

<b>Committee(s)</b> Policy and Resources - for decision  Court of Common Council – for decision	<b>Dated:</b> 3 June 2021  22 July 2021
<b>Subject:</b> Members Financial Support Scheme	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	<b>3</b>
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>Y</b>
<b>If so, how much?</b>	<b>Potentially £937,500</b>
<b>What is the source of Funding?</b>	<b>To be confirmed</b>
<b>Has this Funding Source been agreed with the Chamberlain's Department?</b>	<b>Y</b>
<b>Report of:</b> Town Clerk on Behalf of the Financial Assistance Working Party	<b>For Decision</b>
<b>Report author:</b> Angela Roach, Assistant Town Clerk and Director of Members Services	

### Summary

1. In July 2020 the Policy and Resources Committee gave support, in principle, to the introduction of an annual, flat rate, allowance based on the City Corporation's rate for inner-London Weighting which would be easy to claim and would only create a potential tax liability for Members who received the payment. It was envisaged that any new scheme would recompense Members for the duties they undertake on behalf of the City Corporation and that it would enable those who chose not to claim from the scheme to also maintain their status as volunteers.
2. This followed on from the Committee's aspirations to enhance the diversity of the Court of Common Council and to ensure that prospective candidates for election to the Court are not deterred from standing for election for any reason, including any prohibitive cost. This is a view shared by the Members Diversity Working Party and more recently by the Tackling Racism Taskforce.
3. Since July work has been undertaken by the City Corporation's tax adviser, RSM, in consultation with the Members Financial Assistance Working Party (MFAWP), to develop a new, non-evidence-based allowance scheme (including the criteria for applying to it). In order to give certainty on the tax and NIC position, the views of HMRC were sought on an initial proposal including the treatment of other elements of the scheme such as the provision of Member's expenses prior to it being presented for approval.
4. HMRC were unable to confirm that the allowance would not have adverse tax implications for all Members as the MFAWP had hoped. The Working Party therefore

concluded that RSM should revert to its original proposal to update the existing Members Financial Loss Scheme (FLS) and include an element where all Members can claim for the duties they perform if they choose, with only those Members who subsequently benefitted from the scheme being liable for tax.

5. The FLS was previously administered in-house and since its introduction almost 15 years ago, fewer than ten Members have claimed from it. To remove the perceived barrier caused by feelings of awkwardness and, to some extent, embarrassment by those making a claim, the Working Party is of the view that a degree of anonymity should be included in the process. It felt that having a process which dealt with claims on a more confidential basis might encourage more Members to consider whether to apply, though it was accepted that anonymity might not be applicable once a Member benefitted from the scheme. Notwithstanding this, the MFAWP is recommending that the scheme is administered by an external third party to validate the applications received and provide the City Corporation with confirmation that a payment should be made. The appointment of an administrator would be determined in accordance with the City Corporation's procurement policy and the Scheme would be subject to the usual internal auditing practices.
6. It was originally intended that any payment should start after the all-out Common Council elections i.e. from April 2021. However, as a result of the pandemic, the Ward elections are now scheduled to take place in 2022. Nonetheless, the Working Party is keen to see a revised scheme introduced by October 2021 as this would give prospective candidates the security of a scheme being in place from the outset rather than one which was still to be introduced.
7. The FLS has now been updated and has been renamed the Members Financial Support Policy (MFSP). It is divided into two parts. The first retains the previous scheme which enables claims to be made for actual financial loss and the second part is a new section entitled the Extended Member Support Scheme (EMSS) which will enable all Members to claim for duties undertaken if they choose, providing they meet the necessary criteria. The new draft MFSP is attached for your consideration.

## **Recommendations**

8. The Committee is asked to:-
  - i. consider and approve the final draft Members Financial Support Policy including the Extended Members Support Scheme section as set out in the appendix to this report;
  - ii. reconfirm the current policy on claims for travel expenses where expense reimbursement only applies when travelling from Guildhall to undertake City Corporation business;
  - iii. agree that the Scheme should be administered by an external third party who would receive and validate applications before passing to the City Corporation for payment, with the appointment being made in accordance with the City Corporation's procurement policy;

- iv. determine whether Members should have the ability to claim from the Scheme as soon as it is settled, and a scheme administrator is appointed i.e. in October 2021; and
- v. given current financial constraints, the tax and NIC incurred on expenses and other benefits in kind liable to tax and NIC (such as the provision of certain meals, with exception of business meals - or accommodation, with the exception of accommodation provided for the betterment of an office) should no longer be met by the City Corporation;
- vi. agree that notwithstanding desires for anonymity, Internal Audit be given free and unfettered access to information when necessary and decide whether payments should be publicised in aggregate or by named recipients;
- vii. note the potential annual cost of the Extended Member Support element of the Members Financial Support Policy with full take up is £937,500 (not including employer's NIC where payable or the cost of the scheme administrator);
- viii. agree that the cost of the Scheme be split across City Fund and City's Cash on a suitable, allocation criteria, e.g. Committee/Board time, employer's pensions contributions or on the basis on which we split corporate departmental time and consider the options on how this cost should be met;
- ix. subject to approval of the scheme and the implementation date, note that part year costs incurred in the financial year 2021/22, will be funded from one-off contingencies included within the budget that are no longer needed relating to pay. Future costs are to be included in the 2022/23 budget setting and medium-term financial planning
- x. agree to the submission of the Scheme to the Court of Common Council for final approval.

## **Main Report**

### **Background**

- 9. The Policy and Resources Committee is keen to enhance the diversity of the Court of Common Council and to ensure that prospective candidates for election to the Court are not deterred from standing for election for any reason, including any prohibitive cost. It is a view shared by the Members Diversity Working Party and more recently by the Tackling Racism Taskforce.
- 10. Last year the Committee gave support, in principle, to the introduction of an annual, flat rate, allowance based on the City Corporation's rate for inner-London Weighting which would not, if implemented and operated correctly, create a tax liability for all Members, irrespective of whether they sought/received the payment. It was envisaged that any new scheme would provide Members with compensation for the City Corporation duties they perform, provide recompense for any adverse impact

these duties had on day-time jobs and one which enabled those Members who chose not to claim from the scheme to also maintain their status as volunteers.

11. Since then, the Members Financial Assistance Working Party (MFAWP), has been working with the City Corporation's tax adviser, RSM, to develop a new, non-evidence-based scheme which included the criteria for applying to it. In order to give certainty on the tax and NIC position, the views of HMRC were sought on the initial proposals for an allowance scheme, including the treatment of other elements such as the provision of Member's expenses prior to it being presented for approval.
12. HMRC were unable to confirm that the introduction of a non-evidence-based allowance scheme would not have tax implications for all Members. The Working Party therefore concluded that it should revert to RSM's original proposal to simply update the current Members Financial Loss Scheme (FLS) and include an element where all Members were able to claim for the City Corporation duties they perform should they wish, with only those Members who claimed and subsequently benefitted from the scheme being liable for tax.
13. Claims would be based on these duties and on other grounds (for example the loss of self-employed income, financial loss for incurring specific expenses etc). Whilst Members would not be required to provide proof of the loss of earnings, which had in the past proved to be overly restrictive, they would be required to make an application and submit receipts for other expenses where necessary.
14. It was originally intended that any scheme should be introduced in time for the all-out Common Council elections i.e. from April 2021 as this would encourage a more diverse range of candidates to stand for election. However, as a result of the pandemic, the Ward elections are now scheduled to take place in 2022. Notwithstanding this, the Working Party is keen to see a revised scheme introduced by October 2021. This would give prospective candidates the security of a scheme being in place from the outset rather than one which was still to be introduced.

## **Current Position**

15. The FLS has now been updated. In revising it, consideration was given to the criteria for applying to the Scheme, how often a claim could be made and whether to continue with the City Corporation's current policy on travel expenses where expenses apply only when travelling from Guildhall to and from the actual business venue. The sum of the maximum annual amount claimable has been increased from £6,710.04 (the London Weighting figure envisaged last year) to £7,500 to take into account the cost of clothing required for City Corporation business and, in particular, its civic events. This follows HMRC's view that meeting the cost of clothing would create tax and NIC charges. Notwithstanding this, RSM have queried this view and a response from HMRC is awaited.
16. Given previous concerns about the narrative and title of the original scheme which focussed on hardship rather than having a more positive tone, the revised scheme has been renamed the Members Financial Support Policy (MFSP). The Policy has been separated into two parts. It retains the actual FLS element that has been in place since 2006 and now it includes a completely new section, the Extended Member Support Scheme (EMSS). It is the EMSS, which will enable all Members to

benefit if they choose, providing they meet the criteria. Entitlement to receive payment would not be automatic and would only arise once an application has been approved. Consideration was given to whether claims should be made on an annual basis, however, the Working Party felt that Members should have the ability to claim on a quarterly basis. The new draft MFSP is attached for your consideration.

17. The FLS was previously administered in-house and since its introduction almost 15 years ago, fewer than ten Members have claimed from it. To remove the perceived barrier caused by feelings of awkwardness and, to some extent, embarrassment by those making a claim, the Working Party is of the view that a degree of anonymity should be included in the process. It felt that dealing with claims on a more confidential basis might encourage more Members to consider whether to apply.
18. The intention is that the administrator will consider whether to reject all or part of a claim if they do not feel it meets the criteria or ask for further details where necessary to establish if it does meet the necessary criteria. The appointment of an administrator would be determined in accordance with the City Corporation's procurement policy.
19. Consideration has also been given to whether there should be any further levels of anonymity and in the interest of transparency and probity, the Working Party is of the view that payments should be publicised in the same way the City Corporation publicises expenses i.e. in aggregate. Notwithstanding this, it was also accepted that it might be expedient to publish recipients by name and the Committee's view is sought on this.
20. The MFSP Scheme will be audited through the City Corporation's internal auditing processes. This process examines the organisation's activities by undertaking independent and objective reviews of activities and assessing their reliability and integrity as well as their compliance with policy and regulations.

## **Next Steps**

21. Subject to the views of the Committee proposals will be submitted to the Court for final approval in July.
22. Support has been given to Special Responsibility Allowances (SRA) being introduced in due course. Once the MFSP is in place and following the implementation of the outcomes of the governance review and the all-out Ward elections further work will be undertaken on SRAs. Therefore, MFSP is likely to be revised to take account of the outcome of any subsequent decision taken in relation to the introduction of SRAs.
23. Overnight accommodation (i.e. rooms not amounting to *living* accommodation, which are owned by the Corporation) attributable to an employee's or officeholder's (which would include paid Members) attendance at their permanent place of work is taxable and liable to NIC as earnings from the employment/office. The only exception to this, is where the employee reimburses the marginal cost of its provision. Further work will need to be undertaken to establish the marginal cost of

providing a room to ensure, for example, that the maintenance costs are included in the rates charged.

## **Financial Implications**

24. Payments under the EMSS in recognition of the time spent and the duties performed are subject to Income Tax and NIC as employment income with the rates being dependent on the Members individual circumstances. Apart from accommodation (for example rooms) and, subject to further consideration and final advice being provided, all other expenses may not be liable to tax and NIC. The provision of living accommodation is classified as a benefit in kind for certain post holders unless an exemption arises. HMRC have announced a change to the rules from April 2021 which may impact those liable for taxation. RSM are working with the City Corporation to identify the implications of this change. Currently the City Corporation completes a form P11D for those posts it considers to be taxable such as the duties of posts such as the Chief Commoner or Chair of Policy and could consider meeting the costs of the tax liability.
25. Given that payment of an allowance and provision of benefits in kind will attract tax and NIC, Members have a personal responsibility to ensure that they comply with any HMRC requirements and may wish to take advice from them or their own tax adviser on the impact of any payment received.
26. In order to enable appropriate deductions to be made through the City Corporation's PAYE, Members would be required to submit information relating to their personal circumstances and would be included on the City Corporation's payroll as 'office holders' for the quarterly payment. Officers have considered the request for an external administrator.
27. The Working Party is keen for the Scheme to be managed by an outsourced provider. The tender process will not be as simple as outsourcing payroll/expense, as this is a specialist financial advisory service. The service is required to review and recommend to the City Corporation whether to pay a Member by reviewing whether the Member qualifies under the schemes and supporting evidence, plus carry out an annual review to ensure the tax returns and P60 stack up to the evidence provided at the outset. Having gone through a similar tender process for outsourcing the scrutiny services for the COVID recovery fund, officers will seek to secure an external provider at a competitive rate.
28. If the Committee agrees to outsource the administration of the scheme. Internal Audit will be asked to consider, before the scheme is finalised/launched, the controls within the process and how the Administrator/City Corporation would operate this. Findings will be presented to the Chamberlain and approved prior to the scheme commencing.
29. The City Corporation has the right to audit the operation of the assessment and 'scheme' and will adhere to relevant laws.
30. If Members are supportive of the new Scheme, there are three funding options:

- As these are elected roles, we could fund all of the assistance from **City Fund**. Other local authorities pay allowances under section 18 of the Local Government and Housing Act 1989 and the Local Authorities (Members' Allowances) (England) Regulations 2003. However, these statutory provisions do not apply to the City Corporation, which means we can create our own scheme using the power of general power of competence in section 1 of the Localism Act 2011 (a power to do anything that individuals generally may do, unless prevented by a pre-existing or other limitation). The allowances paid in local government are supposed to cover all duties, which may include serving on the governing bodies of charities etc. However, as the City Corporation's Members perform much wider roles than those in a typical local authority - e.g. in relation to Bridge House Estates, the independent schools, GSMD, etc. this doesn't seem equitable on the taxpayer.
- **City's Cash** – we are permitted to fund all the assistance from this source (the City Corporation in its private capacity effectively has the same power an individual has to do anything not prescribed by law). However, this puts strain on one fund and doesn't recognise fair governance costs across funds
- **Split the cost across City Fund and City's Cash** based on a suitable, allocation criteria, e.g. Committee/Board time, employer's pensions contributions or on the basis on which we split corporate departmental time. This is the Working Party's preferred option.

31. Bridge House Estates is not able to contribute to these costs as this would effectively be a trustee benefit. The general position in charity law is that trustees may be reimbursed proper expenses incurred in running a charity but may not be remunerated for acting as trustee (unless expressly authorised, which is unusual). In the draft Supplemental Royal Charter, the intention is that the City Corporation seeks very limited authorised benefits for Members through their role in acting for the Trustee. This point also applies to the City Corporation's sundry charitable funds.
32. The City Corporation has the right to audit the operation of the assessment and 'scheme' and adherence to relevant laws.
33. For part year costs incurred in the financial year 2021/22, these will be funded from one-off contingencies included within the budget that are no longer needed relating to pay. Future costs are to be included in the 2022/23 budget setting and medium-term financial planning.

## Legal Implications

34. As previously advised, the City Corporation is able to use the general power of competence under s.1 of the Localism Act 2011 to fund any proposed payments using City Fund should it so wish. It can also use its private funds i.e. City's Cash for the same purpose. An assistance scheme provided by the authority itself is not a disclosable pecuniary interest and therefore there is nothing to prevent Members from speaking and voting on this proposal.

## **Equality Impact Assessment and Public Sector Equality Duty**

35. Under the Equality Act 2010, all public bodies have a duty to ensure that when exercising their functions they have due regard to the need to advance equality of opportunity between people who share a protected characteristic and to take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people and encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.
36. An assessment of the people with protected characteristics was recently undertaken (i.e. age, disability, gender transition, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sex orientation). Whilst the impact of changes to the current FLS is unlikely to be great for people in these groups with higher earnings, there is likely to be a more positive impact for those on lower incomes who wish to stand for civic office. It might also enable them to participate more fully once elected.

## **Conclusion**

37. The Policy and Resources Committee is keen to enhance the diversity of the Court of Common Council and to ensure that prospective candidates for election to the Court are not deterred from standing for election for any reason, including any prohibitive cost. This is a view shared by the Members Diversity Working Party and the Tackling Racism Taskforce. Work has therefore been undertaken to address this by updating the current FLS and including an element where all Members can claim for the City Corporation duties they perform, should they wish, without having an adverse impact on those who do not wish to claim. The revised draft MFSP which includes a new section which extends support for all Members is presented for consideration.

## **Appendices**

- Appendix 1 – Draft Members' Financial Support Policy

## **Background Papers:-**

9 July 2020 - Report to the Policy and Resources Committee.

8 October 2020, 1 March, 30 April, 12 May 2021– Reports to the Members Financial Assistance Working Party

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