

	<p align="center"><b>Full council</b> 8 July 2024</p>
	<p align="center"><b>Report from the Corporate Director of Law &amp; Governance</b></p>
<p align="center"><b>Maternity and Paternity Arrangements for Councillors – Allowances, Leave and s85 Local Government Act 1972.</b></p>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Council
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>List of Appendices:</b>	One Appendix 1: Draft Changes to Constitution Part 6, Members' Allowance Scheme
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Debra Norman Corporate Director of Law & Governance 020 8937 1578 Debra.norman@brent.gov.uk

## 1.0 Executive Summary

1.1 This report proposes that the maternity/paternity policy in the Members Allowances Scheme be updated following feedback from Members who have returned from paternity and maternity leave. The proposed changes include:

- A requirement to inform the Deputy Director, Democratic Services if a Member is due to become a parent as soon as reasonably practical.
- A requirement to inform the Deputy Director, Democratic Services, in writing, of the expected start day or date of the period of leave and its duration.
- A note on leave if a Member has a baby who dies shortly after birth.
- A note on miscarriages
- Confirming the approach to 'Keeping in Touch' (KIT) Days for Party Leaders and Cabinet
- A general approval of absence from formal council member meetings while on approved maternity leave.

## 2.0 Recommendation(s)

- 2.1 In accordance with s.85 of the Local Government Act 1972, to agree (in relation to each and every relevant member) absence on approved maternity leave as a reason for non-attendance at any meeting of the Council, Cabinet, Committee or Sub-Committee from 8th July 2024 onwards.
- 2.2 To decide whether to adopt the changes contained in the appendix to this report.
- 2.3 To authorise the Corporate Director of Law & Governance to amend the Constitution accordingly if required, including making any necessary incidental or consequential changes.

### **3.0 Detail**

#### **3.1 Contribution to the Borough Plan and Strategic Priorities**

- 3.1.1 Reviewing provisions contained in the Constitution is supportive of good governance and the particular proposals in the report ensure that councillors are not unduly disadvantaged where they need to take maternity or paternity leave during their tenure.

#### **3.2 Background**

- 3.2.1 A review of the maternity and paternity provisions in the Members Allowances Scheme has been undertaken based on feedback from Members who have undertaken maternity or paternity leave, as well as benchmarking across the London boroughs.
- 3.2.2 The Maternity, Paternity, Adoption and Sickness Pay policy (which is included in the Council's Constitution at Part 6 and is published on the Council's website) currently provides that a Councillor entitled to a Special Responsibility Allowance (SRA) shall continue to receive their SRA during any period of maternity, paternity, adoption and sickness leave "in the same way that the Council's employees enjoy such benefits".

#### **3.3 The Review**

- 3.3.1 Over the period of May 2023 to date, two female Members have taken and returned from maternity leave, one female member is currently on maternity leave, and one male member has taken paternity leave. Two more male members who were eligible did not take paternity leave. One of these members was unaware of the policy and suggested paternity leave should be promoted in the Members Bulletin and elsewhere for general Member awareness.
- 3.3.2 Benchmarking with a number of other London councils has been carried out to be able to draw comparisons to inform decision making. Councils were asked if (a) If a backbencher or a Cabinet Member went on parental leave,

would casework/inbox support be provided, and (b) was formal time off offered for members who had miscarriages.

- 3.3.3 Of the sample of eight councils, Westminster and Waltham Forest support their Members with casework via their Support Officers whilst they are on maternity or paternity leave, whereas the rest of the councils would expect their fellow Ward members to pick up casework in their absence. The latter is the case in Brent. Cover for responsibilities as a Cabinet Member is a matter for the Leader (subject to the statutory limit on the number of Cabinet members that can be appointed) and cover for roles on Council Committees would be a matter for Full Council. It is not proposed that any changes be made in respect of these arrangements.
- 3.3.4 Of the sample of eight councils, the vast majority do not have a formal policy on miscarriage, but if the issue arose, they felt this would be covered under current bereavement and sickness policies and would be tailored to that individual Member. Only Greenwich has specific miscarriage policies, and since 2022, their policy is “In all cases of miscarriage, Members are advised to liaise with the Whips who will have the discretion to agree leave”.
- 3.3.5 The review has also considered the recommendations from the London Remuneration Panel, to which the council is required to have due regard in setting its allowances scheme. The recommendations include the following:

*councils should make arrangements in their members’ allowances schemes to allow the continuance of special responsibility allowances in the case of sickness, maternity and paternity leave in the same terms that the council’s employees enjoy such benefits (that is to say, they follow the same policies).*

It is proposed that the provisions currently in the council’s scheme be amended to reflect this wording for any periods of relevant leave commencing after the changes are approved.

- 3.3.6 The council’s current policies for employees provide the following in respect of maternity pay:
- *the first 6 weeks: 90% of their average weekly earnings (AWE) before tax in the eight weeks preceding the end of the 15th week before the expected week of confinement. This is inclusive of statutory maternity pay (SMP) where employees are eligible; (or 90% SMP, whichever is higher)*
  - *the next 12 weeks: half contractual pay plus SMP where eligible, except where combined pay and SMP exceeds full pay*
  - *from week 19 to 39: Lower rate SMP (£184.03 or 90% of average weekly earnings, whichever is lower) or 90% of AWE (whichever is lower), up to a maximum of 39 weeks or whenever the employee decides to return to work.*

- 3.3.7 The council's current policies for employees provide the following in respect of paternity pay:

*£184.03, or 90% of average weekly earnings (whichever is lower)*

- 3.3.8 Another issue raised in the review is the application of s85 of the Local Government Act 1972. This provision requires a member of a Local Authority to attend at least one meeting of that Authority within a 6 month consecutive period in order to avoid being disqualified as a Councillor.

- 3.3.9 This requirement can be waived if any failure to attend was due to a reason approved by the Authority in advance of the 6 month period expiring.

- 3.3.10 It is proposed that the Council be asked to approve as a reason for failure by a member to attend for a 6 month period a meeting of the Council, Cabinet or any committee or sub-committee of the Council during any period they are on approved maternity leave. This will include the councillor who is currently on maternity leave.

#### **4.0 Stakeholder and ward member consultation and engagement**

- 4.1 Members of the Council's Constitutional Working Group have been consulted about the changes proposed in this report. Members recently affected by the paternity and maternity provisions in the council's Members Allowances scheme were consulted in the course of the review.

#### **5.0 Financial Considerations**

- 5.1 New parents who go on maternity or paternity leave will be entitled to receive their current full Basic Allowance and the relevant portion of their SRA (if entitled to one). If another Councillor is appointed to cover the period of absence, the replacement will be entitled to receive the full SRA allowance for the role. In accordance with paragraph 3.3 of the scheme, no Councillor shall receive more than one Special Responsibility Allowance.

- 5.2 The current budget for members' allowances is £1.16m. It is expected that there is scope within the existing budget to absorb the cost of maternity cover SRAs for the number of such SRAs it might reasonably be expected could be required in a year.

#### **6.0 Legal Considerations**

- 6.1 The recommendations to which the Council is required to have due regard are set out in the body of the report.

- 6.2 There is at present no legal right to parental leave of any kind for people in elected public office; this applies to MPs as well as Councillors. This policy can, therefore, only currently be implemented on a voluntary basis.

6.3 Councillors have a duty under section 85 Local Government Act 1972 to attend a meeting of the Council within a six month period unless the Council agrees to an extended leave of absence prior to the expiration of that six month period, failing which they automatically cease to be councillors. The proposed changes to the policy would mean that any Councillor on approved maternity leave would, for the period of that leave, be regarded as absent from council meetings for a reason which has been approved by full Council prior to the absence.

## **7.0 Equity, Diversity & Inclusion (EDI) Considerations**

7.1. Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have “due regard” to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.2 “Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to the effect is a matter for the council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged. Depending on the circumstances, regard should be had to the following:

- the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision;
- the need to remove or minimise disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic;
- the need to take steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes taking account of disabled persons’ disabilities. There can be a positive duty to take action to help a disabled person. What matters is how they are affected, whatever proportion of the relevant group of people they might be;
- the need to encourage persons who share a protected characteristic to participate in public life (or in any other activity in which participation by such persons is disproportionately low); and
- the need to tackle prejudice and promote understanding.

7.3 This report outlines arrangements for the payment of allowances for members on paternity or maternity leave. Basic allowances are the same for all Members in these circumstances, irrespective of their background. The arrangements in respect of Special Responsibility Allowances are linked to those in place for paternity and maternity leave for employees.

7.4 The approval of the reason for non-attendance set out in this report will protect councillors on maternity leave from being disqualified where this leads to their non-attendance at relevant meetings.

## **8.0 Climate Change and Environmental Considerations**

8.1 None

## **9.0 Human Resources/Property Considerations (if appropriate)**

9.1 None

## **10.0 Communication Considerations**

11.1 None

**Report sign off:**

***Debra Norman***

Corporate Director of Law & Governance