

Ethics Committee Agenda



To: Councillor Clive Fraser (Chair)
Councillor Pat Clouder (Vice-Chair)
Councillors Mario Creatura, Patricia Hay-Justice, Joy Prince and
Helen Redfern

Independent Members: Anne Smith and Ashok Kumar

Reserve Members: Karen Jewitt, Felicity Flynn, Maddie Henson,
Callton Young, Jeet Bains and Gareth Streeter

A meeting of the **Ethics Committee** which you are hereby summoned to attend, will be held on **Thursday, 18 October 2018 at 6.30 pm in F4 - Town Hall**

JACQUELINE HARRIS BAKER
Director of Law and Governance
London Borough of Croydon
Bernard Weatherill House
8 Mint Walk, Croydon CR0 1EA

Annette Wiles
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www.croydon.gov.uk/meetings
Wednesday, 10 October 2018

Members of the public are welcome to attend this meeting.
If you require any assistance, please contact the person detailed above, on the righthand side.

N.B This meeting will be paperless. The agenda can be accessed online at www.croydon.gov.uk/meetings

AGENDA – PART A

1. Apologies for Absence

To receive any apologies for absence from any members of the Committee.

2. Minutes of the Previous Meeting (Pages 5 - 8)

To approve the minutes of the meeting held on 4 June 2018 as an accurate record.

3. Disclosure of Interests

In accordance with the Council's Code of Conduct and the statutory provisions of the Localism Act, Members and co-opted Members of the Council are reminded that it is a requirement to register disclosable pecuniary interests (DPIs) and gifts and hospitality to the value of which exceeds £50 or multiple gifts and/or instances of hospitality with a cumulative value of £50 or more when received from a single donor within a rolling twelve month period. In addition, Members and co-opted Members are reminded that unless their disclosable pecuniary interest is registered on the register of interests or is the subject of a pending notification to the Monitoring Officer, they are required to disclose those disclosable pecuniary interests at the meeting. This should be done by completing the Disclosure of Interest form and handing it to the Democratic Services representative at the start of the meeting. The Chair will then invite Members to make their disclosure orally at the commencement of Agenda item 3. Completed disclosure forms will be provided to the Monitoring Officer for inclusion on the Register of Members' Interests.

4. Urgent Business (if any)

To receive notice of any business not on the agenda which in the opinion of the Chair, by reason of special circumstances, be considered as a matter of urgency.

5. Code of conduct and complaints process (Pages 9 - 32)

To review and confirm the arrangements relating to decision making on Members' Complaints under the Code of Conduct.

6. Case law update (Pages 33 - 42)

To review the outcome of recent case law and developments in relation to councillor conduct.

- 7. Disclosure and Barring Service (DBS) checks for Members** (Pages 43 - 48)
To approve the revised protocol for criminal record checks for Members.
 - 8. Work programme** (Pages 49 - 50)
To consider the draft work plan for the Committee for the 2018/19 Municipal Year.
 - 9. Dispensation applications for Members** (Pages 51 - 56)
To receive the report of the Director of Law on Members' dispensations for consideration, if any are received.
- 10. Exclusion of the Press and Public**
The following motion is to be moved and seconded where it is proposed to exclude the press and public from the remainder of a meeting:
- “That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information falling within those paragraphs indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended.”

PART B

- 11. Dispensation Applications for Members**
To receive the report of the Director of Law on Members' dispensations for consideration, if any are received.

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Agenda Item 2

Ethics Committee

Meeting of held on Monday, 4 June 2018 at 6.30 pm in F5 - Town Hall

MINUTES

Present: Councillor Clive Fraser (Chair);
Councillors Mario Creatura, Maddie Henson, Joy Prince and Helen Redfern.

Also Present: Mr Ashok Kumar, Independent Person (non-voting) and Mrs Anne Smith, Independent Person (non-voting)

Apologies: Councillor Patricia Hay-Justice, Councillor Pat Clouder

PART A

14/18 Minutes of the Previous Meeting

The minutes of the meetings held on 28 February 2018 and 23 May 2018 were agreed as an accurate record.

15/18 Disclosure of Interests

There were none.

16/18 Dispensations for Members

The Committee considered and commented on the proposed general Member dispensation regarding council tax and Members' allowances, payments and indemnities.

The Committee considered the content of the report and **RESOLVED:**

- (i) That all Council Members be granted a dispensation until May 2022 for matters relating to Council Tax or a Precept.
- (ii) That all Council Members be granted a dispensation until May 2022 for matters relating to Members' allowances, payments and indemnities.

17/18 Urgent Business (if any)

There were no items of urgent business.

18/18 **Work Plan**

The Committee considered the draft work programme for the 2018/19 municipal year as outlined by the Director of Law and made no amendments.

RESOLVED – That the Committee agreed the draft work programme for the 2018/19 municipal year.

19/18 **Members' Learning and Development Plan 2018/19**

The Director of Law presented the Members' Learning and Development Plan for 2018/19, highlighting the induction training for new Members and the mandated training sessions for Members of selected Committees.

Members enquired what the annual budget was for Members' Development and how the spending was approved. The Head of Democratic Services and Scrutiny informed the Committee that it was £21,000 per year and that applications for expenditure of £600 and under were approved by Officers, with applications over this threshold being referred to the Members' Learning and Development Panel for approval.

Mr Ashok Kumar questioned whether there had been improvements to the Members' induction programme implemented in 2014. The Director of Law informed the Committee that significant improvements to the previous programme had been made, including a wider variety of sessions that had been more actively advertised to Members. The new programme also looked to take feedback from Councillors on the individual sessions to further improve any future learning and development activities.

The Director of Law further informed the Committee that all training materials from these events would be made available to Members via the Council's paperless software, as would any future Case Law updates brought to the Committee. Councillor Clive Fraser noted that the sessions he had attended had been good and that future sessions could include more on Officer Roles and Members' IT.

RESOLVED – That the Committee noted the report.

20/18 **Dispensation Applications for Members**

(Part A summary)

Members' applications for dispensation were received from Councillor Alisa Flemming, Councillor Lynne Hale, Councillor Simon Hall, Councillor Maggie

Mansell and Councillor Paul Scott.

RESOLVED – The Committee resolved to consider these applications in Part B of the meeting.

21/18 **Exclusion of the Press and Public**

The following motion was moved by Councillor Fraser and seconded by Councillor Henson to exclude the press and public:

“That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information falling within those paragraphs indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended.”

The motion was put and it was resolved by the Committee to exclude the press and public for the remainder of the meeting.

22/18 **Dispensation Applications for Members**

The Committee considered applications for dispensations from Councillor Alisa Flemming, Councillor Lynne Hale, Councillor Simon Hall (two applications), Councillor Maggie Mansell and Councillor Paul Scott.

Councillor Flemming

Following the consideration of the application the Committee **RESOLVED**:

- i. That Councillor Flemming be granted a dispensation until May 2022 in regard to matters related to housing issues which could affect Council tenants, as the Councillor was a tenant of the Council.

Councillor Hale

Following consideration of the application, the Committee concluded that a dispensation was not required in this instance, as the matter raised did not constitute a disclosable interest. The Committee **RESOLVED**:

- ii. That Councillor Hale be invited to withdraw this application for a dispensation, as the matter raised did not constitute a disclosable interest.

Councillor Hall

Following the consideration of the applications the Committee **RESOLVED**:

- iii. That Councillor Hall be granted a dispensation until May 2022 in regard to matters related to Transport for London, as the Councillor's partner was employed by Transport for London.

- iv. That Councillor Hall be granted a dispensation until May 2022 in regard to matters related to Barnardos, as the Councillor's partner was an Adoption Panel member for Barnardos.

Councillor Mansell

Following consideration of the application, the Committee concluded that a dispensation was not required in this instance, as the matter raised did not constitute a disclosable interest. The Committee **RESOLVED**:

- v. That Councillor Mansell be invited to withdraw this application as the matter raised did not constitute a disclosable interest and that Councillor Mansell also be advised to include the matter as a voluntary declaration on her entry in the Members' Register of Interests.

Councillor Scott

Following the consideration of the application the Committee **RESOLVED**:

- vi. That Councillor Scott be granted a dispensation until May 2022 in regard to matters related to the Development and Construction Industry, and with regard to planning applications and construction projects, as the Councillor is employed by TP Bennett, who practice architecture, planning and interior design.

Councillor Stranack

Following the consideration of the application the Committee **RESOLVED**:

- vii. That the application be deferred to allow the Monitoring Officer to seek additional information from Councillor Stranack regarding the nature of the disclosable interest, and the grounds on which a dispensation had been sought.

The meeting ended at 7.11 pm

Signed:

Date:

Agenda Item 5

Croydon Council

For General Release

REPORT TO:	ETHICS COMMITTEE 18 OCTOBER 2018
AGENDA ITEM NO:	6
SUBJECT:	MEMBER CODE OF CONDUCT: COMPLAINTS PROCESS
LEAD OFFICER:	DIRECTOR OF LAW AND GOVERNANCE AND MONITORING OFFICER
CABINET MEMBER:	COUNCILLOR SIMON HALL CABINET MEMBER •FINANCE AND RESOURCES
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct which regulates Member conduct.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATIONS

The Committee is asked to:

- 1.1 Note the contents of the report and confirm the arrangements relating to decision making on Members' Complaints under the Code of Conduct.

2. EXECUTIVE SUMMARY

- 2.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This report details the Council's arrangements required to be adopted under the provisions of the Localism Act 2011 to deal with Code of Conduct complaints about Councillors.

3. DETAIL

3.1

- 3.2 The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a Member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. (Pursuant to Sections 28(6) and (7) of the Localism Act 2011)
- 3.3 The Council's Code of Conduct forms part of the Constitution, Part 5I, attached at Appendix 1 and can be accessed here:
<https://democracy.croydon.gov.uk/documents/s1026/Part%205I%20-%20Members%20Code%20of%20Conduct.pdf>
- 3.4 The initial stage of these arrangements under the Localism Act is the Assessment of Member complaints, which is covered by the flowchart at Appendix 5.
- 3.5 Pursuant to the current arrangements which the Committee has approved on behalf of the Council, any complaints which pertain to Members Conduct are made in the first instance to the Monitoring Officer.
- 3.6 The Monitoring Officer has authority to undertake an initial assessment of the complaint in accordance with the Assessment Criteria which the Committee have specifically adopted for these purposes, please see Appendix 2 or the below link:..
<https://www.croydon.gov.uk/sites/default/files/articles/downloads/criteriacomplaints.pdf>
- 3.7 The initial assessment by the Monitoring officer will indicate whether or not the complaint is one which ought to be referred for investigation and if that occurs, the matter is then referred to Members in accordance with the Arrangements for dealing with allegations of breach of the code of conduct under the Localism Act 2011 which is attached at Appendix 3 or available via the below link:
https://www.croydon.gov.uk/sites/default/files/articles/downloads/Arrangements%20under%20the%20Localism%20Act%202011_July%202012.pdf
- 3.8 Members attention is specifically drawn to the provisions of section 5 and 6 of the Arrangements. If the Monitoring Officer decides that a complaint merits formal investigation, she will appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to the Member or complainant, which further parties he/she wishes to interview or whether he/she wishes to conduct the investigation on the papers. The Investigating Officer will write to the Member against whom the complaint has been made and provide him/her with a copy of the complaint and ask the Member to provide their explanation of events. At the end of his/her investigation, the Investigating Officer will produce a report for the Monitoring Officer.
- 3.9 The Monitoring Officer will review the Investigating Officer's report and may consult with them if necessary. If the Monitoring Officer is satisfied that the

Investigating Officer's report is sufficient, the Monitoring Officer will write to the Complainant and to the Member concerned notifying them that she is satisfied that no further action is required. At this stage, the complainant and the Member will be given a summary of the Investigating Officer's final report. If the Monitoring Officer, in consultation with the Independent Person, is not satisfied that the investigation has been conducted properly, she may ask the Investigating Officer to undertake further investigation or reconsider his/her report.

- 3.10 If the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will review the Investigating Officer's report and, if following consultation with the Independent Person, he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will then either send the matter for local hearing before the Ethics Committee or a sub-committee of the Ethics Committee or seek local resolution. If the matter is to come before the Ethics Committee, that Committee is empowered to establish a Hearings Panel to consider the matter, which will be a sub-committee of the Ethics Committee.
- 3.11 The Ethics Committee has previously adopted the Hearing Panel rules of procedure which can be viewed here or at Appendix 4:
<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Hearings%20Panel%20Rules%20of%20Procedure.pdf>

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 There are no direct financial implications arising from this report.

5. LEGAL CONSIDERATIONS

- 5.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.

CONTACT OFFICERS: Jacqueline Harris Baker, Director of Law and Governance (ext 62328)

BACKGROUND DOCUMENTS: None

APPENDIX 1

CONSTITUTION OF THE LONDON BOROUGH OF CROYDON

Part 5.I - Members' Code of Conduct*

1. You are a member or co-opted member of the London Borough of Croydon or a Member of the Health and Wellbeing Board and as such you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and truthfulness, leadership and undertake to observe this Code when acting in your capacity as a member or co-opted member.

2. When acting in your capacity as a member or co-opted member:-

i) 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.

ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you inappropriately in the performance of your official duties.

iii) When carrying out your public duties you must make all choices, such as making public appointments, determining applications, awarding contracts or recommending individuals for rewards or benefits, on merit without discrimination or bias.

iv) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office as determined by the Council.

v) 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.

vi) You must declare any private interests, both pecuniary and non-pecuniary, which relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest. This means you must register and declare the interests set out in paragraph 3 below, in a manner conforming with the procedures set out therein.

vii) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have

January 2017 Part 5I / Page 1 of 2

*Adopted July 2012, revised January 2017 Members' Code of Conduct

regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

viii) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example, including not doing anything which breaches the equalities legislation and observing the Council's Protocol on Staff -Councillor Relations.

3. Registering and disclosing pecuniary and non-pecuniary interests

i) You must, within 28 days of taking office as a member or co-opted member, notify the Council's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

ii) In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which the Council has decided should be included in the register. For these purposes the Council has determined that you will disclose any gift(s) or hospitality the value of which exceeds £50 or multiple gifts and/or instances of hospitality with a cumulative value of £50 or more when received from a single donor within a rolling twelve month period.

iii) If an interest described in (i) above has not been entered onto the Council's register, or is not pending inclusion on the register following your notification to the Monitoring Officer then you must disclose the interest to any meeting of the Council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'

iv) Following any disclosure of an interest not on the Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

v) Unless a dispensation has been granted, you may not participate in any discussion of, vote on or discharge any function related to any matter in which you have a disclosable pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions the Council places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by the Council.

January 2017 Part 5I / Page 2 of 2

*Adopted July 2012, revised January 2017 Members' Code of Conduct

APPENDIX 2

Assessment Criteria: Code of Conduct complaints

In considering complaints received that there has been a failure by a Member or co-opted member of the Council to comply with the Council's Code of Conduct, the Monitoring Officer shall have regard to the following factors in reaching a decision on whether a complaint is appropriate to refer for investigation. The criteria set out are not exhaustive and include but are not limited to the following:

1. Does the information pertain to an allegation regarding Disclosable Pecuniary Interests? If so, this is a matter for the Police and is not a matter in respect of which the Council will accept an allegation.
2. Where the complaint is about someone who is no longer a Member or co-opted Member of the Council, no further action will be taken.
3. Where the complaint has already been the subject of an investigation by other regulatory authorities and the Monitoring Officer considers that further action will not benefit the public interest, no further action will be taken.
4. Where the period of time that has passed since the alleged conduct occurred is such that there would be little benefit in taking further action at the time of receipt of the complaint. For these purposes, it is considered that where a period of three months has elapsed since the alleged conduct occurred and no complaint has been received then this criterion will be engaged and no further action will be taken after the three month period.
5. Where the complaint is not considered sufficiently serious to warrant further action, no further action will be taken.
6. Where the complaint appears to be simply malicious, politically motivated or tit-for-tat no further action will be taken.
7. Where the complaint appears to relate to the "rough and tumble of political debate" and pertains to conduct between Members or Members and co-opted Members rather than between Members and the public or Members and officers, no further action will be taken.
8. Where the information provided is insufficient to make a decision as to whether the complaint should be referred for investigation, unless or until further information is received, no further action will be taken on the complaint.
9. Having regard to the sanctions available to the Council and bearing in mind the public interest, including the public interest in ensuring that best use is made of public resources, it is not appropriate to refer the matter for an investigation.
10. Where the complaint indicates that there is a lack of understanding of the Code or the Council's procedures, policies or protocols, the issues may be dealt with by way of recommending and/or arranging training rather than referring the matter for an investigation.

11. Where the complaint relates to the manner in which formal Council meetings are conducted, this will not be a matter in respect of which an investigation is instituted.

12. Where the complaint is one person's word against another's with no independent impartial witness verification such that ascertaining the true facts of the complaint may prove improbable, it is unlikely that further action will be taken on the complaint.

13. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally without the need for investigation. Such informal resolution may involve, for example, a discussion with the Member or the Member offering an apology. In circumstances where informal resolution is offered by the Member and the Complainant chooses not to accept this, the Monitoring Officer will take this into account in determining whether the complaint merits formal investigation and may decide that no further action will be taken in such circumstances.

Complainants should be aware that the decision of the Monitoring Officer to take no further action on a complaint is final and is not subject to an internal right of appeal or review. Complainants do, however, retain their rights to approach the Local Government Ombudsman or seek legal redress if they remain dissatisfied. The Local Government Ombudsman can be contacted on 0300 061 0614 or 0845 602 1983 or by writing to them: The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH

The assessment criteria set out above will be reviewed and amended as necessary and in light of local experience.

July 2012

APPENDIX 3

Arrangements for dealing with allegations of breach of the Members' Code of Conduct under the Localism Act 2011

Context

These arrangements set out how you may make a complaint that an elected or co-opted Member of this Council has failed to comply with the authority's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council's Code of Conduct.

Under Sections 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a Member or co-opted Member of the Council (referred to as 'Members'), has failed to comply with its Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage of the investigation, or by a Member or co-opted Member against whom an allegation has been made.

An Independent Person is a person who is not a Member, co-opted Member or officer of the Council and who has been appointed to the role of Independent Person by a positive vote from a majority of all the Members of Council following an advertised recruitment process.

You should be aware that the arrangements set up by the Council do not cover Disclosable Pecuniary Interests as defined by Regulations issued by the Secretary of State, or complaints that a Member or co-opted Member has failed to comply with the statutory requirements in respect of Disclosable Pecuniary Interests. Any complaints of this nature need to be addressed to the Police, who have jurisdiction to deal with such complaints. The Council will not pursue such complaints on your behalf.

The Code of Conduct

The Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 to these arrangements and is available for inspection on the Council's website.

Making a complaint

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.

If you wish to make a complaint it must be made in writing. Oral complaints will not usually be considered for investigation. So in order to ensure that we have all the information which we need to be able to process your complaint, please use the model complaint form, which can be downloaded from the Council's website.

Please complete that form, providing us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. Your name will be disclosed to the Member against whom you have made the complaint.

Please send or email that form to –

Monitoring Officer
Resources Department
Bernard Weatherill House
8 Mint Walk
Croydon
Surrey
CR0 1EA
Or –

ethics@croydon.gov.uk

The Monitoring Officer will usually acknowledge receipt of your complaint within 15 working days of receiving it, and will keep you informed of the progress of your complaint.

Will your complaint be investigated?

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. In reaching this decision, the Monitoring Officer may, although is not obliged to do so, consult with an Independent Person before reaching this decision.

The decision by the Monitoring Officer will normally be taken within 30 working days of acknowledgement of your complaint. In deciding whether to refer the matter for investigation, the Monitoring Officer will have regard to relevant considerations including the considerations set out in Appendix 2. When the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the Member against whom your complaint is directed. Where the Monitoring Officer requires further information from you, the time period of 30 days referred to above ceases to run until such time as such additional information is received.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve, for example, the Member accepting that his/her conduct was unacceptable and/or offering an apology. Where the Member of the Council makes a reasonable offer of informal resolution but you are not willing to accept that offer, the Monitoring Officer will consider this in deciding whether the complaint merits formal investigation. However, this will not be an overriding consideration and will only be one of a number of factors which the Monitoring Officer will take into account.

The decision of the Monitoring Officer on whether to investigate a complaint is final

and is not subject to an internal right of appeal or review. Parties affected by the decision do however retain their rights to approach the Local Government Ombudsman or seek legal redress if they remain dissatisfied. The Local Government Ombudsman can be contacted on 0300 061 0614 or 0845 602 1983 or by writing to them: The Local Government Ombudsman PO Box 4771 Coventry CV4 0EH

If your complaint identifies criminal conduct or breach of other Regulation by any person, the Monitoring Officer does not have the power to consider the matter and you will be directed to the Police and/or other appropriate regulatory agencies.

How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you, which further parties he/she wishes to interview or whether he/she wishes to conduct the investigation on the papers.

The Investigating Officer will write to the Member against whom you have complained and provide him/her with a copy of your complaint and ask the Member to provide his/her explanation of events.

At the end of his/her investigation, the Investigating Officer will produce a report for the Monitoring Officer.

What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and may consult with them if necessary. If the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned notifying you that he/she is satisfied that no further action is required. At this stage, you and the Member will be given a summary of the Investigating Officer's final report. If the Monitoring Officer, in consultation with the Independent Person, is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to undertake further investigation or reconsider his/her report.

What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if following consultation with the Independent Person, he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will then either send the matter for local hearing before the Ethics Committee or a sub-committee of the Ethics Committee or seek local resolution. If the matter is to come before the Ethics Committee, that Committee is empowered to establish a Hearings Panel to consider the matter, which will be a sub-committee of the Ethics Committee.

Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved

without the need for a hearing. In such a case, he/she will consult with the Independent Person and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable, or offering an apology. If the Member complies with the suggested resolution, the Monitoring Officer will advise you and no further action will be taken.

Local Determination by the Ethics Committee or sub-committee

If the Monitoring Officer considers that local resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Ethics Committee or sub-committee of the Ethics Committee set up for this purpose which will consider and determine the matter. It will decide whether to take any action in respect of the Member. Save in exceptional circumstances, the Ethics Committee or sub-committee will determine the matter on the papers, which will comprise the investigation report along with written representations from the Member concerned and the Complainant.

The Council has delegated the power to agree a procedure for local hearings to the Ethics Committee. Once agreed, this procedure will be attached as Appendix 3 to these arrangements.

As part of any procedure, the Monitoring Officer will conduct a "pre-hearing process", requiring the Member and Complainant to each give their written responses to the Investigating Officer's report. These papers will then form part of the documentation for consideration by the Ethics Committee or sub-committee established for purposes of determination. In the event that it is determined that an oral hearing is required due to the exceptional circumstances of the matter, the Chair of the Ethics Committee or sub-committee tasked with hearing the matter may issue directions as to the manner in which the hearing will be conducted, including in relation to the calling of witnesses and representations by the Complainant and Member.

The Ethics Committee or sub-committee, in consultation with the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Ethics Committee or sub-committee of the Ethics Committee concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Ethics Committee or sub-committee of the Ethics Committee will then consider what action, if any, the Ethics Committee or sub-committee of the Ethics Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Ethics Committee or sub-committee of the Ethics Committee may give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter. The possible actions which the Ethics Committee or sub-committee of the Ethics Committee could take are set out below.

What action can the Ethics Committee or sub-committee of the Ethics Committee take where a Member has failed to comply with the Code of Conduct?

The Council has delegated to the Ethics Committee or sub-committee of the Ethics

Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Ethics Committee or sub-committee of the Ethics Committee may –

Publish its findings in respect of the Member's conduct;

Report its findings to Council for information;

Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

Recommend to full Council or the Leader of the Council as the case may be that the Member be removed from outside appointments to which he/she has been appointed or nominated by the Council;

Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access;

Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings; or

Request that the Monitoring Officer arrange training for the Member.

The Ethics Committee or sub-committee of the Ethics Committee has no power to suspend or disqualify the Member or to withdraw the Member's basic or special responsibility allowances.

What happens following consideration by the Ethics Committee (or sub-committee)?

A minute of the decision of the Ethics Committee (or sub-committee as the case may be) will be prepared in consultation with the Chair of the Ethics Committee or sub-committee or Chair of the Hearings Panel, as the case may be, which will record the outcome and state the committee's reasons for the decision. This will be published on the Council's website once approved.

Who are the Hearings Panel?

The Hearings Panel is a sub-committee of the Ethics Committee which will comprise three Members drawn from the Ethics Committee and convened for the purpose of acting as a Hearings Panel under this procedure. The Ethics Committee is comprised of five Members of the Council, including not more than one Member of the authority's Executive and comprising Members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of Party Group Leaders in proportion to the representation of each political group on the Council.

The Independent Person/s is/are invited to attend all meetings of the Ethics

Committee and her/his views are sought and taken into consideration before the Ethics Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

Revision of these arrangements

The Council may by resolution agree to amend these arrangements.

Appeals

There is no internal right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer, the Ethics Committee or a sub-committee of the Ethics Committee. This includes a decision of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman and/or take independent legal advice.

July 2012

APPENDIX 4

Hearings Panel: Rules of Procedure

1. General:

1.1 Definitions:

“Complainant”	The party who has made an allegation that a Member has failed to comply with the Members’ Code of Conduct.
“Independent Person”	A person who is not a Member, co-opted Member or officer of the Council and who has been appointed to the role of Independent Person and whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage of the investigation, or by a Member or co-opted Member against whom an allegation has been made.
“Investigation Officer”	The person appointed by the Monitoring Officer to undertake the investigation. The investigation officer may be another officer of the Council, an officer of another authority or an external investigator.
“Subject Member”	The Member against whom the allegation has been made of a failure to comply with the Code of Conduct.
1.2	The Hearings Panel consists of three voting elected Members drawn from the Ethics Committee. The Council Solicitor, Director of Democratic and Legal Services shall have delegated power to constitute a Hearings Panel as and when a local hearing is required under the arrangements adopted by the Council.
1.3	If the Chairman of the Ethics Committee is not a Member of the Hearings Panel, one of the Members of the Hearings Panel shall be elected as Chairman, otherwise the Chairman of the Ethics Committee shall chair the Hearings Panel.
1.4	The quorum for a meeting of the Hearings Panel is three elected Members and all three Members must be present throughout the hearing.
1.5	The hearing will be attended by a Legal Officer and a Democratic Services Officer who shall act as the clerk. The officers are present to provide advice and are not Parties to the hearing. The

Investigation Officer may also attend the hearing to present their report to Members but is not a Party to the matter.

- 1.6 The role of the Legal Officer is to provide legal advice relating to the application and submissions. Any legal advice that may be given to the Hearings Panel in private shall be repeated when the Hearings Panel returns in open session.
- 1.7 The role of the Clerk is to record the hearing and the decisions of the Hearings Panel, and to ensure efficient administration.
- 1.8 The Independent Person's views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Members' Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Members' Code of Conduct. The Independent Person should normally be present throughout the Hearings Panel meeting (but not during the deliberations of the Hearings Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearings Panel in writing instead.
- 1.9 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearings Panel. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearings Panel where it is likely that confidential or exempt information will be disclosed.
- 1.10 The Hearings Panel may retire to consider the representations and evidence in private. Upon the Hearings Panel's return, the Chairman will announce the Hearings Panel's findings of fact and invite the Legal Officer to relay any legal advice given to Members during private session.
- 1.11 All matters/issues before the Hearings Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.12 The Hearings Panel will consider all matters on the papers, without hearing oral evidence or receiving oral representations, unless exceptional circumstances exist which make an oral hearing necessary, proportionate and in the public interest. Should the Hearings Panel determine that an oral hearing is necessary, proportionate and in the public interest, it shall adjourn the consideration of the matter to allow the Oral Hearings Procedure to be followed. The procedure is set out at section 3 hereto.
- 1.13 The papers shall comprise the investigation report along with written representations from the Subject Member and Complainant concerned and any additional comments of the

Investigating Officer. If the independent person is not able to attend the Hearings Panel, the written comments of the Independent Person, including where the Independent Person has indicated that they have no comments, shall also be included as part of the papers.

1.14 If an oral hearing is undertaken, the procedure set out in section 3 below shall apply. The Chairman of the Hearings Panel shall however have the discretion to issue such further directions as are necessary for the conduct of the matter, including in relation to the manner in which the oral hearing will be conducted, the time frame, the calling of witnesses and representations by the Subject Member.

1.15 Where the Hearings Panel determines the matter on the papers neither the Subject Member nor the Complainant are required to attend, although they may do so. Where the Hearings Panel undertakes an oral hearing of the matter, and the Subject Member and/or Complainant is not in attendance, having been notified of the hearing date, the hearing may proceed in their absence and a determination may be made on the matter.

1.16 Subject to paragraph 1.17 below, the order of business will be as follows:

- (a) Elect a Chairman if the Chairman of the Ethics Committee is not a Member of the Hearings Panel for that hearing;
- (b) Apologies for absence;
- (c) Disclosure of interests;
- (d) Urgent business (if any)
- (e) Exempt items – to confirm allocation of business between Part A and Part B
- (f) Introduction by the Chairman, of Members of the Hearings Panel the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, the Complainant and the Subject Member and their representative;
- (g) Consideration of the allegation regarding failure to comply with the Code of Conduct.

1.17 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

1.18 The Hearings Panel may adjourn the hearing at any time.

2. Pre –hearing/pre-consideration process:

2.1 Prior to convening a Hearings Panel the Monitoring Officer will issue the forms annexed to this Procedure to the Subject Member (Appendices A- E) and Complainant (Appendix A only), as necessary, for completion by them to facilitate the preparation for the Hearing. The Monitoring Officer shall then ask the Investigating Officer to comment on these responses. The Hearings Panel

will then be convened to consider the allegation/s including the investigation report, responses and any comment from the Investigating Officer.

3. Hearings Procedure

The Hearings Panel will consider all matters on the papers, without hearing oral evidence or receiving oral representations, unless exceptional circumstances exist which make an oral hearing necessary, proportionate and in the public interest. In the event that the Hearings Panel determines that an oral hearing is necessary, proportionate and in the public interest, the Oral Hearings Procedure set out below is to be followed. In all other circumstances the procedure set out in section “Hearing on the papers” will be followed.

3A. Oral Hearings:

3.1 Right to be accompanied by a representative

The Subject Member may choose to be accompanied and/or represented at the Hearings Panel by a fellow Member, friend or colleague or such other representative as they may choose.

3.2 The conduct of the oral hearing

3.2.1 Presentation of the Investigating Officer’s report

(a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted;

(b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;

(c) The Hearings Panel may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

3.2.2 Presentation of the Subject Member’s case

(a) The Subject Member or their representative presents their case and calls their witnesses;

(b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;

(c) The Hearings Panel may question the Subject Member and any witnesses called by the Subject Member.

3.2.3 Summing up

(a) The Investigating Officer sums up the complaint;

(b) The Subject Member or their representative sums up their case.

3.2.4 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearings Panel there has been a failure to comply with the Members' Code of Conduct or no failure to comply with the Members' Code of Conduct as the case may be.

3.2.5 Deliberations of the Hearings Panel

- (a) The Hearings Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) Prior to reaching a decision, the Hearings Panel will consider the views expressed by the Independent Person.
- (c) Where the complaint has a number of aspects, the Hearings Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (d) The Hearings Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (e) The Hearings Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Hearings Panel cannot be presented, then the Hearings Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- (f) Having deliberated on its decision, the Hearings Panel will reconvene the hearing in public and the Chairman will announce whether, on the facts presented, the Hearings Panel considers that there has been a failure to comply with the Members' Code of Conduct, or whether there has been no failure to comply, as the case may be. The Chairman will also invite the Legal Officer to relay any legal advice given to Members during private session.

3.2.6 Representations on Sanction

- (a) The Chairman will remind all parties of the possible sanctions which the Hearings Panel may impose as set out in the Arrangements for dealing with allegations of breach of the Members' Code of Conduct and below at section 4.
- (b) The Chairman will then invite the Independent Person and the Subject Member to make their representations as to whether any sanctions should apply and what form they should take.
- (c) Having heard the representations/views, the Hearings Panel will adjourn and deliberate in private.

3.2.7 Findings on Sanction

- (a) Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Hearings Panel will reconvene the hearing in public and the Chairman will announce

the sanctions (if any) to be applied and the recommendations (if any) to be made to the Council or Monitoring Officer.

3B. Hearings on the Papers:

The Hearings Panel shall receive the papers in advance of the meeting. The papers shall comprise the investigation report along with written representations from the Subject Member concerned and any additional comments of the Investigating Officer. If the Independent Person is not able to attend the Hearings Panel, the written comments of the Independent Person shall also be included as part of the papers.

3.3 Verbal report from Investigating Officer (if necessary)

If they consider it necessary, Members may receive a verbal summary from the Investigating Officer on the investigation report and may ask any questions, in clarification, of the Investigation Officer.

3.4 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearings Panel there has been a failure to comply with the Members' Code of Conduct or no failure to comply with the Members' Code of Conduct as the case may be.

3.5 Deliberations of the Hearings Panel

- (a) The Hearings Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) Prior to reaching a decision, the Hearings Panel will consider the views expressed by the Independent Person.
- (c) Where the complaint has a number of aspects, the Hearings Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (d) The Hearings Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (e) Having deliberated on its decision the Hearings Panel will reconvene the hearing in public and the Chairman will announce whether on the facts presented, the Hearings Panel considers that there has been a failure to comply with the Members' Code of Conduct, or whether there has been no failure to comply, as the case may be. The Chairman will also invite the Legal Officer to relay any legal advice given to Members during private session.

3.6 Representations on Sanction in the event of a finding of failure to comply with the Members' Code of Conduct

- (a) Where the Hearings Panel has determined that there has been a failure to comply with the Members' Code of Conduct, they will then receive the papers setting out the written representations from the Investigating Officer and Subject Member regarding

whether or not the Hearings Panel should impose a sanction or penalty; and if so, what form any sanction or penalty should take.

(b) The Chairman will remind all parties of the possible sanctions which the Hearings Panel may impose as set out in the Arrangements for dealing with allegations of breach of the Members' Code of Conduct and below at section

(c) The Hearings Panel will adjourn and deliberate in private regarding whether or not the Hearings Panel should impose a sanction or penalty; and if so, what form any sanction or penalty should take.

3.7 *Findings on Sanction*

Having deliberated on its decision and/or recommendations and the application of any sanctions, and having taken into account the Independent Person's views, the Hearings Panel will reconvene the hearing in public and the Chairman will announce the sanctions (if any) to be applied and the recommendations (if any) to be made to the Council or Monitoring Officer

3.8 *Finding of Fact – No failure to comply with the Code*

If the Hearings Panel decides that the Subject Member has not failed to comply with the Code it may still consider whether it should provide any feedback to the Council, Leader of the Council or Group Leader where the matter before them has raised an issue of general concern.

4. Range of possible sanctions

4.1 The Hearings Panel may –

- a. Publish its findings in respect of the Subject Member's conduct;
- b. Report its findings to Council for information;
- c. Recommend to the Subject Member's Group Leader (or in the case of un-grouped s, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- d. Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Recommend to full Council or the Leader of the Council as the case may be that the Subject Member be removed from outside appointments to which he/she has been appointed or nominated by the Council ;
- f. Withdraw facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access;
- g. Exclude the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings; or

- h. Request that the Monitoring Officer arrange training for the Subject Member.
- 4.2 The Hearings Panel has no power to suspend or disqualify the Subject Member or to withdraw the Subject Member's basic or special responsibility allowances.
- 4.3 The Hearings Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
- 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Hearings Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour.
- 4.5 In considering the nature of the sanction that may be appropriate, the Hearings Panel shall have regard to the relevant circumstances which may include consideration of the following questions:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Members' Code of Conduct?
 - (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
 - (c) Has there been a breach of trust?
 - (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
 - (e) What was the result/impact of failing to follow the Members' Code of Conduct?
 - (f) How serious was the incident?
 - (g) Does the Subject Member accept that they were at fault?
 - (h) Did the Subject Member apologise to the relevant persons?
 - (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
 - (j) Has the Subject Member previously failed to comply with the Members' Code of Conduct?
 - (k) Is there likely to be a repetition of the incident?

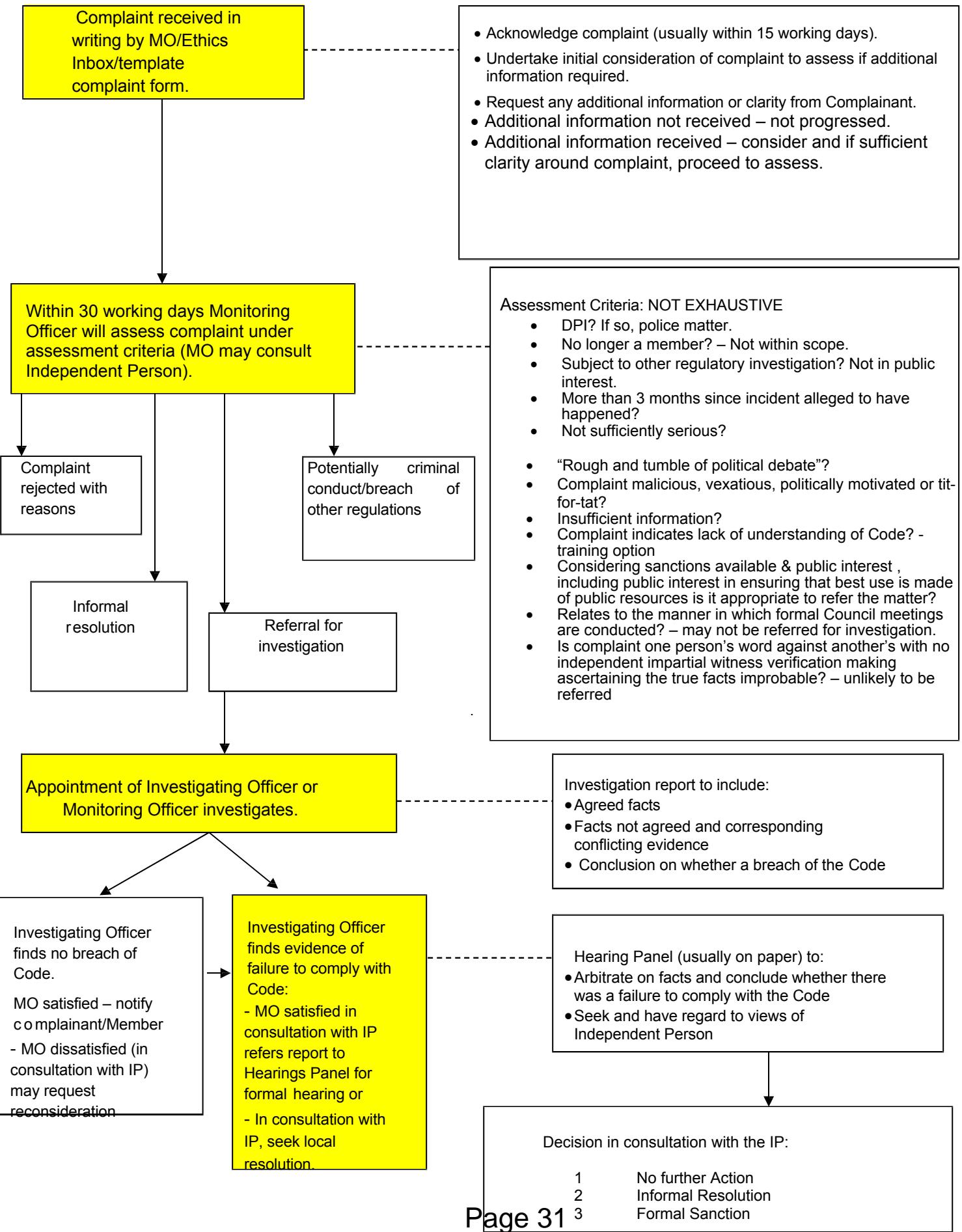
5. Post hearing procedure

- 5.1 A written minute of the decision will be prepared in consultation with The Chair of the Hearings Panel which will record the outcome and state the Hearings Panel's reasons for the decision. Once approved, this minute will be published on the Council's website.

- 5.2 There is no right of appeal or review from the decision of the Hearings Panel. Any Party aggrieved by the outcome may consider whether it is appropriate to make a complaint to the Local Government Ombudsman and/or take independent legal advice.

Adopted: November 2012

MEMBER/CO-OPTED MEMBER
CODE OF CONDUCT COMPLAINTS
FLOWCHART



Agenda Item 6

Croydon Council

For General Release

REPORT TO:	ETHICS COMMITTEE 18 OCTOBER 2018
AGENDA ITEM NO:	7
SUBJECT:	RECENT CASE LAW – COUNCILLOR CONDUCT
LEAD OFFICER:	DIRECTOR OF LAW & GOVERNANCE AND MONITORING OFFICER
CABINET MEMBER:	COUNCILLOR SIMON HALL – CABINET MEMBER FOR FINANCE AND RESOURCES
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider and recommend revisions to the Code of Conduct.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report have no financial implications.	
FORWARD PLAN KEY DECISION REFERENCE NO: This is not a key decision.	

1. RECOMMENDATIONS

The Committee is asked to:

1.1 Note the outcome of recent case law and developments in relation to councillor conduct since the last Ethics Committee (February 2018).

2. EXECUTIVE SUMMARY

2.1 This report provides details of a case in the High Court in May 2018 that considered local authority staff grievance procedures and their relationship with the Code of Conduct regime under the Localism Act 2011. The High Court decision in *R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin)* has clarified how a council should deal with complaints against a councillor, and which has implications for Town and Parish Councils throughout England. Any local authority will be acting unlawfully if it tries to bypass the Code of Conduct procedure under the Localism Act 2011 when addressing alleged misconduct by councillors.

2.2 In May 2018 in the case of ***Bennis v The Information Commissioner & Stratford-on-Avon District Council, EA/2017/0220***, the First-tier Tribunal (FTT) decided that details of unsubstantiated complaints made against councillors must not generally be disclosed to the world at large under section 40(2) (*personal data*) of the Freedom of Information Act (FOIA) 2000. The FTT also considered the position of the Interested Person (IP) in respect of FOIA, in particular whether the views of the IP in respect of an allegation made against a councillor are exempt from disclosure under the exemptions in section 40(2) and/or section 36 (*prejudice to effective conduct of public affairs*).

2.3 As part of its evidence collection, the Committee on Standards in Public Life held two roundtable discussions in April 2018 as part of its review into local government ethical standards:

- 18 April 2018: Monitoring Officers, clerks, and Independent Persons
- 24 April 2018: Academics and think tanks

The Committee has published a summary note and a transcript of above meetings.

2.4 The Local government ethical standards: stakeholder consultation is now closed. The Committee received 317 responses to the public consultation and says it will be publishing its report by the end of 2018.

3. DETAIL

R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin)

- 3.1 Councillor Harvey had served as a town councillor since 2011. She sat on three of the main committees. Complaints of bullying and harassment were made against Councillor Harvey by the Town Clerk and Deputy.
- 3.2 The Town Council decided to deal with the allegations under their grievance procedure as this was more efficient than the Code of Conduct procedure under the Localism Act 2011 (section 28).
- 3.3 Councillor Harvey did not accept that this was the appropriate procedure to deal with the complaints due to the seriousness of the accusations. She “self-referred” a Code of Conduct complaint to the monitoring officer (MO) of Herefordshire Council (the principal authority for the area).
- 3.4 The Town Council proceeded under its grievance procedure and found against Councillor Harvey. The Town Council imposed sanctions that Councillor Harvey could not serve on any of the Council’s committees, sub-committees, panels or working/steering groups and that she could not represent the Council on any outside body. All bodies affiliated with the Council were to be informed of these

actions and the sanctions would remain in place until May 2017, when the matter would be reviewed.

- 3.5 Hereford's MO instructed internal investigators whose findings were that there was no basis to support the decision that Councillor Harvey had breached the Code of Conduct. The MO's decision was that there had been no breach of the code and she would take no further action.
- 3.6 The Town Council made a further decision in 2017 to continue the sanctions against Councillor Harvey regardless of the independent investigator's findings.
- 3.7 Councillor Harvey bought judicial review proceedings against the Town Council on three grounds:
 1. The Council had acted *ultra vires* (beyond its legal power) in determining the complaints through their grievance procedure instead of the Code of Conduct procedure.
 2. The Council's actions were substantively unfair and in breach of Article 10 ECHR (freedom of expression).
 3. The procedure the Council followed was in itself procedurally unfair.
- 3.8 The judge found for Councillor Harvey on all three grounds. It is the first ground, namely that of *ultra vires*, that is of key significance for local authorities.
- 3.9 The judge found that Section 28 of the Localism Act 2011 (*codes of conduct*) contemplates a four-stage process:
 1. the making of an allegation;
 2. (optionally) a non-formal investigation or mediation stage or a pause pending other relevant steps being taken (e.g. criminal proceedings being taken);
 3. a formal stage involving an independent person leading to a decision on breach;
 4. (if breach is found) a formal stage, again involving the Independent Person, dealing with action.

The judge emphasised that it was important not just at the sanction stage but also at the decision making stage (breach finding), that an Independent Person must be involved and consulted.

Comment

- 3.10 The High Court's decision is clear that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure under the Localism Act 2011, and that complaints regarding a councillor's

conduct have to be dealt with under the authority's standards arrangements.

- 3.11 A local authority will be acting unlawfully if it tries to bypass the Code of Practice Procedure under the Localism Act 2011 when seeking to address alleged misconduct by members and will be at risk if it tries to discipline councillors outside the governance procedures as laid down by the Act.

***Bennis v The Information Commissioner & Stratford-on-Avon District Council,
EA/2017/0220***

- 3.12 This case considered the position of the Interested Person (IP) in respect of the Freedom of Information Act (FOIA) 2000, in particular whether the views of the IP in respect of an allegation made against a councillor are exempt from disclosure under the exemptions in section 40(2) (*personal data*) and/or section 36 (*prejudice to effective conduct of public affairs*).
- 3.13 In *Bennis*, the appellant made an unsuccessful complaint of misconduct against a councillor concerning the handling of a planning matter. The appellant subsequently requested Stratford-on-Avon District Council to disclose its advice received when handling the complaint. That advice had been provided by one of two of the appointed IPs. The council provided the appellant with all material information except for advice received from the IP which was withheld under sections 40(2) (*personal data*), 36(2)(b)(i) (*inhibition of free and frank advice*) and 36(2)(c).
- 3.14 Mr Bennis complained to the IC. The IC's decision notice endorsed the council's decision in respect of the two section 36 exemptions; the IC did not go on to consider section 40(2) in its notice. The appellant appealed to the First-tier Tribunal (FTT).
- 3.15 The FTT found that the decision notice was wrong in its assessment of the public interest test concerning both of the exemptions relied on by the council under section 36. In particular this was because while the decision notice gave considerable weight to the contention that IPs would be inhibited in giving robust advice if they knew that their views would be made public, and that this in turn would prejudice the effective conduct of public affairs. The decision notice failed in its assessment of the public interest balance to take into account the fact that the IP's views would in any event have become public if there had been a hearing.
- 3.16 Regarding the section 40(2) exemption, the FTT was '*not satisfied that s40(2) FOIA may also be applied to the personal data of the IPs, as their names are already in the public domain, they occupy senior public roles, and their views may be disclosed if there is a public hearing*'.

- 3.17 As to unsubstantiated complaints against councillors, the FTT agreed with the council that these '*ought not generally to be disclosed to the world at large*' under the FOIA. For in its view: '*The proper approach to such information is to consider the rights of the councillor concerned as a data subject.*' The FTT was satisfied that '*the council could not disclose the councillor's personal data in this case (consisting of their name and opinions expressed about them) without breaching the data protection principles and that s40(2) FOIA [was] therefore engaged*'.
- 3.18 The formal decision of the FTT was therefore to conclude that the IC's decision notice was wrong in its assessment of the public interest test as it related to the section 36 exemptions relied on by the council. The council was, however, correct to refuse part of the requested information under section 40(2). Accordingly, the tribunal required no steps to be taken.

Comment

- 3.19 This FTT case is useful in that it deals with the status of IP advice under FOIA and the position concerning unsubstantiated complaints against councillors (where in this case section 40(2) was found to be engaged).

Local government ethical standards: roundtable transcript and summary notes

- 3.20 The roundtable on 18 April 2018 was held under the Chatham House Rule¹ attended by Monitoring Officers, clerks, and Independent Persons. The Committee on Standards in Public Life has published a summary note of the discussion. The roundtable on 24 April, attended by academics and think-tanks, was held on the basis that participants would approve the transcript prior to publication (also published).
- 3.21 The note of the roundtable attended by Monitoring Officers, clerks, and Independent Persons is appended to this report as Appendix 1. The four-page summary deals, among other things, with codes of conduct, sanctions and role of the Independent Person.
- 3.22 Members can read further details at:
<https://www.gov.uk/government/publications/local-government-ethical-standards-roundtable-transcript-and-summary-note>

¹ When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

Report into Local Government Ethical Standards

- 3.23 The Committee on Standards in Public Life says it will publish its report of local government ethical standards by the end of 2018.
- 3.24 Members can read further details, including the stakeholder consultation document, at <https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 There are no direct financial implications arising from this report.

5. LEGAL IMPLICATIONS

- 5.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

CONTACT OFFICERS: Jacqueline Harris Baker, Director of Law & Governance (ext. 62328)

BACKGROUND DOCUMENTS: None

APPENDIX 1: Summary note of discussion attended by Monitoring Officers, clerks, and Independent Persons (18 April 2018)

Committee on Standards in

ETHICAL STANDARDS IN LOCAL GOVERNMENT ROUNDTABLE OF MONITORING OFFICERS, CLERKS, AND INDEPENDENT PERSONS WEDNESDAY 18 APRIL 2018 - BIRMINGHAM

SUMMARY NOTE OF DISCUSSION

Codes of conduct

- There is a high level of variation in local authority codes: both in length and in provisions. Codes range from those which simply list the Nolan Principles, to long and complex documents.
- This variation creates complexity: for example, public living on the borders don't understand differences between neighbouring counties; and dual- or triple-hatted councillors are subject to multiple regimes. This confusion is particularly acute in respect of specific requirements such as declarations of interests. Participants generally agreed that the public expects the same ethical standards at all tiers of local government.
- A successful code needs to aid public understanding of standards, as well as set expectations for councillors.
- One participant suggested that around half of parish councils used a template a code of conduct drafted by NALC.
- Members of the public can find it difficult to understand provisions in codes sufficient to identify which under which one they should lodge their complaint.
- Shorter codes based on the Nolan Principles alone are the hardest to administer and can lead to disputes or more complaints due to the breadth of interpretations open.
- The availability of case law has meant some councils have retained codes adopted under the previous statutory regime so that they can be more easily interpreted.
- Some authorities do not revise their codes regularly or in light of experience.

Declaration of interests

- The 'disclosable pecuniary interests' introduced in the Localism Act 2011 are a new category of interest in local government law and are difficult to deal with. Some councils use three, overlapping, categories of conflicts (personal, prejudicial, and disclosable pecuniary).
- In small communities, some level of overlapping interests by an individual is inevitable.

- The definition of disclosable pecuniary interests under the Localism Act 2011 is narrower than would be the public's expectation. Councils find that they need to supplement the statutory requirements with their own code.
- The criminal offences relating to pecuniary interests are complex and there is little prospect of follow-up.
- Putting an interest on a register and declaring it at a meeting are both needed for full transparency, but the current regime does not require a declaration as long as the interest is registered.

Gifts and Hospitality

- Most councils include a gifts and hospitality register in their code of conduct, however, councils do not tend to receive complaints about a lack of declaration of gifts or hospitality. Most participants did not consider this a significant problem.
- It is difficult for local authorities officers to advise councillors on registering gifts and hospitality due to a number of roles they might hold, and the capacity in which they are offered gifts and hospitality.

Sanctions

- Participants highlighted an inconsistency with an approach of being able to set a code but not enforce it. Participants strongly felt that a lack of stronger sanctions undermines the system and erodes public confidence.
- Being censured by a council can, depending on the individual and the situation, be seen as a 'badge of honour'.
- Introducing the ability to suspend councillors may require an appeal stage to ensure it is Article 6 ECHR compliant.
- Councils have been creative with the use of sanctions under their existing competency: for example, by withdrawing facilities, including IT, or putting in place bans from council premises.
- Political consensus assists with making disciplinary findings against members in some cases where conduct very serious. The interaction between political parties and the sanctions process is complex.
- Investigations are currently disproportionately expensive to sanctions available.
- Parish councils are not organised (politically or otherwise) or structured in the same way as principal authorities and, in many cases, are not sufficiently resourced to avail themselves of effective sanctions, even if they were aware that such sanctions were possible.
- Most councillors go into local government to make a difference, conduct themselves well, and would find any sanction very sobering. More sanctions are needed for the small minority of councillors who show poor conduct.

Independent Person (IP) role

- The Independent Person (IP) is a wholly advisory role.
- Their effectiveness heavily depends on the culture of the authority and their relationship with the Monitoring Officer. With the right relationship, the IP can be an effective position.
- Subsequent legislation has found other roles for IPs, for example, on panels for Chief Officer disciplinary hearings and Combined Authority audit committees.

- Some participants suggested strengthening and clarifying the IP role. Others expressed a concern that IPs can lose their independent perspective after serving for a long period and should therefore have a limited term of appointment.

Pressures on Monitoring Officers

- Participants felt that the Monitoring Officer role was difficult. Monitoring Officers need carefully to navigate relationships with councillors - they may have to deal with complaints about them whilst at same time need to build a relationship with them.
- The role is particularly difficult in small authorities as they cannot share the workload among a team.
- The role is more likely to be successful where there is a collaborative, and not adversarial, culture between members and officers.
- Some complaints can become ethical issues due to the escalating nature of the complaint; equally, weak governance can create situations where ethical standards complaints are more likely.
- There is a small number of parish councils that create a disproportionate standards caseload, partly because there are fewer external bodies and processes to oversee town and parish councils.
- A number of participants reported that many clerks would rather walk away from their role than use the employment or code complaints avenues to resolve behaviour directed towards them in their role.

Culture and improvement

- Participants spoke of the need to convince members that it is not in anyone's interest to become involved in formal complaints and sanctions.
- Any standards regime needs to be robust enough to deal with councillors who do not 'buy in' to it.
- Need to improve public understanding of ethical standards expected of councillors and that standards are central to a council's activity.
- Standards committees should not stand alone; ethical standards should be incorporated into the overall governance of a council.
- Equally, standards should not be seen as the exclusive responsibility of the Monitoring Officer, but the responsibility of all statutory officers. An ethical culture is strongest where senior officers work together.
- Many councils do not publish data about the type of complaints investigated and categories of outcomes, which does not meet expectations about transparency.
- Councillors may take up their role without knowing what standards are expected and their responsibilities: early induction is important, but takes resources.

Role of central government

- Participants contrasted the current approach in England to that in the devolved administrations in the UK, describing the Standards Commission in Scotland and Public Service Ombudsman for Wales in particular as 'cheerleader regulators'.
- Only central government could give councils legal power to levy additional sanctions.
- Besides this, participants suggested that many changes could take place at the local level, and that it was important to retain an element of local flexibility.
- Some participants suggested that steps could be taken by central government to enforce transparency data relating to standards issues and complaints.

- Participants generally agreed that it is the duty of councillors to set standards, and that local councils could themselves put in place clearer and fairer codes that more clearly set out expectations for complainants and councillors.

Agenda Item 7

Croydon Council

REPORT TO:	ETHICS COMMITTEE 18 OCTOBER 2018
AGENDA ITEM:	8
SUBJECT:	DISCLOSURE AND BARRING SERVICE (DBS)CHECKS FOR MEMBERS
LEAD OFFICER:	DIRECTOR OF LAW AND GOVERNANCE AND MONITORING OFFICER
CABINET MEMBER:	COUNCILLOR HALL CABINET MEMBER FOR FINANCE AND RESOURCES
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The continued development of and the promotion of new initiatives to enhance ethical standards is a key component of the Council's approach to ethical and corporate governance and falls within the Ethics Committee's remit.	
FINANCIAL IMPACT: Any costs would need to be met from within existing budgets for Members.	
FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a key decision.	

For general release

1. RECOMMENDATIONS

That Committee is asked to:

- 1.1 Note the contents of the report; and
- 1.2 Approve the revised protocol in respect of criminal records checks via the Disclosure and Barring Service (DBS) for Members attached at Appendix 1.

2. EXECUTIVE SUMMARY

- 2.1 The Council had previously required DBS checking of certain categories of Members and as part of the review of the council's processes, this report details the circumstances under which it is considered appropriate to request a DBS check of a Member.
- 2.2 The revised Protocol for DBS checks is attached at Appendix 1 for Members' consideration and approval.

3. BACKGROUND

- 3.1 The Protection of Freedoms Act 2012 made changes to the regime of vetting and barring individuals from working with children and vulnerable adults. This had the effect of reducing significantly the number of positions and circumstances in which persons would need to be the subject of a criminal records check. The provisions only relate to those persons who have close and unsupervised contact with vulnerable groups including children. There are specific definitions as to what this means in practice.
- 3.2 The 2012 Act amended the definition of “regulated activity” under the Safeguarding Vulnerable Groups Act 2006. Previously, the definition specifically included councillors who “discharged functions” relating to the social care of vulnerable adults and children for two or more days in any 30 day period. This was understood by many of the councils to include all executive Members, relevant scrutiny Members and those serving on fostering and adoption panels. This definition has been formally repealed so that each role has to be assessed individually to ascertain whether or not it is possible to request a DBS check due to a Members’ role.
- 3.3 The changes in legislation effectively mean that there is no legal requirement for any councillor to undergo criminal record checking by virtue only of their position as an elected Member or Member of the executive, shadow executive or scrutiny.
- 3.4 In making individual assessments of whether or not a DBS check is appropriate, consideration has to be had to the definition of “regulated activities” which have the following meanings:
- With regard to children, regulated activities are
- unsupervised activities involving teaching, training, instructing, caring for or supervising children, or providing advice/guidance on their well-being, or driving a vehicle only for children – if done regularly; and
 - relevant personal care (even if only done once);
 - registered childminding and foster caring.
- With regard to adults, regulated activities involve:
- the provision of healthcare or personal care by healthcare professionals;
 - the provision of social work by social care workers;
 - assistance with cash, bills or shopping or the conduct of their personal affairs;
 - conveying persons because of their age, illness or disability even if only done once.
- 3.5 Subsequent to the adoption of the Council’s current policy, the DBS formally warned another local authority which was proposing to blanket check councillors on bodies that dealt with education and social services and indicated that such a power had been removed by the Protection of Freedoms Act 2012. The DBS indicated that Councillors could be checked only where their roles had been “assessed individually to confirm whether they meet the eligibility criteria”.

4. DETAIL

- 4.1 The Monitoring Officer, with support from officers from Adults and Children's Services has undertaken an assessment of the roles fulfilled by Members on Council's Adoption Panel, Fostering Panel, Corporate Parenting Panel and Adult Social Services Review Panel to determine if their work falls within the relevant statutory definition of regulated activity. The enquiries have indicated that none of these Members' work on these bodies falls within the statutory definition as summarised in paragraph 3.4 above and set out more fully in paragraphs 3-7 in the protocol, Appendix 1 hereto. Accordingly no checks may be made of these Members. No other Members have roles on the Council which require them to undertake "regulated activities" therefore no DBS checks are currently recommended for Members.
- 4.2 In the event that this situation changes in future and a DBS check is required by one of more Members, the Protocol sets out how the information contained within the DBS will be dealt with and who will have access to the information and for what purpose as this is similarly regulated by statute.
- 4.3 Members' attention is specifically drawn to paragraphs 15-20 of the Protocol which sets out the disclosure process, which provides that where checks have been undertaken and information is disclosed to the Monitoring Officer (or her Deputies) pursuant to the Protocol, there is a prohibition on disclosure of such information to any other person, including Party Leaders, unless the Member in question has provided their written consent permitting disclosure to the additional person concerned. The reason for this is that there is a statutory prohibition on such disclosure (beyond the response in 19.1 of the Protocol) which makes it a criminal offence to disclose information from a DBS check to persons who are not entitled to hold such information. If such information were disclosed to Party Leaders with the written consent of the Member concerned, the Party Leaders would not be permitted to disclosure that information further without potentially rendering themselves liable to criminal sanction.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 There are no direct financial implications arising from this report.

6. LEGAL CONSIDERATIONS

- 6.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.

CONTACT OFFICER: Jacqueline Harris Baker, Director of Law and Governance
(ext 62328)

BACKGROUND DOCUMENTS: None

Protocol on Disclosure and Barring Service (“DBS”) Checks for Members and Co-opted Members

Background

1. The effective date of commencement for this protocol is November 2018
2. This protocol replaces all previous protocols, policies, decisions and/or precedents relating to criminal records checks for Croydon Members and Co-opted Members. For these purposes “co-opted Members” include both voting and non-voting Co-optees where they are sitting on Council Committees or Sub-Committees which exercise education or social services functions, or scrutinise education or social services functions.
3. The definition for “regulated activity” for children includes:
 - Unsupervised activities e.g. teach, train, care for or supervise children, providing moderating electronic interactive communication used predominantly by children, driving a vehicle used to convey children, or
 - Work in specified places with opportunity for frequent contact with children, like schools, nurseries, children’s homes, childcare establishments or childcare premises which includes premises where childminding and day care take place; or
 - Providers of personal care or health care. Health care or personal care are regarded as regulated activities even if they are only carried out on a single occasion.
 - Any person who supervises a person undertaking a regulated activity is also regarded as undertaking that regulated activity and any person who supervises a person who is not in a regulated activity (but would be except for the fact that they are supervised) is also in regulated activities
4. The definition for “regulated activity” for adults no longer labels adults as ‘vulnerable’ but identifies activities which lead to an adult being considered vulnerable at a particular time. The revised definition still excludes any activity carried out in the course of family relationships and personal, non-commercial relationships.
5. The requirement around the activities having to take place in a specified establishment has been removed in respect of adults – it is the activity and not the location which is considered to be relevant.
6. The frequency test has been removed – an individual only needs to engage in the activities below once to be carrying out “regulated activity” relating to adults.

7. There are 6 categories of job (plus those who manage or supervise them) which fall within the definition of “regulated activity” for adults:
 - Providing health care
 - Providing personal care
 - Social work in relation to health services or social services
 - Assisting with cash, bills or shopping
 - Assisting with personal affairs under formal appointment, for example through power of attorney
 - Transporting adults to and from care provision establishments like hospitals and care homes.
8. Supervised volunteers or occasional workers or visitors (photographers, builders, governors and inspectors who do not have regular contact with vulnerable groups) are no longer required to be checked. Schools are however required to adhere to statutory guidance issued by the Department of Education relating to standards of supervision.
9. Health Care not given by a health care professional (or supervised by one) and treatment therapy providers no longer need to be checked.
10. Standard checks – To be eligible for a standard level DBS check the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.
11. Enhanced checks – To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order and in Police Act 1997 (Criminal Records) Regulations 2002, as amended.
12. Enhanced checks with children’s and/or adults’ barred list check(s) – To be eligible to request a check of the children’s or adults’ barred lists, the position must be eligible for an enhanced level DBS check and be specifically listed in the Police Act 1997 (Criminal Records) Regulations as able to check the barred list(s).
13. Given the revised definitions introduced as a result of the Protection of Freedoms Act 2012, there is no legal requirement for a criminal records check on Members unless it is considered that the Member is undertaking any of the activities listed in paragraphs 3 or 7 above.

General Principles

14. There will not be general DBS checking of all Members as this is no longer permitted by the revised legislative requirements

The Process

15. If a Member does undertake regulated activities in relation to their role with the Council, they will be required to undergo a DBS check. The level of that check will be determined by the role they fulfil and a Member or Co-opted Member may not be appointed to or sit on any of the Bodies undertaking the role which involves “regulated activities” until they have had the requisite DBS checks and provided the necessary information to the Monitoring Officer in accordance with this Protocol. In addition, a Member may not act as a substitute or reserve Member for another Member in relation to a role which involves regulated activities unless they have had a DBS check and provided the necessary information to the Monitoring Officer in accordance with this Protocol.
16. The outcome of DBS checks is not made available to the Council but only to the individual to whom the check relates. Each individual Member and Co-opted Member who requires a check will therefore be responsible for making this information available to the Monitoring Officer within 28 days of the date of issue of the DBS certificate, unless the contents of the DBS certificate is disputed and the dispute is raised with the DBS within 28 days of issue of the disputed certificate. In the latter case the certificate must be provided to the Monitoring Officer within 28 days following the outcome of the dispute.
17. Where the Member or Co-opted Member has an existing up to date DBS Check for another role **and** is signed up to the DBS update service <https://www.gov.uk/dbs-update-service>, their DBS Check details will be regarded as transferrable for the time period for which the update service is valid and those DBS details may be provided to the Monitoring Officer in satisfaction of the requirements of this Protocol meaning that the Member will not need a new DBS for these purposes.
18. Any disclosure information will be made available only to the Monitoring Officer and her Deputies and will be kept locked in a secure place to which only the Monitoring Officer and her Deputies will have access. The DBS information shall be securely destroyed once the DBS expires or the Member no longer serves as a Croydon Member or Co-opted Member undertaking regulated activities.

Effective November 2018.

ETHICS COMMITTEE WORK PROGRAMME 2018 – 2019

This table sets out the Ethics Committee Work Programme for 2018/2019; the items were agreed by the Panel at its first meeting of the municipal year on 23 May 2018. This Work Programme will be considered at every meeting of the Committee to enable it to respond to issues of concern and incorporate any additional items.

Chair: Councillor Clive Fraser

Vice Chair: Councillor Pat Clouder

Democratic Services Support:

For further information on the Work Programme of the Ethics Committee, please contact:-
Annette Wiles, Senior Democratic Services and Governance Officer, Council and
Regulatory

Tel: 020 8726 6000 ext 64877; **Email:** annette.wiles@croydon.gov.uk

ETHICS COMMITTEE
WORK PROGRAMME 2018 – 2019

Meeting date	Standing item(s)	Other item(s)
18 October 2018	Members' dispensations	Code of conduct and complaints process Case law update DBS checks for members Dispensation for all members
26 November 2018	Members' dispensations	Report on review of Council's Whistleblowing Policy Member learning and development panel revised terms of reference
27 February 2019	Members' dispensations	Annual Whistleblowing Report Annual update on member complaints Annual update on members' learning and development Annual update on use of RIPA
1 May 2019	Members' dispensations	TBC

Agenda Item 9

REPORT TO:	ETHICS COMMITTEE 18 October 2018
SUBJECT:	DISPENSATIONS APPLICATIONS FOR MEMBERS
LEAD OFFICER:	JACQUELINE HARRIS BAKER, DIRECTOR OF LAW AND GOVERNANCE
CABINET MEMBER:	COUNCILLOR SIMON HALL
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall consider dispensations for Members under the new ethics regime.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATION

The Committee is asked to:

- 1.1 In the event of applications for dispensations received, consider the application from the Members and determine whether to grant the dispensation, and if so, the length of time for which such dispensation is to be granted.

2. EXECUTIVE SUMMARY

- 2.1 Following statutory amendments to the ethics regime, full Council adopted a new Code of Conduct and delegated to the Monitoring Officer and the Ethics Committee the power to consider dispensations under the new ethics regime.

3. DETAIL

- 3.1 Under Section 31 of the Localism Act 2011 (“the Act”), a Member or co-opted Member who has a disclosable pecuniary interest (DPI) in a matter to be considered or being considered at a meeting of the authority at which that Member or co-opted Member is present and the DPI is one which the Member or co-opted Member is aware of, the Member or co-opted Member may not participate or participate further in any discussion or vote on the matter at the meeting unless he/she has first obtained a dispensation in accordance with the Council’s dispensation procedure.

- 3.2 The Council has adopted dispensation criteria which are attached for Members' ease of reference at Appendix 1. There are 5 circumstances in respect of which a dispensation may be granted, namely:
- i) That so many members of the decision-making body have disclosable pecuniary interests (DPIs) in a matter that it would "impede the transaction of the business";
 - ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
 - iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - iv) That, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
 - v) That the authority considers that it is otherwise appropriate to grant a dispensation.
- 3.3 The Council has determined that in respect of grounds (i) and (iv) above, which involve an objective assessment of whether the requirements are met, it is appropriate to delegate dispensations on these grounds to the Monitoring Officer for determination. The Monitoring Officer is permitted, but not required, to consult with the Ethics Committee prior to determining an application for dispensation on grounds (i) or (iv).
- 3.4 In respect of grounds (ii), (iii) and (v) above, assessment of these grounds involve a value judgement and are less objective and Council has therefore considered it appropriate that the discretion to grant dispensations on these grounds is delegated to the Ethics Committee, after consultation with the Independent Person.
- 3.5 The Council currently does not have any outstanding applications for dispensations, however should any be received following the dispatch of the agenda they will be circulated on the evening for consideration.
- 3.6 In considering the matter, the Ethics Committee is required to assess whether, in light of the contents of the application, the public interest in excluding a Member from participating where a Disclosable Pecuniary Interest exists is outweighed by the considerations set out in the application which support the public interest in the Member being able to participate.
- 3.7 The Committee is also asked to set out the time period in respect of which it is appropriate to grant the dispensation. In this regard, Members should be mindful of the fact that any dispensation may not be granted for a period exceeding four calendar years, nor is it recommended that a dispensation be granted for a period longer than the remaining term of office of the relevant Member.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

4.1 There are no direct financial implications arising from this report.

5. LEGAL IMPLICATIONS

5.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

CONTACT OFFICERS:

Jacqueline Harris Baker,
Director of Law and Governance
(ext 64985)

BACKGROUND DOCUMENTS: None

Appendices: Appendix 1 – Dispensation Criteria

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Determination of Dispensation Applications:

Under Section 31 of the Localism Act 2011 (“the Act”), a Member or co-opted Member who has a disclosable pecuniary interest (DPI) in a matter to be considered or being considered at a meeting of the authority at which that Member or co-opted Member is present and the DPI is one which the Member or co-opted Member is aware of, the Member or co-opted Member may not participate or participate further in any discussion or vote on the matter at the meeting unless he/she has first obtained a dispensation in accordance with the Council’s dispensation procedure.

The provisions on dispensations are significantly changed by the Localism Act 2011. There are 5 circumstances in respect of which a dispensation may be granted, namely:

- 1.1 That so many members of the decision-making body have disclosable pecuniary interests (DPIs) in a matter that it would “impede the transaction of the business”
- 1.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. ;
- 1.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- 1.4 That, without a dispensation, no member of the Cabinet would be able to participate on this matter or
- 1.5 That the authority considers that it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

The Localism Act gives discretion for the power to grant dispensations to be delegated to a Committee or a Sub-Committee, or to the Monitoring Officer.

This Council has determined that in respect of grounds 1.1 and 1.4 above, which involve an objective assessment of whether the requirements are met, it is appropriate to delegate dispensations on these grounds to the Monitoring Officer for determination. The Monitoring Officer is permitted, but not required, to consult with the Ethics Committee prior to determining an application for dispensation on grounds 1.1 or 1.4.

In respect of grounds 1.2, 1.3 and 1.5 above, assessment of these grounds involve a value judgement and are less objective and Council has therefore considered it appropriate that the discretion to grant dispensations on these grounds is delegated to the Ethics Committee, after consultation with the Independent Person.

Members wishing to apply for a dispensation are advised to complete the dispensation application form, Appendix 1 hereto.

Adopted: July 2012

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