

Croydon Council

For General Release

REPORT TO:	FULL COUNCIL 26th January 2015
AGENDA ITEM NO:	6
SUBJECT:	SPECIAL INQUIRY REPORT
LEAD OFFICER:	Jacqueline Harris-Baker Head of Social Care & Education Law, and Deputy Monitoring Officer
LEAD MEMBER:	COUNCILLOR TONY NEWMAN, LEADER OF THE COUNCIL
WARDS:	NONE
CORPORATE PRIORITY/POLICY CONTEXT: One of the key roles of all Members is to maintain the highest standards of conduct and ethics. In addition, Council is responsible for setting the Scheme of Members Allowances and as such it is appropriate that a report detailing the outcome of the Special Inquiry is presented to full Council.	
FINANCIAL IMPACT: The recommendations within this report do not result in financial implications for the council	

1. RECOMMENDATIONS

1.1 That Council notes the actions taken by the Leader in relation to the Special Inquiry.

2. EXECUTIVE SUMMARY

2.1 In September 2014, Councillor Tony Newman, Leader of the Council, commissioned a Special Inquiry to enquire into the take up of Special Responsibility Allowances (SRAs) by the Conservative administration during their term of office between 2010-2014 and subsequently under the provisions of the Members' Allowance Scheme 2010 (the "Scheme").

2.2 This report details the outcome of the Special Inquiry and the recommendations of the Special Inquiry Panel ("The Inquiry").

3. DETAIL

Inquiry Panel and Terms of reference:

3.1 The Terms of Reference of the Special Inquiry were:

- To clarify the level of SRAs taken by Councillor Mike Fisher during 2010/14.
- To clarify the level of additional or 'top-up' payments of SRAs for 2010/14 by Councillor Mike Fisher.
- To clarify which Conservative Members requested payment of their full allowances for 2014.
- To review the robustness of payment pathways and to make recommendations for improvement to prevent a reoccurrence.
- To review the 2010/14 Members' Scheme of Allowances in relation to the Members' Code of Conduct.
- To review the Council's approach to the publication of data in respect of Members' Allowances.
- To make recommendations to the Leader of the Council in respect of these matters to ensure an improved level of openness, transparency and public accountability.

3.2 The Special Inquiry Panel (the "Inquiry") consisted of three independent members of the public:

- Mrs Anne Smith (Chair), former independent Chair of the Council's Standards Committee and current independent member of the Council's Ethics Committee.
- Mr Damian Luke, a Borough Dean and Chair for the Black Majority Churches in Croydon.
- Mr Joseph Trickey, a former lead inspector for Ofsted.

Summary findings:

3.3 The Inquiry is of the view that there was an ambiguity in the approach and presentation of the Scheme in 2010 and in setting new rates. This resulted in a lack of both clarity and robustness in payment pathways. Inherent in the consequent operation of the Scheme was a duality of options: the higher SRA rates for some Members' roles recommended by the London Panel and adopted by the Council, and the lower rates which Members took. The only indication as to which SRA a Member would claim was the "asterisk reference" which provided that "*Recipients have indicated that, at this time, their total remuneration shall not exceed those paid to equivalent post holders in 2009/10*". This reference was introduced specifically for the Scheme in 2010 and does not appear in any previous or subsequent Schemes, including the current scheme approved in July 2014.

3.4 The Inquiry accepted that taking the higher rate payment was not unlawful. However being mindful of what was stated in the asterisk in the Scheme, it would call into question whether it was proper or in the public interest to take the increase without publically communicating that decision in advance.

- 3.5 The Inquiry found, as a matter of fact, that only Cllr Mike Fisher took the higher rate of payment provided for under the scheme and only in the 2013/14 financial year. No other Members or former Members of the former Conservative administration were found to have done so.
- 3.6. The Inquiry endorsed the decision not to include the asterisk reference in the 2014 Members allowance Scheme.
- 3.7 The Inquiry was of the view that the Members' Code of Conduct covers the conduct that should have been expected in this instance.

Leader's Actions:

- 3.8 The Leader has referred the Special Inquiry Report to the Ethics Committee to undertake a review of the Scheme of Members' Allowances and Member's Code of Conduct in light of the Special Inquiry Report and make such recommendations for Council's consideration as are considered appropriate.

4. CONSULTATION

- 4.1 The Inquiry met on 23 November and 5 November 2014. All three members attended both meetings. Support was provided by the Head of Social Care and Education Law and Deputy Monitoring Officer. The Inquiry members met to discuss the content of the background documents and to request any additional information, raise questions of clarification and approve the findings and recommendations for this report. The Panel did not consider it necessary to hold public sessions or to obtain specific responses from Members or Officers. It was decided that the appropriate focus of investigation, within the guidelines of the terms of reference, was the analysis of reports and decisions made by the Council, the Members Scheme of Allowances 2010/14, the manner in which the latter enabled additional claims to be made at subsequent dates and statements in the public domain.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 There are no financial considerations arising from the recommendations in this report.
Approved by: Richard Simpson, Director of Finance and Assets

6. LEGAL COMMENTS

- 6.1 The Members' Allowances Scheme 2010/14 (the "Scheme") for Croydon was reviewed in 2010 and was contained within Part 6 of Croydon's Constitution.
- 6.2 The relevant legislation is the Local Authorities (Members' Allowances) (England) Regulations 2003 (the "Regulations"). This authorises the establishment by the Association of London Government (now London Councils) of an Independent Remuneration Panel (the "London Panel") to make recommendations in respect of the members' allowances payable by London Boroughs. Such a Panel was established and reported in 2001, 2003, 2006 and

2010. The London Panel's recommendations have led to substantial convergence of members' allowances across London.

- 6.3 It is a statutory requirement for the Council to take into account the recommendations of the London Panel when reviewing its own Members' Allowance Scheme (the "Scheme"), but it is not bound by their recommendations.
- 6.4 In accordance with the Regulations local authorities are required to publish the total sum paid to Members each year under the Scheme. The Scheme is broken down into various allowances: basic allowance; special responsibility allowance; dependent carers allowance; travel and subsistence allowance. In addition to publication requirement, it is also a legal requirement that a review of the Scheme is undertaken (as a minimum) every four years.
- 7. HUMAN RESOURCES EQUALITIES, ENVIRONMENTAL AND CRIME AND DISORDER IMPACT**
- 7.1 There are no direct human resources, equalities, environmental or crime and disorder implications arising as a result of the recommendations in this report.

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BACKGROUND DOCUMENTS:
Special Inquiry Report dated November 2014.

SPECIAL INQUIRY REPORT

1. Executive Summary

1.1 In September 2014, Councillor Tony Newman, Leader of Croydon Council, commissioned a Special Inquiry to enquire into the take up of Special Responsibility Allowances (SRAs) by the Conservative administration during their term of office between 2010-2014 and subsequently.

1.2 This report details the findings and recommendations of the Special Inquiry.

2. Terms of Reference

2.1 The Terms of Reference of the Special Inquiry are:

- To clarify the level of SRAs taken by Councillor Mike Fisher during 2010/14.
- To clarify the level of additional or 'top-up' payments of SRAs for 2010/14 by Councillor Mike Fisher.
- To clarify which Conservative Members requested payment of their full allowances for 2014.
- To review the robustness of payment pathways and to make recommendations for improvement to prevent a reoccurrence.
- To review the 2010/14 Members' Scheme of Allowances in relation to the Members' Code of Conduct.
- To review the Council's approach to the publication of data in respect of Members' Allowances.
- To make recommendations to the Leader of the Council in respect of these matters to ensure an improved level of openness, transparency and public accountability.

2.2 The Special Inquiry Panel (the "Inquiry") consisted of three independent members of the public:

- Mrs Anne Smith (Chair), former independent Chair of the Council's Standards Committee and current independent member of the Council's Ethics Committee.
- Mr Damian Luke, a Borough Dean and Chair for the Black Majority Churches in Croydon.

- Mr Joseph Trickey, a former lead inspector for Ofsted.

2.3 The Inquiry met on 23 November and 5 November 2014. All three members attended both meetings. Support was provided by the Head of Social Care and Education Law and Deputy Monitoring Officer. The Inquiry members met to discuss the content of the background documents, listed in Appendix 1 to this Report, and to request any additional information, raise questions of clarification and approve the findings and recommendations for this report. The Panel did not consider it necessary to hold public sessions or to obtain specific responses from Members or Officers. It was decided that the appropriate focus of investigation, within the guidelines of the terms of reference, is the analysis of reports and decisions made by the Council, the Members Scheme of Allowances 2010/14 and the manner in which the latter enabled additional claims to be made at subsequent dates.

3. Legal context

3.1 The Members' Allowances Scheme 2010/14 (the "Scheme") for Croydon was reviewed in 2010 and was contained within Part 6 of Croydon's Constitution.

3.2 The relevant legislation is the Local Authorities (Members' Allowances) (England) Regulations 2003 (the "Regulations"). This authorises the establishment by the Association of London Government (now London Councils) of an Independent Remuneration Panel (the "London Panel") to make recommendations in respect of the members' allowances payable by London Boroughs. Such a Panel was established and reported in 2001, 2003, 2006 and 2010. The London Panel's recommendations have led to substantial convergence of members' allowances across London.

3.3 It is a statutory requirement for the Council to take into account the recommendations of the London Panel when reviewing its own Members' Allowance Scheme (the "Scheme"), but it is not bound by their recommendations.

3.4 In accordance with the Regulations local authorities are required to publish the total sum paid to Members each year under the Scheme. The Scheme is broken down into various allowances: basic allowance; special responsibility allowance; dependent carers allowance; travel and subsistence allowance. In addition to publication requirement, it is also a legal requirement that a review of the Scheme is undertaken (as a minimum) every four years.

4. Council decisions

4.1 A report in respect of the Members' Allowances Scheme 2010/14 was considered by the Council's Corporate Services Committee on 30 June 2010. The Committee report referred to the May 2010 Report of the London Panel.

4.2 The Corporate Services Committee Report states that the Croydon Scheme was already in accordance with the London Panel's recommendations and that special responsibility allowances were compatible with suggested bands. The London Panel allowances' recommendations were stated to be entirely appropriate and proportionate to those having special responsibilities within local government. A calculation of the basic and special responsibility allowances for 2010/11 and the 2011/14 is contained within Appendix B of Annex 1 to the Committee Report. The report advises that on the face of it, the financial consequence of adopting the Scheme would mean an increase in the special allowances for the Leader of the Council, Councillor Mike Fisher, and some Cabinet Members. In the case of Councillor Mike Fisher, this would be an increase from £47,831 to £54, 227 p.a. Contained within Appendix B is an asterisk footnote to the relevant posts affected, which states that "Recipients have indicated that, at this time, their total remuneration shall not exceed those paid to equivalent post holders in 2009/10".

4.3 The minutes of the Corporate Services Committee's meeting of 30 June 2010, record that the Labour Councillors, then the Opposition, voted and recorded against the decision to recommend the increases to the Full Council.

4.4 The Labour Opposition subsequently moved a debate motion at the July 2010 Full Council meeting. The debate motion was defeated. The Full Council agreed the recommendations from the Corporate Services Committee on 19 July 2010. The Labour Opposition voted against.

4.5 The Scheme agreed therefore provided that 'Special Responsibility Allowances' (SRA) would be set at the pan-London scales. This had the effect of some SRAs rising and the basic rate allowance falling. However, having reached this decision, it was noted by way of asterisk marking on the Scheme that, "at that time", Members would not take the full increase of their SRAs.

5. The former Leader of the Council, Councillor Mike Fisher

5.1 In accordance with the Regulations, each year the Council is required to publish a notice of allowances paid to the Members. This is done by way of a Public Notice published on the Council's website by the Monitoring Officer.

5.2 The Public Notice is published in the summer each year and lists each Councillor by name and the total payments made to them. At the date of the Full Council decision in July 2010, Councillor Fisher had agreed to claim the SRA Allowance at the lower rate set for 2009/10 of £41,343, plus the basic allowance of £11,880. This would mean a total allowance payable in the region of £53,223. The published total sums for Councillor Fisher were: for 2010/11 £52,445; for 2011/12 £53,223; for 2012/13 £53,223; and for 2013/14 £66,875.

5.3 It was upon the publication of the 2013/14 Public Notice that it became public knowledge that Councillor Mike Fisher had taken the increases in his SRA.

5.4 These increases had been taken as follows. In January 2014, Councillor Fisher requested payment of the higher rate special responsibility allowance at the higher rate from 1st December 2013 going forward. In March 2014, Councillor Fisher requested payment of the SRA at the higher rate for the period 1st August 2013 to 30th November 2013. In May 2014, Councillor Fisher requested payment of the SRA at the higher rate for the month of July 2013. This accounts for the difference in the increased allowance received for 2013/14 over previous years.

5.5 There has been speculation that other senior councillors have also individually requested payment of their SRAs at the higher rate. However, the figures published by Croydon in the Public Notices illustrate that this is not the case. Councillors Steve O'Connell, Vidhi Mohan, Steve Holland and former Councillor Simon Hoar made enquiries about the allowances they were eligible for under the Scheme. However, after further consideration, it is noted that they did not proceed with their claims.

6. The Inquiry Findings

6.1 The decision to introduce new increased SRA limits, upon review of the Scheme, in 2010 was highly political. This is evident from the Labour Opposition Members' objection to the Corporate Services Committee Recommendations, and their debate motion at Full Council in July 2010.

6.2 Councillor Fisher, as Leader of the Council at that time, took a public stand with the majority Conservative group, not to take payment of the SRAs at the higher rate beyond the 2009/10 rates. This was in the climate of tight financial restraints and cuts in public sector services and staffing salaries. The political advantage of this stance would have been significant at the time.

6.3 The Inquiry is of the view that there was an ambiguity in the approach and presentation of the Scheme in 2010 and in setting new rates. This resulted in a lack of both clarity and robustness in payment pathways. Inherent in the consequent operation of the Scheme was a duality of options: the higher SRA rates for some Members' roles recommended by the London Panel and adopted by the Council, and the lower rates which Members took. The only indication as to which SRA a Member would claim was the asterisk reference referred to in paragraph 4.5, which appears to have been introduced specifically for the Scheme in 2010. It is noted that the asterisk indication has since been removed from the Scheme, in July 2014. The Inquiry endorses this decision and recommends that there should be no such asterisk or footnote in any future Scheme.

6.4 The Inquiry concludes that if the Scheme is not adjusted annually on 1st April (as provided for in the Scheme) a review should take place. There would

essentially be two options on how to proceed with the Scheme. Firstly Croydon could adopt the recommended rates as set out by the London Panel report, and if this is done, it should be applied and paid as adopted. If not, Croydon should set up a local separate Scheme. This would need to be properly dated with annual review mechanisms in place. Above all, specific statements must be made about the exact allowances available to all Members, to avoid any doubt about the position.

6.5 Whilst the Inquiry accepted that the ambiguity of the Scheme's presentation allowed claims at the higher SRA rate, Councillor Fisher's actions have caused considerable concern. Councillor Fisher has resigned as Leader of the Opposition as of 19 September 2014.

6.6 The Inquiry considered Councillor's Fisher's actions within the context of the Members' Code of Conduct.

6.7 It is noted that in a statement on the Croydon Conservatives website, dated 6 September 2014, Councillor Fisher explained the reasons for claiming the higher allowance. He explains that he took the decision "in the interests of my family".

6.8 The Code provides clear guidance as to what is expected from Members in that paragraph 2(i) provides that

'You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate'

In addition, paragraph 2(v) states:

'You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions'

6.10 The Inquiry accepts that taking the higher rate payment was not unlawful. However being mindful of what was stated in the asterisk in the Scheme, it would call into question whether it was proper or in the public interest to take the increase without publically communicating that decision in advance.

6.11 The Code is based on the principles of openness and transparency. With this in mind the Scheme was adopted at a public Council meeting, and public statements were made where it was decided that those eligible would not take the additional money. Clearly there was a variation to this, and this should have been disclosed to the public by way of a public statement by any individuals making those claims, at the time any such claims were made.

6.12 The Inquiry finds that the situation involving Councillor Fisher demonstrates a lack of openness, transparency and public accountability.

6.13 It is acknowledged that steps have been taken by the Full Council to ensure that the position could not arise in 2014/18, as the caveat was deleted from the Scheme.

6.14 In view of these findings, it is of the utmost importance that any future action addresses the importance of restoring public confidence; safeguarding public monies and preventing a reoccurrence.

7. Recommendations

7.1 As far as annual publication is concerned, the Inquiry recommends that this should take place by the end of April each year rather than, as currently, in the summer. If this had been in place in 2014 then the timing of the claims made by Councillor Fisher could not have suggested to some, that they were made so as to only come into the public domain after the local election. The Inquiry chooses not to comment on the suggestion that data should be published monthly, as the Scheme of Allowances deals with the publication of allowances on an annual basis.

7.2 In view of its findings about the wording in the 2010 Scheme, the Inquiry recommends that no Scheme should include additional comments or notes that are not part of the Scheme. Whatever future Allowances Scheme is adopted, it should be accessible and transparent to the public, ensuring that the London Panel's recommendations are either adopted or implemented, or not; and if not, the local Croydon Scheme should be defined as such, and subject to annual review.

7.3 The Inquiry is of the view that the Members' Code of Conduct covers the conduct that should have been expected in this instance. However in order to establish public confidence in Members and the system, the Inquiry recommends there should be further commentary within the Scheme to the effect that *the Code of Conduct is to be used as a guideline for establishing the rules for how the allowances are set and claimed.*

Appendix A

Background documents

1. Corporate Services Committee Report: Review of the Scheme of Members' Allowances 30 June 2010
2. Written minutes for Corporate Services Committee meeting held on 30 June 2010
3. Report to Full Council on 19 July 2010: Review of the Scheme of Members' Allowances
4. Motion for Debate submitted at Council meeting on 19 July 2010
5. Written minutes for Council meeting held on 19 July 2010
6. Public Notice of Members' Allowances Scheme 2009/2010 (Total Payments)
7. Public Notice of Members' Allowances Scheme 2010/2011 (Total Payments)
8. Public Notice of Members' Allowances Scheme 2011/2012 (Total Payments)
9. Public Notice of Members' Allowances Scheme 2012/2013 (Total Payments)
10. Public Notice of Members' Allowances Scheme 2013/2014 (Total Payments)
11. Public Notice of Members Allowances Scheme - Additional Information 2014/15 - Monthly Figures for period 1 April to 31 August 2014
12. Councillor Fisher's Statement from the Croydon Conservative Party Website, dated 6 September 2014
13. Croydon Council Members Code of Conduct, dated July 2012