

Item No. 3.6	Classification: Open	Date: 18 May 2011	Meeting Name: Council Assembly
Report title:		Member Allowances Scheme 2011/12	
Ward(s) or groups affected:		All	
From:		Constitutional Steering Panel	

RECOMMENDATIONS

1. That Council Assembly considers and notes the recommendations set out in latest report of the Independent Panel together with the officer comments (see Appendix A).
2. That the Constitutional Steering Panel recommends that Council Assembly adopts a revised Member Allowances Scheme for the forthcoming year (see paragraphs 7-24 of this report).

BACKGROUND INFORMATION

3. The current scheme was last amended by council assembly on 19 May 2010 by way of changes to special responsibility allowances (SRAs). Prior to then rates had been agreed for a period of four years (2007-11). The current scheme expires at the end of May 2011. On 3 May 2011 the Constitutional Steering Panel received a report on a Member Allowances Scheme 2011/12. The Constitutional Steering Panel noted the recommendations set out in the latest report of the Independent Panel together with the officer comments (see Appendix A). The panel agreed to recommend a revised scheme to Council Assembly for adoption.
4. The Local Government & Housing Act 1989 and the Local Authorities (Members' Allowances) (England) Regulations 2003 require authorities to make a scheme for payment of allowances to councillors. The regulations do not set the amounts that can be paid.
5. Before making, amending or reworking its allowance scheme, the council is required, by the Regulations, to have regard to the recommendations of an independent remuneration panel. The council is not, however, bound to adopt all or any of the panel's recommendations provided it has given them due consideration and is satisfied that it has justifiable reasons for not doing so. The current independent panel report recommendations with officer comments are set out in appendix A. The report in full is available as a background paper or online at the London Council's website.
6. As with the body of the constitution, circumstances have changed and experience gained by the operation of the scheme has highlighted anomalies and difficulties. These are addressed in this report.

KEY ISSUES FOR CONSIDERATION

7. Proposed amendments to the scheme (changes/additions in **bold**) are set out below and paragraph references in the tables are to the paragraphs in the current scheme. Unless noted all other paragraphs remain unaltered. Consequential changes such as titles, paragraph renumbering and references will be made by the Monitoring Officer.

Introduction

8. A number of members have expressed confusion as to the nature of allowances and tax deductions etc. and seek officer assistance in dealing with their tax liability. The council cannot answer or take up any personal tax issues on behalf of members and this should be made clear in the scheme.

Para	Existing scheme	Proposed scheme
	None	Allowances are not salaries but are subject to tax and national insurance as any allowance is considered as income. Any such deductions are subject to personal circumstances. Members should note that the council is unable to deal with personal tax enquiries on their behalf and should inform their tax office of any change in circumstances.

9. Although the scheme refers to the role of the independent panel it does not identify the relevant panel.

Para	Existing scheme	Proposed scheme
2	Before making, amending or reworking its allowance scheme, the council is required to have regard to the recommendations of an independent remuneration panel. The council is not, however, bound to adopt all or any of the panel's recommendations provided it has given them due consideration and is satisfied that it has justifiable reasons for not doing so.	Before making, amending or reworking its allowance scheme, the council is required to have regard to the recommendations of an independent remuneration panel. The council is not, however, bound to adopt all or any of the panel's recommendations provided it has given them due consideration and is satisfied that it has justifiable reasons for not doing so. For this authority the relevant independent panel is the London Councils Panel.

10. From time to time some members elect not to receive their full allowance(s). The scheme is not as explicit as it might be in this regard referring only to the notification process. Although applying to all allowances this is currently noted only under the provision for basic allowances.

Para	Existing scheme	Proposed scheme
6	If a member wishes to waive their right to receive a basic allowance, or any other allowance under the scheme, they must notify the monitoring officer in writing.	Members do not have to take their allowance(s) - if a member wishes to waive their right to receive a basic allowance, Special Responsibility Allowance, any other allowance, or part thereof, they must notify the monitoring officer in writing.

11. The current scheme refers to pro rata payments for members serving less than a full year. This has sometimes proved difficult with payments made in advance i.e. payment around the 20th of each month for the period to the end of the month. In addition some members where roles have changed have requested that pro rata adjustments be made based on the number of days in the relevant month. The Regulations require pro rata payments to be calculated as a proportion of the number of days in the year. Recovery of small amounts of overpayments often present administrative difficulties and has been reasonably waived previously for example on the death of a councillor. The scheme should be amended to reflect the Regulations

more specifically and note arrangements for recovery of any overpayment. Similarly any in year changes to allowance rates should be linked to a specified implementation date. The pro rata payment arrangement is currently noted separately under basic allowance and SRAs and these should be combined.

Para	Existing scheme	Proposed scheme
5	<p>If a member of the council does not serve for the whole of the 12 month period, or becomes disqualified, they will only be entitled to pro-rata payments for the period(s) during which they were actually a serving member of the council.</p> <p>SRAs are paid monthly. If a member of the council does not serve as an elected member for the whole of the 12 month period, or becomes disqualified they will only be entitled to pro rata payments for the period(s) during which they undertake the duties. Except in the case of eligible special leave, if a member of the council ceases to perform the duties for which the allowance is payable, they will only be entitled to pro rata payments for the period(s) during which they undertake the duties. Similarly, if the scheme is amended so as to affect entitlement, the allowance will be paid pro rata.</p>	<p>Replace paragraphs 5 and 9 with:</p> <p>Allowances are paid monthly in equal instalments. If a member of the council does not serve for the whole of the year, becomes disqualified or ceases to be entitled to an SRA, they will only be entitled to payments for the proportion of the number of days served in that year. Overpayment of SRAs for continuing members will be automatically deducted from the basic allowance. Other overpayments must be repaid to the authority. If the scheme is amended so as to affect entitlement any variation will be paid from an agreed date only. Retrospective payments will not be made to members who are no longer serving.</p>

12. Since the scheme was last agreed members have approved the publication of additional information relating to members' expenses and this should be noted in the scheme.

Para	Existing scheme	Proposed scheme
10	<p>In accordance with the Local Authorities (Members Allowances) (England) Regulations 2001, the council is required to publish details of any basic and special responsibility allowances paid to councillors for the previous financial year, along with details of the allowances scheme which applied at that time.</p>	<p>In accordance with the Local Authorities (Members Allowances) (England) Regulations 2003, the council is required to publish details of any basic and special responsibility allowances paid to councillors for the previous financial year, along with details of the allowances scheme which applied at that time. This statutory notice also includes details of subsistence, travel and carer's allowance. In addition the council publishes further information regarding members' expenses.</p>

Basic allowance

13. No change is required to the basic allowance as it is fixed to the rate of the national local government pay settlement, now subject to a two year pay freeze. The figure will remain at £10,599 unless members specifically agree to change it.

Special responsibility allowance

14. The Leader and members of the cabinet may have reduced levels of allowances paid based on the average number of hours the member is employed elsewhere. The current thirds system allows members to elect to work a fixed but arbitrary number of hours without affecting their SRA or with set reductions. It is not clear whether other employment needs to be paid. Members may wish to consider a voluntary system where there is no stated reduction but members elect not to receive their full allowance irrespective of the number of hours worked elsewhere.

Para	Existing scheme	Proposed scheme
8	<p>The level of allowance paid to a band 3 or band 4 member is dependent on the average number of hours per week the member is employed elsewhere, as set out below:</p> <ul style="list-style-type: none"> • less than 11 hours elsewhere, full SRA; • 11 to 24 hours elsewhere, two thirds SRA; • more than 24 hours elsewhere, one third SRA. 	<p>The level of allowance paid to a band 3 or band 4 member is reduced by half if the member is, during normal office hours, in paid employment elsewhere.</p>
9	<p>SRAs are paid monthly. If a member of the council does not serve as an elected member for the whole of the 12 month period, or becomes disqualified they will only be entitled to pro rata payments for the period(s) during which they undertake the duties. Except in the case of eligible special leave, if a member of the council ceases to perform the duties for which the allowance is payable, they will only be entitled to pro rata payments for the period(s) during which they undertake the duties. Similarly, if the scheme is amended so as to affect entitlement, the allowance will be paid pro rata.</p>	<p>Replace with:</p> <p>Except in the case of eligible special leave, if a member of the council ceases to perform the duties for which the allowance is payable, they will only be entitled to pro rata payments for the proportion of the number of days served in that year which they undertake the duties.</p>
10	<p>In accordance with the Local Authorities (Members Allowances) (England) Regulations 2001, the council is required to publish details of any basic and special responsibility allowances paid to councillors for the previous financial year, along with details of the allowances scheme which applied at that time.</p>	<p>Delete</p>

Approved duties

15. Under current contract standing orders members are not required to be present at tender openings.

Para	Existing scheme	Proposed scheme
20	<p>For a member, an approved duty for the purpose of travel, subsistence and childcare and dependant carers allowances means:</p>	<p>Delete paragraph 20 (e)</p>

Para	Existing scheme	Proposed scheme
	<p>a) attendance at a meeting of the council or of any committee or subcommittee of the council, or of any other body to which the council makes appointments or nominations, or of any committee or subcommittee of such a body, provided they are a member of the body concerned;</p> <p>b) attendance at any other meeting, the holding of which is authorised by the council, or a committee or subcommittee of the council or a joint committee of the council, or a subcommittee of such a joint committee, provided that it is a meeting to which members of at least two political groups have been invited;</p> <p>c) attendance at a meeting of any association of authorities of which the council is a member;</p> <p>d) attendance at a meeting of the executive or of any of its committees;</p> <p>e) attendance at tender openings, where this is required by the council's procedure rules;</p> <p>f) performance of any duty in connection with the discharge of a function of the authority empowering or requiring the inspection of premises;</p> <p>g) performance of any duty in connection with arrangements made by the authority for the attendance of pupils at special schools;</p> <p>h) any other duty approved by the council for the purpose of, or in connection with, the discharge of the functions of the council, or any of its committees or sub-committees; and,</p> <p>i) any duty for the purpose of or in connection with the discharge of the functions of the cabinet.</p>	

Withholding allowances

16. Standards Committee currently can withdraw allowances in the event of a member being suspended. There is no provision for withholding allowances if a member fails to attend required training or for co-opted members who fail to attend meetings. A separate report to Standards Committee on the Localism Bill and the abolition of the current standards regime suggests that the allowance scheme may provide a route for dealing with standards issues. Council Assembly can approve the reason for non-attendance at meetings of the authority. However it has no authority to consider whether allowances should continue to be paid. Whilst it is acknowledged that all previous decisions have related to a member's ill health this may not always be the case.

Para	Existing scheme	Proposed scheme
23	The standards committee may withdraw allowances in whole or in	The standards committee may withdraw allowances from individual members

Para	Existing scheme	Proposed scheme
	part in the event of a member being suspended or partially suspended. All allowances should be withheld for the period of total suspension.	(including independent members of standards committee and co-opted members) in whole or in part as part of any sanction in relation to a breach of conduct, for non-attendance at meetings, or, for elected members only, for failure to attend required training. Withheld allowances are not repayable/recoverable.
24	In the case of partial suspension: <ul style="list-style-type: none"> the basic allowance should continue to be paid (though the council expects a member voluntarily to abate their claim according to the extent to which they were able to continue to fulfil the functions of a nonexecutive member). to the extent that the partial suspension made it impossible or impracticable for a member to undertake activities in respect of which a special responsibility allowance was payable, that allowance should be withdrawn. 	Delete paragraph 24
	None	Standards committee may also consider the withdrawal of allowances for a member given approval by council assembly for a failure to attend, subject to a referral being made by council assembly.

Amendments to the allowances scheme

17. For at least the last five years SRAs have been fixed by Council Assembly and have not been subject to the national local government pay settlement. Index linking on the basic allowance ended in June 2010. It is recommended that in future basic allowances continue to be linked to the national local government pay settlement. The Constitutional Steering Panel sought clarification that index linking is to the general settlement rather than any special provision for particular groups of staff such as the low paid. Officers undertook to reword the proposed scheme to make this point clear. As officers' pay is frozen for the year 2011/12, this implies no increases in the basic allowance for members.

Para	Existing scheme	Proposed scheme
32	Levels of basic, special responsibility and financial loss allowance are adjusted in accordance with the local government pay settlement. This index linking will continue until June 2010.	Basic allowance and travel, subsistence and carers allowances are adjusted in accordance with the national local government pay settlement and allowances for officers. SRA levels are set by Council Assembly and are not subject to inflationary adjustments. Footnote: Index linking is to the general settlement rather than any special provision for particular groups of staff such as the low paid.

Allowances

18. Members should note that some positions or the number of positions attracting an SRA may change as a result of implementing the budget or changes to the national framework. Any such changes should be regarded as consequential and will be implemented by the Monitoring Officer at the appropriate time.
19. At constitutional assembly in 2010 council assembly considered the possible addition of deputy cabinet members and asked for proposals to be made to it. These proposals form part of the separate report on the constitutional review. It is proposed that the role of deputy should attract an SRA. The Local Authorities (Members' Allowances) (England) Regulations 2003 provides, under section 5.1i, for an SRA to be paid for carrying out "such other activities in relation to the discharge of the authority's functions as require the member an amount of time and effort equal to or greater than would be required for any other specified activity" (these include chairing committees, representing the council and acting as a spokesperson). For simplicity it is recommended that the level of SRA should be in line with existing bands and that band 1a applies.

Para	Existing scheme	Proposed scheme
35	Band 1a	Add Deputy Cabinet Members to the list

Travel allowances

20. For the sake of clarity the two sections covering travel allowances should be combined.
21. Members can either claim travel expenses actually incurred or make booking arrangements through member services. Out of borough travel expenses should be agreed by the relevant whip before any journey is undertaken. Details of expenditure incurred by individual members through either route are published.
22. Members who claim the fixed cycle allowance (whether they have taken part in the Bikes4Work scheme or not) should not normally be able to claim any other travel allowance for official duties within the borough.

Para	Existing scheme	Proposed scheme
40	Pedal cycles: Monthly cycle allowance is payable for councillors, independent and co-opted members who use their own cycles in connection with their official duties. The rate is currently £20 per month.	A monthly cycle allowance is payable to councillors, independent and co-opted members who use their own cycles in connection with their official duties. The rate is currently £20 per month. Members must notify the Monitoring Officer of their intention to claim this allowance as unlike other travel allowances it is not paid as an expense. Except in circumstances agreed by the Monitoring Officer members in receipt of the cycle allowance may not claim other travel allowances. Except in circumstances agreed by the Monitoring Officer members who have taken advantage of the Bikes4Work scheme are required to use their cycle for normal council business whether they claim the

Para	Existing scheme	Proposed scheme
		cycle allowance or not and will not be eligible to claim other travel allowances.

Subsistence allowance

23. For the sake of clarity the two sections covering subsistence allowances should be combined.

Summary list of approved duties

24. The summary list gives examples of eligible meetings and in part duplicates the section on approved duties. The full list is set out under paragraph 16 of this report. The Regulations provide for travel and subsistence allowance to be paid for, among others, attendance at meetings for the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or of any of its committees or sub-committees. It would be useful if members would confirm the approved duties as currently listed, including those such as neighbourhood forums, which may be attended by members of one political group only, and thus excluded by virtue of paragraph b of the section on approved duties. The two sections should nonetheless be combined. The current summary list is set out below.

Para	Summary list of approved duties
54	The following is a list of approved duties: a) Attendance at council, committee or sub-committee meetings b) Attendance at neighbourhood forums that fall within the member's ward c) Attendance at tenants' council and leaseholders' council d) Attendance at licensing or planning committees as a ward representative e) Attendance at a meeting of a body to which the member has been nominated by the council.

Resource implications

25. There are no additional resource requirements associated with the adoption of a revised scheme.
26. The proposed introduction of SRAs for deputy cabinet members, assuming a maximum of four, can be contained within existing budgets if the number of cabinet members is maintained at the current reduced number.

Legal implications

27. Legal issues are outlined in the body of the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Constitution 2011	On-line on council's website	Ian Millichap 020 7525 7225

APPENDICES

Appendix	Title
Appendix A	Independent panel report recommendations with officer comments

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Communities, Law & Governance	
Report Author	Graham Love, Head of Democratic Services	
Version	Final	
Dated	5 May 2011	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Strategic Director of Communities, Law & Governance	Yes	Yes (included in body of report)
Cabinet Member	No	No
Date final report sent to Constitutional Team		5 May 2011

Independent panel report recommendations with officer comments

The Report of the Independent Panel 2010 made 12 recommendations, set out in full below.

1. We believe that the scheme of allowances that the panel recommended in 2001, updated in line with local government pay awards, is still appropriate. At appendix A we set out the five bands of responsibility with updated figures for the basic allowance and for the five bands.

Comment

Not all positions attracting an SRA are defined by London Councils i.e. Deputy Mayor. Basic and Band 1 SRAs are within the London Council's range, Band 2a is about £1000 less than the lower end of the range, Band 2b is within the range, Band 3 is about £1000 less than the lower end of the range, Band 4 is about £4000 less than suggested.

2. We continue to believe that the roles identified in the 2006 report as attaching to the bands are still, in general terms, appropriate. Consultation has suggested other roles, but most are covered by the 2006 recommendations. We have added to the role descriptions in band one 'community leaders' and 'leaders of a specific major project'. We appreciate that such responsibilities can provide development opportunities for the leaders of the future and are analogous to other responsibilities within band one. We also recommend the inclusion of 'acting as a member of a committee or sub-committee which meets with exceptional frequency or for exceptionally long periods' and 'acting as a member of an adoption panel where membership requires attendance with exceptional frequency or for exceptionally long periods'.

Comment

The only role recognised as meeting exceptionally frequently is that of licensing committee and the current scheme provides for payment for each meeting attended. This was implemented as a more efficient process than that of the previous SRA payments. It is not recommended that we revert to the SRA but members may wish to consider the rate of the fixed payment.

3. With changes in local government structure and organisation, we accept that some cabinet roles may be more demanding than others. Although it may be sensible for many councils to remunerate cabinet members at the same level, we believe that there is sufficient width in band three to permit councils to recognise different levels of responsibility within the cabinet where this is appropriate.

Comment

There is currently no SRA distinction between cabinet portfolios.

4. In return for the levels of remuneration which we propose, it is important that councillors account publicly for their activities. We believe that:

- role descriptions should be developed for councillors for all their areas of work;
- the role descriptions should be placed on council websites;
- members should report publicly on their activity through a variety of channels as illustrated in the main report; and
- councils should consider the introduction of an appraisal system for members.

Comment

The council has never agreed to a form of job description for members. The portfolios of cabinet members are published as part of the constitution. The main report refers to examples of good practice identified in their 2006 report. A number of these examples have been adopted within Southwark or are a part of our normal constitutional practice. One

suggestion, that each member has their own website, has not been supported by the council although a number of members do operate their own or have links through group pages.

5. Councillors who, without reasonable cause, fail to discharge their duties should not claim the basic allowance. We believe that the legislation requiring only an attendance at a council meeting every six months should be tightened.

Comment

It remains a personal choice under the current scheme to claim any allowance. There would be some difficulty in ascertaining whether a member had failed to discharge their duties unless connected to a complaint. There has been no change in legislation.

6. We endorse the recommendations of the 2006 report in relation to the chair and members of the standards committee.

Comment

The 2006 report proposed an allowance based on a fixed rate for each meeting. Southwark translated this into a fixed sum and SRA. No additional payments are made for independent members chairing sub-committees. With proposed changes to the standards regime there seems little benefit in making any changes now.

7. We reiterate our view that only one SRA should be paid to a councillor in respect of duties with the same authority.

Comment

The scheme provides for only one SRA to be paid.

8. Although councillors are not employees, we believe that it is reasonable that their special responsibility allowances should not cease in case of sickness, maternity and paternity leave in the same way that employees enjoy such entitlements. We continue to recommend that councils should be able to make arrangements in their schemes in appropriate circumstances to enable this to happen.

Comment

The current scheme provides for special leave for SRA holders.

9. We continue to recommend that the allowances we recommend should be updated annually in accordance with the headline figure in the annual local government pay settlement. We appreciate that Regulation 10(1) of the Local Authorities (Members' Allowances) (England) Regulations 2003 appears to require re-adoption of the scheme at the start of each municipal year. However Regulation 10(4) provides that the scheme will not be deemed amended by virtue only of adjustment of the scheme through indexation. If there is no other change a re-adoption can be achieved by a simple resolution.

Comment

This will not be relevant in the foreseeable future as the current freeze on local government pay will apply for at least two years.

10. While we continue to believe that intra-borough travel should be part of the basic allowance, we recognise that there are circumstances where it may be appropriate for a scheme to provide payment for the cost of transport e.g. journeys home after late meetings and for people with disabilities. In the case of dispute, we believe that the standards committee could adjudicate.

Comment

The current scheme provides exceptions for intra-borough travel as noted. The scheme defines the duties that are approved for travel allowance.

11. We strongly believe that there is need for rationalisation in the tax treatment of expenses borne by councillors and recommend that the Local Government Association be asked to

pursue that at the national level, or failing that, London Councils attempt to achieve rationalisation on behalf of London.

Comment

Not an issue for the council.

12. We have consistently recommended that eligible councillors should be eligible for admission to the local government pension scheme and we continue to urge that councils should give their members this opportunity.

Comment

Members have previously agreed not to join the LGPS. In 2007 it was estimated that the cost to the council of members joining the scheme was about £140k a year. The LGPS is a contributory scheme and would require members to pay 6% (non-taxable) of their allowance. The scheme as applied to councillors is a career average scheme rather than a final salary scheme. Further details of the scheme are available online:

<http://www.lge.gov.uk/lge/core/page.do?pagelId=8518952>