

# Ethics Committee Agenda



To: Councillor Jerry Fitzpatrick (Chair)  
Councillor Pat Clouder (Vice-Chair)  
Councillors Joy Prince, Clive Fraser, Mario Creatura and Simon Hoar

Independent Members: Don Axcell, Jennifer Gordon, Ashok Kumar, Alan Malarkey and Anne Smith

Reserve Members: Councillors Jeet Bains, Jan Buttinger and Karen Jewitt

A meeting of the **Ethics Committee** which you are hereby summoned to attend, will be held on **Wednesday, 26 May 2021** at **6.30 pm** in **Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX**

JACQUELINE HARRIS BAKER  
Council Solicitor and Monitoring Officer  
London Borough of Croydon  
Bernard Weatherill House  
8 Mint Walk, Croydon CR0 1EA

Cliona May  
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[www.croydon.gov.uk/meetings](http://www.croydon.gov.uk/meetings)  
Tuesday, 18 May 2021

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## **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 - 10)**

Minutes of the meeting held on 11 February 2021.

### **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. Review of the Terms of Reference (Pages 11 - 24)**

To receive the report of the Interim Executive Director of Resources and Deputy Monitoring Officer regarding the review of the Terms of Reference, membership, dates and frequency of meetings of the Ethics Committee.

### **6. Dispensation Applications for Members**

To consider the Members' dispensations received by the Interim Executive Director of Resources & Deputy Monitoring Officer, if any are received.

**7. LGA Code of Conduct Gap Analysis with Current Code (Pages 25 - 56)**

To consider the report which provides an analysis of the differences between the Council's current light touch Code of Conduct and the LGA draft Code of Conduct.

**8. Social Media Guidance for Councillors (Pages 57 - 72)**

To consider the report which provides an overview of draft social media guidance for Councillors, which is recommended for adoption and inclusion into the Members' Handbook.

**9. Access to Information Protocol (Pages 73 - 82)**

To consider the adoption of the proposed Access to Information Protocol.

**10. Update on Ethics Complaints Received up to and including 31 March 2021 (Pages 83 - 90)**

To receive the report of the Interim Executive Director of Resources and Deputy Monitoring Officer on ethics complaints received up to and including 31 March 2021.

**11. Equalities Review (Pages 91 - 128)**

This report includes the initial work presented to the Council from Joe Montgomery, who conducted an independent review of the council's workforce equalities in May 2019.

**12. Work Programme (Pages 129 - 132)**

To consider the Committee work programme for the remainder of the Municipal Year.

**13. 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**

**14. Dispensation Applications for Members**

To consider the Members' dispensations received by the Interim Executive Director of Resources & Deputy Monitoring Officer, if any are received.

## **Ethics Committee**

Meeting of held on Thursday, 11 February 2021 at 6.30 pm. This meeting will be held remotely.

### **MINUTES**

**Present** Councillor Clive Fraser (Chair);  
Councillor Pat Clouder (Vice-Chair);  
Councillors Jerry Fitzpatrick, Joy Prince, Mario Creatura and Simon Hoar  
Independent Members Ashok Kumar and Anne Smith

### **PART A**

#### **30/20 Minutes of the Previous Meeting**

The Ethics Committee expressed disappointment that the actions agreed at the previous meeting had not been taken forward, particularly in regards to future report requests. The officers presented explained that the reports requested, namely the Joe Montgomery report, had not yet been ready for circulation, but it would be distributed to Ethics Committee Members as early as possible. The Assistant Chief Executive noted that she would also circulate the recommendations made by the Head of Learning and Organisational Development in response to the report.

The minutes of the meeting held on 18 November 2020 were agreed as an accurate record.

#### **31/20 Disclosure of Interests**

There were none.

#### **32/20 Urgent Business (if any)**

There were no items of urgent business.

#### **33/20 Independent Persons Succession Planning**

The Committee considered a report which identified recommended candidates for appointment to a pool of Independent Persons to perform the Council's statutory functions under the Localism Act 2011 and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules). The Head of Litigation & Corporate Law explained to the Committee that interviews had originally been planned to take place in the spring of 2020 but were

postponed due to the Covid-19 pandemic. The interviews were conducted by the Selection Panel on 10 and 16 December 2020 and were held remotely. The report recommended to Full Council that current Independent Persons, Anne Smith and Ashok Kumar, continued for a further two years.

The Chair thanked officers for the report and noted the recommended candidates all had a wealthy experience in the borough and would be valuable Independent Persons on the Ethics Committee. In response to queries, the Chair clarified that six people applied, five were shortlisted, and the report was recommending for three candidates to be appointed.

Councillor Prince noted that the second corporate priority outlined in the report was to focus on tackling ingrained inequality in the borough; she asked whether any protected characteristics, other than gender, were being represented in the three recommended candidates. The Head of Litigation & Corporate Law confirmed that one candidate was from an ethnic minority background.

The Committee **RESOLVED** to:

- 1) Agree the recommendation of the Selection Panel for the following candidates:
  - Donald Axcell
  - Alan Malarkey
  - Jennifer Gordonto be appointed to the pool of Independent Persons and delegate to the Monitoring Officer the selection of an Independent Person from the pool for specific purposes.
- 2) Recommend to Full Council that their appointment as Independent Persons should be confirmed for a term of 4 years, subject to annual appointment at Full Council, and that such appointment be subject to the Council's Scheme of Co-option set out in Part 6D of the Constitution.
- 3) Invite Anne Smith and Ashok Kumar, the Council's current Independent Persons, to serve for a further term of 2 years expiring at the end of the municipal year in 2023, subject to annual appointment at Full Council and the Council's Scheme of Co-option set out in Part 6D of the Constitution.
- 4) Recommend to Full Council that the continued appointment of Anne Smith and Ashok Kumar be confirmed on this basis.

## **34/20 LGA's New Model Code of Conduct**

The Head of Litigation & Corporate Law introduced the report and explained that the recommendations in the report were to note the appended model Code of Conduct from the LGA, and to request officers to conduct a more

detailed gap-analysis between the new LGA model Code of Conduct and the current adopted Code of Conduct for Members. This would be brought back to Ethics Committee for consideration.

In response to Councillor Creatura, in regards to the use of sanctions, the Head of Litigation & Corporate Law confirmed that Committee on Standards in Public Life (CSPL) review had reached the consensus that the current sanctions available to local authorities in relation to breaches of the code of conduct were insufficient. The sanctions that were currently available would remain the same under the new LGA model Code of Conduct if adopted. Local authorities tended to focus on training Members and relied on the political parties to take action when there had been a breach; she further confirmed that the local authority did not have a legal power to suspend allowances or suspend or dismiss Councillors. In response to Councillor Clouder, it was further clarified that the LGA and lawyers in Local Government were encouraging the change in law to permit the Ethics Committee to be able to enforce sanctions.

Councillor Creature asked for clarification on what the work the Croydon Renewal Plan was conducting in relation to improving governance and leadership practice included. In response, the Assistant Chief Executive explained that the Report in the Public Interest had a series of recommendations to the council, including both Member and officer training and ensuring that all the work conducted by the council was in line with the Nolan Principles. This had been agreed by Cabinet in January 2021 and a comprehensive programme of training was currently being developed, which would be brought to Ethics Committee for approval. Ashok Kumar, Independent Person, noted that he wanted to see the training programme as he had concerns that the council could continue to make mistakes without having the full plan enrolled as soon as possible.

The Committee **RESOLVED** to:

- (1) Note the contents of the new Local Government Association model Code of Conduct for Members in Appendix A and the detail of this report; and
- (2) Request officers to conduct a gap-analysis between the new LGA model Code of Conduct and the current adopted Code of Conduct for Members within the Constitution and report back to the Committee for further consideration.

## **35/20      Annual Update on Member Complaints**

The Head of Litigation & Corporate Law introduced the report and outlined the complaints that had been received and investigated, up until December 2020. She noted that the nine complaints received had all been made by members of the public, and none had been taken to full investigation following assessment.

In response to the Chair, it was confirmed that complaints received outside of Committees were often in regards to activity on social media. It was explained that a report would be presented to a future Ethics Committee which would recommend the council adopting a policy in regards to Members' use of social media. The Chair stated that the Labour Party had adopted a Social Media Code, and he would distribute this to Members for information.

**RESOLVED** – That the Committee agreed to note the contents of the report.

**36/20      Annual Update on Members' Learning and Development**

The Head of Democratic Services introduced the report and explained to the Committee that attendance at conferences and training sessions had been severely affected by the pandemic, but there had been an increase in August as restrictions had eased. He added that the Members' Learning and Development programme was being strengthened, in response to the Report in the Public Interest.

In response to Councillor Clouder, it was explained that some training was not captured in the report as it had not been booked through Democratic Services, or Members had signed up for individual online webinars; he agreed with Councillor Clouder that officers would look in to how all training information could be captured in the report.

In response to Councillor Prince, the Head of Democratic Services requested that when Councillors request to go on a training course that they outline which council statutory function it is in regards to, to allow Democratic Services Officers to present the business case to the Spending Control Panel.

**RESOLVED** – That the Committee agreed to note the contents of the report.

**37/20      Work Programme**

**RESOLVED** – That the Committee agreed to note the contents of the report.

**38/20      Dispensation Applications for Members**

There were no dispensation applications received for consideration.

**39/20      Exclusion of the Press and Public**

This was not required.



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**40/20      Dispensation Applications for Members**

There were no dispensation applications received for consideration.

The meeting ended at 7.36 pm

**Signed:**

**Date:**

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<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b>
<b>COMMITTEE:</b>	<b>26 May 2021</b>
<b>SUBJECT:</b>	<b>REVIEW OF THE TERMS OF REFERENCE, MEMBERSHIP, DATES AND FREQUENCY OF MEETINGS OF THE ETHICS COMMITTEE</b>
<b>LEAD OFFICER:</b>	<b>ASMAT HUSSAIN INTERIM EXECUTIVE DIRECTOR OF RESOURCES AND INTERIM DEPUTY MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<p><b>CORPORATE PRIORITIES 2021-2024/POLICY CONTEXT.</b></p> <p>The proposal will ensure good governance within the Council and by councillors. Good governance underpins the Council's new Core Priorities and Ways of Working:</p> <ul style="list-style-type: none"> <li>• we will live within our means, balance the books and provide value for money for our residents;</li> <li>• we will focus on tackling ingrained inequality and poverty in the borough;</li> <li>• we will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe; and</li> <li>• to ensure we get full benefit from every pound we spend, other services in these areas will only be provided where they can be shown to have a direct benefit in keeping people safe and reducing demand.</li> </ul>	
<p><b>FINANCIAL IMPACT</b></p> <p>Implementation of the recommendations contained in this report shall be contained within existing budgets.</p>	
<p><b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A</p>	
<p><b>1. RECOMMENDATIONS</b></p> <p>The Ethics Committee is asked to:</p> <p>1.1 Consider and review its Membership (including the role of the Independent Persons), Terms of Reference, together with dates and frequency of future meetings as set out in Appendix 1, 2 and 3 respectively;</p> <p>1.2 Agree any next steps required;</p> <p>1.3 Note that any changes to the Constitution and associated requirements will need to be referred to Full Council for final consideration.</p>	

## **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 and to consider matters relating to the Code of Conduct.
- 2.2 It is good practice for the committee at its first meeting following Annual Council to consider and, where necessary, review its terms of reference, membership, frequency, dates and timing of its future meetings.
- 2.3 Ensuring the Committee's terms of reference are accurate and effective supports the work of the Committee. This in turn helps ensure high standards are maintained by the Council's Members.
- 2.4 Members are therefore asked to consider these matters and agree any next steps required.

## **3. DETAIL**

### **Annual establishment, terms of reference and dates of meetings.**

- 3.1 At the Annual Council meeting on Tuesday 4 May the Council approved the proportionality and establishment of Committees and Panels of the authority including the Ethics Committee and appointment of Members thereto.
- 3.2 It is good practice that, following the Annual Council meeting, the committees that have been established note their Membership, Terms of Reference (ToR), and the dates of meetings for the duration of the municipal year. The Membership is set out in Appendix 1 of this report. The ToR are set out in Appendix 2.
- 3.3 The Ethics Committee usually meets 4 times per municipal year and the dates of the Ethics Committees for the municipal year are as set out in Appendix 3. Meetings start at 6.30 pm.

### **Membership.**

- 3.4 Full Council has agreed that the committee shall be appointed in accordance with the requirements of political proportionality and that:
  - The Ethics Committee shall be composed of six Members (none of whom shall be the Mayor or Leader).
  - No Cabinet Member appointed to the Committee shall be eligible to Chair meetings of the Ethics Committee.
  - Appointed "Independent Persons" shall be entitled to attend and may vote at meetings of the Ethics Committee, where the committee is dealing with a specific allegation against a Member.
- 3.5 Following appointment at the Annual Council meeting on 4 May and pursuant to a recent recruitment process designed to ensure appropriate succession

planning in relation to the role of the Independent Person the Council now has five appointed Independent Persons to assist the Monitoring Officer:

- Anne Smith a long standing Independent Person for the Council recently had her appointment renewed on 4 May 2021 for a further 2 year term expiring at the end of the municipal year in 2023.
- Ashok Kumar a long standing Independent Person for the Council recently had his appointment renewed on 4 May 2021 for a further 2 year term expiring at the end of the municipal year in 2023.
- Don Axcell was appointed by full council on 4 May 2021 as a new Independent Person. His appointment is for a period of 4 years expiring at the end of the municipal year in 2025.
- Alan Malarkey was appointed by full council on 4 May 2021. His appointment is for a period of 4 years expiring at the end of the municipal year in 2025.
- Jennifer Gordon was appointed by full council on 4 May 2021. Her appointment is for a period of 4 years expiring at the end of the municipal year in 2025.

- 3.6 Full Council at its meeting on 4 May 2021 also agreed the appointment of Councillor Jerry Fitzpatrick as Chair and Councillor Pat Clouder as Vice-Chair of the Committee for the municipal year.

### **Terms of Reference.**

- 3.7 Members will be aware the requirement to have a Standards Committee was dis-applied by the Localism Act 2011 and as a result the Council's Standards Committee was dis-established by full Council following the July 2012 meeting of full Council. The Council, however, agreed to voluntarily create the Ethics Committee consisting, at that time, of five elected Members with ToR including authority to issue dispensations in specified circumstances. Whilst there has been some update to the ToR for the Ethics Committee this has remained largely as drafted and agreed in 2012. A copy of the current ToR can be found at Appendix 2 which Members are asked to consider and review as necessary.
- 3.8 Matters such as the review of the Council's Whistleblowing Policy and Policy under the Regulation of Investigatory Powers Act together with arrangements thereunder, whilst not specifically referred to in the Committee's ToR have traditionally been reported into this Committee. It is proposed by the interim Executive Director of Resources and Deputy Monitoring Officer that going forward such matters be reported to the General Purposes and Audit Committee on the basis that this function is more suited to the auditing role of that committee. When concerns are raised of suspected wrongdoing in the workplace by employees, contractors, suppliers or those outside of the normal management channels internal audit have a vital role in responding to those matters in a confidential manner and would, it is suggested, be best placed to address any concerns on behalf of the Council through the role of the General Purposes and Audit Committee.

### **Dates and frequency of meetings.**

- 3.9 Members will note from Appendix 3 that the calendar of meetings proposes that the committee meet 4 times throughout the municipal year. Members will want to consider whether they consider this is appropriate having regard to the Work Programme which a separate item on the agenda. It should also be noted that there is no planned committee meeting between May and November 2021.

## **4. NEXT STEPS**

- 4.1 Members should now consider and, if necessary, review its membership, terms of reference and meeting calendar.
- 4.2 To assist Members with their review attached as Appendix 4 is a summary of key themes from a sample of other London Council Constitutions in relation to membership, terms of reference and frequency of meetings extracted from public websites.

## **5. CONSULTATION**

- 5.1 The proportional balance of the Council was reviewed by all members at full council on 4 May and committees and their membership duly appointed. The proposals in this report have been discussed with the new Chair and Vice Chair of the Ethics Committee but there has been no formal prior consultation regarding a review.

## **6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 6.1 Implementation of the recommendations contained in this report shall be contained within existing budgets.

*Approved by:* Geetha Blood interim Head of Finance on behalf of the Director of Finance Investment and Risk.

## **7. LEGAL CONSIDERATIONS**

- 7.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance that section 27(1) of the 2011 Act places a duty upon the Council to ensure that its members and co-opted members maintain high standards of conduct. In discharging this duty the Council is required under section 27(2) to adopt a code of conduct for its members. Section 28(1) of the 2011 Act provides that the contents of such a code must be consistent with the Nolan principles of standards in public life namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

- 7.3 In addition, the 2011 Act section 28(6) requires the Council to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and have Arrangements under which decisions on allegations may be made.
- 7.4 The 2011 Act also provides in section 28(7) that the Council must make provision for the appointment by the Council of at least one Independent Person whose views (a) are to be sought and taken into account by the Council before it makes its decision on an allegation that it has decided to investigate and (b) whose views may be sought by the Council in relation to an allegation at any other time and (c) whose views may be sought by a Member if that person's behaviour is the subject of an allegation.
- 7.5 The Committee's current membership and composition is as set out in Article 8 and Article 9 of the Council's Constitution. Its terms of reference are set out in Part 3 of the Constitution - Responsibility for Functions. Any changes proposed to the terms of reference for the committee or its membership will require a change to the Constitution and will need to be referred to full Council for approval.

*Approved by:* Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Interim Director of Law and Governance.

## **8. HUMAN RESOURCES IMPLICATIONS.**

- 8.1 There are no HR implications arising from this report for Croydon Council employees or staff. If any should arise these will be managed under the Council's policies and procedures.

*Approved by:* Gillian Bevan, Head of HR – Resources for and on behalf of Sue Moorman Director of HR

## **9. EQUALITIES IMPACT**

- 9.1 The Equality Act 2011(section 149) places a public sector equality duty (section 146) on the Council. The duty requires the Council to have due regard to *the need to advance equality of opportunity* between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Having “due regard” to the need to advance equality of opportunity involves having due regard, in particular, to the need to *encourage persons* who share a relevant protected characteristic *to participate in public life* or in any other activity in which participation by such persons is disproportionately low.
- 9.3 When drawing up the schedule of dates, consideration was given to avoiding school holiday dates and known dates of religious holidays and other key/important dates around culture, diversity and inclusion where at all possible.

*Approved by:* Yvonne Okiyo, Equalities Manager.

**10. ENVIRONMENTAL IMPACT**

There are not considered to be any environmental impacts of the proposal.

**11. CRIME AND DISORDER REDUCTION IMPACT**

The proposal supports the requirement to maintain good governance within the Council.

**12 DATA PROTECTION IMPLICATIONS.**

There are no data protection implications arising from the proposal.

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**CONTACT OFFICERS:** Asmat Hussain, interim Executive Director of Resources and interim Deputy Monitoring Officer (ext. 62328)

**APPENDICES TO THIS REPORT**

Appendix 1 - Membership of the Committee

Appendix 2 – Terms of Reference of the Committee

Appendix 3 – Dates of future meetings

Appendix 4 – Key themes from review of London Borough Constitutions.

**BACKGROUND DOCUMENTS:** None



**Appendix 1**  
**Ethics Committee**  
**Membership**

**Councillors (including Chair and Vice Chair):**

<b>Majority Group Members 4</b>	<b>Minority Group Members 2</b>
Jerry Fitzpatrick (Chair)	Mario Creatura
Pat Clouder (vice Chair)	Simon Hoar
Clive Fraser	
Joy Prince	

**Substitute Members:**

<b>Majority Group</b>	<b>Minority Group</b>
Karen Jewitt	Jeet Bains
<i>Vacancy</i>	Jan Buttinger
<i>Vacancy</i>	
<i>Vacancy</i>	

**Independent Persons (Non-Voting):**

Anne Smith	Appointed until end of municipal year 2023
Ashok Kumar	Appointed until end of municipal year 2023
Alan Malarkey	Appointed until end of municipal year 2025
Donald Axcell	Appointed until end of municipal year 2025
Jennifer Gordon	Appointed until end of municipal year 2025

**Constitution**

**PART 3 Responsibility for Functions**

**2.2 Ethics Committee (Membership 6 + 2 Independent non-voting co-optees)**

1. Supporting the statutory role of the Monitoring Officer.
2. Receiving reports from the Monitoring Officer on matters of probity and ethics, and to consider and recommend any necessary revisions of the Members' Conduct of Conduct (the Code) to the Council.
3. Reviewing the operation of the Code and recommending revisions for the consideration of full Council as necessary.
4. Monitoring compliance with the Code and granting any dispensations church and parent governor representatives from requirements relating to interests set out in the Code.
5. To comment on the content of guidance and advice to be issued to elected and non-elected Members.
6. Agreeing programmes of advice and training for elected, co-opted and non- elected Members on ethics and probity, and on the Code.
7. To consider applications for a grant of dispensation in the following circumstances:
  - a. 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.
  - b. That the authority considers that the dispensation is in the interests of persons living in the authority's area.
  - c. That the authority considers that it is otherwise appropriate to grant a dispensation.
  - d. If referred to them for consideration by the Monitoring Officer, to advise on or express a view on whether a dispensation would be appropriate in either of the following circumstances:
    - 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; or

- ii. That, without a dispensation, no Member of the Cabinet would be able to participate on this matter.

8. To agree the processes and procedures for the Appointments Committee for the consideration of disciplinary action and suspension pursuant to Part 4J of the Constitution.

9. To make future invitations for appointment of Independent Persons in accordance with and for the purposes of the Staff Procedure Rules.

10. To undertake the role of Hearings Panel in respect of a complaint that a Member or co-opted Member has failed to comply with the Code of Conduct upon the matter being referred to the Committee by the Monitoring Officer in accordance with the arrangements adopted by the Council under the Localism Act 2011.

**Appendix 3**  
**Ethics Committee**  
**Dates of meetings**  
**Municipal year 2021/2022**

**Dates of meetings**

26	May	2021
17	November	2021
9	February	2022
6	April	2022

**KEY THEMES**

**LONDON BOROUGH COUNCIL CONSTITUTIONS**

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## Review of London borough website constitutions

<b>Membership - themes</b>	<b>Politically balanced</b>	<b>Membership restrictions</b>	<b>Chairing restrictions</b>	<b>Co-opted members</b>	<b>Independent Persons as advisers/observers</b>	<b>Size of committee</b>
	Most.  Some unclear.  2 with political balance specifically removed. (Camden, Lambeth)	Commonly:  No more than 1 Cabinet Member (CM); Not the Leader; Some not the Mayor. Some CM for probity/governance must be a member.	Many had restrictions on a Cabinet Member not chairing.  A few had Chair majority group Vice Chair minority group (Southwark, Sutton).	Some had non-voting co-opted members alongside elected councillors (especially when undertaking audit functions also).  A few had chairing non-voting roles.  One had a chairing voting role as an advisory committee (Tower Hamlets).	All.	4 - 12 councillors  1- 6 co-opted members.
<b>Terms of Reference - themes</b>	<b>Standards combined with audit and governance</b>	<b>Standards alone</b>	<b>Template terms of reference (including promoting and maintaining high standards of conduct, reviewing code, training, dispensations, hearing complaints etc.)</b>	<b>Additional areas in T of R:</b>		
	12	19	17	Responding to consultations; Receipt of reports; Issue of annual report; Establishment of sub-committees; Amendments to the constitution; Review key protocols for Council; Whistleblowing; RIPA; Payments for maladministration; Staffing matters		
<b>Frequency of meetings</b>	All quarterly					

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<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b>
<b>SUBJECT:</b>	<b>LGA CODE OF CONDUCT GAP ANALYSIS WITH CURRENT CODE</b>
<b>LEAD OFFICER:</b>	<b>INTERIM EXECUTIVE DIRECTOR OF RESOURCES, &amp; DEPUTY MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> 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.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	
<b>1. RECOMMENDATIONS</b>  The Ethics Committee is asked to: <ul style="list-style-type: none"> <li>1.1 Consider the contents of the report</li> <li>1.2 Agree, in principle, to recommend to Full Council that it replace or part replaces the current Code of conduct with the LGA Model Code as revised.</li> <li>1.3 Agree that the proposed new Code or parts to be recommended to Full Council will include the additional matters detailed in paragraph 3.25 below.</li> <li>1.4 Delegate authority to the Interim Executive Director of Resources, and Deputy Monitoring Officer authority to prepare for the Committee's further consideration and onward recommendation to Full Council:             <ul style="list-style-type: none"> <li>1.4.1 a revised version of the Members' Code to adhere to recommendations 1.2 and 1.3</li> <li>1.4.2 a revised version of the Code of Conduct for non-voting Co-opted members</li> <li>1.4.3 an updated Register of interests to take the Code changes into account</li> <li>1.4.4 an updated Gifts and Hospitality register</li> <li>1.4.5 details regarding any associated constitutional changes which are contingent upon the recommendations in this report.</li> </ul> </li> <li>1.5 Note that any changes to the Members' Code of Conduct and associated requirements and documents, including any constitutional amendments will need to be referred to Full Council for consideration and that any revisions to</li> </ul>	

the Code and associated arrangements will need to be published in accordance with section 28 of the Localism Act 2011.

- 1.6 Note that training necessary to update members on the changes to the Code, will be arranged by the Interim Executive Director of Resources and Deputy Monitoring Officer.

## **2. EXECUTIVE SUMMARY**

- 2.1 This report provides an analysis for Members' consideration of the differences between the Council's current light touch Code of Conduct, Appendix A to this report and the LGA draft Code of Conduct, Appendix B to this report which was published in January 2021.
- 2.3 Whilst work was already underway in terms of the report from the Committee on Standards in Public Life ("CSPL") and their recommendation regarding a Model Code of Conduct, the Croydon Renewal Plan makes clear that there will be "a review of the code of conduct for councillors and officers, and action to change culture and behaviours and strengthen staff engagement, involvement and equality." This report details the review of the Council's Members' Code of Conduct within the statutory framework.
- 2.2 The Committee is asked to recommend, in principle, the adoption of the LGA Model Code, with some Croydon specific additions to enhance the Council's Compliance with its statutory duties under the Localism Act 2011.

## **3. DETAIL**

- 3.1 The Localism Act 2011 ("the Act") abolished the Standards Regime and Standards Board for England, including the Model Code of Conduct which was introduced in 2000. Under the Act the Council was required to adopt a Code of Conduct and have in place arrangements under which allegations that a Member has failed to comply with that authority's Code of Conduct could be investigated and decisions made on such allegations.
- 3.2 At the time of introduction of the current Code of Conduct, it was based on the suggested Code prepared by DCLG (now MHCLG) and the light touch approach recommended by the Government bearing in mind the abolition of the former statutory Model Code of Conduct. The legislative provisions upon which the current code of conduct are based have not altered.
- 3.2 The Council is required to 'promote and maintain high standards of conduct' by their Members by the adoption of a Code of Conduct for elected Members. The content, beyond the requirements around disclosable pecuniary interests (DPIs), is at the discretion of the Council provided the 7 principles identified within the Act are taken into account. These 7 principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

- 3.3 The CSPL was established in 1994 and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles. The most recent report prepared by the CSPL was in January 2019 and can be accessed here:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

- 3.4 Members may recall receiving ethics committee reports in March 2019 and May 2019 which detailed the outcome of the January 2019 Report of the CSPL which set out a gap analysis between the Council's then Code of Conduct and ethics arrangements and the best practice suggestions set out in the review by the CSPL. In addition to best practice suggestions, the report made a number of recommendations, predominantly to government, many of which are still being considered.

The reports from March 2019 and May 2019 to the Ethics committee can be accessed via the following links for members' ease of reference:

<https://democracy.croydon.gov.uk/documents/s14176/Agenda%20Item%209%20-%20Committee%20on%20Standards%20in%20Public%20Life%20Ethics%20Ctee%20Feb%202019%20updated.pdf>

and

<https://democracy.croydon.gov.uk/documents/s15377/Agenda%20Item%205%20-%20Rpt%20Best%20Practice%20Committee%20on%20Standards%20in%20Public%20Life%20Ethics%20Ctee%2016%20May%202019v.pdf>

- 3.5 The first of the recommendations which the CSPL made was that "The Local Government Association should create a Model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government". It was felt that following the outcome of the Report that a return to a Model Code would be appropriate. The LGA is not a statutory or governmental body but a national membership body for local authorities and works on behalf of member councils to support, promote and improve local government.
- 3.6 It should be noted that requiring the implementation of a Model Code across all local authorities would require a legislative change. At present, there is no indication that such a change is proposed by the government. That does not preclude the Council from reviewing its current arrangements under the Localism Act 2011 or making changes thereto.
- 3.7 During 2020, the LGA worked up a proposed Model Code which was consulted on with various stakeholders, including Monitoring Officers across the country. In January 2021 the LGA published a Model Code taking into account the outcome of the consultation. This document is attached at Appendix B to the report.

Primary differences between the Council's Code and the LGA Model Code:

- 3.8 The Councils' current code is short and succinct, running to 2 pages and is designed to be light touch. In contrast the LGA Model Code runs to 18 pages and replicates many of the requirements and obligations and wording of the former Model Code of Conduct which was abolished under the Localism Act 2011.
- 3.9 The Council's current code is a principles based code rather than a discursive code, whereas the LGA's Model Code contains statements as to conduct as well as a discursive element.
- 3.10 The LGA code includes a statement of principle in relation to standards of Councillor conduct and then goes on to offer what the LGA Code terms as "Guidance" which is included to "help to explain the reasons for the obligations and how they should be followed". This delineation would indicate that there is a separation between the obligation placed on the Councillor as to the standard of conduct and the interpretative element of the "guidance" section. This has the potential to create ambiguity between what is "duty" and what is merely guidance.
- 3.11 The LGA Code creates two new categories of interest, both of which are non-statutory, namely "other registerable interests" – which broadly correlate to the former Model Code "personal interests" category which was abolished by the Localism Act and "other non-registerable interests" which is defined as something that directly relates to a members' financial interest or well-being or a financial interest or well-being of a relative or close associate. This has no corresponding statutory footing.
- 3.12 In relation to gifts and hospitality, the Council's code requires declaration not only of any gift or hospitality received over £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. The LGA Code only considers a single gift/hospitality which exceeds £50
- 3.13 The LGA Code, in a departure from statute, provides that if there is an interest which falls within either of the three categories of interest as defined in the LGA Code (two of which go beyond the statutory scope) then not only may a member not participate or vote (which is the statutory requirement for Disclosable Pecuniary Interests and is reflected in the Council's Code of Conduct) but that they are also required to leave the room unless they have received a dispensation. This is a change from the current provisions in the Council's Code which simply requires that members are not permitted to participate or vote as per the statutory requirements, although in practice some members still chose to leave the room in such circumstances. It is considered appropriate for members to leave the room in such circumstances to avoid the perception of undue influence and this is an area proposed for change under the Code revisions.

- 3.14 The LGA Code appends the best practice recommendations from the CSPL. These recommendations are not reflected anywhere else in the draft Model Code. It should be noted that these recommendations were previously considered by the Ethics Committee as detailed in paragraph 3.4 above.
- 3.15 The Council's Code of Conduct makes clear when various co-opted members are caught by the statutory code and when co-optees are required to comply with the non-statutory code which the Council has adopted for certain non-voting co-optees. Because this latter code mirrors many of the statutory code features, if the Council is proposing to alter the code required by statute, consideration should also be given to reflecting those changes, where appropriate, in the non-statutory co-optees code of conduct.
- 3.16 The first section of the LGA Code includes a definition section which re-iterates the statutory definition of "Councillor" as set out in section 27(4) of the Localism Act as well as a definition of "local authority". In contrast, the Council's code provides: "You are a member or co-opted member of the London Borough of Croydon or a Member of the Health and Wellbeing Board or Pensions Board" specifically delineating when the Member code of Conduct applies as contrasted with the Code which the Council has adopted for Non-voting Co-optees who fall outside the statutory definition. A copy of the Code for non-voting co-optees is Appendix A to Part 6D of the Constitution and can be accessed here:

<https://democracy.croydon.gov.uk/documents/s22425/31%20Part%206D%20-%20Scheme%20of%20Co-option%20as%20amended%20Jan%202020.pdf>

- 3.17 In line with the discursive nature of the LGA code, it goes on to set out the purpose of the LGA Code as follows:

"The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government."

There is no such description in the Council's Code of Conduct.

- 3.18 The LGA Code then sets out the "General principles of Councillor conduct" which are said to be as follows:

"Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also

known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage or disadvantage, on any person.
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest."

3.19 The above referenced principles are already set out in the Council's Code of conduct – section 2 (i)- (viii) in more detail that set out above but also with slightly different emphasis. For example, the LGA code does not reference the requirements around the Local Authority Code of Publicity made under the Local Government Act 1986 and compliance with said Code, which is particularly important in relation to the pre-election period for any election or referendum. Another example is that the use of public resources in the LGA Model Code only refers to "prudent" use rather than the Council's code which places an obligation on Members to avoid "improper" use. In addition, the Council's code specifically references the need to comply with the Council's Protocol on Staff - Councillor Relations, Part 5B.

3.20 Part 5 B makes it clear that staff can expect from Members such behaviour as:

- Respect, dignity and courtesy
- Integrity, mutual support and appropriate confidentiality

- Not to be subject to bullying or harassment or to be intimidated or put under undue pressure or improper influence. This requirement is expanded upon in Part 5B and specifically includes any person who is involved in any complaint about any alleged breach of the Council's Member's Code of Conduct. Part 5B places a requirement, as part of the Code and as part of Part 5B on Members to have regard to the seniority of employees in determining what reasonable requests are, having regard to the power relationship between Members and employees, and the potential vulnerability of employees, particularly at junior levels (Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)
  - That Members shall not use their position or relationship with employees to advance their personal interests or those of others or to influence decisions improperly (viii) That Members shall at all times comply with the relevant Code of Conduct.
- 3.21 Both the LGA Code and the Council's code provide that the Code applies when the Member is acting as a councillor. The LGA Code goes on to provide generic examples of when this might occur - in meetings, during communications (including "non-verbal" communication) and in electronic and social media communication.
- 3.22 In relation to standards of conduct, the LGA Code sets out the standards – as "I will" type statements and follows this with what is termed guidance to help to explain the reasons for the obligations and how they should be followed.
- 3.23 The LGA Code then goes on to delineate general conduct expectations. In some instances these are more fulsome than in the Council's Code and in others, the LGA Code sets out a lower threshold. For example:
- The LGA Code specifically addresses respect and disrepute which are not addressed in the Council's Code in the same way.
  - Both LGA Code and the Council's Code deal with bullying, harassment and discrimination, but in slightly different ways with the latter reminding members of their obligations to comply with Part 5B of the Constitution in their interactions with officers. Part 5B includes bullying, harassment and discrimination matters.
  - The Council's Code specifically places a duty on Members when carrying out their public duties to 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. The LGA Code does not make the avoidance of bias a specific obligation placed on Councillors.

- The LGA Code places an obligation on Members not to compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority. The Council's Code deals with this requirement in the Part 5B of the Constitution, which is discussed in paragraph 3.20 above and is incorporated into the Code of Conduct.
- The LGA Code includes a specific section which re-iterates some of the legal rules in relation to confidentiality and access to information. The Council's Code does not address confidentiality and access to information. The statutory obligations which are placed on officers, Councillors and the Council in general are set out in full in the Council's Constitution at Part 4B. Any re-interpretation of the Access to information procedure rules which apply as part of a revised Code will need to be in line with the statutory and common law requirements already delineated in Part 4B but if expanded in any code revision, may require amendments to Part 4B to be undertaken. Such matters as amendments to the Constitution are matters reserved to full council.
- In relation to use of position, the LGA code requires a member not to use, or attempt to use, their position improperly to the advantage or disadvantage of themselves or anyone else. The Council's Code requires more of a Member than the LGA Code in this regard, namely it requires that the member 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."
- Broadly similar provision is made in both the LGA Model Code and the Council's Code in relation to use of Council resources, including for political purposes however the Council's Code of conduct goes further and specifically references the obligations imposed by Local Authority Code of Publicity made under the Local Government Act 1986, which, particularly during pre-election periods, is of particular sensitivity.
- The LGA Code provides that

"As a Councillor:

I undertake Code of Conduct training provided by my local authority.

I cooperate with any Code of Conduct investigation and/or determination.

I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct."



There are no comparable provisions to the above in the Council's current Code although a number of specific committee related training requirements are imposed on members under the Constitution before they are eligible to sit on certain committees – such as on Planning and Licensing.

- In relation to declaration of interests, the LGA Code simply provides that the councillor “register and disclose my interests”. This is followed in the discursive section by detailing requirements in appendices to the Code including those which are statutory and those which are not. The Council's Code of Conduct specifically requires declaration of particular types of interests within the statutory time frames. These requirements are set out in Section 3 of the Council's Code of Conduct.

It should be noted that if the LGA Code is adopted it will require a revision of Councillors' register of interests and the forms used for this purpose as the LGA Code, as detailed in paragraphs 3.11 and 3.12 above, makes different delineations regarding interests than is currently the case. The form of register was previously approved by Full Council for use in its current form.

- Gifts and hospitality have a slightly different emphasis in the LGA Code when compared the Council's Code of Conduct. The LGA Code requires that as a matter of course a councillor does not accept gifts or hospitality where this could give rise to a “real or substantive personal gain or reasonable suspicion of influence to show favour. Where any significant gift or hospitality has been refused, this is required to be notified to the Monitoring officer and the Member is required to register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt. The Council's code of conduct requires declaration not only of any gift or hospitality received over £50 but also of 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. The LGA code would only capture more significant gifts/hospitality, whereas the Council's code acknowledges that a number of small gifts/hospitality over a period of time could just as easily give rise to a perception of seeking to influence a Member. In addition, under the Council's code a member must not place themselves under a financial or other obligation to outside individuals or organisations that might seek to influence them inappropriately in the performance of their official duties – this is obviously broader than simply gifts and hospitality.
- Whilst the LGA Code includes the Nolan Principles as an appendix, they are not specifically discussed as part of the Code. In contrast in the Council's Code of Conduct, not only are the 7 principles set out as obligations but the specific duties within section 2 of the Council's code reflect the discursive element of the 7 principles as set out by Nolan. These form the basis of the requirements placed on Councillors in Section 2 of the Council's Code.

Additional matters recommended for inclusion into LGA Model Code if adopted:

3.24 As detailed above there are matters which are not addressed as fulsomely or clearly in the LGA Code when compared to the Council's Code in addition, there are matters which are not addressed at all in the LGA code and which are recommended to be included in any Code considered by Members for recommendation to Full Council. These matters include:

- Predetermination and Bias.
- Reference to the Nolan Principles in full within the Code. Currently LGA Code has the Nolan Principles as Appendix A to the Code but no reference is made within the Code itself to Appendix A, whilst the Council's code includes such a reference and the discursive element of the principles within the body of the obligations placed on Members.
- Reference to the time frames within which registration of interests is required, including notification of changes to the Monitoring Officer.
- To require declaration not only of any gift or hospitality received over £50 but also any 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.
- To maintain reference in the Code to the requirements around Part 5B of the Council's Constitution- Council's Protocol on Staff - Councillor Relations and adherence to that protocol's principles.
- To reference the requirements around access to information as detailed in Part 4B of the Constitution which ties in with the recent access to information guidance which has been prepared for Members.
- To reference and require compliance with the Recommended Code of Practice on Local Authority Publicity made under the Local Government Act 1986 as is currently the case in the Code.
- To make clear that improper use of position includes that a member should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate.
- That a member must not place themselves under a financial or other obligation to outside individuals or organisations that might seek to influence them inappropriately in the performance of their official duties.
- Social media and principles for use. Elsewhere on this agenda the Committee is receiving a report in relation to a Social media Guide for Members however this could be strengthened by incorporation into the Code of Conduct of a set of principles around social media. Some suggested principles for consideration are included at Appendix C.

- The requirement to have regard to advice from the Monitoring Officer and Section 151 officer.
- The requirement to give reasons for decisions (this is covered in the Council's Code of Conduct but not in the LGA Code).
- Warnings about potential personal liability where members fail to act in the Council's interests.
- To make clear when co-optees are caught by the members' code of conduct and when co-optees are covered by the Code of Conduct for Non-voting Co-optees adopted by the Council as the current Code and code of conduct for non-voting co-optees currently does.

Legal requirements:

- 3.25 The statutory obligation in terms of the Code of Conduct is set out in Section 28 of the Localism Act 2011 and provides that a relevant authority must secure that a code adopted by it under section 27(2) is, when viewed as a whole, consistent with the following principles—
- (a) selflessness;
  - (b) integrity;
  - (c) objectivity;
  - (d) accountability;
  - (e) openness;
  - (f) honesty;
  - (g) leadership.
- In other words, the Nolan principles.
- 3.26 The Council's Code must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of—(a) pecuniary interests, and (b) interests other than pecuniary interests.
- 3.27 Section 28 (5) provides that a relevant authority may—
- (a) revise its existing code of conduct, or
  - (b) adopt a code of conduct to replace its existing code of conduct.

However the function of adopting, revising or replacing a code of conduct may be discharged only by the authority – in other words, it is a function reserved to Full Council.

- 3.28 A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area. It will also be necessary to ensure that Councillors are made aware of, and involved with the proposals to ensure member buy-in and willingness to comply.

3.29 In considering the appropriate actions, Members attention is drawn to the fact that the Localism Act, unlike the Local Government Act 2000 provisions does not make provision for any substantial sanctions – for example there is no ability to suspend a Councillor under these provisions and other actions under Section 28 (11) are quite limited in scope and would require legislative amendment as recommended by the CSPL. In addition, despite the recommendations coming out in January 2019, there has yet to be any governmental indication of any legislative changes to facilitate and support the proposed LGA Model Code of Conduct and any such legislative changes may well alter the ethics landscape and parameters of a Code.

#### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

4.1 There are no direct financial implications arising from this report. Implementation of the recommendations contained in this report shall be contained within existing budgets.

Approved by: Geetha Blood, interim Head of Finance on behalf of the Director of Finance Investment and Risk.

#### **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.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance and Deputy Monitoring Officer.

#### **6. CONSULTATION**

6.1 Whilst the Council renewal plan has been the subject of engagement and consultation with both members of the public and officers within the authority, the recommendations within this report, which address one of the elements within the Council's renewal plan, have not been separately consulted on.

#### **7. HUMAN RESOURCES IMPACT**

7.1 There are no HR implications arising from the recommendations in this report.

Approved by: Sue Moorman, Director of Human Resources

#### **8. EQUALITIES IMPACT**

8.1 There are no direct equalities impacts arising from the recommendations in the report. An Equalities Analysis will be prepared to allow equality consideration

and potential impact by members alongside any proposed revised Code to be presented to a later meeting of the Committee for consideration and onward recommendation to Full Council.

Approved by: Yvonne Okiyo, Equalities Manager.

## **9. ENVIRONMENTAL IMPACT**

- 9.1. There are no environmental impacts arising from the recommendations within this report.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

- 10.1 There are no crime and disorder reduction impacts arising from the recommendations within this report.

## **11. DATA PROTECTION IMPLICATIONS**

- 11.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

**NO**

As part of the statutory requirements placed on Members and Co-opted Members, there are requirements to make declarations of interests which are, in turn, published on the Council's website subject to such an interest being a "sensitive" interest as defined in the Localism Act 2011. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.

Where a member has a 'sensitive interest' they are required to notify the Monitoring Officer with the reasons why they believe it is a sensitive interest. If the Monitoring Officer agrees that the matter is a sensitive interest, the Monitoring Officer will withhold the interest from the public register.

### **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

**To be completed as detailed below**

The Executive Director Resources and Deputy Monitoring Officer (Interim) comments that whilst the proposed changes to the Code do not change the statutory obligations on members to make disclosures of interests or the requirements that such interests be published (including being available on the Council's website and the exceptions regarding sensitive interests) it is considered appropriate to undertake a revised DPIA and to update the Privacy Notices which are associated with registration of interests under the Code of Conduct to coincide with the Code of Conduct refresh. These updates will be prepared in advance of the upcoming report to Members with the draft Code documents as detailed in the recommendations.

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**CONTACT OFFICER:** Sandra Herbert, Head of Litigation and Corporate Law and Deputy Monitoring Officer.

**APPENDICES TO THIS REPORT**

Appendix A – Council’s Code of Conduct for Members

Appendix B – LGA Model Code of Conduct

Appendix C – Social Media principles

**BACKGROUND DOCUMENTS:** None

## **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 or Pensions 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 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'.<sup>1</sup>

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.

Adopted July 2012, revised January 2017  
As amended Jan 2020

APPENDIX B



## LGA DRAFT CODE OF CONDUCT

### **Definitions**

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who:

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London Borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

### **Purpose of the Code of Conduct**

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

### **General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

### **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings

- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice you're your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

### **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

### **General Conduct**

The general conduct guidance follows below:

#### **1. Respect**

##### **As a councillor:**

**1.1 I treat other councillors and members of the public with respect.**

**1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views

are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

## **2. Bullying, harassment and discrimination**

### **As a councillor:**

**2.1 I do not bully any person.**

**2.2 I do not harass any person.**

**2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of

a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **3. Impartiality of officers of the council**

**As a councillor:**

**3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **4. Confidentiality and access to information**

**As a councillor:**

**4.1 I do not disclose information:**

- a) given to me in confidence by anyone**
- b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - i. I have received the consent of a person authorised to give it;**
  - ii. I am required by law to do so;**
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. I have consulted the Monitoring Officer prior to its release.**

**4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

#### **4.3 I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

### **5. Disrepute**

**As a councillor:**

#### **5.1 I do not bring my role or local authority into disrepute.**

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

### **6. Use of position**

**As a councillor:**

#### **6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

### **7. Use of local authority resources and facilities**

**As a councillor:**

**7.1 I do not misuse council resources.**

**7.2 I will, when using the resources of the local or authorising their use by others:**

- a) act in accordance with the local authority's requirements; and**
- b) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **8. Complying with the Code of Conduct**

**As a Councillor:**

**8.1 I undertake Code of Conduct training provided by my local authority.**

**8.2 I cooperate with any Code of Conduct investigation and/or determination.**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## **Protecting your reputation and the reputation of the local authority**

## **9. Interests**

**As a councillor:**

## **9.1 I register and disclose my interests.**

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

**Appendix B** sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## **10. Gifts and hospitality**

**As a councillor:**

**10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**

**10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**

**10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality.



However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **Appendix A – The Seven Principles of Public Life**

The principles are:

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try to inappropriately influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **Appendix B Registering Interests**

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

**“Disclosable Pecuniary Interest”** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

**"Partner"** means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.

2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.

3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### **Non participation in case of disclosable pecuniary interest**

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise

of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

### **Disclosure of Other Registerable Interests**

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

### **Disclosure of Non-Registerable Interests**

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which **affects** –  
a. your own financial interest or well-being;  
b. a financial interest or well-being of a relative, close associate; or  
c. a body included in those you need to disclose under Other Registrable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter **affects** your financial interest or well-being:  
a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;  
b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests Regulations 2012).

Subject	Description
<b>Employment, office, trade, profession or vocation</b>	<p>Any employment, office, trade, profession or vocation carried on for profit or gain.</p> <p>[Any unpaid directorship.]</p>
<b>Sponsorship</b>	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
<b>Contracts</b>	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which</p>

Subject	Description
	<p>such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed;</p> <p>(b) band which has not been fully discharged.</p>
<b>Land and property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor or is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income</p>
<b>Licenses</b>	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
<b>Corporate tenancies</b>	<p>Any tenancy where (to the councillor’s knowledge)—</p>

Subject	Description
	<p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
<p><b>Securities</b></p>	<p>Any beneficial interest in securities* of a body where—</p> <p>a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>b) either—</p> <p>i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has</p>

Subject	Description
	a beneficial interest exceeds one hundredth of the total issued share capital of that class

- 'director' includes a member of the committee of management of an industrial and provident society.
- 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## Table 2: Other Registerable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) any body
  - i) exercising functions of a public nature
  - ii) any body directed to charitable purposes or
  - iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

## **Suggested Principles on Social Media for Inclusion in Code of Conduct**

1. Principles of integrity, professionalism, privacy, and impartiality should be observed when posting.
2. Posting items to social media is publication for the purposes of the laws of defamation and intellectual property.
3. Proper copyright and reference laws should be observed when posting on-line.
4. When posting on your own social media accounts and referencing the Council or your role as a Councillor be clear about the capacity in which you are posting, for example clearly stipulating that your views are personal and purely your own.
5. Discriminatory content is prohibited and may be unlawful and criminal.
6. Be mindful of the Council's duties towards employees and others.
7. You must not disclose any information which is contrary to data protection laws, is sensitive or confidential in nature including financial, operational, and legal information as well as personal information pertaining to employees, clients, service users or third parties.
8. You should be mindful of giving rise to a perception of bias or predetermination where you are the decision maker, a member of the decision making body or are advising the decision maker.
9. You should show respect for other's opinions. That does not mean you cannot disagree but do so in a manner which is appropriate – think about how you might interact if this were an in person conversation. Where individuals are expressing dissatisfaction about the Council you may be able to direct them to the right place to make their complaints.
10. You should uphold the code of conduct when using social media and have regard to any guidance issued to Councillors from time to time by the Council in this regard.



<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b>
<b>SUBJECT:</b>	<b>SOCIAL MEDIA GUIDANCE FOR COUNCILLORS</b>
<b>LEAD OFFICER:</b>	<b>INTERIM EXECUTIVE DIRECTOR OF RESOURCES &amp; DEPUTY MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> 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. The Ethics Committee is also responsible for commenting on the content of guidance and advice to be issued to elected and non-elected Members, of which this social media guidance for Councillors is proposed to form a part.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	
<b>1. RECOMMENDATIONS</b> <p>The Ethics Committee is recommended to:</p> <p>1.1 Consider and comment on the contents of the report and appendices</p> <p>1.2 Adopt the Social Media Guidance for Councillors, Appendix A, for use and circulation to Members as part of the Members' Handbook.</p> <p>1.3 Note that any changes to the Code of Conduct and associated requirements and documents, including any constitutional amendments will need to be referred to Full Council for consideration.</p>	

## 2. EXECUTIVE SUMMARY

- 2.1 Social Media is a key communication tool used by the Council and many Councillors; it is also used by service users and key stakeholders. It has a significant role in the ability to connect with residents but is also important in the reputational management of the Council and the personal reputation of Members. This report provides an overview of draft Social media guidance for Councillors, Appendix A hereto, which is recommended for adoption and inclusion into the Members' Handbook.
- 2.2 Members will also note that separately on the agenda a report is to be considered regarding revisions to the Members' Code of Conduct along with a recommendation that certain principles regarding social media use be included

in a revised code. These proposed principles are reproduced at Appendix B for members' ease of reference.

### **3. DETAIL**

#### Background:

- 3.1 The use of social media is increasing exponentially and has been, unsurprisingly, particularly prevalent as a preferred communication method during the various lockdowns due to Covid-19.
- 3.2 Whilst it is a useful tool for all walks of life, including assistance in performing the role of a Councillor, it was considered by the Monitoring Officer that it would be good practice to offer guidance to Members on its use from the perspective of the Code of Conduct, not least of all given the nature of some of the Code of Conduct complaints which had arisen in the past year. It is important to have safeguards in place to ensure that the benefits of social media are exploited, without breaching the law or code of conduct.
- 3.3 The draft guidance at Appendix A has been designed to raise awareness of the responsibilities of Councillors in relation to social media and to give guidance on the safe use of social media. It should be read in conjunction with the Members' Code of Conduct

#### Risks:

- 3.4 The following non-exhaustive list of risks have been identified with social media use, including:
  - Virus or other malware (malicious software) infection.
  - Disclosure of confidential information.
  - Damage to the council's reputation.
  - Damage to Councillors' reputation
  - Social engineering attacks (also known as 'phishing').
  - Bullying or witch-hunting.
  - Civil or criminal action relating to breaches of legislation.
  - Breach of safeguarding through the use of images or personal details leading to the exploitation of vulnerable individuals.
  - Breach of the code of conduct for members through inappropriate use

#### Benefits:

- 3.5 Conversely, social media has become an every-day communications tool for councillors and the people they represent and is a useful source of intelligence for Councillors and the Council:
  - People will talk about local issues, their concerns and interests.
  - Councillors can find out about breaking news, the latest research or publication or the latest policy announcements from organisations which may impact your work.

- People often have little understanding of the councillor role and may have negative perceptions, but social media can give people a taste of what it is that councillors do and remind them that you are similar to them.
- Residents can be made aware of and provide feedback to Councillors' work and campaigns, including mobilising support and interest and gathering followers.
- Councillors can have conversations with people who do not traditionally seek out their local representatives.
- Social media allows for immediate communication. Councillors can pass on information and receive opinions in minutes. Councillors can forward information from other people equally quickly (bearing in mind that councillors would then share equal responsibility in law for anything later seen to be untrue or defamatory)
- The local and sometimes national press will follow councillors on Twitter or Facebook. Social media is a growing source for stories for news outlets as each tweet or comment is effectively a mini-press release.

#### Recommendation:

- 3.7 Members of the Committee are invited to consider the contents of Appendix A and recommend Appendix A for adoption and inclusion in the Members' Handbook. Members are also asked to note the contents of Appendix B which is presented as a recommendation for inclusion to the Code of Conduct in the report regarding the Members' Code of Conduct which is separately reported on this agenda.

## **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 4.1 There are no direct financial implications arising from this report. Implementation of the recommendations contained in this report shall be contained within existing budgets.

Approved by: Geetha Blood, interim Head of Finance on behalf of the Director of Finance Investment and Risk.

## **5. LEGAL CONSIDERATIONS**

- 5.1 There is potential for breaches of various areas of law including defamation, copyright, harassment, incitement, data protection, discrimination and protected characteristics, confidentiality, judicial review, malicious and obscene communications in the use of social media. These are detailed more fully in Appendix A although Councillors are recommended to seek advice from the Monitoring Officer if they are unsure or have concerns.

## **6. CONSULTATION**

- 6.1 The draft contents of the Social media guidance for Councillors has been consulted on with the Communications team and mirrors, where relevant, the guidance provided to staff in relation to social media by the Digital Services Team.

## **7. HUMAN RESOURCES IMPACT**

- 7.1 There are no HR implications arising from the recommendations in this report.

Approved by: Sue Moorman Director of Human Resources

## **8. EQUALITIES IMPACT**

- 8.1 The social media guidance prepared for Members draws attention for the need to ensure that members are abiding by various legislative requirements, including in relation to Equalities as they engage on social media. There are however no direct equalities implications arising from the recommendations within this report.

Approved by: Yvonne Okiyo, Equalities Manager

## **9. ENVIRONMENTAL IMPACT**

- 9.1. There are no environmental impacts arising from the recommendations within this report.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

- 10.1 There are no crime and disorder reduction impacts arising from the recommendations within this report.

## **11. DATA PROTECTION IMPLICATIONS**

- 11.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

**NO**

**HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

**No**

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**CONTACT OFFICER:** Asmat Hussain - Executive Director of Resources (Deputy Monitoring Officer) Interim

**APPENDICES TO THIS REPORT**

Appendix A – Councillors and Social media: A Guide for Members

Appendix B- Social media principles.

**BACKGROUND DOCUMENTS:** None

## **Councillors and Social media: A Guide for Members**

### **1. Introduction**

Social media includes online social networks, technology and methods through which people share content, opinions, information and ideas. They do this in the form of text, images, audio or video.

These include (but not exclusively):

- Social networking sites where individuals create profiles such as Facebook, Google+
- blogging or microblogging sites where individuals write articles or short posts such as Twitter, BlogSpot and Tumblr
- photo and video sharing sites where users upload visual content such as Flickr, Instagram and YouTube.
- If you cut away the jargon and buzz words, at its heart it's just people having conversations and sharing information. It is designed to be a two-way interaction not a marketing channel.

Social media has become an every-day communications tool for councillors and the people they represent, and the potential for councillors using social media is huge. Social media allows you to be innovative and responsive as well as providing links to useful sources of information or sign-posting to other organisations. But as with any form of communication, awareness of the impacts of your communication needs to be cultivated to be effective and responsible.

### **2. Summary of key points and principles for online participation:**

- Social media can be very useful in getting feedback on proposals and communicating information about your work as a councillor. However, DO remember that not everybody is on social media and so opinions expressed may not be representative.

- Social media is always on, so DO consider setting personal limits and establishing your own routine. You have no obligation to respond to posts and comments at any speed but it is often helpful to explicitly indicate that to users.
- Councillors are subject to the council's code of conduct when using social media. DO be professional, credible and responsible, accurate and fair;
- DO remember that you should take care to be clear that views you publish are your own and should credit others when these are the views and work of others. Know that your behaviour can impact negatively on the Council and on your fellow councillors.
- DO consider the content of your communications carefully and apply this test – if you would be reluctant to say it face-to-face or in an official email, then it is probably inappropriate to say online.
- DO always remember that participating online means your comments are permanently available and open to being republished in other media. Once something is posted on social media, it is difficult to retain control over how it will be used. Think about this when posting.
- Different platforms allow for different types of interactions. It is useful to indicate the aims and intended audiences of your different accounts.
- DO stay within the legal framework and be aware that libel, defamation, copyright, equalities and data protection laws apply when using social media and know that you will also be responsible for ensuring that you abide by any applicable fair use policies which the relevant social media platforms have in place.
- An increase in complaints about members' use of social media has been acknowledged by the Committee on Standards in Public Life. One of the key issues is the capacity in which posts are being made by councillors. There is no clear definition and much depends on the facts in each case. Even where you do not disclose that you are a councillor, it can still be perceived that you are posting in that capacity. It is important therefore that you DO state in what

capacity you are posting or tweeting/retweeting. It does not prevent issues arising, but it should help to provide clarity.

### **3. Benefits of social media for Councillors**

Social media has become an every-day communications tool for councillors and the people they represent, In addition, it is a useful source of intelligence:

- People will talk about local issues, their concerns and interests.
- You can find out about breaking news, the latest research or publication or the latest policy announcements from organisations which may impact your work.
- People often have little understanding of the councillor role and may have negative perceptions, but social media can give people a taste of what it is that councillors do and remind them that you are similar to them.
- Residents can be made aware of and provide feedback to your work and campaigns, including mobilising support and interest and gathering followers.
- You can have conversations with people who do not traditionally seek out their local representatives.
- Social media allows for immediate communication. You can pass on information and receive opinions in minutes. You can forward information from other people equally quickly (bearing in mind that you would then share equal responsibility in law for anything later seen to be untrue or defamatory)
- The local and sometimes national press will follow councillors on Twitter or Facebook. Social media is a growing source for stories for news outlets as each tweet or comment is effectively a mini-press release.

### **4. Online safety, personal security and digital citizenship**

- 4.1 Digital Citizenship is about engaging in appropriate and responsible behaviour when using technology, and encouraging others to do so as well. It encompasses digital literacy, ethics, etiquette, online safety, norms, rights, culture and more.
- 4.2 Developing digital citizenship requires us to improve online political communications. It is about expressing our opinions while respecting others'



rights and personas and avoiding putting them at risk or causing unnecessary distress. It is about respecting freedom of speech and dissidence while condemning abuse.

- 4.3 In any personal online biography, it is advisable to make clear that the views are those of the councillor in question and may not represent the views of the council. If space allows, you may also want to set out the aims of the page, the 'response' policy, such as "I welcome questions via email" and an 'engagement' policy, such as "abusive content will be reported/removed".
- 4.4 It is easy to put personal information online, such as your birthday, routines, places you frequent, future visits, holiday destinations, relationships, and opinions, etc, which are then available for anyone in the public domain to access. For personal safety, as well as identity security, you may want to consider whether it is appropriate for you to share personal information, images of friends and/or family and details of any routines.
- 4.5 Social media platforms have different privacy options. You can choose different levels and change them depending on your own preferences.
- 4.6 Social media posts now include location-based information, particularly from mobile phones, which tells people exactly where you are or where you have been. Again, with personal security and privacy in mind, you may want to turn off these notifications.
- 4.7 You can 'search for yourself' to check what information you can find out about yourself, your family or your business on-line. Checking this regularly means you can check what is in the public domain and edit it if necessary and possible.
- 4.8 Concerning personal security, it is advisable not to include on social media details such as your personal phone numbers, addresses, details of family members or vehicle details.
- 4.9 A picture paints a thousand words, and a photo can relay personal information you may not want shared on social media. As such, it is advisable to only publish photos of family, friends and colleagues with your consent and theirs, to ensure photos don't reveal your home or places frequented with family members such as schools or care homes, and to disable automatic photo and location tagging so that you have to approve another user identifying you in a

photo or being at a specific location. You may also want to make your family and friends aware that you will be following these precautions.

- 4.10 Some people say things via social media that they probably would not say in person, and they can post false information, insults or messages that you would not want to be associated with you. These can multiply and be shared quite rapidly. Councillors are not immune to being the subject of online abuse, bullying and harassment on social media.
- 4.11 Having a social media presence means that people can contact you at any time. This is great in terms of accessibility but means that they may expect you to reply immediately, which can create a sense of pressure. It is useful to set your own rules and limits for how you manage your social media presence.
- 4.12 You can be sent phishing requests and malicious software on social media the same as you can on email, so maintain the same level of vigilance.
- 4.13 Some individuals post socially unacceptable, defamatory, inciting or even intimidatory remarks to generate online activity on the back of advertising or promotion of ideologies, brands or events. Similarly, the term “internet troll” is used to refer to a person or group of people who deliberately start arguments or upset people by posting inflammatory or off-topic messages online with the deliberate intent of provoking readers into an emotional response or of otherwise disrupting normal discussion.
- 4.14 Social media can be a manner in which misinformation spreads. Very often articles that spread false information trigger strong emotional responses such as fear, anger or shock to maximise how much/quickly something is shared. Individuals posting online are responsible for the content of their posts even if they did not originally create it. Councillors should very carefully consider the content of new posts, posts they share and posts they support.
- 4.15 Be aware of safeguarding responsibilities because social media sites are misused by offenders. Safeguarding is everyone’s business – if you have any concerns about other site users, you have a responsibility to report these.
- 4.16 The usual requirements regarding confidential information, copyright, data protection, equalities, pre-election period restrictions, exempt reports, etc, apply to social media. Avoid publishing anything where there is doubt or seek permission in advance. There are also provisions in the Council’s constitution about use of Social media during Council meetings.

- 4.17 To be an effective councillor you won't stop meeting people and posting leaflets simply because you are posting online. You will know your residents best - consider which channel works best for them to connect with you, online and offline.

## **5. Responsibilities of Councillors on Social Media**

- 5.1 Councillors are personally responsible for the content they publish on any form of social media. Publishing an untrue statement about a person which is damaging to their reputation may incur a defamation action for which you will be personally liable. The same applies if you pass on any similar untrue statements you receive.
- 5.2 Social media sites are in the public domain and it is important to ensure you are confident of the nature of the information you publish. Once published, content is almost impossible to control and may be manipulated without your consent, used in different contexts, or further distributed. The relatively permanent nature of a social media post means that it can follow an individual around their entire lifetime and even when deleted, another person may have captured a screen shot which could be reposted.
- 5.3 It is important at all times to respect confidentiality, financial, legal and personal information. For example, an exempt report, confidential contracts with sensitive commercial information, confidential details about regulatory functions or investigations, or information about complaints or individuals who have made complaints should not be disclosed. This could result in claims being brought against the council or against individual councillors to recover any loss or damage suffered as a result of such disclosure.
- 5.4 You can make use of stringent privacy settings if you do not want your social media to be accessed by the press or public. It is advisable to read the terms of service of any social media site accessed and make sure you understand their confidentiality / privacy settings.
- 5.5 Some councillors choose to have separate social media profiles for personal and council use. It is important to keep in mind, however, that even the strictest privacy settings is no guarantee for posts or actions to remain private. As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a public meeting.

- 5.6 It is recommended that councillors are clear in their communications whether they are making contact in their official councillor role or in a private capacity. However, councillors should bear in mind that if communications are made public, even if they are sent in a private capacity, that the media and the wider general public may not make the distinction.
- 5.7 The code of conduct for members and relevant legislation continues to apply online and in social media. If you are referring online in any way to your role as a councillor, you may be deemed to be acting in your “official capacity” and any conduct may fall within the code.
- 5.8 The rules of pre-determination and bias apply to decision making and provide that a Councillor who is pre-determined as to the outcome of a matter or is biased regarding the outcome would place council decision making at risk if they participated. Members sitting, in particular, on regulatory committees such as planning or licensing should be aware that they are allowed to have a view, but not go so far as to have predetermined their position on a matter. Any views aired on social media could be used as evidence of making a decision in advance of hearing all relevant information. The Council's decision is then open to challenge and could be invalidated. It can prove difficult to be clear on the appropriate boundaries when you are championing an issue for residents – whether in person or on social media - and are then required to participate in the decision-making on that issue. If in doubt about whether or not your participation in decision making is appropriate in relation to a matter, please seek advice from the Monitoring Officer before participating.
- 5.9 You should remember that officers within the council are employees of the council. Members have responsibilities toward them in relation to ensuring and maintaining the mutual relationship of trust and confidence owed to them. Where Councillors themselves make allegations against officers via social media (or otherwise), it can impact upon the mutual duty of trust and confidence between the officer and the Council.
- 5.10 You should also be aware of the Council's duty to its employees under the Health and Safety at Work etc. Act 1974 which provides, among other things that: “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”. In this regard you should be very careful when referring to officers on social media,

ensuring instead that you are raising concerns or complaints through the appropriate council policies and procedures only.

- 5.11 You also need to be alive to inappropriate comments and content posted by third parties in response to your own posts. Whether by failing to respond at all or by actively engaging with third parties without addressing the offending content, this could be seen to undermine trust and confidence and at worst, be taken to condone such activity.

## **6. Dealing with harmful rumours and misinformation**

It is difficult not to engage when you are the subject of rumours, misinformation and smear campaigns. While it is always tempting to respond and clarify every rumour and falsehood circulated about you, it is also useful to think about the emotional, economic and time costs of engaging as in many cases, rumours disappear as quickly as they emerged. You may find the following suggestions useful

- Calmly try to understand who is behind the attack. Most of the time, they are people with a clear agenda trying to gain control or to manipulate.
- Correct the facts. This can be done with a formal statement or if you can identify the source, then do it publicly by correcting their posts with facts and evidence.
- Remember that rumours and misinformation are fed by repetition. It is good to defend your reputation but often the most efficient way is to do it once and then stop engaging this way.
- Leave the environment in which the rumour is being spread. A smear campaign tries to manipulate and gain control but no control can be gained if you do not participate. You may wish to advise your followers that you will be logging out of social media for a period of time, which gives the rumour time to calm down while protecting your own emotional and mental wellbeing.
- Rumours and smear campaigns can be very stressful and at times, they can feel very isolating. Keep your self-confidence by talking to family, friends and others in your support network. Some may also feel able to counteract rumours with factual information.

- If you can identify the source of the rumours and smear campaigns, you should document it and keep a record. This may be useful if disciplinary, police or legal action is required.

## 7. Legal Areas:

The following is a list of legal areas which should be taken into account when using social media: -

- Defamation:** if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages.
- Copyright:** publishing information that is not yours, without permission, may also result in an award of damages against you.
- Harassment:** it is an offence to pursue a course of conduct against a person that is likely to cause alarm, harassment, or distress.
- Data protection:** do not publish personal data of other people, including photographs, without their express permission to do so.
- Incitement:** it is an offence to incite any criminal act.
- Discrimination and 'protected characteristics':** it can be unlawful to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010).
- Malicious and obscene communications:** it is an offence to send malicious or obscene communications.
- Judicial review** of decisions on the basis of bias and/or predetermination.
- Confidentiality** of information which you may receive by virtue of your role as a councillor. Breaches of duties of confidentiality (whether implied or express) can happen in all contexts, including via social media. An exempt report, confidential contracts with sensitive commercial information, confidential details about regulatory functions or investigations, or information about complaints or individuals who have made complaints might be

disclosed. This can result in claims being brought against the council or against individuals to recover any loss or damage suffered.

#### **8. Further information and support**

If you have any queries or are unsure about any of the guidance contained in this document, please contact the Council's Monitoring Officer in the first instance.

May 2021

### **Suggested Principles on Social Media for Inclusion in Code of Conduct**

1. Principles of integrity, professionalism, privacy, and impartiality should be observed when posting.
2. Posting items to social media is publication for the purposes of the laws of defamation and intellectual property.
3. Proper copyright and reference laws should be observed when posting on-line.
4. When posting on your own social media accounts and referencing the Council or your role as a Councillor be clear about the capacity in which you are posting, for example clearly stipulating that your views are personal and purely your own.
5. Discriminatory content is prohibited and may be unlawful and criminal.
6. Be mindful of the Council's duties towards employees and others.
7. You must not disclose any information which is contrary to data protection laws, is sensitive or confidential in nature including financial, operational, and legal information as well as personal information pertaining to employees, clients, service users or third parties.
8. You should be mindful of giving rise to a perception of bias or predetermination where you are the decision maker, a member of the decision making body or are advising the decision maker.
9. You should show respect for other's opinions. That does not mean you cannot disagree but do so in a manner which is appropriate – think about how you might interact if this were an in person conversation. Where individuals are expressing dissatisfaction about the Council you may be able to direct them to the right place to make their complaints.
10. You should uphold the code of conduct when using social media and have regard to any guidance issued to Councillors from time to time by the Council in this regard.



<b>REPORT TO:</b>	<b>Ethics Committee 26 May 2021</b>
<b>SUBJECT:</b>	<b>Access to Information Protocol</b>
<b>LEAD OFFICER:</b>	<b>Asmat Hussain – Interim Executive Director of Resources and Deputy Monitoring Officer</b>
<b>WARDS:</b>	<b>All</b>
<b>PUBLIC/EXEMPT:</b>	<b>Public</b>
<b>SUMMARY OF REPORT:</b> <p>The purpose of this report is to set out a protocol that can be adopted by the Council to clarify the rights of Members to access information held by the Council.</p>	
<b>CORPORATE PRIORITIES 2020 - 2024</b> <p>The issue of Councillors being able to access the information they require to fulfil their roles effectively has been identified as part of the Croydon Renewal Plan.</p> <p>The purpose of the Access to Information Protocol is to clarify the rights of Members to access information held by the Council and to set out the expectations of officers responding to requests.</p>	
<b>FINANCIAL IMPACT:</b> <p>There are no direct financial implication arising from the Access to Information Protocol. However, the protocol will help manage the time of both Members and officers by clarifying the process.</p>	
<b>RECOMMENDATIONS:</b> <p>The Ethics Committee is asked to:-</p> <ol style="list-style-type: none"> <li>1.1 Endorse the Access to Information Protocol.</li> <li>1.2 Agree that the Protocol will be placed in the Members Handbook as a reference point for Members.</li> <li>1.3 Note that the Interim Executive Director of Resources will arrange a briefing for all Members on the implications and operation of the protocol.</li> </ol>	

## 2. ACCESS TO INFORMATION PROTOCOL

- 2.1 Councillors from both Groups have expressed concern about their ability to access information held by the Council, which would assist them in their role as elected Members. This was highlighted in both the Governance Review (completed in 2020) and the Centre for Governance and Scrutiny's review of the Council's scrutiny function (completed March 2021).
- 2.2 These concerns about Members ability to access information were also reflected in the Report in the Public Interest issued by the Council's External Auditor, Grant

Thornton, in September 2020, resulting in it being incorporated as an action in the Croydon Renewal Plan.

- 2.3 At present the rights of a Councillor to request access to information held by the Council are set out in the Council's Constitution under the following sections:
  - Access to Information Procedure Rules (Part 4B of the Constitution)
  - Protocol on Staff Councillor Relations (Part 5B of the Constitution)
- 2.4 Given the feedback from Councillors, it has become apparent that there is a lack of clarity amongst Members on their rights to access information. As such it was decided that Access to Information Protocol would be created to clarify the existing access arrangements available in the Council's Constitution. A draft of the Protocol is attached as Appendix A to this report.
- 2.5 In addition to Sections 4B and 5B in the Council's Constitution, the Protocol has been written with regard to relevant legislation and case law, as outlined in the introduction of the Protocol. It has also been informed by guidance produced by the Local Government Association and the Centre for Governance & Scrutiny.
- 2.6 The Ethics Committee is asked to give its endorsement to the Protocol. Providing the Committee's endorsement is given, it is proposed that the Protocol would be incorporated into the Members Handbook as a reference for Members going forward. It is also recommended that the Ethics Committee notes that a briefing for Members on Access to Information will be arranged and that it be incorporated into any future training on the Code of Conduct and the Staff Councillor Protocol.

### **3. CONSULTATION**

- 3.1 The Protocol is being presented to the Ethic Committee for its feedback and endorsement before it is rolled out to all Members.

### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 4.1 **Revenue and Capital consequences of report recommendations**
- 4.2 There are no financial consequences as a result of the report recommendations.

### **5. LEGAL CONSIDERATIONS**

- 5.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that Part 4B of the Council's Constitution details access to information requirements which apply to the Council and its meetings.
- 5.2 Section 100F Local Government Act 1972 (as amended) ("the 1972 Act") provides that any document which is in the possession or under the control of a principal council and contains material relating to any business to be transacted at a meeting of the

council or a committee or sub-committee of the council shall be open to inspection by any member of the council.

- 5.3 This does not require the document to be open to inspection if it appears to the proper officer (being the officer designated by the authority for these purposes) that it discloses exempt information although the document may still have to be open to inspection if the information is information of a description for the time being falling within the following descriptions:
- Information relating to the financial or business affairs of any particular person (including the authority holding that information) (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract), or
  - Information which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.
- 5.4 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 make provision in relation to the access to information pertaining to executive decision making. This includes setting out the additional rights of local authority members and members of overview and scrutiny committees to access documents (Part 5) and general provisions relating to information, such as the information which is exempt from disclosure (which includes advice from a political adviser).
- 5.5 Members can, like a member of the general public, also resort to The Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 5.6 The Local Audit and Accountability Act makes provision in relation to the rights of objection, inspection and questioning of the local auditor in relation to local authority accounts.
- 5.7 Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the member to properly perform their duties as a councillor.
- 5.8 However, if the councillor's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Councillors are not, therefore, allowed to go off on a 'fishing expedition' through their council's documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See *R v. Clerk to Lancashire Police Committee ex parte Hook* [1980] Q.B. 603).
- 5.9 A member must not disclose information given to them in confidence nor disclose information acquired which they believe is of a confidential nature, unless they: a) have received the consent of a person authorised to give it; or b) are required by law to do so. If information is accessed using the Freedom of Information / Environmental Information Regulations provisions the information can be regarded as public and the

Member may share the information with others. If on the other hand the Member has accessed the information via the provisions of the 1972 Act or the common law 'need to know' then in some cases the information may still be confidential and the Member will be bound by confidentiality. In that case Members should not publish or otherwise disclose the information to a third party.

Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer

## **6 HUMAN RESOURCES IMPACT**

- 6.1. There are no direct human resources impacts as a consequence of this report and its recommendations
- 6.2. Approved by: Sue Moorman on behalf of the Director of Human Resources

## **7 EQUALITIES IMPACT**

- 7.1 There is no equalities impact arising from the consideration of this report. We will take steps to ensure information to Members is accessible in relation to language and formats where possible
- 7.2 Approved by: *Yvonne Okiyo, Equalities Manager*

## **8 ENVIRONMENTAL IMPACT**

- 8.1 There is no environmental impact arising from the consideration of this report.

## **9 CRIME AND DISORDER REDUCTION IMPACT**

- 9.1 There is no crime and disorder impact arising from the consideration of this report

## **10 DATA PROTECTION IMPLICATIONS**

- 10.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**  
**NO**

- 10.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**  
**NO** - The subject matter of this report does not directly have any data protection implications from the consideration of the report.  
The actual process of administering access to information may have data protection implications, but these will need to be assessed on a case by case basis when requests are made.

- 10.3 Approved by Asmat Hussain – Interim Executive Director for Resources

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**CONTACT OFFICER:** Simon Trevaskis – Senior Democratic Services & Governance Officer – Scrutiny.

**APPENDICES TO THIS REPORT**

Appendix A: Draft Access to Information Protocol

**BACKGROUND DOCUMENTS:**

None

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## **COUNCILLORS' ACCESS TO INFORMATION**

### **General**

1. The following paragraphs identify the rights of Councillors and the procedures that they must comply with when applying for access to Cabinet/Committee/Sub-Committee papers and other documents/ information. These paragraphs take into account the following:
  - Relevant legislation including the Public Bodies(Admission to Meetings) Act 1960, as amended, Local Government Act 1972, as amended; the Data Protection Act 2018 General Data Protection Regulation (GDPR); Environmental Information Regulations 2004; the Freedom of Information Act 2000; the Licensing Act 2003 (Hearings) Regulations 2005, and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)
  - Local Government Transparency Code 2015 (see Local Government (Transparency Requirements) (England) Regulations 2015/480)
  - Open and accountable local government: plain English guide
  - Access to Information Procedure Rules (Part 4B of the Constitution)
  - Protocol on Staff-Councillor Relations (Part 5B of the Constitution)
  - Members Code of Conduct (5I of the Constitution)
  - Relevant case law
2. In principle, Councillors have the same ordinary rights of access to certain information as is enjoyed by the general public, but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a Councillor provided that it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor (see "Need to Know" below). This right of additional access may not extend to the publication of or otherwise making public such information as there may be issues of confidentiality, data protection and legal professional privilege.

### **Access to Committee Papers for Meetings**

3. The rights of Councillors can be summarised as follows:-
  - (i) Councillors enjoy the same access rights as members of the public in respect of Part A Cabinet/Committee/Sub-Committee papers.
  - (ii) Councillors of the appropriate Cabinet/ Committee/ Sub-Committee will have a good reason for access to all Part B exempt information on the respective Cabinet/ Committee/ Sub-Committee agenda under the "Need to Know" principles (see below).
  - (iii) Councillors of the Scrutiny and Overview Committee will have a prima facie "Need to Know" where they require access to Part B Cabinet agenda items as part of their scrutiny function provided the subject matter is within the Committee/ Sub-Committee's terms of reference.
  - (iv) All other Members who require access to confidential/ exempt Cabinet/Committee/ Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or Environmental

Information Regulations 2004 or demonstrate a “Need to Know” by complying with the principles set out below.

### **Access to Other Documents/Information – “The Need to Know”**

4. It is important to note that in some cases access to information to which the public is not entitled only applies where Councillors are clearly carrying out their role as elected representatives. Where a Councillor has a financial or personal interest in a matter the Councillor will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Councillor must make it clear that they are acting in their private capacity and not as a Councillor. Failure to do so may have a bearing on a Councillors duties under the Member Code of Conduct and the Protocol for Staff Officer Relations.
5. Under common law principles Councillors have the right to access information held by the Council where it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor. This is known as the “Need to Know”. This means that information must not be used for party political purposes, as set out in the Code of Recommended Practice on Local Authority Publicity.
6. The common law “Need to Know” is the prima facie right of Councillors to inspect documents of the authority which exist, as Councillors are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Councillors who do not have statutory rights to exempt or confidential information and to other documents held by the Council under local government legislation, the Freedom of Information Act 2000 or data protection legislation including the Data Protection Act 2018.
7. For example, a Councillor is likely to have a prima facie “Need to Know” where they have a legitimate Ward problem and access is needed to the documents that are relevant to that specific problem. Another example would be a Cabinet Member whose Portfolio covers the matter in question, requiring them to be aware of what is occurring for the purpose of their Cabinet position.
8. A further example would be a Scrutiny & Overview Committee requiring access to information to inform a scrutiny review. Any request from scrutiny for to access confidential information should be made by the Chair of the respective Scrutiny Committee/Sub-Committee via the Council’s Statutory Scrutiny Officer and will need to confirm why it is required.
9. Access to information on the basis of a ‘Need to Know’ does not exist where the Councillor is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient.
10. It should be noted that some material (for example, exempt information such as that relating to financial or commercial interests) may be redacted from any information that is disclosed, if this does not affect the ability of a Councillor to exercise their role as an elected representative.
11. There will also be a range of documents which, because of their nature are either not accessible by Councillors (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Councillors of other political groups. An example of this latter category could be draft documents compiled in the context of emerging Council policies and draft Committee



reports, the premature disclosure of which might be against both the Council's and the public interest.

12. Whilst the term "Council document" is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Councillor of one political group will not have a "Need to Know" and therefore, a right to inspect, a document which forms part of the internal workings of another political group, for instance relating to the process of policy development.

### **Use of Council Information – Confidentiality**

13. Procedural Rules and specific local procedures (e.g. on contracts) require Councillors and officers to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and an interaction with a Councillor which leads to a breach of confidentiality will almost certainly lead to disciplinary action. The expected behaviour of both Councillors and Officers is set out in the Protocol for Staff-Councillor Relations (Section 5B of the Council Constitution) and should be used as the basis for the interaction between Councillors and Officers when requesting information.
14. Officers must distinguish between assisting an elected representative in the course of the Councillor's council business and dealing with the same person as a client or customer, e.g. a Housing Benefit claimant. In the latter case, Officers will treat the Councillor with the same degree of helpfulness, courtesy and confidentiality as would be afforded to any other member of the public in the same situation, and interpret the relevant rules and procedures as they would for any other client or customer.
15. Equally, any council information provided to a Councillor on the basis of a 'Need to Know' must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors may be discussed in Part B Committee meetings or in informal meetings of appropriate Councillors and Officers. However, it should not be discussed with, or released to, any other persons. Any information that is provided should be clearly marked as confidential before it is released to Councillors.
16. In cases where a Councillor discloses information given to him/her in confidence by anyone, or information acquired by the Councillor which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor may find themselves the subject of a complaint that they have contravened the Code of Conduct for Members.
17. Similarly, the unauthorised disclosure of confidential or exempt information is regarded by the authority as a serious disciplinary offence for Officers. This includes an unauthorised disclosure to a Councillor. For further information see the Protocol for Staff-Councillor Relations.
18. Any request from a Councillor for information will be treated by Officers in the same confidence as any other member of the public and will not be made known to any other Councillor or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor(s) (e.g. during Part B discussions at Committee, informal briefings etc.) to another Councillor, Officer or person not already privy to that information.

19. The duty of officers to observe a Councillor's confidence however will not apply if the information disclosed relates to something which could severely damage the Council or which is illegal or constitutes maladministration. In this event the matter will be referred to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate. It would also be expected that officers would seek advice from their senior officers as part of any query they may have on their interaction with a Councillor.
20. In case of a decision made by an individual executive member or officer, a councillor can inspect the document within 24 hours of the conclusion of the meeting or the decision being made. In addition, if as a member of an Scrutiny and Overview committee, a councillor can ask for any document that contains business transacted at a meeting of the executive, its committees or sub-committees or officer of the authority and the executive must provide the document within 10 days after it (the executive) receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide the councillor with a written explanation.

**If in doubt, Members should seek advice from the Monitoring Officer regarding any duties, obligations or requirements which arise as a result of access to information.**

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b>
<b>SUBJECT:</b>	<b>UPDATE ON ETHICS COMPLAINTS RECEIVED UP TO AND INCLUDING 31 MARCH 2021</b>
<b>LEAD OFFICER:</b>	<b>INTERIM EXECUTIVE DIRECTOR OF RESOURCES &amp; DEPUTY MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> 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.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	
<b>1. RECOMMENDATIONS</b> <p>The Committee is asked to:</p> <p>1.1 Note the contents of the report.</p>	

## 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 is the annual report to the Ethics Committee to update members on any complaints or investigations undertaken by the Monitoring Officer during the last quarter to 31 March 2021 subject to what is set out at paragraph xxx below. The previous report, an annual report up to and including complaints received and considered by 31 December 2020 is accessible here:  
<https://democracy.croydon.gov.uk/documents/s27834/Complaint%20under%20the%20Councillor%20Code%20of%20Conduct%20report.pdf>

## 3. DETAIL

- 3.1 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.
- 3.2 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.

3.3 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. The Assessment Criteria are summarised below.

- Does the allegation relate to a Disclosable Pecuniary Interest? If so, this is a police matter.
- Is the complaint about someone who is still a Member? If not no further action can be taken.
- Has the matter already been the subject of an investigation – if so, the Monitoring Officer is unlikely to consider further action in the public interest.
- Has a period of 3 months elapsed since the alleged conduct occurred – if so the Monitoring Officer may consider no further action is appropriate.
- Is the complaint sufficiently serious to warrant further action?
- Is the complaint malicious, politically motivated or tit-for-tat – if so the Monitoring Officer is unlikely to take action.
- Is the complaint part of the ‘rough and tumble of political debate’ and conduct between Members – if so, the Monitoring Officer is unlikely to take action.
- Has insufficient information been provided? If so, unless further information is provided no further action can be taken.
- Is referring complaint the complaint for an investigation the best use of public resources and in the public interest? If not, no further action is likely to be taken particularly as no sanctions are available to the Council.
- Does the complaint demonstrate a lack of understanding of the code or policies/procedures? If so, the complaint will likely be dealt with by recommending/arranging training.
- Does the complaint relate to the manner in which meetings are conducted? If so, this will not be a matter in respect of which an investigation will be instituted.
- Is the complaint one person’s word against another? If so, with no independent evidence it is unlikely further action will be taken.
- Can the complaint be resolved informally without the need for an investigation e.g. by the offer of an apology. If so, the Monitoring Officer will take this into account in deciding what further action should be taken on the complaint.

The list is not exhaustive and a full copy of the criteria for assessment of complaints can be access here:

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/assessment-criteria-january2019.pdf>

3.4 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.

<https://democracy.croydon.gov.uk/documents/s17243/Part%2051%20-%20Members%20Code%20of%20Conduct.pdf>

- 3.5 Whilst each matter has different facts which would impact on the assessment, historic examples from previous years of when matters have not been considered appropriate for investigation have included where a Councillor has failed to respond to correspondence sent by a constituent or not responded as constituent wished them to or as quickly; where a councillor has not advocated on behalf of a constituent or has supported a different constituent or cause; or non-decision making councillors having a particular views on a matter which is being considered by the Council and expressing those views.
- 3.6 The Committee on Standards in Public Life("CSPL") recommended, as part of their 12<sup>th</sup> report into standards in local government, that the Local Government Transparency Code should be updated to require councils to annually publish a report detailing the following: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied. Whilst there has not been such a change to the Transparency Code as yet as this will require legislative changes and the Council already reports annually on the above matters, it is considered that it will create greater transparency and allow greater involvement by the Ethics Committee to change the current annual report of Code of Conduct complaints to a quarterly report.
- 3.7 The team responsible for receiving ethics complaints was made aware that the online "Complaints, Comments and Feedback" form on the website had not been working properly during the period July 2020- March 2021 in that customers were able to complete the form and submit it but the system was not then generating an email to Contact The Council's inbox with the details and accordingly these details were not passed on to the relevant teams in the authority. The issue has now been resolved however the quarterly report as detailed below does not include the matters which came in over this period as the team are currently awaiting responses from those customers affected to ascertain whether they wish to raise their concerns as ethics complaints. Once this information is received, the relevant information will be updated and members will have this information in the next quarterly report.
- 3.8 Since the last updating annual report to Members which covered complaints up to and including 31 December 2020, the Monitoring officer has received 17 complaints this quarter up to and including 31 March 2021. There are no high level themes which arise from the nature of the complaints – they have been diverse in their nature and fact specific, unlike in previous years where there were a number of complaints pertaining to planning related matters.
- 3.9 In respect of 4 of these matters, further information is still awaited to undertake the initial assessment process. In respect of 1 matter, the complainant withdrew the complaint and it was therefore not progressed. One of the matters already pertained to existing complaints by the same complainant and reflected allegations already dealt with in the earlier complaint and was therefore not progressed. A further matter was not within the remit of the Monitoring Officer and was therefore not progressed.
- 3.10 In respect of the remaining matters 10 matters, 9 matters have been assessed and no further action is to be taken when considered against the assessment

criteria adopted by the Council for this purpose and 1 remains at assessment stage.

- 3.11 Appendix A summarises the information detailed in paragraph 3.6 above pertaining to the complaints which have been completed. It should be noted that any such disclosure of information needs to have the necessary regard to the Councils' obligations under Data Protection and the processes adopted by the Council in relation to Code of Conduct complaints. The Committee also need to be mindful that the contents of Appendix A only represent complaints made and assessment decisions against the criteria as detailed in paragraphs 3.3 and 3.4 above rather than the outcome of an investigation and do not in any way indicate that a finding has been made against any members regarding compliance with the Code of Conduct. Such a finding would only be possible after an investigation and any necessary hearings in line with the Council's processes in this regard. None of the matters on Appendix A have made it past the assessment stage.
- 3.12 In relation to complaints handling going forward, the Deputy Monitoring Officer recommends that the views of the independent persons be sought prior to the initial assessment decision is made. The Council's current processes provide that the Monitoring Officer may, but is not obliged to consult with an IP prior to reaching a decision regarding initial assessment but it is considered good practice to do so and will therefore be implemented for future allegations.

#### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 4.1 There are no direct financial implications arising from this report. Implementation of the recommendations contained in this report shall be contained within existing budgets.

Approved by: Geetha Blood, interim Head of Finance on behalf of the Director of Finance Investment and Risk.

#### **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 although Members attention is specifically drawn to the information contained in paragraph 3.11 pertaining to disclosure of information in relation to Data Protection and the Council's ethics processes as well as the fact that the complaints detailed within this report only reflect the outcomes of assessment decisions and not findings following an investigation or hearing under the Localism Act 2011 requirements.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance and Deputy Monitoring Officer.

## **6. CONSULTATION**

- 6.1 There has been no consultation with Officers or Members regarding the contents of this report.

## **7. HUMAN RESOURCES IMPACT**

- 7.1 There are no human resources impacts arising from the recommendations in this report.

Approved by: Sue Moorman Director of Human Resources

## **8. EQUALITIES IMPACT**

- 8.1 There are no equalities impacts arising from the recommendations in this report.

Approved by: Yvonne Okiyo, Equalities Manager.

## **9. ENVIRONMENTAL IMPACT**

- 9.1. There are no environmental impacts arising from the recommendations within this report.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

- 10.1 There are no crime and disorder reduction impacts arising from the recommendations within this report.

## **11. DATA PROTECTION IMPLICATIONS**

- 11.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

**NO**

**HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

**NO**

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**CONTACT OFFICER:** Asmat Hussain - Executive Director of Resources (Deputy Monitoring Officer) Interim

### **APPENDICES TO THIS REPORT**

Appendix A- Summary of code of conduct complaints for first quarter

**BACKGROUND DOCUMENTS:** None

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Ref.	Nature of complainant	Member/Co-opted member?	Nature of the complaint	Initial Assessment Outcome	Initial assessment completed in Time	Referred for investigation
01/21	Member of the public	Member	Involvement in non-attendance at committee by another.	No further action ("NFA"). Not established	Y	N
02/21	Member of the public	Member	Non-attendance at committee	NFA. Not established	Y	N
03/21	Member of the public	Member	Not responding to correspondence	NFA. Not established	Y	N
04/21	Member of the public	Member	Pre-determination of decision maker	NFA. Not established	N	N
05/21	Member of the public	Member	Not responding to questions asked	NFA. Not established.	Y	N
06/21	Member of the public	Member	Not contacting complainant	NFA. Not established	Y	N
10/21	Member of public	Member	Attendance at two meetings simultaneously	NFA. Not established	Y	N
11/21	Officer/Cllr	Member	Non-compliance with Nolan Principles and Staff-officer protocol	NFA. Not Established	N	N
12/21	Officer/Cllr	Member	Non-compliance with Nolan Principles and Staff officer protocol	NFA. Not Established.	N	N

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<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>26 May 2021</b>
<b>SUBJECT:</b>	<b>Presentation of Equalities review undertaken in 2019 and progress</b>
<b>LEAD OFFICER:</b>	<b>Asmat Hussain, Interim Executive of Resources and Deputy Monitoring Officer</b>
<b>FINANCIAL IMPACT:</b>  There is no expenditure arising directly from the recommendations contained in this report.	
<b>1. RECOMMENDATIONS:</b>  Members of the Appointments Committee are recommended to:-  1.1 Note the initial work presented to the Council from Joe Montgomery, who conducted an independent review of the councils workforce equalities in May 2019  1.2 Note the presentation of the subsequent actions undertaken as a response to the recommendations in the review and progress made.	

## 2 EXECUTIVE SUMMARY

- 2.1 In November 2018 the former Chief Executive commissioned Joe Montgomery, to undertake a review of the council's workforce strategy with a key enquiry on the equality of opportunity.
- 2.2 The independent commissioned work was designed across 2 phases, a quantitative review of workforce data and a qualitative exercise of staff experience.
- 2.3 The work resulted in a series of recommendations that were incorporated in the council's workforce strategy.

## 3 BACKGROUND AND CONTEXT

- 3.1 In November 2018, the Executive Leadership Team commissioned a baseline review to provide a comprehensive insight to workforce activity and experience
- 3.2 The review was conducted in two phases of quantitative followed by qualitative investigation by:

- Creating a Baseline Data Set for monitoring across core employment activity,
  - Utilising the outcomes of the Baseline Data set to design and inform qualitative engagement activity with a representative sample of the workforce.
  - Engaging high quality independent expertise to identify key conclusions / recommendations that inform the Council's Workforce Strategy; as well as highlighting key issues that require ongoing consideration / lessons to be learned.
- 3.3 An independent advisor – industry professional Joe Montgomery who is highly regarded in both central and local government was commissioned to lead this work. His role was to provide an objective assessment to assist the council to develop a workforce strategy. The headline themes from last year's staff survey were used to frame with a selection of staff and with trade unions. The output from this work was to highlight where the council needed to concentrate efforts.
- 3.4 The review highlighted some negative indicators that have the potential to inhibit staff moving to higher levels of engagement but if these are addressed and responded to, will enable that to change more readily.
- 3.5 A member oversight sub-committee was established to provide political oversight to the development of the council's workforce strategy as informed by the review outcomes.

#### **4. FINDINGS**

- 4.1 As a result of the review, a series of recommendations were provided to the council and Joe Montgomery, presented these and his headline findings in a number of presentations to the organisation. Appendix A highlights the key summary presentations.
- 4.2 The recommendations were accepted and factored into work programmes, and in particular the development of the workforce strategy 2019-2022. Appendix B provides an overview of the progress made against these recommendations.

#### **5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 5.1 There are no finance considerations

#### **6. LEGAL CONSIDERATIONS**

There are no legal considerations

## **7. HUMAN RESOURCES IMPACT**

- 7.1 There are no additional human resources impacts beyond those described in the body of the report.

## **8. DATA PROTECTION IMPLICATIONS**

The recommendations contained within this report will not directly involve the processing of data

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### **CONTACT OFFICER:**

Sue Moorman, Director of Human Resources ext 60881

Grace Addy, Head of Learning and Organisational Development ext 88391

### **APPENDICES TO THIS REPORT:**

**A1** Presentation to Corporate Leadership Team March 2019

**A2** Presentation “a review of Croydon’s workforce strategy April 2019

**B** Summary update to Ethics Committee on progress against recommendations

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A black and white photograph of a diverse group of nine people, including men and women of various ethnicities, smiling and cheering. A semi-transparent blue rectangular overlay is positioned on the right side of the image, containing the text 'CLT AWAY DAY' and 'March 2019'.

# CLT AWAY DAY

March 2019

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# Success Traits



Resilience



Rapport



Mastery



Fostering Inclusion & Managing difference





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## The Context

- Those subject to the duty must eliminate unlawful discrimination, harassment and victimisation; Advance equality of opportunity; and foster good relations between people who share a protected characteristic and those who do not.
- Demographic and democratic imperatives
- Potential staff engagement and productivity dividends
- Reputational considerations



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## Inherited Legacy

- Tough Times
- Under-representation
- Over-representation
- Much left unsaid

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# Structured Listening

Culture board places equalities at centre of the agenda: JN has accelerated this

It is a friendly place, not a 'stab-you-in-the-back' place

In terms of equalities Croydon is seen as offering people fairness

A lot of good will and lots of good things happening

Not aware of anyone being refused learning and development opportunities

No loss of trust in Croydon's commitment to fairness and merit

# Structured Listening

In other LA's the CEO would Chair the Equalities Board: is the culture board fulfilling that role?

Fear of 'trace-back' during staff survey

Need to show managers how to give fair and honest feedback, not just issue guidance

Is there systematic analysis of reorganisations and the shift to Localities Model on equalities?

There isn't a strong performance management culture, partly due to weak systems

BAME staff less likely to get 'exceeded' appraisals

Problematic grievances not dealt with early enough

We no longer have equalities expertise at HoS or Director level

Need BAME reps on recruitment panels

Completion-rate for appraisals given more emphasis than the quality of the interaction

Croydon is a fair place to work except for those who have problems with their line manager

Lack of in-year feedback

BAME staff over-represented in grievance, disciplinary and TU casework

---

# Inclusive Croydon

- Where everyone can speak up, speak out and have a voice in the future direction of the organisation
- Where fairness and justice feel real and where bullying, harassment & discrimination will not be tolerated;
- Where evidence of promoting inclusion is a key feature of managers' performance appraisal

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# Workforce Strategy

- Inclusivity modelled by the Top 25
- Corporate recommitment to honest and timely feedback
- Retooling of Surveys; Reports; Recruitment, Informal resolution of Issues; EFLG
- What else could CLT do to drive this agenda







A review of Croydon's  
**Workforce Strategy**  
April 2019



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## The Brief

- To assess current practices and to determine whether any further developments or actions are required as part of Croydon's workforce strategy or overall council policy...[by means of] qualitative engagement with a representative sample of the workforce"; and
- To identify key conclusions and/or recommendations that inform the Council's workforce strategy, as well as highlighting key issues that require ongoing consideration and/or lessons to be learned.





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# Methodology

Review internal and commissioned datasets and then “test hypotheses with cross-sectional groups within the organisation, from front-line to senior management, with specific reference to trades unions, workers’ forums, a cross section of BAME staff, leadership development alumni, human resource staff, senior managers”

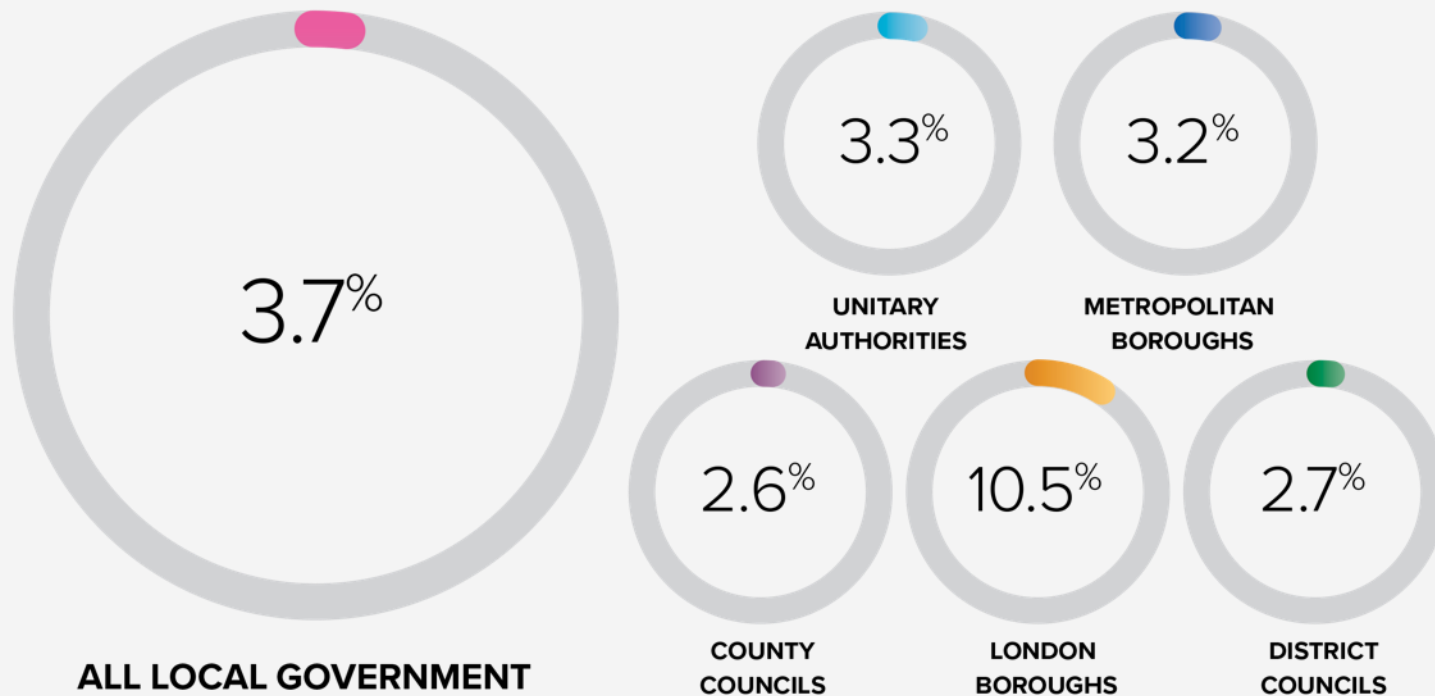
Data materials reviewed for this exercise included Ixia's phase 1 analytic reports; LBC internal datasets on ethnicity pay gap, staff appraisal results by ethnic group 2016-18, staff survey data for 2011, 2015 & 2018, HR grievance & disciplinary data 2015-18 plus draft EFLG materials; and Green Park local govt leadership reports.

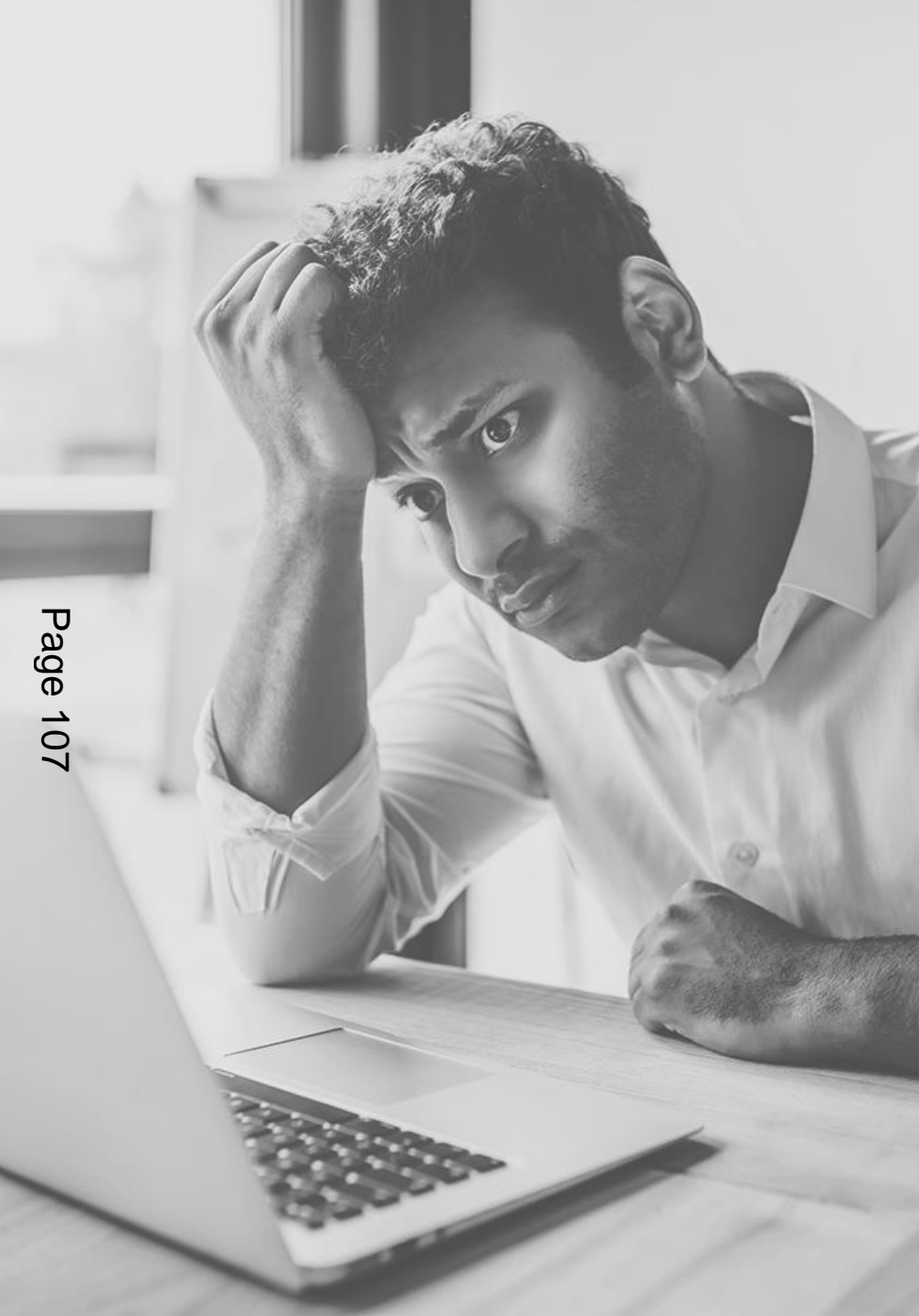
The approach took into account a range of diversity and inclusion considerations but focussed more closely on issues of race as a proxy for the wider set of concerns, with the view that Croydon can derive cross-cutting insights from a sustained initial focus on one aspect of its broader D&I challenge.

# Croydon's Profile

**LBC's TOP TEAM IS AT THE LEADING EDGE: 3 OUT OF 7 ARE BAME**

## Ethnocultural Diversity: Top 20





# Croydon's Profile

## SIGNIFICANT DISSONANCE

Croydon has secured considerable staff buy-in to its values of "One team; proud to serve, honest and open; and valuing diversity";





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# Structured Listening

During the staff interactions, the following themes were consistently raised:

## **RECRUITMENT PROCESS:**

Need for stronger D&I component to search & shortlisting; need for BAME representation on interview panels;

## **LINE MANAGEMENT:**

concerns around managers' accountability for staff engagement and D&I, and inconsistent decision-making on themes devolved to managers' discretion (especially annual/compassionate leave & agile working);

## **UNCERTAINTIES:**

about a centralised or dispersed model of leadership regarding D&I and the role of the Culture Board;

## **ROLE CLARITY:**

and resourcing of Staff Forum groups;

## **TARGETS TO TACKLE:**

Under-representation of BAME staff in senior management and the consequent ethnic pay gap; and over-representation of BAME staff in lower quadrants of staff appraisal, in grievances, disciplinaries and TU casework.

# Potential Responses

## a. RECRUITMENT

1. Corporate commitment to race and gender participation on interview panels;
2. Curation of external BAME panel members list to serve on interview panels for senior posts;
3. Insertion of fee retention clause to incentivise search consultants to generate diverse candidate lists;
4. Trialling of 'name-blind' shortlisting systems as practiced in NHS;
5. Non-diverse shortlists only be taken to interview with approval of relevant ED



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# Potential Responses

## b. PROMOTING DISPERSED LEADERSHIP OF D&I

6. Learning & development refresh for all managers on the equalities duty, staff engagement and managing difference;
7. Inclusion of staff engagement and promotion of D&I in all managers' objectives;
8. Clarify guidelines on areas left to managers' discretion (especially agile working, annual & compassionate leave etc) to reduce perceived inconsistencies;
9. Commission an external provider to conduct future staff surveys to alleviate 'trace-back' concerns, with disaggregated questions on particular D&I sub-themes and with space for respondents to rate their team, their department and the organisation as a whole;



# Potential Responses

## c. CORPORATE D&I FOCAL POINT

10. Reconstitute the Culture Board giving its remit, programmes and membership an explicit focus on D&I as part of its wider responsibility for the workforce strategy;
11. Support ELT and the Culture Board with the creation of a data observatory to bring together strands of D&I data at regularly intervals.
12. Craft a small number of key metrics through which the Culture Board can measure progress against explicit D&I targets on representation of BAME staff in senior positions; on BAME over-representation in grievance, disciplinary and TU casework; on BAME over-representation in lower appraisal quartiles; on the ethnic pay gap; and on comparative progression rates within the organisation;
13. Review the initial work on EFLG accreditation in the light of the emerging workforce strategy, with a view to using the EFLG accreditation drive as a vehicle to generate an organisation-wide recommitment to the equalities duty, staff engagement, and D&I.



# Potential Responses

## d. REFRESH KEY PROCESSES

14. Commission a rapid stocktake of grievance, disciplinary and TU casework with the aim of bringing these to closure within a short but reasonable timespan;
15. Introduce an organisational target to close out all routine grievance, disciplinary and TU casework within 12 weeks, recognising that there is a resource implication to this target and that there will always be a number of more complex cases;
16. Assemble a team of trusted, potentially external, mediators to help handle disputes that are amenable to more informal forms of resolution;
17. Review the purpose and format of the appraisal system now that it has been decoupled from the remuneration system, so as to make staff clear whether it aims to promote personal growth and development, whether it assesses promotability or whether it serves mainly to cascade departmental goals to individual team-members;





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# Closing Comments

Croydon has made important progress on Diversity & Inclusion, not least in creating one of the most diverse top-teams in local government;

There is clearly more the Council can do on its journey toward better staff engagement, a better equalities profile and a leading edge workforce strategy;

In commissioning this review, ELT has clearly shown that it is motivated to help the organisation secure fuller engagement from its BAME staff but it will need to build an implementation plan that is commensurate with the scale of the challenge;

Progress against the milestones in any implementation plan will need to be reviewed in order to secure sustained progress.

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# **Ethics Committee** update on Joe's recommendations

Page 115

Grace Padonou Addy

Head of Learning & Organisation Development

Resources department

# Executive summary

- Joe Montgomery made 16 recommendations in late 2019
- Agreement with former CE not to publish a report but offer formal slide presentations
- Culture board 2020 prioritised some of the recommendations and work was undertaken
- Unfulfilled recommendations embedded in workforce strategy and now as part of new cultural transformation programme
- Proposal to establish a governance structure to support new equalities and cultural transformation and D&I initiatives underway

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# Progress on Joe's Recommendations

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# Recruitment

Recommendation	Action
Race and gender participation on interview panels	<ul style="list-style-type: none"><li>• Recruit &amp; train internal pool of BAME &amp; other protected staff to sit on interview panels</li><li>• Training of chairs &amp; BAME complete: 30 August, 2020</li><li>• Additional recruitment bias training for restructure interviews completed by external facilitator August 2020</li></ul>
Curation of external BAME panel members list to serve on interview panels for senior posts	<ul style="list-style-type: none"><li>• Connected with other local authorities to determine interests in collaborating and sharing resources</li><li>• Currently utilising internal resources where possible</li><li>• Recruitment embargo has afforded us some additional time</li><li>• Financial constraint has limited action on this</li></ul>
Assemble a team of trusted, potentially external mediators to help handle disputes that are amenable to more informal forms of resolution	<ul style="list-style-type: none"><li>• Put out an expression of interest to all 32 local authorities in collaborating and sharing resources</li><li>• Currently trialling a set of providers provided by a trusted provider</li><li>• Listing of mediators in place and being utilised at cost</li></ul>

# Recruitment continued

Recommendation	Action
'Anonymised shortlisting system	<ul style="list-style-type: none"><li>• Implemented July 2020</li></ul>
Shortlists must be diverse for all posts & include at least 1 BAME person	<ul style="list-style-type: none"><li>• Revised policy to incorporate this change</li><li>• Communicated change to organisation</li><li>• Incorporated change into training for all panel chairs &amp; recruiting managers August 2020d as</li><li>• Training developed and offered as required</li></ul>

# Recruitment continued

Recommendation	Action
'Anonymised shortlisting system	<ul style="list-style-type: none"><li>• Implemented July 2020</li></ul>
Shortlists must be diverse for all posts & include at least 1 BAME person	<ul style="list-style-type: none"><li>• Revised policy to incorporate this change</li><li>• Communicated change to organisation</li><li>• Incorporated change into training for all panel chairs &amp; recruiting managers August 2020d as</li><li>• Training developed and offered as required</li></ul>



# Managing differences

Recommendation	Action
Learning & development refresh for all managers on the equalities duty, staff engagement and managing difference	<p>Move beyond awareness training...</p> <ul style="list-style-type: none"><li>• Speaking with other local authorities for possibility of partnering to develop/deliver interventions</li><li>• Consulting with external experts (David Weaver, Alison France, Binna Kandola, ENEI)</li><li>• Create/deliver in-house courses</li><li>• Establish a reverse mentorship programme with Executive level to Directors (relationship led by mentor)</li></ul> <p>In house E-learning materials</p> <ul style="list-style-type: none"><li>• Introduce Uncomfortable truths and conversations</li><li>• Procurement process to commission an external partner came to a halt</li><li>• Work to resume under transformation umbrella</li></ul>

# Managing differences

Recommendation	Action
Clarify guidelines on areas left to managers' discretion (especially agile working, annual & compassionate leave etc.) to reduce perceived inconsistencies	<ul style="list-style-type: none"><li>• Additional Leave policy has been updated and implemented</li><li>• Flexible working policy has been reviewed in context of remote working</li><li>• Integrate policies in new managing differences offers</li><li>• Monitor &amp; track relevant grievances and redressal procedures (not yet implemented).</li></ul>

# Performance management

Recommendation	Action
Review the purpose and format of the appraisal system now that it has been decoupled from the remuneration system, so as to make staff clear whether it aims to promote personal growth and development, whether it assesses promotability or whether it serves mainly to cascade departmental goals to individual team-members	<ul style="list-style-type: none"><li>• Appraisal revised annually to reflect organisational context</li><li>• Rating system removed</li><li>• Focus on monthly 121's, health and wellbeing and development</li></ul>
Inclusion of staff engagement and promotion of D&I in all managers' objectives	Implemented from 20/21 appraisals include D&I objectives

# Staff Engagement & Culture Board

Recommendation	Action(s)
Commission an external provider to conduct future staff surveys to alleviate 'trace-back' concerns, with disaggregated questions on particular D&I sub-themes and with space for respondents to rate their team, their department and the organisation as a whole	<p>Developing and conducting in-house temperature checks on a quarterly basis</p> <ul style="list-style-type: none"><li>• Commissioning an external provider deferred due to financial constraints</li><li>• Currently in talks with LGA for support</li></ul>
Reconstitute the Culture Board giving its remit, programmes and membership an explicit focus on D&I as part of its wider responsibility for the workforce strategy	<ul style="list-style-type: none"><li>• Reflected in the cultural transformation programme</li><li>• Currently under review with the ECO System structure</li></ul>

# Tracking & measuring our progress

Recommendation	Action
Creation of a data observatory to bring together strands of Diversity & Inclusion data at regular intervals.	<ul style="list-style-type: none"><li>• Work was deferred due to COVID19 priorities</li><li>• Metrics being measured should be key driver to what is populated first on data base</li></ul> <p>Phase 1-Scoping completed</p> <p>Phase 2- Identify key metrics that require monitoring</p> <p>Create a dashboard for publicising information</p> <p>Phase 4- Create end to end data base (Oct 21)</p>

# Tracking & measuring our progress

Recommendation	Action
Craft a small number of key metrics through which the Culture Board can measure progress against explicit D&I targets on representation of BAME staff in senior positions; on BAME over-representation in grievance, disciplinary and TU casework; on BAME over-representation in lower appraisal quartiles; on the ethnic pay gap; and on comparative progression rates within the organisation	<ul style="list-style-type: none"><li>• Establish one/two key metric(s) to monitor</li><li>• Need to agree on key initial metrics to be tracked and measured</li><li>• This is work in progress an in concert with performance management team and equalities strategy</li></ul>

# Thank you

# Over to you

Grace Padonou Addy

**Head of Learning & Organisation development**

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<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>26 MAY 2020</b>
<b>SUBJECT:</b>	<b>ETHICS COMMITTEE: WORK PROGRAMME</b>
<b>LEAD OFFICER:</b>	<b>Asmat Hussain, Executive Director of Resources and Deputy Monitoring Officer (Interim)</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:</b> Organisational design: consideration of the business processes, systems, budgeting, workforce, capacities and capabilities that will reflect the requirements of the operating model.	
<b>FINANCIAL IMPACT</b> The implementation of the recommendations contained in this report shall be contained within existing budgets.	
<b>1. RECOMMENDATIONS</b>  1.1. For the Members of the Ethics Committee to consider and comment on the following Work Programme.	

## 2. EXECUTIVE SUMMARY

- 2.1. The table sets out the Ethics Committee Work Programme for 2021/22. 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.

## 3. DETAIL

Meeting date	Standing item(s)	Other item(s)
26 May 2021	Members' dispensations  Complaint Monitoring and Associated Matters  Register of Gifts & Hospitalities  Work programme  Member Training	Review of Code of Conduct (incl. LGA Code)  Councillor Induction programme  Member Learning and Development Programme Update  Review of the LGA Code and Gap analysis  Members Rights to Access to Information

		Social Media guidance
17 November 2021	Members' dispensations  Complaint Monitoring and Associated Matters  Register of Gifts & Hospitalities  Work programme	Members' Handbook  Joe Montgomery Report  Member Attendance Statistics (annual)
9 February 2022	Members' dispensations  Complaint Monitoring and Associated Matters  Register of Gifts & Hospitalities  Work programme	Review of Code of Conduct (incl. LGA Code)  Draft Annual Council Report  Practical guidance for Members handling confidential information
6 April 2022	Members' dispensations  Complaint Monitoring and Associated Matters  Register of Gifts & Hospitalities  Work programme	Annual Council Report  Member Learning and Development Induction Programme

#### 4. **CONSULTATION**

- 4.1. The Work Programme is subject to consultation with the Members of the Ethics Committee.

#### 5. **FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 5.1. The implementation of the recommendations contained in this report shall be contained within existing budgets.

#### 6. **THE EFFECT OF THE DECISION**

- 6.1. The decisions made about its Work Programme will determine the agenda for Ethics Committee meeting.

## **7. RISKS**

7.1. There are no direct risks arising from the content of this report.

## **8. OPTIONS**

8.1. 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.

## **9. FUTURE SAVINGS/EFFICIENCIES**

9.1. There are no direct future savings/efficiencies arising from the content of this report.

## **10. LEGAL CONSIDERATIONS**

10.1. There are no direct legal consequences arising from the contents of this report.

## **11. HUMAN RESOURCES IMPACT**

11.1. There are no direct Human Resources consequences arising from the contents of this report.

## **12. EQUALITIES IMPACT**

12.1. There are no direct equalities impact consequences arising from the contents of this report.

## **13. ENVIRONMENTAL IMPACT**

13.1. There are no direct environmental impact consequences arising from the contents of this report.

## **14. CRIME AND DISORDER REDUCTION IMPACT**

14.1. There are no direct crime and disorder reduction impact consequences arising from the contents of this report.

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### **CONTACT OFFICER:**

Cliona May, Senior Democratic Services Officer, Council & Regulatory

### **APPENDICES TO THIS REPORT:**

None

### **BACKGROUND DOCUMENTS:**

None

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