

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 **Thursday, 30 September 2021** at **6.30 pm** in **Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX**

ASMAT HUSSAIN
Executive Director of Resources and
Monitoring Officer (Interim)
London Borough of Croydon
Bernard Weatherill House
8 Mint Walk, Croydon CR0 1EA

Cliona May
cliona.may@croydon.gov.uk
www.croydon.gov.uk/meetings
Wednesday, 22 September 2021

Residents are able to attend this meeting in person, however we recommend that you watch the meeting remotely via the following link:

<https://webcasting.croydon.gov.uk/croydon/meetings/13251>

If you would like to attend in person please note that spaces are extremely limited and are allocated on a first come first served basis. If you would like to attend in person please email democratic.services@croydon.gov.uk by 5pm the day prior to the meeting to register your interest.

The agenda papers for all Council meetings are available on the Council website www.croydon.gov.uk/meetings

Members of the public are welcome to attend this meeting. If you would like to record the meeting, we ask that you read the guidance on the recording of public meetings [here](#) before attending.

If you require any assistance, please contact the person detailed above, on the righthand side.

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

To approve the minutes of the meeting held on 26 May 2021 as an accurate record. (Copy to follow)

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. Dispensation Applications for Members

To receive the report of the Executive Director of Resources & Monitoring Officer on Members' dispensations for consideration, if any are received. (Report to follow)

6. Complaint Monitoring and Associated Matters (Pages 5 - 12)

This report updates the Ethics Committee of any complaints or investigations undertaken by the Monitoring Officer during the last quarter to 31 July 2021.

7. Register of Gifts & Hospitalities

Report to follow.

8. Members' Code of Conduct (Pages 13 - 84)

This report asks the Committee to consider and recommend to Full Council the adoption of a revised version of the Members' Code of Conduct and supporting guidance.

9. Access to Information Protocol (Pages 85 - 104)

This report includes the draft Access to Information Protocol for the consideration of the Ethics Committee.

10. Members Development Plan Update (Pages 105 - 164)

This report contains the Member Training Programme which has been developed in response to comments by the Member Development Panel on 13 July 2021.

11. Work Programme (Pages 165 - 168)

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

12. 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

REPORT TO:	ETHICS COMMITTEE
AGENDA ITEM NO:	30 SEPTEMBER 2021
SUBJECT:	UPDATE ON ETHICS COMPLAINTS RECEIVED UP TO AND INCLUDING 31 JULY 2021
LEAD OFFICER:	INTERIM EXECUTIVE DIRECTOR OF RESOURCES & DEPUTY MONITORING OFFICER
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1.	RECOMMENDATIONS
	The Committee is asked to:
1.1	Note the contents of the report

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 July 2021 subject to what is set out at paragraph 3.9 below. The previous report, an annual report up to and including complaints received and considered by 31 March 2021 is accessible here:
https://democracy.croydon.gov.uk/documents/s29357/Rpt_Quarterly%20Compl aints_%20Ethics%20Cttee_May%202021final.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 12th 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, the Committee has agreed to receive quarterly Code of Conduct complaints.
- 3.7 Since the last updating annual report to Members which covered complaints up to and including 31 March 2021, the Monitoring officer has received 6 complaints this quarter up to and including 31 July 2021. In addition there were 5 complaints which were in progress at the time of the previous report which are included in Appendix A as they are now complete. 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.
- 3.8 In respect of the 5 matters which were in progress at the time of the last quarterly report, 4 were withdrawn by the complainants as their concerns had subsequently been resolved and 1 was assessed and no further action taken. In respect of the 6 new matters during this quarter, for 2 of these matters further information is still awaited to undertake the initial assessment process. In respect of the remaining matters 4 matters, 3 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. The final matter was not within the remit of the Monitoring Officer and was therefore not progressed.
- 3.9 Appendix A summarises the information detailed in paragraph 3.8 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.

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: *Michael Jarrett*, 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: Gillian Bevan Head of HR – Resources

8. EQUALITIES IMPACT

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

Approved by: Gavin Handford, Director of Policy & Partnership

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

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

APPENDICES TO THIS REPORT

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

BACKGROUND DOCUMENTS: None

This page is intentionally left blank

Ref.	Nature of complainant	Member/Co-opted member?	Nature of the complaint	Initial Assessment Outcome	Initial assessment completed in Time	Referred for investigation
13/21	Member of the public	Member	Failure to respond to communications	NFA. Officers had undertaken to respond to the member of the public	N. Complainant email was missed due to volume of correspondence from complainant	N
14/21	Member of the public	Member	Complaint withdrawn	N/A	N/A	N/A
15/21	Member of the public	Member	Complaint withdrawn	N/A	N/A	N/A
16/21	Member of the public	Member	Complaint withdrawn	N/A	N/A	N/A
17/21	Member of the public	Member	Complaint withdrawn	N/A	N/A	N/A
18/21	Member of the public	Member	Complaint about internal Labour politics	NFA. Not a matter for ethics	Not a matter for ethics	N/A
19/21	Member of the public	Member	Failure to respond to correspondence	NFA. Member made aware of concerns	N. Email from complainant went to spam folder therefore initially missed	N
20/21	Member of the public	Member	Failure to respond to correspondence	NFA. Member made aware of concerns	N. Email from complainant went to spam folder therefore initially missed	N

21/21	Member of the public	Member	Failure to respond to correspondence	NFA. Member made aware of concerns	N. Email from complainant went to spam folder therefore initially missed	N
22/21	Member of the public	Member	Outcome of planning decision	Further information requested and not provided to date	N/A	N/A
23/21	Member of the public	Member	Outcome of planning decision	Further information requested and not provided to date	N/A	N/A

REPORT TO:	ETHICS COMMITTEE 30 September 2021
SUBJECT:	Members' Code of Conduct
LEAD OFFICER:	Asmat Hussain, Executive Director of Resources and Monitoring Officer (Interim)
WARDS:	All
CORPORATE PRIORITIES 2021-24: A review of the member and officer codes of conduct to fully embed the Nolan Principles in all work is one of the strands of the Croydon Renewal Improvement Plan.	

FINANCIAL IMPACT

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

RECOMMENDATION

Ethics Committee is recommended to:

1. Consider the proposed revised version of the Members' Code of Conduct and associated guidance (Appendix 1);
2. Agree to recommend to Full Council that the revised Code of Conduct and guidance be adopted in replacement for the current Members' Code of Conduct in the Council's Constitution;
3. Agree to recommend to Full Council that any changes to the Members' Code of Conduct guidance should be delegated to the Ethics Committee.

2. EXECUTIVE SUMMARY

- 3.1 Ethics Committee is asked to consider and recommend to Full Council the adoption of a revised version of the Members' Code of Conduct and supporting guidance. The proposal is to use the new national Model Member Code of Conduct, with a few clarifications and additions to reflect the Code previously in place in Croydon.
- 3.2 Proposed guidance on use of the Code also reflects national guidance produced by the Local Government Association: it is proposed to include the guidance as well as the Code in the Constitution, and that the Ethics Committee would therefore give weight to the guidance when considering alleged breaches of the Code of Conduct.

3. BACKGROUND

- 3.1 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.
- 3.2 In 2020 the Local Government Association (LGA) conducted a national consultation exercise on a draft Model Member Code of Conduct. The draft had been developed in response to recommendations by the Committee for Standards in Public Life (CSPL) on Local Government Ethical Standards.
- 3.3 In January 2021 the LGA published its new Model Member Code of Conduct, and in July 2021 it published associated guidance.
- 3.4 At its May meeting, the Ethics Committee agreed in principle to adopt the Model Member Code of Conduct and asked officers to:
- consider inclusion of any elements of the current Croydon Member Code of Conduct in the new version;
 - move all explanatory wording into supporting guidance to make the Code as succinct as possible;
 - use language which is as easy to understand as possible.

4. PROPOSAL

- 4.1 The proposed revised version of the Code of Conduct and associated guidance appears at Appendix 1.
- 4.2 The guidance is an edited version of explanatory text extracted from the LGA Model Code of Conduct, combined with the LGA's guidance. It sets out in more detail what the commitments in the Code mean in practice, for example:
- Definitions of bullying and harassment such as abuse of power, placing unreasonable expectations on someone in relation to their job and the relevance of the perception of the recipient of the behaviour;
 - Case studies which give real-life examples of what would and would not be a breach of the Code;
 - Detailed explanation of the requirements associated with registering interests.
- It is therefore equally important that members are familiar with the guidance as with the Code as this will be used to assess complaints made against Member conduct.
- 4.3 Adoption of this Code and guidance will ensure consistency with the same standards of conduct followed by councils elsewhere in the country, and with the recommendations of the CSPL. Additional provisions in the Model Code which reflect the content of changes to legislation recommended by CSPL are as follows:
- Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media;

- The Code of Conduct applies to a Member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority;
- Interests to be registered include unpaid directorships, trusteeships, management roles in a charity or a body of a public nature and membership of any organisations that seek to influence opinion or public policy;
- A councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, ‘if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter’;

A response from Government to recommendations by CSPL for changes to legislation is awaited.

4.4 The proposed Members’ Code of Conduct for Croydon replicates the LGA Model Code, with the addition of a few points reflecting previous practice in Croydon and needs identified by the Monitoring Officer, as follows (additional text in italics):

- 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. *This may include a hearing by a sub-committee of the Ethics Committee which has powers to take action in respect of individual Members in order to promote and maintain high standards of conduct. A list of the possible sanctions which the Hearings Panel may apply appears in the Hearings Panel Rules of Procedure.*
- 2. Bullying, harassment and discrimination:
2.3 I promote *and value equality and diversity* and do not discriminate unlawfully against any person.
- 8. Code of Conduct. As a councillor:
8.5 *I comply with the Council’s Constitution, all relevant Protocols contained within it and guidance issued from time to time by the Chief Executive, Chief Finance Officer and/or Monitoring Officer.*
8.6 *I undertake essential Councillor training provided or commissioned by the Council.*
- 9. Interests. As a councillor:
 - I register and disclose my interests *in accordance with detailed provisions set out at Appendix B (see 4.5, below).*
 - *I make all decisions on merit, without discrimination or bias.*
- 10. Gifts and hospitality. As a councillor: ...
I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £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* within 28 days of its receipt.

4.5 Appendix B of the Code gives further detail on disclosure of interests. This includes:

- Details of what is a 'Disclosable Pecuniary Interest', as set out in legislation (and in Table 1 of Appendix B). Where a matter arises at a meeting which directly relates to a Disclosable Pecuniary Interest, the Member must disclose the interest, not participate in any discussion or vote on the matter and **leave the room** unless they have been granted a dispensation. Arrangements for granting dispensations are set out in Article 12 of the Constitution;
- Members are also required to register 'Other Registrable Interests' such as school governorships or positions on boards of charities (details appear in Table 2 of Appendix B). Where a matter arises at a meeting which directly relates to an Other Registrable Interest, the Member must disclose the interest and may not speak on the matter unless members of the public are also allowed to speak at the meeting. Otherwise the Member may not take part in the discussion or vote on the matter and must **leave the room** unless they have sought and been granted a dispensation;
- Where a matter arises at a meeting which is not a Disclosable Pecuniary Interest but does **directly relate** to the Member's financial interest or wellbeing or that of a relative or close associate, the Member must disclose the interest and may not speak on the matter unless members of the public are also allowed to speak at the meeting. Otherwise the Member may not take part in the discussion or vote on the matter and must **leave the room** unless they have sought and been granted a dispensation;
- Where a matter arises at a meeting which **affects** the Member's own financial wellbeing or that of a relative or close associate, or that of a body included under Other Registrable Interests, the Member must disclose the interest. Whether or not the Member may stay in the room depends on the extent to which it affects their interests and 'whether a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest'.

4.6 Ethics Committee is asked to note that:

- The Independent Persons have been informed about the process to develop the draft to date and invited to comment on the draft Code of Conduct and guidance (no material changes have been proposed by any of the Independent Persons);
- Members are required to comply with the Council's Constitution, all relevant Protocols contained within it and guidance issues from time to time by the Chief Executive and/or Monitoring Officer. Ethics Committee are asked to give weight to the Code of Conduct guidance when considering alleged breaches of the Code of Conduct;
- The Protocol on Staff-Councillor Relations will be revised to support implementation of the new Code of Conduct, addressing, for example, the behaviours required to meet the requirements in the Code to treat others

with respect and not to bully, harass or discriminate against others (which are mirrored in the Officer Code of Conduct). Workshops will be conducted with Members and Officers to inform the development of the new Protocol;

- Member engagement with training on the Code and its guidance, and on associated Protocols, will be essential, both to ensure a common understanding of their requirements, and to provide assurance to the Improvement Panel and others of the importance placed on good governance by the Council. Ethics Committee is asked to promote this engagement.
- 4.7 Subject to the approval of Ethics Committee, opportunities will be scheduled for all members to be fully briefed on the proposed new Code prior to and following the meeting of Full Council. Training on the Code will also be incorporated into the member induction programme for May 2022.
- 4.8 Preparations will be made so that, once the revised Code of Conduct is adopted, processes for registering interests, gifts and hospitality are adjusted accordingly. Work is also underway by HR to ensure that the Officer Code of Conduct is consistent with the Member Code, where relevant.
- 4.9 It is proposed, in line with the approach recommended by the LGA, that the Ethics Committee review the Code of Conduct annually ongoing. It is however understood that the Government is preparing to respond to recommendations of the Committee on Standards in Public Life relating to sanctions for breaches of Member Codes of Conduct: if legislative changes were to take place the Council may wish to review its Code at an earlier stage.
- 4.10 The Member Code of Conduct is part of a suite of documents which supports high standards of Member conduct. In addition to the review of the Protocol on Staff Councillor Relations, work will also be undertaken as part of revisions to the Constitution, on:
- The Planning Code of Good Practice
 - Protocols for Licensing Hearings
 - Arrangements for investigations into complaints on Councillor conduct
 - The Scheme of Co-option.
- 4.11 Work is also underway to prepare for approval:
- An Access to Information Protocol
 - Guidance on use of social media for inclusion in the Members' Handbook.

5. CONSULTATION

- 5.1 The draft Code has been informed by comments from Ethics Committee, and both the Model Code and guidance have been informed by a national consultation exercise consulted by the Local Government Association

6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

Approved by: Matt Davis, Interim Deputy s151 Officer.

7. LEGAL CONSIDERATIONS

7.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance and Deputy Monitoring Officer that the Localism Act 2011 section 27(1) ('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 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. The Council's current adopted Members' Code of Conduct can be viewed here:

www.croydon.gov.uk/sites/default/files/articles/downloads/Part%20I%20-%20Members%20Code%20of%20Conduct.pdf

7.2 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. The Council's current Arrangements can be viewed here:

www.croydon.gov.uk/sites/default/files/articles/downloads/Arrangements%20under%20the%20Localism%20Act%202011_July%202012.pdf

7.3 The 2011 Act section 29 requires Monitoring Officers to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on the Council's website.

7.4 The 2011 Act section 30 requires members to notify the Monitoring Officer of any Disclosable Pecuniary Interests of them or a spouse or a civil partner they live with, within 28 days of taking up office. In turn, the Monitoring Officer is required to enter any notified Disclosable Pecuniary Interest in the Council's register, as well as any other interest notified to them, whether or not it is pecuniary. 'Disclosable Pecuniary Interests' are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

7.5 There is no obligation by the Council to adopt a particular model of the Code of Conduct. The statutory duty is to adopt a code of conduct which complies with the requirements referred to in paragraph 7.1.

7.6 The proposed recommendations support the statutory requirement placed upon the Council in section 27(1) and 27(2) of the Act to adopt a code of conduct for its Members and ensure that they maintain high standards of conduct.

7.7 Further legal consideration will be provided on the implementation of the recommendations in the report.

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

8. HUMAN RESOURCES IMPACT

- 8.1 There are no direct human resources impacts for Croydon Council employees or staff as a consequence of this report and its recommendations.

Approved by: Gillian Bevan, Head of HR- Resources.

9. EQUALITIES IMPACT

- 9.1 The proposed revised Members' Code of Conduct includes a commitment to promote equalities and not to discriminate unlawfully against any person. The associated guidance gives detailed examples of what might constitute bullying, harassment and discrimination.

Approved by: Gavin Handford, Director of Policy & Partnership

10. ENVIRONMENTAL IMPACT

- 10.1 There is no environmental impact arising from this report.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There is no crime and disorder impact arising from this report.

12. DATA PROTECTION IMPLICATIONS

- 12.1 **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 interest which are, in turn, published on the Council's website, subject to an interest being a 'sensitive interest'. A 'sensitive interest' (as defined in the Localism Act 2011) is an interest which, if disclosed, could lead to the Member, or a person connected with the Member, 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.

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

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 availability 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 adoption of the new Code by Full Council.

Approved by: Asmat Hussain – Interim Executive Director of Resources

13. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 13.1 To ensure that Croydon Council adopts a Member Code of Conduct which reflects national best practice.

CONTACT OFFICER: Heather Wills, Governance Improvement Adviser;
heather.wills@croydon.gov.uk

APPENDICES TO THIS REPORT:

- 1: Revised draft Members' Code of Conduct and associated guidance**

BACKGROUND PAPERS: None

MEMBERS' 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”.

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 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 (Appendix A).

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 from your Monitoring Officer on any matters that may relate to the Code of Conduct.

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. This may include a hearing by a sub-committee of the Ethics Committee which has powers to take action in respect of individual Members in order to promote and maintain high standards of conduct. A list of the possible sanctions which the Hearings Panel may apply appears in the Hearings Panel: Rules of Procedure.

Guidance is given at Appendix C to help explain the reasons for the obligations and how they should be followed.

General Conduct

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.

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 and value equality and diversity and do not discriminate unlawfully against any person.

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.

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.

5. Disrepute

As a councillor:

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

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.

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 authority 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.**

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.

8.5 I comply with the Council's Constitution, all relevant Protocols contained within it and guidance issued from time to time by the Chief Executive, Chief Finance Officer and/or Monitoring Officer.

8.6 I undertake essential Councillor training provided or commissioned by the Council.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests in accordance with detailed provisions set out at Appendix B.

9.2 I make all decisions on merit, without discrimination or bias.

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 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 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.

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 inappropriately to 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 the financial interest or wellbeing of 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 or close associate; or
- c. a financial interest or wellbeing of a body included 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 (referred to in paragraph 8 above) **affects** the 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 an Other Registerable Interest or Non-Registerable 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.

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
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.

Subject	Description
Sponsorship	<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>
Contracts	<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 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; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	<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 is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licenses	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.</p>
Corporate tenancies	<p>Any tenancy where (to the councillor's knowledge)—</p> <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>
Securities	<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>

Subject	Description
	<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 have a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

* '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

<p>You must register as an Other Registerable Interest:</p> <ul style="list-style-type: none"> a) any unpaid directorships b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority c) any body <ul style="list-style-type: none"> (i) exercising functions of a public nature (ii) 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) <p>of which you are a member or in a position of general control or management.</p>
--

Appendix C – MEMBER CODE OF CONDUCT GUIDANCE

Contents

Part 1 – when does the Code apply?	13
• Acting as a private individual	13
• Acting on local authority business	13
• Social media postings	14
• Acting as a representative of my local authority	15
• Co-opted members	16
Part 2 – general obligations	16
1. Respect	16
• Disrespectful behaviour	17
• Freedom of expression	18
• Questions and examples	18
2. Bullying, harassment and discrimination	20
• Bullying	20
○ Questions and examples	21
○ Preventing bullying behaviour from developing	22
• Harassment	22
○ Examples	22
• Bullying, harassment and the law	23
• Discrimination	23
○ Questions and examples	24
3. Impartiality of officers of the council	25
• Questions and examples	27
• Having regard to officer advice	28
4. Confidentiality and access to information	28
• Confidential information	28
• Disclosure in the public interest	29
• Circumstances for treating information as confidential	30
• Questions and examples	31
5. Disrepute	33
• Questions and examples	34
6. Use of position	35
• Questions and examples	35
7. Use of local authority resources and facilities	36
• Recommended code of practice for local authority publicity	37
• Questions and examples	37

8. Complying with the Code of Conduct	39
• Cooperation with a Code of Conduct investigation and/or determination	39
• Duty not to intimidate	40
• Compliance with sanctions	40
• Attendance at essential training	40
Part 3 – Protecting your reputation and the reputation of the council	40
9. Interests	40
• Disclosable Pecuniary Interests	42
○ Questions and examples	43
• Other Registrable Interests	46
○ Questions and examples	46
• Non Registerable Interests	48
○ Questions and examples	49
• Executive decisions	51
• Dispensations	51
• Sensitive interests	52
○ Questions and examples	52
• Participation in meetings	53
• Interests flowchart	56
10. Gifts and hospitality	56
• Questions and examples	56
Bias and predetermination	60
• Predetermination	61
• Questions and examples	62
• Improper involvement of someone with an interest in the outcome	62
• Prior involvement	62
• Commenting before a decision is made	62
• Questions and examples	63

Part 1 - When does the Code apply?

The Code applies when you are carrying out your official duties, for example when you are considering or discussing local authority business, either as a councillor or representing the local authority on an outside body.

There is no formal description of what the role of a councillor is, but aside from formal local authority business it would include promoting and representing the local authority in the local community and acting as a bridge between the community and the local authority. The LGA's **Guidance** for new councillors is a helpful reference point.

The code does not, therefore, apply solely when you are in local authority meetings or on local authority premises. This includes interactions with the public as well as with fellow councillors and local authority officers.

Acting as a private individual

For something to fall within the code there must be a clear link to a local authority function or your role as a councillor. For example, an argument with a neighbour which does not relate to local authority business would not engage the code, even if your neighbour happens to know you are a councillor and therefore complains to the local authority about being treated disrespectfully.

Example

A councillor and an officer had a personal relationship. The councillor sent and encouraged the officer to send inappropriate social media messages, including messages of a sexual nature, during office hours. The panel rejected arguments that the councillor had been acting in an entirely personal capacity. It found that the councillor could not divorce himself from his role as the officer's quasi-employer and that, when sending or encouraging the officer to send the messages during working hours, he was acting in his official capacity.

It is not always immediately apparent in which capacity you are acting, therefore in situations where there may be ambiguity it may be helpful if you can make clear to people in which capacity you are engaging with them.

While the Code does not apply to your non-councillor roles, what you do as a councillor could impact on your position in those other roles.

Political party or group rules may also require you as a councillor to demonstrate certain behaviours as a private individual and failure to do so can result in sanctions from political groups.

Under the Local Government Act 1972 councillors can be disqualified from being a councillor due to matters in their private life, such as being subject to a bankruptcy order or receiving a custodial sentence of three months or longer (whether or not suspended).

In what circumstances might I give the impression to a reasonable member of the public that I was engaged on local authority business?

When you use or attempt to use your position as a councillor to seek to gain an advantage for yourself or someone close to you or to disadvantage someone this is an attempt to misuse your position and therefore falls within the scope of the Code of Conduct.

A number of factors will need to be taken into account to determine whether or not you had used or attempted to use your position as a councillor.

For example:

- writing to someone on local authority headed paper or using a local authority email address may lead someone to assume you were writing in your capacity as a councillor
- handing out a business card where you describe yourself as a councillor may also lead to that assumption
- wearing official local authority regalia.

Examples

Attempting to misuse your position as a councillor would include if you threaten to use your position improperly to block someone's planning, licence or grant application. In effect you would be doing something that only a councillor could do even if as a matter of fact, you did not have the power to do so. That may include an assumption, for example, that you would put inappropriate pressure on officers or fellow councillors or lobby behind the scenes for a particular outcome. It should not be up to a member of the public to have to work out whether you are in fact on a planning committee.

Another example would be disclosing confidential information improperly you had received because of your role as a councillor.

A councillor returning from a party got into an argument with a taxi driver. When he arrived home, he refused to pay the fare and when he spoke to the manager of the taxi company, he said that he was a councillor and would make sure that the taxi driver's licence was withdrawn by the council. While he was entitled to dispute the payment if he was dissatisfied with the service he had received he was found to have breached the code by invoking his office and seeking to misuse his position to intimidate the manager and driver and to seek to gain an advantage for himself, notwithstanding the fact that he did not in reality have the ability to carry out his threat.

Social media postings

Simply describing yourself as a councillor in a social media posting or at the top of your page or in your username or profile, for example, does not of itself mean that every posting you make is covered by the Code. There must be a link within the individual posting or thread to your role as a councillor or to local authority business. However, even if you do not describe yourself as a councillor you may fall within the scope of the code if you are discussing local authority business.

For example, a posting which is simply discussing a recent football match is not covered by the code even if you have described yourself as a councillor. However, if you make a posting threatening a fellow councillor or officer that would fall within the code even if you have not described yourself as a councillor as it relates to local authority business or your role as a councillor.

Each matter would need to be looked at on a case-by-case basis (see guidance on 'disrespect, bullying and harassment in Part 2 for further information).

You should be very careful when describing yourself as a councillor as seeing the word "councillor" may lead to assumptions amongst the community that you are acting as a councillor.

To help avoid some of these issues, some councillors have found it helpful to have separate social media profiles for personal and local authority use, though even the strictest privacy settings are no guarantee that posts or actions will remain private. As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a public meeting.

Examples

Following a heavy snowstorm which meant a local street market could not go ahead a councillor posted on the local community Facebook page that a certain local authority officer should be sacked for failing to put adequate arrangements in place to clear the snow. Even though it was not posted on a local authority page and he did not explicitly describe himself as a councillor in the post he was found to have breached the code by treating an officer with disrespect and seeking to put undue pressure on officers.

A councillor who described himself as such in his Twitter profile made insulting and offensive comments about the Prime Minister which led to complaints being made to his local authority. He was found not to have breached the code as the comments did not directly relate to his role as a councillor or local authority business but were seen as wider political comments.

What does acting as a representative of my local authority mean?

You are acting as a representative of the local authority when you are sitting on an outside body to which you have been appointed by the local authority, for example.

You would also be considered a representative of the local authority where you were attending an external function or conference on behalf of the local authority or as the local authority's nominated delegate.

You would not be considered as a representative of the local authority where you were attending an event in a party-political role, for example at a political party's annual conference. In that situation you would be subject to any relevant party rules.

Matters in party group meetings would also normally not be covered by the code as they are more matters for a party to regulate. However, if you are clearly trying to improperly influence fellow councillors or put undue pressure on them in relation to local authority business for example then relevant provisions of the code would apply. The

same would apply to social media groups you may be a member of, such as a WhatsApp group set up for your local authority group.

What is a co-opted member?

The code also applies to co-opted members under the Localism Act. A co-opted member under the Act is someone who is entitled to vote on any matter to be decided at a local authority committee or sub-committee.

It does not, therefore include co-opted members who do not have voting rights, nor does it cover, for example, an Independent Person appointed under s28 of the Localism Act to support the local authority on standards matters.

However, it would be good practice to ask such co-opted members to agree to abide by the code of conduct and to inform the monitoring officer of any interests they might have. While they would not formally fall within the statutory framework for complaint handling, they can be removed from their role by the local authority should they be found to have committed a serious breach of the code so it is important that they are also aware of the expected standards of behaviour.

Part 2 – General obligations under the Code of Conduct

1. Respect

Showing respect to others is fundamental to a civil society. As an elected or appointed representative of the public it is important to treat others with respect and to act in a respectful way.

The key roles and responsibilities of councillors; representing and serving your communities and taking decisions on their behalf, require councillors to interact and communicate effectively with others. Examples of councillor interaction and communication include talking to constituents, attending local authority meetings, representing the local authority on outside bodies, and participating in community meetings and events. In turn this means that as a councillor you are required to interact with many different people, often from diverse backgrounds and with different or conflicting needs and points of view.

Respect means politeness, courtesy and civility in behaviour, speech, and in the written word. It also relates to all forms of communications councillors undertake, not just in meetings. Rude, offensive, and disrespectful behaviour lowers the public's expectations and confidence in its elected representatives.

Debate and having different views are all part of a healthy democracy. You will engage in robust debate at times and are expected to express, challenge, criticise and disagree with views, ideas, opinions, and policies. You should not, however, subject individuals, groups of people or organisations to personal attack. Doing these things in a respectful way will help you to build and maintain healthy working relationships with fellow councillors, officers, and members of the public, it encourages others to treat you with respect and helps to avoid conflict and stress. Respectful and healthy working relationships and a culture of mutual

respect can encourage positive debate and meaningful communication which in turn can increase the exchange of ideas, understanding and knowledge.

Examples of ways in which you can show respect are by being polite and courteous, listening and paying attention to others, having consideration for other people's feelings, following protocols and rules, showing appreciation and thanks and being kind. In a local government context this can mean using appropriate language in meetings and written communications, allowing others time to speak without interruption during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects.

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 Protocol on Staff Councillor Relations.

Disrespectful behaviour

Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.

Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment of others. It is subjective and difficult to define. However, it is important to remember that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour.

Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, attempts to shame or humiliate others in public, nit-picking and fault-finding, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.

Disrespectful behaviour can be harmful to both you and to others. It can lower the public's expectations and confidence in you and your local authority and councillors and politicians more generally. It influences the willingness of fellow councillors, officers, and the public to speak up or interact with you because they expect the encounter will be unpleasant or uncomfortable. Ongoing disrespectful behaviour can undermine willingness of officers to give frank advice, damage morale at a local authority, and ultimately create a toxic culture and has been associated with instances of governance failure.

Freedom of expression

The requirement to treat others with respect must be balanced with the right to Freedom of expression. Article 10 of the European Convention on Human Rights protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.

However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. Democracy depends on people being free to express, debate and criticise opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting. A balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.

Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly made statements in a political context but it does not protect statements which the publisher knows to be false. Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.

Public servants such as local government officers are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians such as councillors. Officers do not necessarily have the same right of reply to such comments as councillors do and councillors should take care not to abuse or exploit this imbalance.

Recent case law has confirmed that local authority officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to offensive, abusive attacks and unwarranted comments that prevents them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example chief executives or heads of services, will also be expected to have a greater degree of robustness.

Is the Respect provision of the code a gag on councillors?

This provision of the Code (Paragraph 1) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through councillors' arguments and public debate are an essential part of the cut and thrust of political life. Councillors should be able to express their opinions and concerns in forceful terms. Direct language

can sometimes be appropriate to ensure that matters are dealt with properly. The code is not intended to stifle the expressions of passion and frustration that often accompany discussions about local authority business.

Can councillors criticise officers?

Yes. In some cases, officers have been known to reject reasonable criticism appropriately made and describe it as disrespectful or bullying. The Code of Conduct is not intended to constrain councillors' involvement in local governance, including the role of councillors to challenge performance. Councillors can question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that councillors may have disagreements with officers from time to time.

This paragraph of the code does not mean that councillors cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in criticism of the way in which an officer or officers handled particular matters.

It is important that councillors raise issues about poor performance in the correct way and at the appropriate forum in accordance with your local authority's processes and procedures, and not in a public meeting or through a published attack in the media.

All local authorities should have clearly defined policies, procedures, and occasions where such issues can be properly raised. It is only where councillors' conduct is unfair, unreasonable, or demeaning that the code will be relevant. If a councillor's criticism is abusive or offensive it is likely to breach the code.

What kinds of conduct are not covered?

A very clear line must be drawn between the Code of Conduct's requirement of respect for others, including councillors with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.

What if a member of the public is being unnecessarily disrespectful to me?

Councillors are allowed to respond to criticism, and where that criticism is robust, then they can be robust in response. However, councillors should always seek to try to be civil and demonstrate leadership in their communication. Even where councillors have been wrongly accused, responding in an angry, defensive way can often escalate the situation.

Examples

The complaint alleged that the councillor posted on their blog a highly critical comment and an offensive caption about a former councillor, who had passed away and whose funeral had taken place the previous day. The councillor was found to have breached the provisions of his local authority's Code of Conduct relating to councillors treating others with respect; as well as conducting themselves in a manner which could reasonably be regarded as bringing their role or their authority into disrepute.

The complaint alleged that a councillor commented under a pseudonym on a local authority blog referring to possible nepotism in the awarding of a contract to a local firm by the local authority. The standards committee found that the councillor had breached the Code of Conduct in making the posts because he had failed to treat others with respect and, in doing so, he had conducted himself in a manner which brought his role and his local authority into disrepute.

The complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to the complainant, a police officer, and also made a number of unfounded allegations about him during two telephone calls to a police station made in his capacity as a ward councillor. It was found that the comments amounted to an unacceptable personal attack on the complainant and that the councillor had breached the respect provisions in his local authority's Code of Conduct.

2. Bullying, harassment and discrimination

Bullying, harassment, discrimination, and victimisation (either directly or indirectly) are unacceptable and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.

Bullying

Bullying may be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Bullying may be obvious or be hidden or insidious. Such conduct is usually part of a pattern of behaviour which attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

Bullying can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Bullying behaviour may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

Bullying can affect anyone, in any career, at any time, at any level and within any workplace. Such behaviour can take the form of easily noticed, physically threatening or intimidatory conduct with immediate impact, or it can take place behind closed doors, or be much more subtle or camouflaged and difficult to identify, at least at first. It can start, for example, with what appear to be minor instances, such as routine 'nit-picking' or fault-finding, but which become cumulative or develop into more serious behaviour over time, enabling the perpetrator to isolate and control the person.

Some bullies lack insight into their behaviour and are unaware of how others perceive it. Others know exactly what they are doing and will continue to bully if they feel they are unlikely

to be challenged. Bullying can sometimes be overlooked, as a result of common euphemisms being used by way of explanation or justification, referring to someone as having a “poor leadership style” or a “bad attitude,” for example, or to the problem being due to a “personality clash”.

You should always be mindful of the overall potential impact of your behaviour on others. First and foremost, bullying can have a significant impact on the recipient’s well-being and health. Bullying can have an impact on a local authority’s effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave. Bullying can impact on a councillor’s ability to represent their residents effectively. It can also discourage candidates from standing in local elections, making local authorities less representative of their communities, and impacting local democracy.

Like disrespectful behaviour, bullying can be difficult to define. When allegations of bullying are considered it’s likely that the person handling the complaint will consider both the perspective of the alleged victim, and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied.

Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual’s conduct or behaviour, or when the behaviour by both the complainant and councillor contributed equally to the breakdown in relations. However, the cumulative impact of repeated 'minor' incidents should not be underestimated.

Examples of bullying include but are not limited to:

- verbal abuse, such as shouting, swearing, threats, insults, sarcasm, ridiculing or demeaning others, inappropriate nicknames, or humiliating language
- physical or psychological threats or actions towards an individual or their personal property
- practical jokes
- overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures
- inappropriate comments about someone’s performance
- abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations
- ostracising or excluding someone from meetings, communications, work events or socials
- sending, distributing, or posting detrimental material about other people, including images, in any medium
- smear campaigns.

Does this mean that councillors cannot raise concerns about officers or fellow councillors?

Bullying behaviour should be contrasted with the legitimate challenges which a councillor can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to

challenge fellow councillors and officers as to why they hold their views. However, if your criticism is a personal threat or abusive or offensive in nature, you are likely to cross the line of what is acceptable behaviour.

Preventing bullying behaviour from developing

Ideally, a culture of honest and clear communication should be sought, with respect for the individual and for the confidentiality required when managing individual performance-related issues. The bullying of officers might be reduced by establishing a specific protocol, which addresses issues such as councillor-officer work relations and appropriate behaviour.

Local authority officers also need to be mindful that councillors can come from a wide range of backgrounds and may have been part of workplaces where the culture and expected standards are very different from what the clerk or officers expect; as a result, the councillor simply may not be aware of the impact that their communications have had on the clerk or officer. Early discussion about emerging issues is important to help avoid matters escalating and help establish more effective working arrangements for the future.

Harassment

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.

Harassment of any kind whether direct or indirect is in no-one's interest and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.

Like bullying, harassment can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics (see discrimination, below). Harassment may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. It may manifest obviously or be hidden or insidious.

The factors likely to be considered when assessing allegations of harassment are whether the councillor knows or ought to know that their actions constitute harassment, whether a reasonable person would consider the actions to be harassment and the impact of the behaviour/conduct on victim.

Examples of harassment include but are not limited to:

- sending unwelcome emails
- unnecessarily repetitive, intrusive questioning
- unwelcome physical contact such as touching or invading 'personal space'
- haranguing
- intimidation

- inappropriate remarks or questioning such as comments about someone's appearance, lewd comments, and offensive jokes
- overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures
- inappropriate comments about someone's performance
- placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations
- sexual harassment.

Bullying and harassment and the law

In some cases, acts of bullying or harassment can be civil offences, which can be brought to an employment tribunal or a county court.

In some cases, conduct that amounts to bullying and harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of bullying or harassment that may constitute a criminal offence. **Examples** may include, but are not limited to:

- physical assault
- making threats of violence or death threats
- stalking
- hate crimes
- sexual harassment

Example

The complaint alleged that a councillor had behaved in a disrespectful and harassing manner towards two fellow female councillors and officers. It was established that the councillor had made unwarranted and inappropriate physical contact with the councillors and officers at an official event and had also made remarks towards the officers which were patronising and demeaning. The councillor was found to be in breach of the Code of Conduct.

Discrimination

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.

The Equality Act 2010 imposes positive duties on local authorities to promote equality and to eliminate unlawful discrimination and harassment. Under the Act your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under the Act. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct. If you are unsure about the particular nature of the duties of your authority you should seek advice from the monitoring officer.

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

There are four main forms of discrimination:

Direct discrimination: treating people differently because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.

Indirect discrimination: treatment which does not appear to differentiate between people because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation but which disproportionately disadvantages them.

Harassment: engaging in unwanted conduct on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.

Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Examples of discriminatory behaviour include but are not limited to:

- exclusion or victimisation based on the Protected Characteristics
- treating someone less favourably or limiting their opportunities based on any of the Protected Characteristics
- comments, slurs, jokes, statements, questions, or gestures that are derogatory or offensive to an individual's or group's characteristics
- promoting negative stereotypes relating to individual's or group's characteristics
- racial or ethnic slurs, insults, or jokes
- intolerance toward religious customs
- mimicking, mocking, or belittling a person's disability
- homophobic, biphobic or transphobic comments or slurs
- discriminating against pregnant people or mothers
- declaring ('outing') someone's religion or sexuality or threatening to do so against their will
- deliberate, unwarranted application of an authority's practice, policy or rule in a way that may constitute indirect discrimination
- instructing, causing, inducing, or knowingly helping someone to commit an act of unlawful discrimination under the Equality Act 2010.

A councillor's personality and life experiences will naturally incline them to think and act in certain ways. They may form views about others based on those experiences, such as having an affinity with someone because they have a similar approach to life or thinking less of someone because they are from a different generation. This is known as "unconscious bias" and it can lead people to make decisions based on biases or false assumptions. Councillors need to be alert to the potential of unconscious bias and ensure they make decisions based on evidence, and not on assumptions they have made based on biases.

How can councillors cause their authority to be in breach of the Equality Act?

The Code of Conduct is not intended to stifle democratic debate. Councillors should always remember that Article 10 of the European Convention on Human Rights gives a high level of protection to comments that are genuinely made during political debate, even if most people would find them offensive.

Some councillors have particular roles which may give a higher risk for the potential for discrimination; for example, if you are on an appointment panel for a position in the local authority, or you are able to award local grants in your ward and will need to decide which organisations to support.

Merely arguing, or even voting, against a proposal which is aimed at complying with a positive anti-discriminatory duty would not be enough by itself to risk breaking this part of the code. Simply having a party-political or personal position on an issue is unlikely to amount to a breach of this provision because it does not, of itself, involve the local authority doing anything.

Under the Equality Act 2010, an authority is made liable for any discriminatory acts which a councillor commits. This will apply where they say or do something in their official capacity in a discriminatory manner.

Examples

The complaint alleged that a councillor 'liked' several racially discriminatory comments on social media and one comment advocating violence against Travellers. The panel found that 'Liking' of the offensive comments did amount to a failure to treat those who were the subject of such comments with respect and a failure to promote equalities in breach of the Code of Conduct.

A councillor was a member of the local authority's recruitment panel to appoint a new chief executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the councillor said, "good candidate, shame he's black". The panel found that the Code of Conduct had been breached.

3. Impartiality of officers of the council

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.

Both councillors and officers are servants of the public and are indispensable to one another. Together, they bring the critical skills, experience and knowledge required to manage an effective local authority.

At the heart of this relationship, is the importance of mutual respect. Councillor-officer relationships should be conducted in a positive and constructive way. Therefore, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy, should show mutual appreciation of the importance of their respective roles and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

Councillors provide a democratic mandate to the local authority and are responsible to the electorate whom they represent. They set their local authority's policy framework, ensure that services and policies are delivered and scrutinise local authority services.

Councillors of the executive, chairs and vice chairs of committees have additional responsibilities. These responsibilities will result in increased expectations and relationships with officers that are more complex. Such councillors must still respect the impartiality of officers and must not ask them to undertake work of a party-political nature or compromise their position with other councillors or other officers.

Officers provide the professional advice and managerial expertise and information needed for decision making by councillors and to deliver the policy framework agreed by councillors. They are responsible for implementing decisions of councillors and the day-to-day administration of the local authority.

The roles are very different but need to work in a complementary way.

It is important for both sides to respect these differences and ensure that they work in harmony. Getting that relationship right is an important skill. That is why the code requires councillors to respect an officer's impartiality and professional expertise. In turn officers should respect a councillor's democratic mandate as the people accountable to the public for the work of the local authority. It is also important for a local authority to have a councillor-officer protocol which sets out how this relationship works and what both councillors and officers can expect in terms of mutual respect and good working relationships.

Officers may sometimes give you advice that you do not want to hear or does not suit your political views. They must be allowed to do this without fear of recriminations to allow for good decision-making looking at all relevant options.

That means in your dealing with officers you must not seek to influence them improperly or put undue pressure on them. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.

Other than political assistants, officers are required to remain politically neutral and not demonstrate their support for specific parties or candidates.

The fundamentally held principle is that “the local government system of the UK has long resided on a bond of trust between elected members and a permanent corps of local government officer... that relationship of trust stems from the right of council members to expect that they are being assisted in their functions by officers who are politically neutral and whose loyalty is to the council as a whole¹.

Examples

A councillor became involved in a social care case on behalf of a constituent during which time he inappropriately sought to influence operational decision-making and sent discourteous and disrespectful correspondence to the officers. In doing so, he lost sight of his overall responsibility to the local authority to allow its officers to perform their statutory functions. He was found to have breached the Code of Conduct.

A councillor who, over a period of six months, persistently sought to influence the decisions of officers dealing with a complaint by his son and daughter-in-law against their local authority tenant neighbour was found, through his actions, to have compromised the impartiality of the officers and to have used his position improperly to promote the interest of his family and to have brought the role of councillor into disrepute in breach of the Code of Conduct.

What does working on behalf of the authority mean?

Local Authorities deliver services in a range of ways. Often services will have been contracted out to outside bodies. For example, if you are in a highway authority, road repair services may be carried out by outside contractors. Their employees delivering that contract are doing so on behalf of the local authority and you should not use your position to interfere improperly in delivery of that service.

What if I disagree with the views of an officer?

You are perfectly entitled to disagree with officers. They are there to give you impartial professional advice and you do not need to accept their advice without question. When you do question them however, you should treat them with respect and recognise that they are professionals.

If you feel dissatisfied with the advice you are given you should raise through appropriate management channels.

Where you have a declarable interest in a matter you are discussing with an officer you should make that clear to the officer (see guidance on declarations of interest in Part 3). Where it is an interest which would stop you from taking part in a meeting you should not discuss those matters with officers except where you are seeking professional advice in the same way as any member of the public could – for example, assistance with making an application – and the officer should make a note that an interest has

¹ Ahmed v United Kingdom (2000) 29 EHRR 1

been declared. If you need to speak to an officer about the matter, you should arrange a meeting as a member of the public and not seek to use your position to gain preferential or quicker access.

Having regard to Officer advice

Councillors take decisions every day that affect the lives of those who live and work within your community. It is therefore important that those decisions are made having regard to all available evidence and weighing up all sides of the argument.

Decisions can be challenged if they are unreasonable, and the local authority could find itself facing an expensive legal bill if it takes a decision which is unlawful. When considering any decision, you must have regard to any professional advice you have been offered, for example from planning or licensing officers. Both the monitoring officer and the chief finance officer have a statutory duty to report formally to the local authority where they believe a local authority action or expenditure is, or may be, unlawful. Similarly, when it comes to elections, you will need to have regard to any advice given to you by the returning officer who may well be a senior officer but in that capacity is entirely independent of and separate from the local authority and is required to be politically neutral.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by your local authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected. Where councillors disagree with officer recommendations in making a decision, councillors will need to take particular care in giving clear reasons for the decision.

If you seek advice as an individual councillor, or advice is offered to you, for example, on whether or not you should register or declare an interest, you must have regard to this advice before you make your mind up. Failure to do so may lead to a breach of the Code of Conduct. If in any doubt – be safe and always seek advice from your monitoring officer before taking any action.

4. Confidentiality and access to information

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.

Confidential information

While local authority business is by law generally open and local authorities should always operate as transparently as possible, there will be times – for example, when discussing a named individual, confidential HR matters or commercially sensitive information – when it is appropriate for local authority business to be kept confidential or treated as exempt information.

In those circumstances, you must not disclose confidential information, or information which you believe to be of a confidential nature, unless:

- you have the consent of the person authorised to give it
- you are required by law to do so
- the disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person
- the disclosure is in the public interest.

Disclosure in the public interest

Disclosure 'in the public interest' is only justified in limited circumstances, when all the following four requirements are met:

1. The disclosure must be reasonable: this requires you to consider matters such as:
 - Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
 - Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
 - The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
 - The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
 - The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
 - The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to reoccur.
 - Whether the disclosure involves your authority failing in a duty of confidence owed to another person.
2. The disclosure must be in the public interest: this needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:
 - a criminal offence is committed.
 - your local authority or some other person fails to comply with any legal obligation to which they are subject.
 - a miscarriage of justice occurs.

- the health or safety of any individual is in danger.
 - the environment is likely to be damaged.
 - that information tending to show any matter falling within the above is deliberately concealed.
3. The disclosure must be made in good faith: the requirement will not be met if you act with an ulterior motive, for example, to achieve a party-political advantage or to settle a score with a political opponent.
 4. You must comply with the reasonable requirements of your local authority: this means that before making the disclosure you must comply with the council's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors, which may justify its disclosure despite these potential consequences. If in doubt you should always seek advice from the monitoring officer. Always keep a note of the reason for your decision.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Circumstances in which a local authority can treat information as confidential

The presumption under local government law is that local authority business is open unless it falls within a specific category of confidential or exempt information as set out in legislation. These categories are:

1. information given to the local authority by a Government Department on terms which forbid its public disclosure or
2. information the disclosure of which to the public is prohibited by or under another Act or by Court Order.

Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

Exempt information means information falling within the following categories (subject to any condition):

1. relating to any individual.
2. which is likely to reveal the identity of an individual.
3. relating to the financial or business affairs of any particular person (including the authority holding that information).

4. relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.
5. in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. which reveals that the authority proposes:
 - 6.1. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - 6.2. to make an order or direction under any enactment
7. relating to any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.

Where information is legally classified as 'confidential' under the above categories the public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

Where an officer recommends that a report to a decision-making committee should be treated as exempt information under the above categories the committee must still agree that the matter should be heard in a closed session. The committee may disagree with any recommendation and decide that those legal tests have not been met; or they may agree that those tests have been met but nevertheless it is in the public interest that the matter be considered in an open session. Again, you should keep a record of the rationale for the decision.

Once the local authority has agreed that the matter be treated as exempt, public access to relevant reports, background papers and minutes will also be excluded and an individual councillor must abide by that collective decision or risk breaching the code if they disclose that information (papers and content of discussion) without lawful excuse.

Does confidentiality under the code apply only to information which is classified as confidential or exempt by law?

No. The code goes wider than matters simply considered in a formal local authority setting. Information is a broad term. It includes facts, advice, and opinions. It covers written material, including tapes, videos, CDs, DVDs, and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all the following apply:-

- it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
- it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
- disclosure of it would be detrimental to the party wishing to keep it confidential.

For example, you may be told confidential information by a constituent in the course of your duties. That is why the code is written broadly to cover information classed as confidential which you may come across in your duties. You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential.

You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential.

Examples

A councillor was assisting a resident in an adoption process, which the resident decided to subsequently withdraw from. The resident's estranged parent contacted the councillor for information as to what was happening with the case and the councillor inadvertently shared confidential information as she had not realised that father and son were estranged. This was found to be a breach of the code.

A councillor circulated information about an officer's medical condition to other councillors and a local headteacher with whom he was acquainted. He was found to have disclosed information which should reasonably be regarded as being of a confidential nature and without the officer's consent in breach of the Code of Conduct.

What does consent by the person authorised to give it mean?

If somebody, for example a constituent, has told you something in confidence – for example in the line of casework – you may later want to put that in the public domain as part of pursuing that case. You should always check with the individual before you disclose something you believe is confidential to ensure that they are comfortable with that information being disclosed. You should also be clear with them as to how you may use the information, they give you to help resolve their issue.

In what circumstances am I required to disclose confidential information by law?

This would be where a law enforcement or regulatory agency or the courts required disclosure of information.

In what way could I use information I have obtained to advance myself or others?

As a councillor you will often receive commercially sensitive or other confidential information. You must not use that information to your own advantage. For example, if you know the local authority is considering the purchase of a piece of land, you should not use that information in your private dealings to seek to purchase the land.

How does this relate to the Data Protection Act?

As part of their role councillors will receive personal information. They should seek to ensure they are familiar with how the Data Protection Act applies to their role in

handling such information through training, and if they are not sure to seek advice from an appropriate officer in the council.

Although councillors are not required to register as a data controller, they will receive personal information from residents in their area. They should only use it for the purpose for which it has been given and must ensure this information is held securely and only share with others that are entitled to it.

In contrast, the local authority is responsible for information they provide to councillors and ensuring they know how it can be used.

Can I use local authority information for matters outside the local authority?

A councillor is entitled to access information held by the local authority for the performance of their duties as a councillor. If a councillor wishes to use local authority information for any purpose other than in connection with their duties as a councillor, and that information is not in a publicly available document, however, then that councillor should submit a freedom of information request so that it can be given to them to use freely.

The general rule is that any information held by the local authority and given directly to a councillor may only ever be used for the purpose for which it was provided. That purpose may add particular restrictions, for example where it relates to an individual constituent or sensitive matter. The purpose should not be for anything other than use in connection with the proper performance of the councillor's duties as a councillor. The exceptions to this are where the information has already been published, it has been given as a result of a request under Freedom of Information or Environmental Information Regulations or it is in the public interest ('whistleblowing') for which provisions are made in the Code of Conduct as explained above.

5. 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 you 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.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

1. reducing the public's confidence in them being able to fulfil their role; or
2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.

Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute.

For example, circulating highly inappropriate, vexatious or malicious e-mails to constituents, making demonstrably dishonest posts about your authority on social media or using abusive and threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your authority in a public arena might well be regarded as bringing your local authority into disrepute.

What distinguishes disrepute to “your role or local authority” from disrepute to you as a person?

The misconduct will need to be sufficient to damage the reputation of the councillor’s role or local authority, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of conduct may damage the reputation of an individual but will rarely be capable of damaging the reputation of the role of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the role of councillor or to the authority in particular cases:

1. Situations where councillors have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their role. For example, councillors using their position to secure a secret personal profit.
2. Similarly, situations where a councillor defies important and well-established rules of the authority for private gain.
3. Where a councillor engages in conduct which directly and significantly undermines the authority’s reputation as a good employer or responsible service provider.

Examples

A councillor posted a tweet reading “Cllr Blogs why don’t you just throw in the towel, just go before you cause any more damage to the reputation of the council. You and some members of your cabinet have failed. I hope that the SFO is brought in to investigate your conduct. #failedleadership.” The complainant stated that she found the tweet ‘very offensive’ and bullying and also considered that the tweet would reasonably bring the councillor’s office and the authority into disrepute. The councillor was found to have brought his authority into disrepute by reducing public confidence in the council.

A councillor brought his role and authority into disrepute by taking advantage of a local authority mistake and failing to prevent local authority-employed contractors from working on his privately-owned home. The local authority mistakenly sent decorators to the home, an ex-local authority property. The councillor only told the local authority

about the mistake after the work had been completed and then said he could not be charged for the work.

The chair of a local authority made a deeply inappropriate remark at a local authority meeting that was reported in the local media and was accused of bringing his role and authority into disrepute. It was clear in both the meeting and the local media reporting that other councillors expressed concerns about his comments and found them inappropriate. It was found that he had not brought his authority into disrepute but that he had brought his role into disrepute.

6. Use of position

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.

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a councillor.

Involving yourself in a decision in which you have an interest, to seek to benefit yourself or another would be a breach of this paragraph of the code. For guidance on how to conduct yourself when you have an interest and how to balance your rights as an individual and your responsibilities as a public decision maker see the chapter on registration of interests.

Councillors who own land, or whose relatives or close associates own land, need to be particularly cautious where planning matters are concerned. This applies equally to parish councillors when your local authority is consulted on planning matters. Similarly, while it is reasonable to expect councillors to help constituents apply to the local authority, for example, for housing, it is quite improper to seek to influence the decision to be taken by the officers and would also be in breach of paragraph 3 of the code.

What kinds of attempts to advantage or disadvantage would be improper?

There are circumstances where it will be proper for a councillor to seek to confer an advantage or disadvantage and other circumstances where it will not.

Being a councillor can involve making hard choices and balancing a range of interests. Most decisions will inevitably benefit some people and will be to the detriment of others. It's important when you make those decisions to make them in what you think is the public interest and not be influenced by private interests.

For example, there can be no objection to councillors voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that councillors' attempts to secure this advantage are clearly part and parcel of their duties as a local representative. Therefore, these activities are not improper.

The term 'improperly' is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that councillors are elected or appointed to public office to serve the public interest.

A councillor's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a councillor's public position to promote private interests over the public interest will be improper.

What if the attempt to confer an advantage or disadvantage fails?

The wording of the Code of Conduct makes it clear that the use of position provision (paragraph 6) covers failed attempts as well as situations where an advantage or disadvantage has actually been achieved.

For example, if you have tried to influence fellow councillors to vote in a particular way which would be to your personal advantage and/or that of your family/close associates you would have breached this provision of the code even if they did not in fact vote that way.

Examples

Most alleged improper uses of position are in connection with matters in which the councillors have interests.

A councillor who was a 'joint coordinator' of a community group did not notify the local authority of her position in this group. She took part in the considerations and voted on the decision to negotiate a new lease in respect of a workshop used by this community group. An ethics committee found that she had used her position improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the council.

A council leader failed to declare a conflict of interest relating to land he owned. The court found that he used his position as a councillor and instructed a planning officer to alter the road route to benefit his own land's value to a considerable extent. He was found guilty of misconduct in public life for trying to influence the route of a new bypass to enclose his land in a new development belt, which would have significantly increased its value. He received an 18-month custodial sentence.

A councillor was found to have improperly used his position and secured an advantage for a member of the public by asking an officer to make a payment which had not been approved by the council in breach of the Code of Conduct. The payment was for repairs to a private road used by the councillor to get to his allotment.

7. Use of local authority resources and facilities

You may be provided with resources and facilities by the council 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 council's own policies regarding their use.

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act 1986.

The recommended code of practice for local authority publicity

The code of practice² published by Ministry of Housing, Communities & Local Government provides guidance on the content, style, distribution, and cost of local authority publicity.

You must be familiar with the rules applying to the use of resources made available to you by your local authority. Failure to comply with the local authority's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use your local authority's resources, you must take care to ensure that this is allowed by the local authority's rules.

You should never use local authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

However, your authority may authorise you to use its resources and facilities for legitimate political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct. Where you are part of a formally-recognised political group, your local authority is also allowed to give you such resources as you need for local authority business, for example use of a room for group meetings.

You should never use local authority resources purely for private purposes, for example using a photocopier to print off flyers for your business unless your local authority's procedures allow for you to repay any costs accrued.

What are the "resources of the local authority"?

² www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity

The resources of the local authority include services and facilities as well as the financial resources of the authority. Resources could include any land or premises, equipment, computers, and materials. The time, skills, and assistance of anybody employed by the authority, or working on its behalf, are also resources, as is information held by the authority which it has not published.

What constitutes using resources “improperly for political purposes”?

The code acknowledges that party politics has a proper role to play, both in the conduct of authority business and in the way that councillors carry out their duties. There will be times when it is acceptable for political groups to use the resources of the local authority, for example, to hold meetings in authority premises. Often it is impractical to separate a councillor’s political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents.

However, councillors and monitoring officers will need to exercise considerable care to ensure that this provision is not abused. You must ensure that there is a sufficient connection between the use of resources and the business of the authority. Only improper use of resources will be a breach of the Code of Conduct.

This part of the code complements Section 2 of the Local Government Act 1986, which prevents the publication of material "designed to affect public support for a political party". The code, however, goes further than the Code of Recommended Practice on Publicity. It covers not only the publication of campaigning material but also any other activity that is intended to promote purely party-political interests.

You must have regard to any applicable local authority code of publicity made under the powers contained in Section 4 of the Local Government Act 1986. Publicity is defined as “any communication, in whatever form, addressed to the public at large or to a section of the public”. It will cover meetings, websites, and social media postings as well as printed and other written material.

You should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using the local authority’s resources in these circumstances, you should not appear to be seeking to influence public opinion in favour of you, your party colleagues, or your party.

Examples

The complaint alleged a councillor used his computer equipment provided by the council for private purposes by downloading inappropriate pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. He was found to have misused the council’s equipment in breach of the code and to have brought his office into disrepute.

A councillor used local authority notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking

penalties dishonestly. He was also found by the council to have breached this paragraph of the code.

8. Complying with 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.

Undertaking Code of Conduct training

Councillors should be competent for the work they undertake, and this includes the way in which you conduct yourself when carrying out your role as a councillor. Training helps to develop such competence, ensuring that you understand the Code of Conduct and how it applies to you.

As a councillor you are responsible for your own actions and will be held personally responsible if you breach your local authority's Code of Conduct. Therefore, it is essential that, where you are offered the opportunity by your local authority, you equip yourself with sufficient knowledge of the code to ensure that you comply with it at all times.

Cooperation with any Code of Conduct investigation and/ or determination

The Code of Conduct is a cornerstone of good governance. It is important for public trust that it is seen to be taken seriously by individual councillors as well as the local authority as a whole.

While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code.

It is equally important if you have made a complaint which the local authority has decided merits investigation that you continue to cooperate. Complaints made simply to damage the reputation of an individual through inferences but which you are not willing to support through your cooperation will damage relationships and will also damage the reputation of you and your local authority.

If you are asked to assist the investigator as a potential witness it is again important that you do so to allow as fully rounded a picture as possible to be drawn so that any determination on a case has as much evidence as necessary in order to reach the correct decision. You should let the investigator know if you need any reasonable adjustments made.

Duty not to intimidate

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course. If you seek to intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

Once there is the possibility of a complaint that the Code of Conduct has been broken, councillors need to be alert to how their behaviour towards potential witnesses or officers involved in handling of their case may be viewed. However innocently the contact is intended or may appear, great care should be taken when councillors deal with people involved with their case.

You should refer to the council's procedures for dealing with alleged breaches of the Code of Conduct.

Compliance with sanctions

Fair, consistent, and proportionate sanctions help to ensure the integrity of the standards framework and thus maintain public trust and confidence in councillors, your role, and your authorities. It is important that councillors and local authorities take standards of conduct seriously and the use of sanctions helps to demonstrate this. Failure to comply with sanctions can bring the standards framework into disrepute.

Attendance at essential training

Councillors are required to attend training which is deemed essential for their role by the Members' Learning and Development Panel.

Part 3 – Protecting your reputation and the reputation of the council

The code requires you to register matters under two separate categories:

1. Certain types of interests; and
2. Gifts and hospitality you receive in your role as a councillor.

9. Interests

At heart there is a simple principle – as public decision-makers, decisions must be made in the public interest and not to serve private interests. However, the rules to set out whether you have an interest or not in any given situation can be complex given the infinite variety of issues that may arise. This guidance is to help you steer a way through those rules.

The Code requires members to declare interests in certain circumstances. Disclosure, in the register and at meetings, is about letting members of the public and interested parties know where you are coming from when involved in decision making and is to enable you to be 'up front' about who you are and what your conflicts of interest might be. Conflicts of interest in decision making as a councillor, and what in public law is known as 'apparent bias', are an established part of the local government legal landscape. The Nolan Principles and the Model Code require councillors to act impartially (i.e. not be biased) when carrying out their duties.

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

The object of this part of the Code is therefore twofold:

- to provide an explanation and a guide to the public and councillors as to what is or isn't a conflict of interest and then how a conflict between the interest you may hold as an individual councillor and the public interest you must hold as a decision maker of a public authority can be best managed.
- it provides a means to hold an individual councillor to account for their actions when they fail to manage that conflict of interest properly and put the decision of the public authority, including the public purse, and decisions around individuals' daily lives, at risk.

The test at law for apparent bias is '**would a fair-minded and informed observer, having considered the facts, conclude that there was a real possibility of bias**'. This is why you will see this question when you are asked to consider whether or not you should participate in a meeting where you have a conflict of interest.

Section 29 of the Localism Act 2011 requires the monitoring officer to establish, maintain and publish a register of interests of members of the local 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.

The code contains three different categories of interests –

- **Disclosable Pecuniary Interests (DPI);**
- **Other Registerable Interests (ORI); and**

- **Non-Registerable Interests (NRI).**

For the first two categories these are interests which must be recorded on a public register except in limited circumstances. The third category (NRI) do not need to be recorded on the register but will need to be declared as and when they arise.

This means an interest may arise not just from interests already on your register. There will also be times when, although the interest does not personally involve you, it may involve a relative or close associate. You are not expected to register every interest of those people, but you will need to declare them as and when they might arise.

As a brief summary, the requirements of the code apply where:

- 1. you or someone you are associated with has an interest in any business of your authority, and;**
- 2. where you are aware or ought reasonably to be aware of the existence of that interest, and**
- 3. you attend a meeting of your authority at which the business is considered (or where you are making a delegated decision as an individual under executive arrangements).**

You must disclose to that meeting the existence and nature of your interests at the start of the meeting, or when the interest becomes apparent. It is usual to have for any declarations of interest at the start of the meeting but it is good practice also to ask again at the start of any agenda item. For example, members of the public may only be present for a specific item so will not have heard the declaration at the start, and a member may only become aware of the interest part-way through the meeting or item in any case.

And there will be times that because your interest is so close to the matter under discussion you will not be able to take part in that item of business. Those circumstances are explained in greater detail for each category of interest below.

Disclosable Pecuniary Interests

Disclosable Pecuniary Interests (or 'DPIs') were introduced by s30 of the Localism Act 2011. They are a category of interests which relate to the member and/or their partner, such as financial interests of you or your partner such as your house or other property, or if you have a job or own a business. The categories are set out in regulations made under the Act and are in Table 1.

They must be registered and, where they come up in a meeting, declared. It is a criminal offence under the Localism Act 2011 to:

- fail to notify the monitoring officer of any disclosable pecuniary interest within 28 days of election or co-option
- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- fail to notify the monitoring officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting

- participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- knowingly or recklessly providing information that is false or misleading in notifying the monitoring officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to five years.

The Localism Act says that if you are present at a meeting of the Council, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest **in any matter to be considered or being considered at the meeting:**

- you may not participate in any discussion of the matter at the meeting
- you may not participate in any vote taken on the matter at the meeting
- if the interest is not registered, you must disclose the interest to the meeting
- if the interest is not registered and is not the subject of a pending notification, you must notify the monitoring officer of the interest within 28 days.

The Act says you need to declare the nature of the interest only if it is not on the public register. In addition, your authority's rules might require you to leave the room where the meeting is held while any discussion or voting takes place.

The Code of Conduct states that it is important to declare the nature of the interest and to withdraw while the item is being dealt with. This aids transparency for the public and helps avoid accusations that you may be seeking to influence the outcome by remaining in the room even if your local authority's rules don't explicitly require it.

If you have a **DPI**, you may in certain circumstances be granted a dispensation to take part.

When does a Disclosable Pecuniary Interest arise?

The Explanatory Notes to the Localism Act say that section 31 of the Act "requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered **relates to** their interest. ... It prohibits a member from participating in discussion or voting on any matter **relating to** their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations)."

This means you have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed **directly relates** to your registered interest or that of your partner, rather than simply affecting it.

For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does **not directly relate** to your registered interest. You may however have a non-registerable interest (see below) as the application may indirectly affect your property.

Does setting the Council Tax give rise to a DPI?

You do not have a DPI simply if you are voting to set the Council Tax. The Council Tax and precept are charges on all relevant properties in the area and do not directly relate to any single property in such a way as to give rise to a DPI. Members are therefore fully entitled to vote on the matter (subject to rules about Council tax arrears).

How much detail do I need to put about my employment?

It is not enough simply to put, for example, 'management consultant' or 'teacher'. Sufficient detail should be given to identify your company or employer. This aids transparency and allows people to see where potential conflicts of interest may arise.

Where you have a sensitive employment, which should not be disclosed you should discuss this with the monitoring officer (see 'sensitive interests' below). While the law on sensitive interests only applies to where there is a fear of intimidation there may be employment, such as certain sections of the military, which cannot be disclosed for other reasons so you should always seek advice if in doubt.

What is a contract with the local authority?

Some councillors' own businesses which may have dealings with the council. For example, a grounds maintenance company may contract with a council for grass cutting. Such contracts should be included on the register of interests.

More broadly, councillors, as residents, may have dealings with the local authority in their personal lives. For example, some councillors pay their own local authority to have garden waste collections, rent an allotment or may be a member of the gym of a local authority operated leisure centre. Such arrangements form a subscription service that are open to all residents, and do not require registration.

How much detail is required of landholdings?

Sufficient detail should be given to identify the land in question.

An address and, where the address is not sufficient, details that are sufficient to identify the land will usually meet the requirement. A plan identifying the land may be useful in some situations but is not a requirement.

Do you have to register the landholdings of your employers or bodies you have shareholdings in?

In general, there is no requirement to list the landholdings of companies or corporate bodies included in the register. The only requirement is to register any tenancy between

such bodies and the authority (under the corporate tenancies). Obviously, you can only be expected to register those you ought reasonably to be aware of, so, for example, if you work for a large housebuilder you may not be aware of which land in the local authority's area they had options on.

You do need to be mindful of your level of control in the company and the effect this may have on your benefit from the land. For example, if you and your spouse jointly owned a farming business, you would be the sole beneficiaries of any land owned by that farm and as such it is strongly advised to register land held by companies in which you have a controlling interest.

What about my home and tenancies?

The most common beneficial interest in land councillors have is their home address. You should include in here your home if you live in it; whether that be as a result of a mortgage, tenancy, or other arrangement (for example, a councillor is living with their parents but not paying a rental fee to them).

You should also include in the section for beneficial interests in land any tenancy properties you own in the local authority's area.

How much information do you have to give out about shareholdings?

In general, if you hold more than £25,000 of equity in a company, or more than 1 per cent of a shareholding, you are required to declare this.

Many councillors hold investments through trust funds, investment funds or pension funds which are managed by fund managers. In that situation, you may not know if you actually hold more than £25,000 in a single company or more than 1 per cent. The expectation is that you should take reasonable steps to ensure you do understand what investments you may have and whether the requirement to register applies, and so:

1. It can be helpful for councillors to state on their form that they have funds invested in specific funds.
2. It can be helpful for councillors to make fund managers aware of their requirement to declare where they hold significant investments within a company that operates in the local authority's area so that they can be notified if this is the case.

Do I have to separate my spouse/ partner's interests and my own interests?

The law only requires you to register the interests, and you are not required specifically to state whether the interest is held by you, or by your spouse. However, many local authorities do ask for this information as it can be more transparent to separate it.

How much information do I need to obtain from my spouse/ partner?

You need to make sure you take all reasonable steps to obtain information from your spouse or partner about their interests. For example, you would reasonably be expected

to know where they worked, or if they owned any rental properties. You would be expected to ask if they had any shareholdings in companies, but they may not know the full details of an investment fund they had and where it was invested, and if that were the case, you would not be expected to know (and register) it either.

Other registerable interests (ORIs)

If you have an 'Other Registerable Interest' – that is an interest which falls within the categories in Table 2 - the Code says you should not participate in the relevant business in two circumstances:

1. when a matter directly relates to the finances or wellbeing of that interest; or
2. when a matter affects the finances or wellbeing of that interest to a greater extent than it affects the majority of inhabitants; and a reasonable member of the public would thereby believe that your view of the public interest would be affected.

With Other Registerable Interests, you are only obliged to register your own interests and do not need to include interests of spouses or partners. Therefore, a spousal interest in a local group is not registerable as an 'other registerable interest'. Failure to register these interests is **not** covered by the criminal offence but would be a breach of the code.

What does 'directly relates mean?

An interest 'directly relates' to an outside body where the local authority is taking a decision which directly relates to the funding or wellbeing of that organisation.

For example, if you are a member of a group which has applied for funding from the council, or if you are a member of an organisation which has submitted a planning application, the decision directly relates to that organisation.

In such a case you must not take part in any discussion or vote on the matter. You can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. For example, you may want to put forward the organisation's case as to why it has applied for funding, but representatives from competing organisations would also need to be able to make their case.

If the public are not allowed to address the meeting on that item, you would need, if necessary, to get another councillor who did not have an ORI to make any relevant case.

If the council is simply discussing that outside organisation but not making a decision which relates to its finances or wellbeing – for example discussing the annual report from the organisation – that does not directly relate to the organisation as there is no direct impact on the organisation which would give rise to a conflict of interest.

If you are on the committee of the local community hall and an application for a licence for another venue in the area is made which may take trade away from the community hall then the matter would affect the community hall and a reasonable person would believe that would affect your view of the public interest so those two tests are met.

You would not have an interest if the council was discussing early planning for an event, which may or may not be held in the community hall as there would be no direct financial impact at that time. When the plans crystallised then an interest would arise as a decision would be made which would have financial implications.

There will also be circumstances where you do not need to declare an interest even though the matter may be relevant to the wider aims of an organisation of which you are a member. For example, if you are a member of a charity such as the Royal Society for the Protection of Birds (RSPB), you do not need to declare an interest every time the council might discuss matters relating to habitats or conservation issues. Those issues may reflect the wider aims of RSPB, but they do not directly relate to or affect the organisation and your mere membership of the organisation has no bearing on the matter.

If you were in a position of control or general management in that body and the organisation was campaigning actively on the specific issue being discussed or you personally were campaigning actively on that specific issue the situation would be different. In those circumstances you may have an interest and there is a risk of predetermination. Where there is doubt you should always seek advice from the monitoring officer.

As with DPs you can be granted a dispensation (see below) and if the interest has not been registered or notified to the monitoring officer you should do so within 28 days of the meeting.

What is a ‘body exercising functions of a public nature’?

Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition –

- does that body carry out a public service?
- is the body taking the place of local or central government in carrying out the function?
- is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- is the function exercised under legislation or according to some statutory power?
- can the body be judicially reviewed?

Unless you answer “yes” to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature.

Examples of bodies included in this definition: government agencies, other councils, public health bodies, council-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of a council, school governing bodies.

Do local campaigning or Facebook groups need to be registered?

Membership (which does not include simply being on a mailing list), of local campaign or Facebook groups will only need to be registered if they are bodies:

- exercising functions of a public nature;

- directed towards charitable purposes; or
- one whose principal purpose includes influencing public opinion or policy.

Generally, it is unlikely that these groups will be regarded as formal bodies to be registered. However, each case should be considered on its own merits. 'A Body' is defined as 'a number of persons united or organised'. Some groups are very united on their cause and organised, but their purpose must fall under one of the functions listed above.

There must also be some formality to the membership, such as registration for example. Simply attending a meeting of a local campaign does not of itself make you a 'member' of that organisation.

There has been a growth in organisations which are more nebulous in nature, and no formal membership requirements exist, such as Extinction Rebellion. It can be helpful to ask yourself the question "do I consider I am a member of the organisation" and if the answer is yes, then register the membership for transparency purposes.

If you need further information or specific advice, speak to the monitoring officer.

What about membership of a political party or trade union?

The second category of other registerable interests refers to membership of a body or being in a position of general control and management of a body, one of whose principal purposes includes the influence of public opinion or policy. This includes any political party or trade union. Memberships of political parties and Trade Unions therefore need to be registered. Remember that if because of membership of a political party or a trade union any payment or financial benefit is received, it is likely to come under the Sponsorship category of DPI.

Non-registerable interests

A Non-registerable Interest arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).

As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances:

- a) when a matter directly relates to that interest; or
- b) when a matter affects that interest to a greater extent than it affects the majority of inhabitants and a reasonable member of the public would thereby believe that your view of the public interest would be affected.

For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.

For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner's home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.

Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest.

In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents.

As with DPIs you can be granted a dispensation (see below).

What is the difference between 'relates to' and 'affects'?

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

What does 'affecting well-being' mean?

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your wellbeing on a temporary basis. Closure of a local amenity may have a more permanent impact on your wellbeing if you use it more than the majority of people in the area.

What are the definitions of relative or close associate?

The Code does not attempt to define "relative" or "close associate", as all families vary. Some people may have very close extended families, but others will have more distant relations.

You should consider the nature of your relationship with the person (eg whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor. It would be a person with whom

you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently.

What if I am unaware of the interest?

You can only declare an interest in a matter if you are aware of the interest. For example, a company of which your father-in-law is a director may have made an application to the local authority. You may not be aware that he is a director, and you are not expected to have to ask about the business affairs of your relatives or acquaintances simply because you are a councillor. However, you would need to declare an interest as soon as you became aware.

A reasonable member of the public would expect you to know of certain interests of course, so it is, for example, reasonable that you would be expected to know your daughter's address or job but not necessarily any shareholdings she might have. While it is therefore your decision as to whether or not to declare an interest, you should always consider how it might seem to a reasonable person and if in doubt always seek advice from the monitoring officer.

Do I always have to withdraw if I have an 'other registerable interest' or a non-registerable interest to declare?

Where you have declared a DPI the Localism Act says you must always withdraw from participation unless you have a dispensation.

If the matter is an 'other registerable interest' or a non-registerable interest you must always withdraw from participation where the matter directly relates to that interest unless you have a dispensation.

If it is something which affects the financial interest or wellbeing of that interest you are asked to declare it and the Code then asks you to apply a two-part test before considering whether to participate in any discussion and/or vote:

1. Does the matter affect the interest more than it affects the majority of people in the area to which the business relates?

For example, if a major development affects the settlement where your sister lives and your sister would be no more affected than anybody else – for example, she lives at the other end of the settlement rather than next door to the development, the answer would be no. If the answer is yes, you then ask:

2. Would a reasonable member of the public knowing all the facts believe that it would affect your judgment of the wider public interest?

If the answer is yes to question 2 then you must not take part in the meeting.

Examples

You help to run a food bank and are considering a motion to investigate the causes of poverty. A reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are over 65 and are taking part in a discussion about provisions for older people. You would be more affected than the majority, but a reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are discussing closure of the council-run home where your elderly parent lives. A reasonable member of the public would think that fact would affect your view of the wider public interest because of the direct effect on your parent.

What does ‘withdraw from the meeting’ mean?

When you withdraw from the meeting that means you must not be present in the room during the discussion or vote on the matter. If the public are allowed to speak at the meeting then you would be granted the same speaking rights as the public and would need to comply with the same rules – for example, giving notice in advance or abiding by time limits. However, unlike the public you would then withdraw once you had spoken.

This would be true at a committee meeting, for example, even if you are not a member of the committee but are simply attending as a member of the public. By staying in the room, even though you are not permitted to speak or vote, it is a long-held doctrine of case law that a councillor may still influence the decision or might gather information which would help in the furtherance of his or her interest. It is therefore in the public interest that a councillor, after having made any representations, should withdraw from the room, and explain why they are withdrawing.

These rules would apply to virtual meetings as they would to physical meetings. For example, after having spoken you should turn off your microphone and camera and may be moved to a ‘virtual waiting room’ while the item is discussed.

Executive decisions

Where you are a Cabinet member you should follow the same rules as above when considering a matter collectively – that is you should not take part in the decision where you have an interest applying the same rules as apply to other meetings above.

Where you have delegated decision-making power, you should not exercise that delegation in relation to matters where you have a disclosable pecuniary interest or another type of interest which would debar you from taking part in a meeting. Instead you should ask the executive to take the decision collectively without your participation.

Where you have been delegated non-executive powers under s.236 of the Local Government and Public Housing Act 2007 you should similarly follow this approach and your local authority may need to make that clear in its code if it is using that power.

Dispensations

Wherever you have an interest the code allows you to apply for a dispensation.

A dispensation must be applied for in writing to the monitoring officer in good time before the relevant meeting and will be considered according to the council's scheme of delegation for considering a dispensation. The circumstances whereby a dispensation may be granted are where –

1. It is considered that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
2. It is considered that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
3. That the authority considers that the dispensation is in the interests of persons living in the authority's area.
4. That the authority considers that it is otherwise appropriate to grant a dispensation.

Sensitive interests

There are circumstances set out in the Localism Act where you do not need to put an interest on the public register or declare the nature of an interest at a meeting although you would have to declare in general terms that you have an interest. These are so-called 'sensitive interests'.

An interest will be a sensitive interest if the two following conditions apply:

- (a) That you have an interest (whether or not a DPI); and
- (b) the nature of the interest is such that you and the monitoring officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.

Where it is decided that an interest is a "sensitive interest" you must inform the monitoring officer of the interest so that a record is kept but it will be excluded from published versions of the register. The monitoring officer may state on the register that the member has an interest the details of which are excluded under that particular section.

Where the sensitive interest crops up in a meeting the usual rules relating to declaration will apply except that you will only be required to disclose that you hold an interest in the matter under discussion but do not have to say what that interest is.

Examples

If your sister has been subject to domestic violence such that the perpetrator has been served with a Domestic Violence Protection Order you would not be expected to disclose your sister's address to a meeting.

If your employment (such as certain scientific research or the Special Forces) is covered by other legislation or interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you.

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the monitoring officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

What happens if the monitoring officer does not agree that the information that the information is sensitive?

It is for the monitoring officer to decide if the information is sensitive. You must notify the monitoring officer of the information which you think is sensitive and give your reasons and any supporting evidence.

If the monitoring officer agrees, this information does not need to be included in the register of interests. However, if the monitoring officer disagrees then it must be registered.

What happens if the information stops being sensitive?

You must notify the monitoring officer of any change in circumstances which would mean that the sensitive information is no longer sensitive within 28 days of the change, for example a change in employment. The information would then be included in the authority's register of interests.

I haven't received a direct threat, but I am concerned about registering my home address

Councillors are required to register their home address as part of their local authority's register of interests which are typically published on their local authority website.

It is important that if councillors have concerns about the potential for threats and intimidation as a result of disclosure of their home address they share these with the monitoring officer transparently and openly so they can be properly considered.

The Golden Rule is be safe –seek advice if in doubt before you act, and if you are unsure as to whether you have an interest to declare you should always seek advice from the monitoring officer.

Participation in meetings

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. You should speak to the Monitoring Officer if you wish to seek a dispensation.

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.

Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of 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.

Where a matter arises at a meeting which is a **Non Registerable Interest** and it **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.

No	Type	Speak*	Vote	Stay	Example	Comments
1	DPI	N	No	No	Awarding a contract to your own company Planning application for your own property Resident parking zone includes your house	Directly relates to DPI Foreseeable Criminal matter
2a	ORI	If public allowed to	No	No	Awarding/withdrawing grant funding to a body of which you are a member e.g. community hall Granting planning permission to a body of which you are a member	Directly relates to finances Foreseeable Can "address" meeting if public can do, but not take part in discussion.
2b	ORI	Test	Test	Test	Awarding grant funding to a body other than the body of which you are a member e.g. competitor to community hall	Affects finances or wellbeing- test: (1) greater than majority of inhabitants and (2) reasonable public-affect view of public interest
3a	NRI	If public allowed to	No	No	Determining an application submitted by your sister or your neighbour for a dog breeding licence Partner with free parking permit: policy review decision to be made	Directly relates to finances of you, partner (not a DPI)- a relative or close associate Unforeseeable

					Councillor objects in private capacity to neighbours' planning application: cannot sit on Planning Committee (because they are a statutory consultee)	Can "address" meeting if public can do, but not take part in discussion.
3b	NRI	Test	Test	Test	Application for housing development on land near to partners business property Your neighbour applies for planning permission	Affects finances or well-being – test: 1) greater than majority of inhabitants and (2) reasonable public-affect view of public interest
2b / 3b	NRI	Test	Test	Test	Road works noise outside your house Odours from nearby refuse tip ASB from rough sleepers housed in B+B's nearby	May not affect finances but well-being=quality of life: apply 2-stage test

*speak = take part in discussion, as opposed to addressing a public meeting as a member of the public where others can also address the meeting

Interests flowchart



10. Gifts and hospitality

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 the Monitoring Officer for guidance.

What does 'hospitality' mean?

Hospitality can be defined as any food, drink, accommodation, or entertainment freely provided or heavily discounted.

How much detail should I include on the register?

Where you register gifts or hospitality you should include the name of the person or organisation who gave you the gift or hospitality; the date on which you received it; the reason it was given; and its value or estimated value.

How do I know if gifts or hospitality have been offered to me because of my role as a councillor?

The code says you must register any gift or hospitality received *in your capacity as a councillor* if the estimated value exceeds £50.

You should ask yourself whether you would have received the gift or hospitality if you were not on the local authority. If you are in doubt as to the motive behind an offer of a gift or hospitality, we recommend that you register it or speak to the clerk or monitoring officer before deciding whether to accept it.

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, or gifts which you do not accept. However, you should apply common sense when you consider how receipt of a gift might be interpreted. For example, if you are the chair of the planning committee and a birthday present arrives from a family friend who is also an applicant just before a planning application is due to be considered, then you need to think about how this would be interpreted by a reasonable member of the public.

What about gifts and hospitality I do not accept?

The code makes it clear that the presumption is that you do not normally accept gifts or hospitality. While gifts or hospitality can be offered for benign reasons it is important for your reputation, the reputation of the local authority and the need to reassure the public that decision-making is not being improperly influenced that you do not accept gifts or hospitality wherever possible.

Simply accepting gifts or hospitality and then registering it does not mean that it may be seen as reasonable. Accepting an expensive meal from somebody who is negotiating for a contract with the council, for example, is not 'made right' by being recorded on a public register.

There will be times, however, where turning down hospitality or gifts could be seen as causing unnecessary offence. For example, if you have been invited as a ward councillor to a local festival or faith celebration along with other members of the community then it may be entirely appropriate to accept the hospitality. However, you should always exercise particular caution if the organisers are involved in ongoing negotiations with the local authority on a particular matter.

Where you are offered a gift or hospitality but decline it you should nevertheless notify the monitoring officer. That helps the authority to identify if there are any patterns and to be aware of who might be seeking to influence the authority.

What about gifts or hospitality that falls below the limit in the code?

You should always notify the monitoring officer of any gift or hospitality offered to you if it could be perceived as something given to you because of your position, especially where the gift or hospitality is from somebody who has put in an application to the local authority (or is about to) even where that hospitality falls below £50 or multiple instances with a cumulative value of £50 or more from a single donor within a rolling twelve-month period. While that would not be a matter for the public register it again allows the authority to be aware of any patterns.

What if I do not know the value of a gift or hospitality?

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may therefore have to estimate how much a gift or hospitality is worth. For example, if you attend a dinner as a representative of the authority which has been pre-paid by the sponsors you would need to make an informed judgment as to its likely cost.

What if I'm at an event but don't have the hospitality or only have a small amount?

The best way to preserve transparency is for you to assess the hospitality on offer, whether it is accepted or not. This is because it would clearly not be in your interests to be drawn into arguments about how much you yourself ate or drank at a particular occasion. For example, you may find yourself at a function where relatively lavish hospitality is on offer, but you choose not to accept it. You may go to a champagne reception but drink a single glass of orange juice for example.

As a guide you should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. What you have been offered is the value of the event regardless of what you actually consumed. Clearly where you are in any doubt the prudent course is to register the hospitality.

Is there a minimal threshold where I wouldn't have to notify the monitoring officer?

The code is about ensuring that there is transparency and accountability about where people may be trying to influence you or the local authority improperly. However, in the course of your duties as a councillor you will be offered light refreshments or similar on many occasions. It is perfectly acceptable to have a cup of tea or biscuits at a meeting with residents at the local community centre for example and there may be times when an external meeting lasts all day and the organisers offer you a sandwich lunch and refreshments.

The Government's guide to the Bribery Act for employers says that 'the Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure. In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is

proportionate and reasonable given the sort of business you do is very unlikely to engage the Act.'

You should use your discretion and think how it might look to a reasonable person but always seek the views of the monitoring officer.

What are 'normal expenses and hospitality associated with your duties as a councillor'?

As well as the minimal threshold hospitality above there will be times when you are paid expenses which include an element for food and drink as part of your role.

The focus of the code is on the source of the hospitality and its nature. Hospitality does not need to be registered where it is provided or reimbursed by the authority or where it is clearly ancillary to the business being conducted, such as an overnight stay for an away-day. Therefore, hospitality at a civic reception or mayor's ball would not need to be registered.

However, the hospitality should be registered if it is provided by a person or body other than the authority and is over and above what could reasonably be viewed as ancillary to the business conducted. You might meet dignitaries or business contacts in local authority offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality.

If you are away at a conference and you are offered entertainment by a private company or individual or attend a sponsored event you should consider registering it.

What if my role involves me attending regular events or receiving gifts or hospitality?

Some roles in a local authority will inevitably involve being offered more entertainment than others because of the 'ambassadorial' nature of the role. For example, the mayor or chair of the authority will be invited to a large number of functions and the leader of the local authority may be attending events as political leader of the local authority.

Although the mayor or chair, for example, may attend many social functions, they are not exempt from the requirement to register hospitality as individual councillors. However, where the hospitality is extended to the office holder for the time being rather than the individual, there is no requirement under the code to register the hospitality against your individual register. The question a councillor needs to ask themselves is, "Would I have received this hospitality even if I were not the mayor/chair?" If the answer is yes, then it must be registered.

If matters are recorded on a mayor or chair's register any entry on the register should make it clear that gifts or hospitality are being accepted because of the office held and, where possible, any gifts accepted should be 'donated' to the local authority or to charity or as raffle prizes for example.

Gifts that are clearly made to the local authority, for example a commemorative goblet which is kept on display in the local authority's offices, do not need to be registered in the councillor's register of gifts and hospitality. However, such gifts ought to be recorded by the local authority for audit purposes.

Bias and Predetermination

The code provisions on declarations of interest are about ensuring you do not take decisions where you or those close to you stand to lose or gain improperly.

There is a separate concept in law dealing with bias and predetermination which exists to ensure that decisions are taken solely in the public interest rather than to further private interests.

Both the courts and legislation recognise that elected councillors are entitled, and indeed expected, to have and to have expressed their views on a subject to be decided upon by the local authority. In law, there is no pretence that such democratically accountable decision-makers are intended to be independent and impartial as if they were judges or quasi-judges.

Nonetheless, decisions of public authorities do involve consideration of circumstances where a decision-maker must not act in a way that goes to the appearance of having a closed mind and pre-determining a decision before they have all of the evidence before them and where they have to act fairly. Breaches of the rules of natural justice in these circumstances have and do continue to result in decisions of local authorities being successfully challenged in the courts. These issues are complex, and advice should be sought and given in the various situations that come up, which is why there are no direct paragraphs of the code covering this, although it does overlap with the rules on declarations of interest.

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct, but councillors need to be clear that they are not biased or predetermined going into the decision-making process. Otherwise the decision is at risk of being challenged on appeal or in the Courts. To quote a leading judgment in this field "All councillors elected to serve on local councils have to be scrupulous in their duties, search their consciences and consider carefully the propriety of attending meetings and taking part in decisions which may give rise to an appearance of bias even though their actions are above reproach."³

The rules against bias say that there are three distinct elements:

The first seeks accuracy in public decision-making.

The second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal strong feelings they may have had in advance of making the decision.

³ Kelton v Wiltshire Council [2015] EWHC 2853

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that justice should not only be done but should manifestly and undoubtedly be seen to be done.

To varying degrees, these “requirements” might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: “automatic” (or “presumed”) bias, “actual” bias, and “apparent” bias.

The rationale behind “automatic” or “presumed” bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased in fact. In these circumstances you should not participate in the discussion or vote on the issue. These are covered by the code’s requirement to declare certain interests and withdraw from participation.

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

Predetermination

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

Predetermination at a meeting can be manifested in a number of ways. It is not just about what you might say, for example, but it may be shown by body language, tone of voice or overly-hostile lines of questioning for example.

You are therefore entitled to have a predisposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind and demonstrate that to the meeting by your behaviour, able to take account of all of the evidence and make your decision on the day.

How can bias or predetermination arise?

The following are some of the potential situations in which predetermination or bias could arise.

Connection with someone affected by a decision

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

Example

There has been a complaint about the behaviour of an officer and as a result the officer has been disciplined. The officer has appealed to a councillor panel. The complaint has been made by the local office of a national charity of which one local councillor is an ordinary member (not involved with the local office). The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.

Improper involvement of someone with an interest in the outcome

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

Example

The council receives an application to modify the Definitive Map of public rights of way. A panel of councillors is given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the order should be made. However, they do not give the same opportunity to people with opposing interests.

Prior involvement

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.

If the councillor is merely seeking to lobby a public meeting at which the decision is taking place but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private lobbying, there is

no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

Examples

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: 'speaking for myself I am inclined to go along with the barrister's recommendation'. He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

A developer entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator had already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new councillors who have campaigned against the incinerator and a full debate, the Cabinet decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

What do I do if I need advice?

If you are unsure as to whether your views or any action you have previously taken may amount to predetermination you should always seek advice from the monitoring officer.

This page is intentionally left blank

REPORT TO:	ETHICS COMMITTEE 30 September 2021
SUBJECT:	Protocol on Members' rights of access to information
LEAD OFFICER:	Asmat Hussain, Executive Director of Resources and Monitoring Officer (Interim)
WARDS:	All

CORPORATE PRIORITIES 2021-24:

Development of an Access to Information Protocol responds to recommendations in the Governance Review and the Scrutiny Improvement Review, both of which inform the Croydon Renewal Plan.

FINANCIAL IMPACT

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

RECOMMENDATION

The Ethics Committee is recommended to:

- 1.1 Consider the Access to Information Protocol (Appendix 1).
- 1.2 Agree to recommend to Full Council that it approve the Protocol and that it be added to the Council's Constitution, with a view to taking effect from January 2022.
- 1.3 Agree that the Committee will undertake an annual review of the Protocol and consider performance against standards for response as part of its annual review.
- 1.4 Note that the Interim Executive Director of Resources and Monitoring Officer will arrange briefings for Members and Officers on the implications and operation of the Protocol.

2. EXECUTIVE SUMMARY

- 2.1 A draft Access to Information Protocol has been prepared, informed by comments from Ethics Committee, Scrutiny Chairs, recent reviews conducted at Croydon Council and advice from the Centre for Governance and Scrutiny.
- 2.2 Ethics Committee is asked to consider the draft and recommend to Full Council its approval and addition to the Constitution.

3. BACKGROUND

- 3.1 At its May meeting, the Ethics Committee considered a draft Access to Information Protocol. Discussion of the draft at the meeting was informed by detailed comments provided by the Chairs of the Scrutiny Committees and covered:
- The need to clearly state the Council's commitment to support councillors' rights to information;
 - The Protocol should be informed by recent reviews, the Nolan Principles and the commitment to be a 'much more transparent, open and honest council';
 - The obligations of officers should be made clear;
 - Timeliness of access to information is an important factor
 - There should be guidance on the processing of requests for information.
- 3.3 Officers undertook to bring a revised draft of the Protocol back to the Ethics Committee, in light of the discussion.

4. PROPOSAL

- 4.1 A revised draft Access to Information Protocol appears at Appendix 1. Drafting has been informed by:
- Comments of the Scrutiny Chairs on the first draft;
 - The Governance Review;
 - The Scrutiny Improvement Review and follow-up advice from the Centre for Governance and Scrutiny;
 - Statutory guidance on Overview and Scrutiny;
 - Benchmarking with similar protocols in other London Boroughs;
 - The Council's financial context.
- 4.2 A flowchart illustrating the way the protocol would work in practice appears at Appendix 2: this will be included in the Members' Handbook, with references to further relevant information.
- 4.3 Informed by the reviews quoted above which highlighted the need for improved member access to information, and the Council's commitment to become a more transparent, open and honest council, provisions within the draft Protocol reflect good practice found in comparator London Boroughs.
- 4.4 In light of the Council's financial context, the Protocol also makes clear that members cannot require officers to expend unbudgeted resources in compiling information which does not exist in the form requested by the member. Consequently members have a responsibility to be mindful of the resource implications of member enquiries and should ensure that their enquiries are proportionate and focused on information required to carry out their duties as Councillors. Equally, it is officers' responsibility to discuss with the member what information is currently available and whether the request can be adjusted to reflect that availability.

- 4.5 The Protocol provides clarity on the specific and limited circumstances in which it would be appropriate for officers not to provide information requested. Officers will however be expected to provide responses to any part of an enquiry where this can be provided through use of redaction, confidential briefing and/or within reasonable cost parameters as appropriate.
- 4.6 Compliance with good standards of record retention is an important part of good governance: work is underway to revise the Council's approach to information management and to ensure its consistent implementation. As the Council's practice in this area improves, it is anticipated that performance in relation to this Protocol will also improve. It is therefore proposed to review this Protocol after 12 months (and review how the Protocol is working in practice annually ongoing) so that consideration may be given to strengthening it further.
- 4.7 When the Committee conducts its annual review of the Protocol, performance information will be shared with the Committee to demonstrate the extent of compliance with the standards for response times contained within the Protocol.
- 4.8 There are several closely related pieces of work which are underway in parallel with this Protocol:
- i) Adoption of a new Model Code of Members' Conduct, including commitments and guidance on treatment of confidential documents and information;
 - ii) Development of a new approach to member enquiry handling: the process outlined at section 2 of the draft Protocol includes some elements to be developed in detailed design (see also 4.8 below);
 - iii) Work to support the improvement of Scrutiny, including the development of an information digest with key information about the council's management, performance and risk, in line with statutory guidance;
 - iv) Work to review and revise the Protocol on Staff Councillor Relations which will follow adoption of the new Members' Code of Conduct.
- 4.9 Further work on the design of the member enquiries process is required before details at section 2 of the draft Protocol can be confirmed: workshops with officers and Members are planned during the next month and it is currently anticipated that the new process will be operational from January 2022. It is therefore proposed that the Protocol take effect from January 2022.
- 4.10 Ethics Committee will note that the draft Access to Information Protocol references the Council's Values and the associated principle of 'Honest and open'. As work is done later in the year to review these values, consideration should be given to ongoing commitments to openness and transparency.

- 4.11 The Protocol also references a Members' briefing: many other councils produce a briefing (for example, fortnightly) which can be used for:
- the Monitoring Officer to inform Members, for example about registering gifts and hospitality;
 - advising ward Members on relevant service issues related to their area and their progress/ resolution;
 - advising Members when resident surveys are being conducted;
 - promoting member learning and development opportunities;
 - informing Members of the introduction of new services.
- Such proactive information provision to Members can reduce the amount of ad hoc, reactive work required to respond to Member enquiries.

- 4.12 If agreement by Ethics Committee and Full Council is received, the following steps will be taken in time for implementation:

- i) Provide text for the Members' handbook clarifying different entitlements for ward/ scrutiny councillors;
- ii) Produce a briefing for officers, delivered to each Departmental Leadership Team to enable cascading to teams;
- iii) Provide training for officers handling members' enquiries and other officers named in the Protocol;
- iv) Produce a members' briefing and hold an informal briefing session, enabling members to understand the links with the Member Code of Conduct;
- v) Address further changes required to the Constitution as part of the ongoing Constitution review;
- vi) Incorporate training on the Protocol within the member induction programme for 2022.

5. CONSULTATION

- 5.1 The draft Protocol has been informed by comments from Ethics Committee and Scrutiny Chairs on an earlier draft.

6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 6.1 Provision of responses to requests to provide information involves a resource cost, the costs of meeting such requirements should be able to be contained within business as usual budgets.

Approved by: Matt Davis, Interim Deputy s151 Office

7. LEGAL CONSIDERATIONS

- 7.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that Part B of the Council's Constitution details access to information requirements which apply to the Council and its meetings.
- 7.2 Section 100F of the Local Government Act (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 committee or sub-committee of the council shall be open to inspection by any member of the council.
- 7.3 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 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 any person; or (b) to make an order or direction under any enactment.
- 7.4 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ('The 2012 Regulations') 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).
- 7.5 Subject to paragraph (3) of Regulation 17 of the 2012 Regulations, a member of an overview and scrutiny committee of a relevant local authority is entitled to a copy of any document which –
- (a) is in the possession or under the control of the executive of that authority; and
 - (b) contains material relating to –
 - (i) any business that has been transacted at a meeting of a decision-making body of that authority;
 - (ii) any decision that has been made by an individual member or that executive in accordance with executive arrangements; or
 - (iii) any decision that has been made by an officer of the authority in accordance with executive arrangements (Regulation 17(1)).

- 7.6 Where a member of an overview and scrutiny committee requests a document which falls within paragraph (1) of Regulation 17, the executive must provide that document as soon as reasonably practicable and in any case no later than ten clear working days after the executive receives the request.
- 7.7 However, no member of an overview and scrutiny committee is entitled to a copy-
- (a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to –
 - (i) an action or decision that member is reviewing or scrutinising; or
 - (ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or
 - (b) of a document or part of a document containing advice provided by a political adviser or assistant.
- 7.8 Where the executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph (1) or (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.
- 7.9 Members can, like a member of the general public, also resort to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 7.10 The Local Audit and Accountability Act 2014 makes provision in relation to the rights of objection, inspection and questioning of the local auditor in relation to local authority accounts and thereby provides access to certain financial information.
- 7.11 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.
- 7.12 However, if the councillor's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. 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).
- 7.13 A member must not disclose information given to them in confidence not 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.

- 7.14 Further legal consideration will be required on the implementation of the recommendations in 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.

8. HUMAN RESOURCES IMPACT

- 8.1 There are no direct human resources impacts as a consequence of this report and its recommendations.

Approved by: Gillian Bevan, Head of HR- Resources.

9. EQUALITIES IMPACT

- 9.1 There are no equalities impacts arising from this report. The Protocol includes steps to ensure that information provided to Members meets their needs and is accessible where possible.

Approved by: Gavin Handford, Director of Policy & Partnership.

10. ENVIRONMENTAL IMPACT

- 10.1 There is no environmental impact arising from this report.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There is no crime and disorder impact arising from this report.

12. DATA PROTECTION IMPLICATIONS

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

No.

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

No: the subject matter of this report does not directly have any data protection implications. The process of administering access to information may have

data protection implications: these will be assessed on a case by case basis when requests are made, in accordance with the protocol.

Approved by: Asmat Hussain – Interim Executive Director of Resourc

13. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 13.1 To support the Council to implement actions within the Croydon Renewal Plan, and to be a transparent, open and honest council.

CONTACT OFFICER: Heather Wills, Governance Improvement Adviser;
heather.wills@croydon.gov.uk

APPENDICES TO THIS REPORT:

Appendix 1: Draft Protocol on Members' rights of access to information

Appendix 2: Flowchart

BACKGROUND PAPERS: None

Appendix 1: Protocol on Members' rights of access to information

1. Introduction and background

1.1 The purpose of this protocol is to:

- a) set out the rights of access to Council information that members of the Council have to enable them to carry out their duties as Members; and
- b) provide guidance to Members and Officers on the approach to be adopted in exercising these rights in relation to the availability of Cabinet and Committee Reports and to information held by the Council generally.

1.2 This protocol does not deal with the wider rights of access of the public and the press which are set out in the Access to Information Procedure Rules at Part 4B of the Constitution. Members are advised to refer to Part 4B which also sets out members' statutory rights to information: this protocol expands on those rights.

1.3 The Council is committed to ensuring that Members have the information they need in a timely way to carry out their duties, in line with Members' statutory and common law rights to access information.

1.4 The term 'Member' as used throughout this Protocol includes both elected Councillors and any individuals co-opted to Council Committees and Sub-Committees. Co-optees' rights under this Protocol apply only in relation to the function(s) of the committee or sub-committee for which they are co-opted and are subject to specific advice from the Council Solicitor to ensure information is not disclosed when it is not legally permissible to do so.

1.5 Statutory rights and guidance: summary

- a) The Local Government (Access to Information) Act 1985 governs the statutory rights that Members have, along with the public, to access agendas, background documents, reports to meetings and minutes. The Act also gives Members rights to see exempt information (ie information which would be kept off the public agenda and public part of the meeting) if it falls into certain categories of information;
- b) The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 give anyone the right to access information held by the Council, provided that information is not determined to be exempt under the Act (eg personal information about others, information that is about to be published, confidential information or information that would prejudice the commercial interests of the Council or others if released). Many of the exemptions are subject to a Public Interest Test to determine whether the information should be withheld.

Members have the same rights to access to information under the FOIA as anyone else. Members' rights of access may overlap with rights under the

FOIA or may allow Members access to information (or documents) that would not be available to them under the FOIA. For example, it is not necessary to say why information is wanted if it is requested under the FOIA but it would be necessary to state this if a Member was relying on their need to know as a Member. Information that is not available to a Member under the FOIA (because it is covered by an exemption) may be available to them on the basis of their rights as a Member. So, in some respect the FOIA rights are wider than Members' other rights and in some respects they are narrower.

- c) The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 include additional rights for Members of Overview and Scrutiny Committees to see information held by the executive, including exempt or confidential information. Where a Scrutiny Member or Committee requests information in relation to matters which they are scrutinising, the executive must provide it no later than ten clear working days after the executive receives the request;
- d) For Members carrying out casework, there are rights to access the personal information of individuals within protections set out in the Data Protection Act 2018 and General Data Protection Regulation 2018 (more information is provided in the Members' Handbook);
- e) The Government has published statutory guidance on the conduct of overview and scrutiny which states that:

A scrutiny committee needs access to relevant information the authority holds, and to receive it in good time, if it is to do its job effectively.

and

While each request for information should be judged on its individual merits, authorities should adopt a default position of sharing the information they hold, on request, with scrutiny committee members.

- 1.6 The statutory guidance includes the following points:
- Scrutiny members need access to a regularly available source of key information about the management of the authority, including information on performance, management and risk;
 - Officers should speak to Scrutiny Members to ensure they understand the request and the reasons why information is needed, so that the authority is better able to provide relevant and timely information in a format that meets the recipient's needs;
 - In instances where it is legitimate for a council to withhold information, the executive is required to provide a written statement to the Scrutiny Committee setting out its reasons for that decision;
 - Before deciding not to share information, the council should give serious consideration to whether that information could be shared in closed session;

- Scrutiny committees can require Cabinet members and Officers to attend before them to answer questions.

1.7 Case law

Members have certain 'common law' rights to information in addition to the statutory rights outlined above, which have been established through historic case law and which intersect with the Freedom of Information Act and statutory guidance. **Members are entitled to see documents which are reasonably necessary to enable them to carry out their duties as a Member.** This is generally described as the 'need to know' principle.

- 1.8 There is no simple definition of the 'need to know', but there is no right for Members to access information if it does not relate to carrying out their role as a Member (eg where the reason is to do with their position as a party member, as a resident or as a member of an association). Extra care will be needed when considering the application of this right in cases which are legally sensitive, e.g. where there is litigation underway or contemplated, where the Council is acting as a quasi-judicial body (such as planning or licensing matters), employment or conduct related matters, or any matter relating to an individual or entity where that individual/ entity has right of appeal or review which is pending.

- 1.9 The following principles relate to the 'need to know':

- i) A Member will generally have a need to know information a constituent had asked the Member to obtain on their behalf if the constituent would themselves be entitled to that information.

Members have a legitimate role as advocates for their constituents as a group and as individuals. Members seeking information about individual constituents will need to demonstrate that they have the agreement of their constituent to the disclosure by the Council of the information. This must be by way of written confirmation, especially in the case of sensitive personal information. Ward members cannot use their role as a Member to obtain for constituents information to which the constituents themselves would not be entitled.

- ii) Ward Members may have a particular need to know about matters affecting their ward. This does not mean they are entitled to access all information the Council has concerning matters affecting their ward. For example, if the information is confidential and could not in any event be passed on by the Ward Member to constituents, it would be necessary to establish a clear 'need to know' for reasons that did not involve sharing the information with constituents.
- iii) The Party Leaders are likely to have a greater need (but no absolute right) to have access to exempt reports than ordinary Members with no special role.

- iv) Members of the Scrutiny Committees are entitled to have access to exempt or confidential reports relevant to an action or decision being reviewed or scrutinised.

1.10 Principles

All Officers and Members are expected to adhere to the Seven Principles of Public Life which include the principle of 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.

1.11 Croydon Council has adopted a number of values which define the way that Officers will work on a day to day basis: this includes the principle 'Honest and open'.

1.12 When requesting information, Members will:

- be mindful of the resource implications of providing a response and will ensure that their enquiries are proportionate and focused on enabling them to carry out their duties as Members;
- understand that Officers will, as part of undertaking good governance, seek to understand the basis on which the Member is requesting the information (for example, as a Ward Member or as a Scrutiny Member).

1.13 This protocol has been drafted to ensure compliance with relevant legislation, statutory guidance, current case law and the above principles.

2. **The process**

2.1 Information requests from all Members

The Council has established a Members' Enquiries system which is designed to ensure that Members receive timely responses to requests for information and resolution of casework issues. The process works as follows:

- i) Members enter their enquiry on the desktop member enquiries app and can see the case number allocated;
- ii) An immediate acknowledgement is sent in response via email, showing the case number against the subject of the request identified by the Member;
- iii) A response is provided within ten clear working days of receipt of the request.
- iv) If a full response is not provided within ten clear working days, the Member Enquiries system will chase a response from the relevant Officer and continue to chase until the response is provided.

2.2 Use of the Members' Enquiries system enables the production of reports on speed of response, (enabling areas for improvement to be identified and

addressed) and generation of information on enquiry trends, to inform the proactive provision of briefings and other information for Members.

2.3 Members should use the Members' Enquiries' system to follow up casework issues on behalf of their constituents when normal procedures and timescales (for example, reporting fly tipping, applying for Housing Benefit) have not led to an appropriate outcome. Issues raised as a Members' Enquiry at the same time as a resident raises the same matter as a complaint to the Council will result in duplication of effort and reduced resources available to respond to other matters. Officers will ensure that Members are well-briefed on the routes for members of the public to use when reporting issues and making requests to the Council.

2.4 Officers will follow these principles when responding to Members' enquiries:

- i) Officers will seek clarification from the Member at the earliest possible opportunity as necessary to ensure that the request (and the intent behind the request) is fully understood, to enable a full and appropriate response to be given;
- ii) If an Officer considers that meeting a request for information would involve an unreasonable commitment of resources (for example a request to compile information which does not already exist in the form requested by the member):
 - the relevant Director will take legal advice to ensure that the Member's right to information is not being inappropriately denied;
 - the Officer will discuss with the Member what information is currently available and whether the request can be adjusted to reflect that availability;
 - the Member will be informed of the outcome within ten clear working days of making the request. The Officer will provide the Member with any parts(s) of their request which can be provided through reasonable expenditure of resources;
 - the Executive Leadership Team will receive regular reports on any instances of non-provision of information in response to Member requests to ensure an appropriate and consistent approach;
- iii) Draft documents compiled in the context of Council policy development and draft Committee reports will not normally be supplied in response to Member enquiries;
- iv) Where a response would otherwise lead to the dissemination of particularly sensitive information (see section 2.11 below) which cannot be made available, Officers will either:
 - a) redact source material only to the extent necessary to ensure that information not appropriate for dissemination is obscured or
 - b) give the Member an explanation of the reason why the information cannot be provided, with reference to the relevant definition of exempt

information (as set out in Appendix 1, Part 4B of the Access to Information Procedure Rules) or any other relevant reason, on the advice of the Council Solicitor.

This response will be provided to the Member within ten clear working days of making the request;

- v) Where a request for information in relation to the Cabinet would otherwise lead to the dissemination of the advice of a political adviser or assistant, Officers will either
 - a) redact source material only to the extent necessary to ensure that information not appropriate for dissemination is obscured or
 - b) give the Member an explanation of the reason why the information cannot be provided, with reference to the relevant definition of exempt information.

This response will be provided to the Member within ten clear working days of making the request;

- vi) Where it is not possible to provide the information for any other reason (eg the information is not held by the Council) the Member will be provided with a full explanation within ten clear working days of making the request;
- vii) Officers will aim to respond quicker than the ten clear working days timescale wherever resources and other priorities permit.

2.5 Both Members and Officers will act in accordance with the Protocol for Staff-Councillor relations as set out in the Council's Constitution when requesting and responding to requests for information.

2.6 Access to reports

All reports will be despatched to the members of the relevant committee or other body and all published reports will be available to all Members via the ModGov app.

2.7 Except where reports contain particularly sensitive information (as set out in section 2.11 and following below), exempt reports to Cabinet will additionally be accessible to Shadow Cabinet Members, Scrutiny Leads (majority and minority groups), Group Whips (majority and minority groups) and the Majority Group Secretary. The Council Solicitor retains discretion not to make exempt reports automatically available in appropriate cases (for example if a report concerned a matter in which the Member had a Disclosable Personal Interest).

2.8 Any Member may request a copy of an exempt report, demonstrating their 'need to know'. The Council Solicitor reserves the right not to provide exempt information to any Member not ordinarily entitled to it if they believe the information is wanted for an improper purpose or if the member has a financial or personal interest relating to the matter (see also section 2.11 below).

- 2.9 In some cases it may be appropriate for a Member to be given an opportunity to see the report without a copy being supplied to take away.
- 2.10 Members automatically sent exempt reports, or receiving them after making a request, are not entitled to share the reports with other members of their party group but may alert them to the opportunity to request a copy of the report from the Head of Democratic Services. Such a request would be dealt with in accordance with the principles set out in this section and at 2.11 below.
- 2.11 Categories of particularly sensitive information
It would not normally be appropriate for exempt information covered by categories 1, 2 and 4-7 in Appendix 1 of Part 4.B (Access to Information Procedure Rules) of this Constitution to be made available on request or automatically circulated. The 'public interest' test states that the right to disclosure of exempt information does not apply when the public interest in maintaining the exemption outweighs the public interest in disclosing it. Reports containing information falling into these exempt categories will only be provided to (or in some cases made available to) Members who are not members of the relevant Committee if they are able to positively demonstrate to the Council Solicitor that they have a need to have a copy of or see the report in order properly to carry out their duties as a Member and where complying with the councillor's request would not breach the terms of the Data Protection Act or General Data Protection Regulation.
- 2.12 Reports containing information falling into category 3 to which Members are not automatically entitled (for example, terms proposed in the course of negotiations for a contract) may also be particularly sensitive. These reports may be made available or copied to Members on their specific request. However, where the report is particularly sensitive this will not happen. This may be the case for example where negotiations are ongoing in relation to price or price sensitive aspects of the contract.
- 2.13 The advice of the Council Solicitor will be sought in response to requests for information in cases which are legally sensitive, for example where there is litigation underway or contemplated, where the Council is acting as a quasi-judicial body (such as planning or licensing matters), employment or conduct related matters, or any matter relating to an individual or entity where that individual/ entity has right of appeal or review which is pending.
- 2.14 Additional rights of access to information for Scrutiny
Scrutiny committee members are entitled to a copy of any document in the possession or under the control of the Council's executive which:
- contains material relating to any business that has been considered at a Cabinet meeting or a meeting of any other decision-making executive body; and/or
 - any executive decision that has been made by an individual Cabinet Member or Officer
- where that document relates to a matter they are scrutinising. In making requests for information, members should have regard to the relevance of that

request to the scrutiny workplan in order to ensure that scrutiny's attention and resource is appropriately focused.

2.15 Scrutiny Members may additionally request information which relates to the Council's functions in relation to the borough and/or the borough's residents and which the Committee reasonably requires to carry out its functions. Such requests will be made in writing through the Statutory Scrutiny Officer or their direct reports, who will:

- coordinate requests to avoid duplication of activity;
- ensure that requests are passed to the relevant Officer for response;
- track and chase responses as appropriate;
- support Officers to clarify requests for information as required, including consideration as to the best format to enable Members to assimilate the information.

2.16 Information supplied in response to requests from scrutiny members will be copied to the relevant Cabinet Member and/or the Leader of the Council.

2.17 The Scrutiny Officers will also work with Scrutiny Chairs and Officers to agree appropriate timescales for the scheduling of reports for scrutiny meetings, as part of a planned and prioritised scrutiny work programme.

2.18 Where a Scrutiny Member requests such a document Officers must provide it as soon as reasonably practicable and in any case no later than ten clear working days after the request is received.

2.19 The above entitlement to documents does not apply to any document or part of a document if:

- i) it contains advice provided by a political adviser or assistant; or
- ii) it would be a breach of confidence for the Council to share that information; or
- iii) disclosure would, or would be likely to prejudice the Council's ability to exercise its functions or to prejudice the legitimate interests of any person or the Council;
- iv) it contains personal information as defined by the Data Protection Act 1988 (unless the Act permits its disclosure); or
- v) any other legislation prohibits its disclosure.

Officers will ensure that, where iii) has previously applied, this is not used to deny requests by Scrutiny for information if the conditions which led to a decision about actual or likely prejudice no longer apply.

Where iv) applies, Officers will revise the information so that the individual concerned cannot be identified and, having checked that disclosure is now

permitted under the Data Protection Act 2018 and the General Data Protection Regulations, disclose it.

2.20 Where a Scrutiny Member requests information which is classified as exempt (Part 4B of the Constitution, Appendix 1) or confidential, this will only be supplied if that information is relevant to:

- i) an action or decision that that Member is reviewing or scrutinising; or
- ii) any review contained in any programme of work of such a committee (or sub-committee).

2.21 Before a decision not to share information is taken, Officers will give serious consideration to whether that information could be shared in an informal briefing or meeting from which the public are excluded. Once the Scrutiny Committee has received exempt or otherwise sensitive information, the Statutory Scrutiny Officer and their direct reports will support Members to consider how the matter can be discussed by the Committee if it includes confidential or sensitive information.

2.22 Where a Scrutiny Member is denied a copy of a document or part of any such document, the Executive will provide Scrutiny with a written statement, usually no later than ten clear working days after the request is received setting out its reasons for that decision.

3. Proactive provision of information to Councillors

3.1 Officers will take action to ensure that Members are appropriately briefed to enable them to carry out their duties, including, but not limited to:

- i) Members' bulletin;
- ii) Forward Plan of reports for Member decision;
- iii) Regular reports to Cabinet on delivery against Council plans and financial monitoring;
- iv) Informal briefings of topics of relevance to Ward Members;
- v) Proactive publication on the Council's website of information identified as being of public interest through Members' Enquiries.

Additionally, Scrutiny Members will be provided with regular digests of finance, performance and risk information to support them to prioritise their workplan.

4. Applying the principle of openness when writing reports

4.1 Reports to Committees and the Cabinet will only be marked as exempt when this cannot reasonably be avoided in order to protect the interests of the

Council and/or third parties in accordance with the statutory rules on exempt reports.

- 4.2 When Officers are preparing a report that contains information about terms proposed in the course of negotiations for a contract they will separate the exempt from the non-exempt information so the latter can be freely circulated. Sometimes information in reports can be made anonymous without the effectiveness of the report being reduced. This is one way of ensuring that as many reports, and as much information, are made accessible as possible. This applies in all cases and not just where category 3 of Appendix 1 of Part 4B of the Access to Information Procedure Rules is relied on. There will still inevitably be a number of reports which are marked exempt.

5. Confidentiality and restrictions on the use of information

- 5.1 Members have a duty to comply with the requirements of the Member Code of Conduct, including provisions relating to the treatment of confidential information. Members must be alert to whether the information they receive from the Council is and/or continues to be confidential.
- 5.2 Officers will ensure that confidential information is clearly marked as such before its release to Members.
- 5.3 Members should only use information obtained in the course of their official duties and which is not public information for the specific purpose of fulfilling their work as a member of the Council. This information should not be shared further except in specific circumstances: any Member considering doing so should seek advice from the Monitoring Officer.
- 5.4 There are detailed provisions concerning the use of personal data by elected representatives contained in the Data Protection Act and General Data Protection Regulations (GDPR), and advice is included in the Members' Handbook.
- 5.5 A request from a Member acting in a personal capacity will be treated in the same confidence as an enquiry from a member of the public. Officers are also under a duty not to relate any information disclosed privately by a Member(s) (for example during Part B discussions at Committee or informal briefings) to another Member, Officer or person not already privy to that information.
- 5.6 The duty of Officers to observe a Member's confidence will however 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 Officer will refer the matter to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate. Officers are also expected to seek advice from senior officers as part of any query they may have on their interaction with a Member.

6. Implications of disclosure of personal or commercially sensitive information

- 6.1 Much of the information kept by the Council relates to individual clients: Officers and Members are expected to be discreet in their handling of such information which is disclosed to them.
- 6.2 Inappropriate disclosure of information can have significant consequences for the Council and individual Members. Members and Officers have obligations to individuals or organisations about whom the Council holds confidential information to respect that confidentiality. If information was wrongfully disclosed, this could lead to legal action against the Councillor and/or Council. Information is often provided by people to the Council for a particular purpose and to disclose or use it for another purpose can lead to a Data Protection Act breach or criminal sanctions under the Data Protection Act. The Council itself could be damaged by information wrongly disclosed. Wrongful disclosure of information by a Member could also result in action under the Members' Code of Conduct.

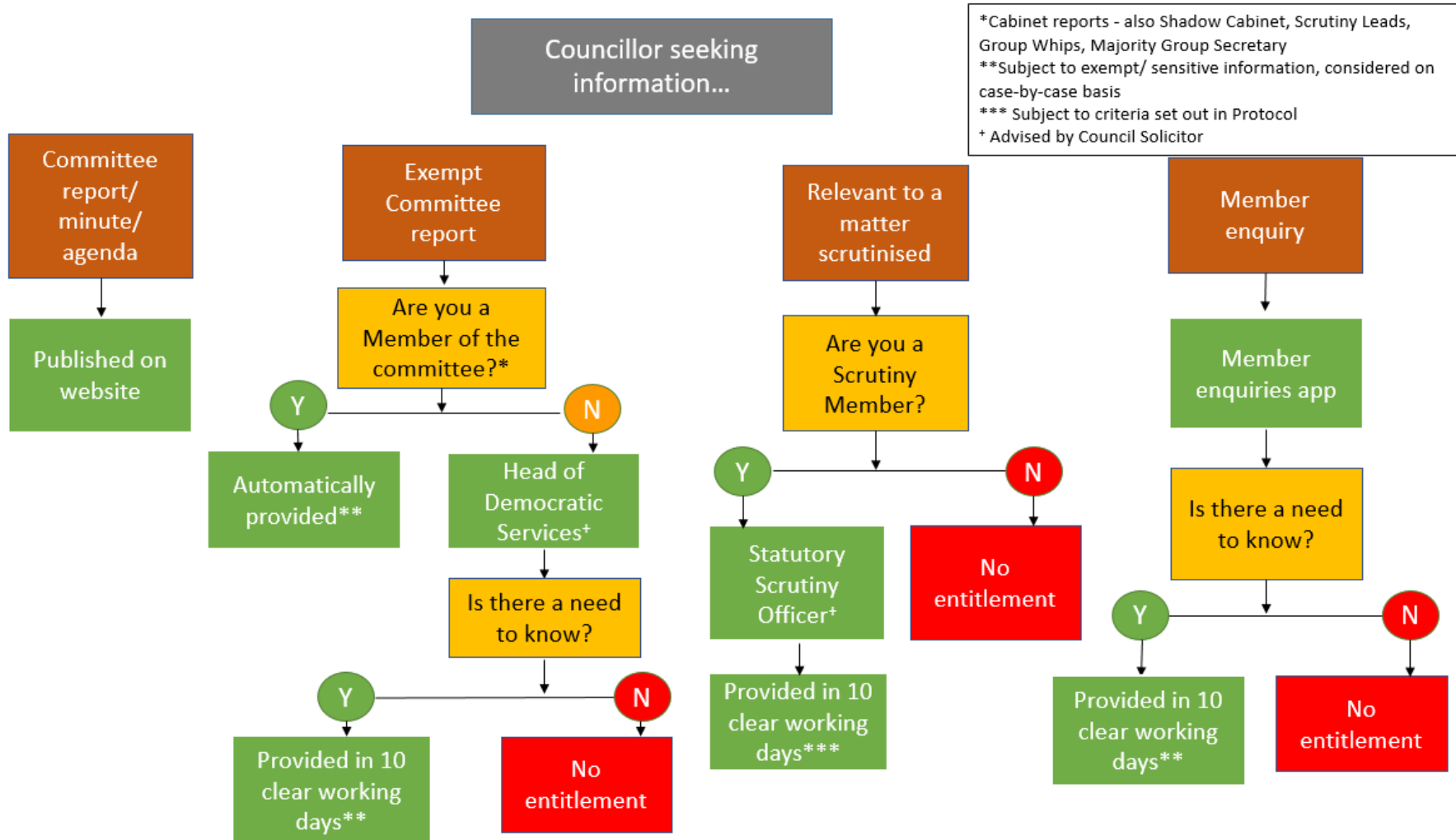
7. Procedure for handling queries or disputes in relation to this protocol

- 7.1 Members should seek advice from the Monitoring Officer on any matters relating to duties, obligations or requirements related to access to information.
- 7.2 Any disputes relating to the rights of access of any person under these rules or any statutory provision or common law rights shall be referred to the Monitoring Officer of the Council.
- 7.3 On the rare occasion that a Member disagrees with the Monitoring Officer's decision on a dispute relating to rights of access under these rules, statutory provision or common law rights, the matter shall be escalated to the Chief Executive for decision. In such cases, the Member shall detail the grounds on which they believe that their request is consistent with the provisions of this Protocol.

8. Review

- 8.1 This Protocol will be reviewed annually by Ethics Committee.

Appendix 2



REPORT TO:	ETHICS COMMITTEE 30 September 2021
SUBJECT:	Members Development Plans update
LEAD OFFICER:	Asmat Hussain, Executive Director of Resources and Monitoring Officer (Interim)
WARDS:	All
CORPORATE PRIORITIES 2021-24: The Croydon Renewal Plan includes 'political and managerial leadership improvement' and effective governance' as areas of focus. The Report in the Public Interest included a number of recommendations relating to Member training which the Member Training Programme is designed to address.	

FINANCIAL IMPACT

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

RECOMMENDATION

Ethics Committee is recommended to:

1.1 Note the report.

2. EXECUTIVE SUMMARY

2.1 The Member Development Panel (which consists of 7 Members) is meeting to consider the report at Appendix 1 on 12 October. The Member Training Programme within the report has been developed in response to comments by the Member Development Panel at its meeting of 13 July.

2.2 Ethics Committee is asked to note the report.

3. CONSULTATION

3.1 The Member Training Programme has been informed by the views of the Member Development Panel.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

4.1 The actions referred to in this report will be contained within existing revenue budgets.

Approved by: Matt Davis, Interim Deputy s151 Officer.

5. LEGAL CONSIDERATIONS

- 5.1 The Head of Litigation and Corporate Law comments that there are no legal implications arising from the recommendations in this 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. HUMAN RESOURCES IMPACT

- 6.1 There are no direct human resources impacts for Croydon Council employees or staff as a consequence of this report and its recommendations.

Approved by: Gillian Bevan, Head of HR- Resources.

7. EQUALITIES IMPACT

- 7.1 The Member Training programme includes training on the Member Code of Conduct, which includes an increased focus on Members' duty in relation to equalities.

Approved by: Gavin Handford, Director of Policy and Partnership

8. ENVIRONMENTAL IMPACT

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

9. CRIME AND DISORDER REDUCTION IMPACT

- 9.1 There is no crime and disorder impact arising from 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?**

N/A.

Approved by: Asmat Hussain – Interim Executive Director of Resources

11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

11.1 To support improvement in political leadership and effective governance.

CONTACT OFFICER: Heather Wills, Governance Improvement Adviser;
heather.wills@croydon.gov.uk

APPENDICES TO THIS REPORT:

1: Members' Development Plans update: report to Member Development Panel 12.10.21

BACKGROUND PAPERS: None

This page is intentionally left blank

REPORT TO:	Members' Learning and Development Panel Ethics Committee 12 October 2021
SUBJECT:	Members' Development Plans Update
LEAD OFFICER:	Asmat Hussain, Executive Director of Resources and Monitoring Officer (Interim)
BRIEF FOR THE PANEL:	
<p>The Panel is asked to:</p> <ol style="list-style-type: none"> 1. Note that this report will also be received by Ethics Committee on 30 September 2021; 2. Note progress in developing a detailed Member Training Programme (Appendix 1); 3. Promote attendance within their Groups engagement with the activities listed in the Member Training Programme; 4. Note the intention to report attendance at Member Training activities to Ethics Committee and to add training records to Members' individual records on Mod.Gov, to appear on the website; 5. Consider and comment on the draft Member role descriptions at Appendix 2; 6. Consider any additions or amendments to the Members Handbook which would be helpful for current and/or new Members; 7. Consider and comment on the draft Member Safety guidance at Appendix 4; 8. Consider and comment on the draft Member Social Media guidance at Appendix 5. 	

1. MEMBER TRAINING PROGRAMME 2021-22

- 1.1 Appendix 1 attached to this cover report lists training completed to date and planned for 2021-22.
- 1.2 The design of the programme has been informed by:
 - The Report in the Public Interest
 - The Scrutiny Improvement Review
 - Comments of the Member Development Panel at its meeting on 13 July 2021.
- 1.3 There is additionally support to Cabinet Members, for example mentoring by councillor peers with relevant expertise elsewhere in the country, facilitated by

the Local Government Association (LGA) and attendance at LGA leadership development courses.

- 1.4 Work to confirm dates for each activity is ongoing. Sessions targeted to all Members will be offered twice, at lunchtime and evening.
- 1.5 Development sessions will not usually be recorded to be viewed by those unable to attend on the day because:
 - Councillors are encouraged to attend in person to gain maximum benefit
 - Development sessions are safe spaces for participants to ask questions and develop their understanding and are not suitable for wider dissemination.Occasionally it may be appropriate to record and disseminate a factual briefing.
- 1.6 Members can also access development opportunities through:
 - The Learning Pool on the Intranet, including access to Local Government Association (LGA) workbooks and e-learning designed for Councillors
 - Attending free events provided by the LGA and others: details of events relevant to Councillors will be circulated by the Democratic Services team as they are identified
- 1.7 Chairs, Vice Chairs and Cabinet Members are also encouraged to attend events which will enable them to develop their own networks of peers in other councils to share experience and good practice.
- 1.8 It is proposed to prepare an annual report detailing attendance at Member Training activities for consideration by the Panel and then by Ethics Committee. The facility within Mod.gov to record individual Members' training attendance for publication on the website will also be utilised.

2. MEMBER ROLE DESCRIPTIONS

- 2.1 Member role descriptions have been drafted for consideration by the Panel and appear at Appendix 2. The drafts have been informed by:
 - Examples from other councils
 - Training by the Local Government Association on being an effective Cabinet Member.
- 2.2 Subject to the views of the Panel, it is intended to:
 - Incorporate the role descriptions in the Member Handbook (see below)
 - Use the descriptions as the focus for a session in the Member Induction programme in May 2022.

3. MEMBERS' HANDBOOK

- 3.1 The Members' Handbook is an essential tool for Members, incorporating key practical information and guidance to support Members in their day to day work. The current contents list of the Handbook appears at Appendix 3.
- 3.2 It is proposed to update the Members' Handbook immediately to include:
- Link to the Local Government Association Councillors' Guide
 - Member safety guidance (see 4 below)
 - Social media guidance (see 5 below)
 - Reference to the updated guidance on the Code of Conduct (to be considered by Ethics Committee on 30 September)
 - Guidance arising from the new Access to Information Protocol, demonstrating the different kinds of information accessible to different kinds of members
 - Member role descriptions (subject to the views of the Panel)
- 3.3 The Panel is asked to advise on any other information which it would be helpful to include in the Handbook for Members from May 2022.

4. MEMBERS' SAFETY GUIDANCE

- 4.1 Member safety guidance has been drafted, drawing heavily on guidance produced by the Local Government Association (LGA) on personal safety and handling intimidation. The draft includes local contacts for further advice and appears at Appendix 4.
- 4.2 The Panel is asked to comment on the draft guidance. Subject to the views of the Panel, it is proposed to:
- Publish the guidance in the Members' Handbook and share with all Members
 - Offer briefing sessions for each Group to enable questions to be raised and answered.

5. MEMBERS' SOCIAL MEDIA GUIDANCE

- 5.1 In May 2021 Ethics Committee considered draft social media guidance for Councillors: they asked that it be simplified and made more concise. A revised draft appears at Appendix 5, using guidance produced by the LGA: the opportunity has been taken to move some content into the Members' Safety Guidance so that the Social Media guidance now focuses on other relevant considerations.
- 5.2 The Panel is asked to comment on the draft guidance. Subject to the views of the Panel, it is proposed to:
- Publish the guidance in the Members' Handbook and share with all Members

- Schedule training sessions for Members, led by the LGA.

6. FINANCIAL IMPLICATIONS

- 6.1 There is a budget of £21,000 set aside for Member training. It is expected that the majority, if not all of the training listed in the programme at Appendix 1 can be delivered at no cost to the Council, through the support of the Local Government Association.

CONTACT OFFICER: Heather Wills, Governance Improvement Adviser;
heather.wills@croydon.gov.uk

APPENDICES TO THIS REPORT:

- 1: Member training plan 2021/22**
- 2: Draft Member role descriptions**
- 3: Members' Handbook contents list**
- 4: Members' safety guidance**
- 5: Members' social media guidance**

Appendix 1 – Member training plan 2021/22

This programme is supplemented by:

- a) the ongoing offer of coaching/ mentoring for:
 - All Cabinet members
 - All Chairs of Committees
- b) attendance at conferences and externally-provided member development sessions (eg those delivered free by the LGA for Cabinet Members/ Committee chairs)
- c) Member access to workbooks and e-learning via Croydon Learning Pool.

Items in italics have already been delivered.

Date	Topic/ content	Audience	Delivery method	Delivered by
<i>May</i>	<i>Planning Committee refresher</i>	<i>Planning Committee</i>	<i>Briefing</i>	<i>Browne Jacobson</i>
<i>June</i>	<i>Induction – Code of conduct; Councillor/ Officer Protocol; constitution</i>	<i>New members</i>	<i>Briefing</i>	<i>Monitoring Officer/ Head of Democratic Services & Scrutiny</i>
<i>June</i>	<i>Adult social care budget</i>	<i>H&SC Scrutiny</i>	<i>Briefing</i>	<i>Executive Director of Health and Wellbeing</i>
<i>May</i>	<i>Planning Committee refresher</i>	<i>Planning Committee</i>	<i>Briefing</i>	<i>Browne Jacobson</i>
<i>August</i>	<i>Scrutiny – revised approach in response to scrutiny improvement review</i>	<i>Scrutiny Chairs</i>	<i>Briefing</i>	<i>Centre for Governance and Scrutiny</i>
<i>September</i>	<i>Introduction to local government finance</i>	<i>All members</i>	<i>Workbook</i>	<i>Local Government Association</i>
<i>September</i>	<i>Annual refresher training</i>	<i>Licensing Committee</i>	<i>Training session</i>	
29 September	Fundamentals of scrutiny: <ul style="list-style-type: none"> • Scrutiny’s legal powers • New approach to scrutiny 	All scrutiny members	Interactive development session	<i>Centre for Governance and Scrutiny</i>

Date	Topic/ content	Audience	Delivery method	Delivered by
4 October	Member Code of Conduct	All members	Briefing	Local Government Association/ Head of Democratic Services and Scrutiny/ Head of Law and Governance & Deputy Monitoring Officer (Interim)
5 October	Budget scrutiny development/ planning session #1: <ul style="list-style-type: none"> Principles and practice of good financial scrutiny Understanding financial overview and context Understanding financial performance 	SOC and sub-committee chairs/ vice chairs	Interactive development session	Centre for Governance and Scrutiny/ Local Government Association
Mid October	Member safety – new guidance	All members	Briefing offered to both Groups	Local Government Association/ Head of Security
13 October	Introduction to finance in Croydon: <ul style="list-style-type: none"> Councillors' roles and responsibilities, including monitoring, audit and scrutiny Overview of Croydon's budgets 	All members	Briefing, Q&A following use of workbook	Local Government Association
25 October	<u>If required:</u> Referendum outcome: what happens next?	All members	Briefing, Q&A	Monitoring Officer
26 October	Budget scrutiny development/ planning session #2 for Scrutiny and Overview Committee members: <ul style="list-style-type: none"> Testing the robustness of the budget Principles of transformation funding HRA and capital programme Financial scrutiny principles: budget scrutiny 	SOC and sub-committee chairs/ vice chairs	Interactive development session	Centre for Governance and Scrutiny/ Local Government Association
Mid November	2022/23 budget – <ul style="list-style-type: none"> Timescales for decision making 	SOC and scrutiny sub-	Briefing, Q&A	Executive Director of Finance, Investment and Risk

Date	Topic/ content	Audience	Delivery method	Delivered by
	<ul style="list-style-type: none"> Overview of budget gap and principles 	committee members		
November	Ensuring effective assurance: the role of General Purposes and Audit Committee: <ul style="list-style-type: none"> Role and responsibility Understanding controls Risk management Appropriate challenge and escalation (To be discussed with Independent Chair) 	GPAC	Interactive development session	Local Government Association
November	Scrutiny of the Renewal Plan: how scrutiny of delivery works in detail	All scrutiny members	Interactive development session	Centre for Governance and Scrutiny
December	Financial oversight and risk: understanding the respective roles of scrutiny and audit	SOC GPAC	Interactive development session	Centre for Governance and Scrutiny/ Local Government Association
December	Member/ officer roles and responsibilities (including member role descriptions)	All members	Interactive development sessions	Local Government Association
January	Member enquiries system/ Access to information protocol	All members	Briefing/ Q&A session	TBC
January	Scrutiny and information: <ul style="list-style-type: none"> Different types and how to interpret them Access to information protocol 	All scrutiny members	Interactive development session	Centre for Governance and Scrutiny
February	Housing applications and policy	All members	Briefing	Director of Housing – Resident Engagement & Allocations
February	Financial leadership: reflections on practice in 2021/22, action planning for the future	Cabinet	Interactive development session	Local Government Association
March	Duties of members as corporate parents	All members	Briefing	Director of Early Help and Children's Social Care

Further training to be scheduled:

- 2 x Chairing training sessions (to be delivered by Association of Democratic Services Officers)
- Using social media effectively and safely – for all Members
- Planning Committee (to be delivered by Planning Advisory Service)
- Whistleblowing policy/ procedure briefing (once Policy revised and officer training completed)
- Commissioning/ procurement (to follow budget setting process)

For delivery May 2022 onwards:

- Engagement and consultation

Appendix 2: Draft Member role descriptions

Councillor role descriptions

These role descriptions set out the skills, behaviours and knowledge required for different Councillor roles.

The purpose of the role description is:

- To provide clarity for Councillors, officers and the public about what is expected of each role
- To support Councillors in their development by providing a basis to identify any development needs, both for this role and for future roles to support succession planning. The role description informs the Member Development Programme.

Ward Councillor

The Ward Councillor role profile underpins and is a requirement for, all other Councillor roles.

ACCOUNTABILITIES

Leadership at Ward and Borough Level

- Individually and collectively lead and champion the interests of local communities and effectively represent the interests of the ward and its constituents, to deliver outcomes that make a difference
- Be the main point of contact for the Council with local communities, which includes residents as well as businesses and other organisations based in the borough
- Engage with local people and businesses, particularly those in under-represented groups, and ensure their views are heard by the Council
- Develop a deep understanding of local communities, their issues, needs and concerns so that these can be fully represented
- Promote good community relations and strengthen community cohesion through taking and encouraging steps to eliminate unlawful discriminatory practices and attitudes within and outside the Council
- Support others to empower themselves and find ways to strengthen the capacity of communities to take action on their own behalf to tackle things that are important to them
- Act as ambassador and advocate for the Council as a whole
- Meet face to face and liaise regularly with local interested individuals and groups to listen and support their involvement in key Council decisions
- Undertake case work for constituents and act as an advocate in resolving concerns or grievances, in a timely way
- Ensure that constituents receive feedback on consultations in which they have participated and help them to understand the reasons why the Council has made its decisions
- When participating in decision-making, ensure that decisions are lawful, reasonable, proportionate, contribute to the delivery of the corporate plan and are within the Council's policy and budget framework
- Participate constructively in the good governance of the ward and borough, being an effective member of any Committee or panel appointed to
- Use influence as a Councillor to develop links between groups and communities in the ward and local area
- Work with communities to help with local service delivery, including encouraging volunteers.

Representation

- Inform the debate at full council meetings and contribute to the effectiveness of the council meeting
- Contribute to the formation of the council's policies, budget, strategies and service delivery, and to the scrutiny of their implementation and review
- Develop and maintain knowledge of how the Council works, its objectives and developing working relationships with its officers as appropriate and relevant to casework
- Keep constituents informed about what they have been doing, through relevant and appropriate communication channels
- Represent the Council to communities, and the communities to the Council
- Participate in the activities of any political group of which the Councillor is a member
- Represent the Council on outside bodies, as appointed, and, where appropriate, represent those bodies within the Council.

Other duties

- Fulfil the legal and local requirements placed on a Councillor (in accordance with the Members' Code of Conduct and Councillor/ Officer Working Protocol)
- Take responsibility for ongoing personal development and continuous improvement for any role undertaken
- Behave in a professional manner towards residents and other stakeholders, officers, and other Councillors.

BEHAVIOURS

Councillors maintain the highest standards of personal conduct, consistent with the Nolan Principles and the Member Code of Conduct.

Our values are fundamental to everything we do as a local authority. Councillors demonstrate commitment to the Council's corporate values through these behaviours:

One Team

- Collaborates effectively with others to benefit the whole Council
- Develops effective relationships with key council officers as appropriate and representatives from partner agencies
- Constructively challenges others when necessary to ensure values and standards are maintained.

Proud to serve

- Strives to do the best for the local community, getting the most from limited resources and using taxpayers' money wisely

- Builds effective, strong and empathetic relationships with communities, working across political boundaries without compromising political values, maintaining confidences where appropriate or required, demonstrating empathy.
- Understands different experiences and sees a range of viewpoints
- Demonstrates effective community engagement skills – specifically:
 - two-way communication with residents to listen and understand
 - finding ways to enable and create opportunities for residents to be actively involved in decision-making
 - listening to every voice (not just the loudest ones) – understanding the role of officers and knowing when to seek help and advice
- Responds fairly to everyone's requests, and where necessary explains when requests can't be met
- Processes information, develops priorities and focuses on what is important
- Manages the media within the context of protocols but identifies when additional support from specialists is required.

Honest and open

- Performs role with integrity, fairness, honesty and transparency
- Adapts style to communicate effectively with a range of audiences, including stakeholders, delivers effective presentations and public speaking and presents reasoned arguments
- Actively listens and effectively questions
- Is able to manage own emotions in the face of conflict or challenge
- Is aware of own strengths and limitations and is open to feedback
- Understands and analyses complex information and presents clear and meaningful arguments.

Taking responsibility

- Gets things done and delivers on promises
- Only commits to actions that they, (or, if appropriate, others), will deliver
- Manages casework effectively ensuring residents receive prompt, respectful and responsive service
- Uses IT to access agendas, minutes, reports, the Council's Intranet and website and carry out role
- Is up to date and well-informed, reading, digesting and managing information as appropriate.

Valuing diversity

- Makes the most of the many perspectives that make Croydon distinctive
- Listens across communities, ensuring decisions are informed by an understanding of the full range of views
- Focuses effort on identifying underlying needs and looking for ways in which these can be met effectively

- Leads and champions the interests of local communities
- Treats others with equal value and respect.

SKILLS AND KNOWLEDGE

- Able to manage casework, including the use of IT to support the process
- Basic administration skills
- Understanding of how the Council works, including the political decision-making structures of the Council and partners
- Knowledge of the Council structure, key officer contacts, service procedures and eligibility criteria (in relation to schemes and services administered by the Council)
- Understanding of the role of a Councillor and the role of officers – how these roles differ and how they work together
- Able to engage and work with a wide range of people and as part of a team
- Understanding of and commitment to the Members' Code of Conduct
- Knowledge of the strategic priorities and key policies of the Council
- Basic understanding local government finance and audit processes
- Able to understand and interpret council budgets and accounts
- Understanding of the Corporate Parenting responsibilities of Councillors
- Knowledge of the Council's standards of customer care and complaints procedure
- Conflict resolution and mediation skills
- Able to chair meetings in the community, facilitating open discussion and debate
- Knowledge of the issues within the ward and the wider locality
- Understands national policies and their impact on the ward
- Knowledge of partner agencies operating in the ward
- Keeps up to date with recent and ongoing evaluations of the Council

Scrutiny Councillor

The Scrutiny Councillor role profile underpins, and is a requirement for, the Scrutiny Committee Chair.

ACCOUNTABILITIES

- With other Scrutiny and Overview Members, effectively and efficiently discharge the Council's Overview and Scrutiny Function under s21 of the Local Government Act 2000
- Participate in the development of a prioritised, balanced scrutiny work programme which is focused on outcomes for local people and the Council
- Work effectively and efficiently with limited resources, prioritising scrutiny activity and use of officer capacity
- Use a range of techniques to ensure that scrutiny hears from and understands issues and ideas which are important to local people
- Use understanding of the needs of local people to shape scrutiny discussions, without acting in a party political manner
- Develop constructive relationships with the Cabinet and individual portfolio holders as well as senior officers
- Participate in an annual review of scrutiny's performance and delivery of its work programme, monitoring and evaluating the effectiveness of scrutiny activity

BEHAVIOURS

Commitment to making the scrutiny function work and to developing the conditions necessary for working effectively with others in the council and any relevant partner organisations, including positive working relationships

SKILLS AND KNOWLEDGE

- Understanding of law, guidance and principles relating to effective scrutiny
- Skills in analysis of performance, finance and risk information, assimilating and analysing complex information
- Able to make recommendations based on evidence
- Able to work as part of a Committee to contribute to the continuous improvement of the Council
- Excellent listening and questioning skills, able to challenge constructively, engage with and learn from the public
- Able to be agile and to adapt personal style and the working of the Committee to obtain input from all relevant partners and the community
- Effective research skills
- Monitoring and evaluation skills

Chair of Scrutiny and Overview Committee/ Chair of Sub-Committee

ACCOUNTABILITIES

- Maintain effective liaison with the Leader of the Council, Cabinet Members, the Chief Executive and Executive Directors to ensure that scrutiny contributes to effective decision-making in Croydon
- Represent scrutiny in Full Council and be accountable to Council for the actions of Scrutiny and Overview Committee
- Ensure that scrutiny is publicised and communicated to build understanding of its role both within and outside the Council
- Be responsible for the constitutional arrangements relating to the waiving of Call-In where decisions are urgent and cannot be reasonably deferred
- Ensure that scrutiny work is properly coordinated and prioritised, taking into account available resources
- Maintain an overview of scrutiny in Croydon and learn from practice elsewhere
- Ensure the continuing development of overview and scrutiny in Croydon through improving both practice and how it is organised
- Contribute to the recruitment and retention of co-optees
- Encourage the involvement of all interested parties, stakeholders, individuals, voluntary and community groups in scrutiny and overview matters.

SKILLS AND KNOWLEDGE

- Ambassadorial skills, to be able to represent and champion the scrutiny function within and outside the Council
- Relationship building skills with other parts of the political management structure
- Advanced listening and questioning skills

Committee Chair

The Committee Chair role profile underpins and is also a requirement for, the Scrutiny Committee Chair/ Sub-Committee Chair.

ACCOUNTABILITIES

- Provide leadership and direction through the effective chairing of Committee meetings in line with the Constitution, terms of reference and Code of Conduct
- Identify the priorities for the work of the Committee and ensure that there is a manageable and achievable agenda for each meeting
- Foster and maintain a disciplined approach by the Members involved having regard to high standards of behaviour and ethics, including relevant protocols
- Ensure that all Members appointed to the Committee fully understand the Committee's work and receive relevant training as specified by the Council
- Encourage all members of the Committee to engage in its activities
- Represent the Council at formal and informal meetings
- Ensure that meetings are run effectively and inclusively, in line with any agreed agenda, to deal with the business at hand and keeping to time.

BEHAVIOURS

- Prepares effectively for meetings, including consultation with officers, other councillors, constituents, partners and/or other stakeholders as appropriate in advance
- Allows all Members to participate and be heard, ensuring that focused and balanced discussions are held within an appropriate framework for debate and managing any conflict appropriately
- Ensures that resources are used to best effect
- Impartiality and objectivity
- Summarises complex debate and ensures that clear and unambiguous decisions are made based on appropriate evidence
- Builds effective and respectful relationships with Members, officers and representatives of outside organisations in order to carry out role
- Develops networks and looks externally for best practice.

SKILLS AND KNOWLEDGE

- Advanced chairing skills, including the ability to manage conflict
- Ability to plan and prioritise the business of the Committee, having regard to its terms of reference and key challenges facing the relevant function

- Able to be agile and to adapt personal style and the working of the Committee to obtain input from all relevant partners and the community.
- Working knowledge of the professional disciplines, services and constitutional requirements relevant to the work of the Committee
- Excellent communication skills
- Excellent listening, questioning as well as influencing and negotiation skills.

Cabinet Member

The Cabinet Member takes strategic responsibility for, and is accountable for, a named portfolio of services, including the initiation of specific relevant policy. They provide collective and individual leadership as part of the Cabinet.

The Cabinet Member represents and champions the Council on outside organisations, and contributes the Council's perspective to national, regional and sub-regional bodies, feeding back insights and learning to inform the Council's decision-making.

ACCOUNTABILITIES

Political vision and strategic direction

- Develop and deliver a vision for the portfolio in keeping with manifesto commitments
- Work closely with senior officers to ensure the vision is translated into robust strategic direction and priorities for action
- Develop a high level of understanding of the services and policies related to the portfolio and the key strategic issues relating to them
- Ensure the political vision and direction for the portfolio is in line with the Council's overall corporate direction
- Contribute to the development of the Council's overall priorities

Leading change and innovation

- Translate strategic direction into necessary change and innovation programmes with appropriate pace, urgency and effectiveness
- Provide political lead for change and motivating others
- Encourage a learning, reflective approach to change and innovation

Communicating messages

- Communicate and positively promote the portfolio's vision and direction to a range of audiences, explaining new initiatives, changes and opportunities, using an appropriate range of channels and approaches
- Be a visible champion for the portfolio service area in the community
- Promote and defend the political decisions and achievements of the administration

Effective decision-making

- Exercise delegated powers in accordance with the Constitution
- Take informed and effective decisions in a timely way, seeking advice from senior officers as appropriate

- Attend Cabinet meetings and take collective responsibility for decisions taken
- Work with local communities and stakeholders to ensure that the voice of residents is heard in policy development and decision making

Performance monitoring and making a difference

- Ensure effective performance management systems are in place for the portfolio
- Ensure effective financial management and achievement of best value for taxpayers
- Monitor performance and budgets systematically, working closely with senior officers to ensure targets are met
- Address poor performance
- Ensure the achievement of impact and agreed outcomes

Effective partnerships and systems leadership

- Ensure that the work of the portfolio is focused outwards
- Work effectively with a range of partners – public, private, voluntary and community
- Address blockages in partnership working where required

Working in partnership with officers

- Work effectively and professionally with senior and less senior officers

Political skills

- Work skilfully with the political group to ensure support and maintain group cohesion
- Develop political alliances and strategies

Governance and accountability

- Be visibly accountable and answerable for the portfolio
- Support and develop good governance for portfolio areas
- Respect, value and respond to Scrutiny and Overview effectively

SKILLS AND KNOWLEDGE

- Understand the statutory and political responsibilities in relation to the portfolio and its relationship with other portfolios within the Cabinet
- Understanding of the Council budget, particularly that of the relevant portfolio
- Understand 'systems leadership' and leadership of place
- Able to communicate vision and strategic direction effectively to a range of audiences
- Understand the respective roles of members and officers
- Aware of the political terrain in the authority

- Able to challenge the status quo and deal with complex strategic issues and problems
- Understand the principles and importance of making sound, evidenced-based decisions
- Able to work with the Leader of the Council and other Cabinet members as a team
- Excellent chairing skills to be able to chair meetings relating to the portfolio
- Able to get things done, manage a busy and complex workload, often to tight timescales and deadlines
- Able to assimilate and analyse complex information
- Able to work as part of an effective team
- Able to build relationships with residents, other Cabinet colleagues, senior officers, Scrutiny and Overview, partners, other organisations etc.
- Able to work with residents and community organisations to inform policy development and decision making
- Excellent communication, presentation and advanced public speaking skills
- Excellent listening, questioning and negotiation skills
- Understand the legally defined roles of certain senior officers
- Detailed knowledge of the challenges facing local government
- Knowledge of the work of national, regional and sub-regional bodies and the role of the Council within them
- Knowledge of the role of local partners and the services they deliver
- Ambassadorial skills, to be able to represent the Council within and outside the borough

Appendix 3: Current Members Handbook contents list

Essentials

- Council Diary
- Surgeries
- Member petitions
- Who to contact
- Casework
- General enquiries
- Councillor questions
- Statutory Officers
- Allowances and expenses
- Confidentiality and information protection

Responding to Civil Emergencies

- How does it work in Croydon?
- The role of Councillors
- How will you be communicated with?
- Media handling
- Further information

Members' ICT

- Office 365 and Smartphone
- How to access Outlook web access for Office 365 email
- How to print to Council printers from your own device
- How to access the Council intranet from your own device
- Paperless meetings

Council facilities

- Members' areas
- How to book meeting rooms
- Town Hall evacuation procedure

About Croydon and the Council

- The Constitution
- Full Council
- The Leader and Cabinet
- Chief Executive
- Scrutiny and Overview Committee
- Non-Executive Committees
- Shadow Cabinet
- Key decisions
- Budget and Policy Framework
- Croydon Observatory

Code of Conduct

- A guide for Members
- Frequently asked questions
- Bias, determination and predisposition
- Staff and Councillor Working Relations

Ward budgets

- Funding criteria
- Budgets
- Identifying projects to be funded
- Awarding funding
- Monitoring
- Advice workshops
- Proforma

Appendix 4: Members safety guidance

Keeping safe, feeling safe – guidance for Members

Contents

Introduction	3
Getting help	4
General advice on handling intimidation	5
Key points	5
If you think you are being subjected to intimidation	5
The SHIELD principles	6
Intimidation on the telephone	6
Your mental health	7
Personal safety	7
Key points	7
Ward surgeries	7
Dealing with a variety of behaviours	9
Home visits	9
Potentially violent persons register	10
Lone working	10
Personal callers to Members' private homes	11
Home security	12
Attendance at meetings	12
Demonstrations	12
Travelling	13
Reporting incidents	14
Terrorist-level threats	15
Members and social media	15
Key points	15
Online safety, personal security and digital citizenship	15
Responsibilities of Members on social media	17
Managing or moderating your own Facebook group or page	18
Managing your Twitter account	18
Dealing with harmful rumours and misinformation	19
Handling abuse on social media	19
Key points	20
Keep a record	20
Tackling abuse on social media	20
Twitter: muting or blocking accounts	21
Twitter: reporting abuse	21

Facebook: tackling abuse	22
Blogs: tackling abuse	23
Practical tips for handling online abuse	23
What does the law say?	24
Key points	24
Legal background	24
Balancing freedom of speech and its limitations	24
Severity of intimidation	25
Appendix 1	27
Summary of offences and relevant legislation	

Introduction

This guidance has been developed for Croydon Members, based on a resource developed by the Local Government Association, which was in turn informed by organisations such as the Suzy Lamplugh Trust.

This guide is not intended to alarm, but to suggest some steps you can undertake to protect yourself as a person in a public position, and how to respond if an incident occurs. There is legislation designed to protect not only Members of the Council but the general public as a whole, and this guide provides some advice on it.

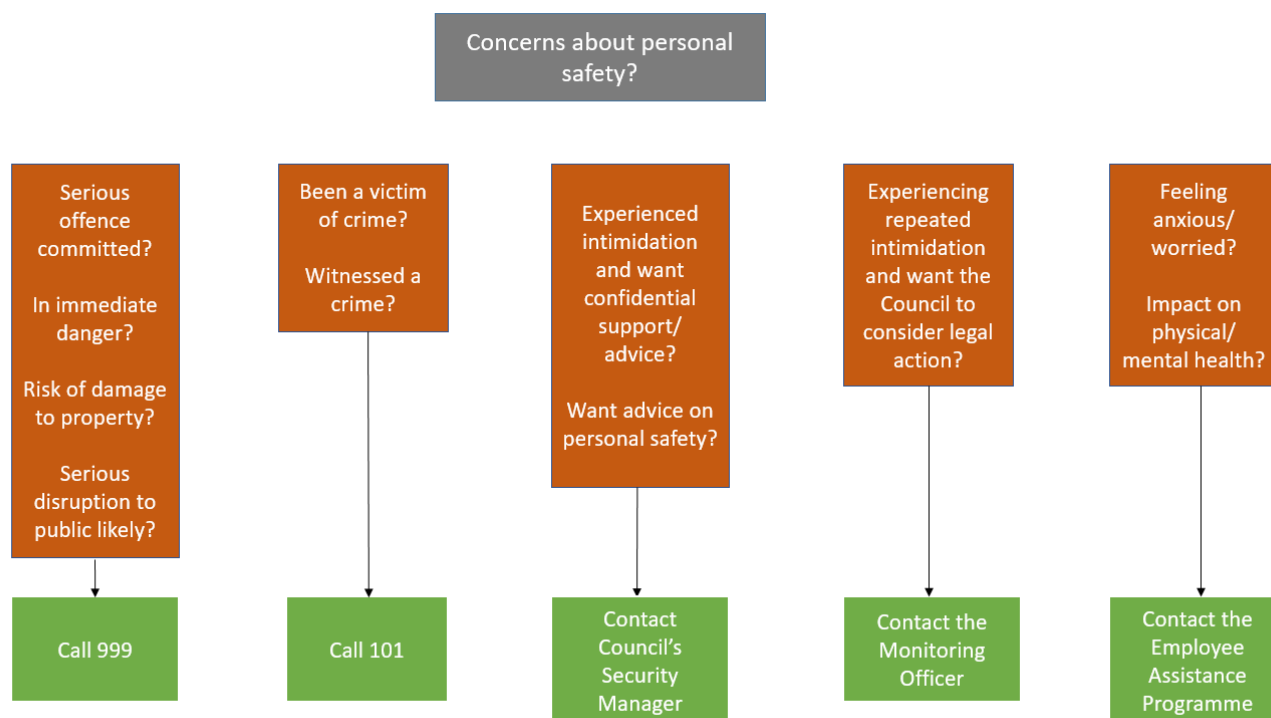
The guide refers to public intimidation, which is defined as *'words and/or behaviour intended or likely to block, influence or deter participation in public debate, or causing alarm or distress which could lead to an individual wanting to withdraw from public life'*.

This includes discriminatory, physical, psychological and verbal actions such as: physical attacks; being stalked, followed or loitered around; threats of harm; distribution of misinformation; character assassination; inappropriate emails, letters, phone calls and communications on social media; sexual harassment or sexual assault; and other threatening behaviours.

If public intimidation is taking place and a crime has been committed it is important that it is recorded and reported so that the scale and nature of the issue can be better understood.

This guide does not take the place of legal advice or personalised advice from the police on offences or personal security. If you or someone else is in immediate danger or harm, contact the police. If you are concerned about your personal safety or security as a result of abuse, harassment or intimidation and would like advice, contact the Council's Security Manager (see below).

Getting help



Call **999** if:

- A serious offence is in progress or has just been committed
- Someone is in immediate danger or harm
- Property is in danger of being damaged
- A serious disruption to the public is likely

Call **101** or [report online](#) if:

- You've been the victim of crime
- You've witnessed a crime

Contact the Council's Security Manager (FMHelpdesk@croydon.gov.uk) if:

- You've received intimidatory contact or communication from an external or internal source and would like a confidential conversation, support and advice
- You'd like advice on personal safety

An allegation of more serious criminal activity may need to be taken further but the Security Manager can advise on the approach to take.

Contact the **Monitoring Officer** if:

- You are experiencing repeated harassment/ intimidation etc and would like to discuss potential legal action that the Council could take.

General advice on handling intimidation

The most important factor in deciding how to respond to intimidation is the impact it is having on you. Regardless of what others may think, if it is having an effect on you, then that is sufficient for you to take action.

The police will take hate crimes relating to racial or religious issues very seriously, and additionally, crimes related to disability, transgender status or sexual orientation can be treated as relevant factors in sentencing.

Key points

- Keep a record of any intimidatory communication or behaviour
- Consider the context, content and frequency of intimidation
- Action can be taken retrospectively
- Take care when making contact with unknown or anonymous individuals
- Where you feel safe to do so, do speak out against harassment and intimidation of others and address any inappropriate and disrespectful behaviour

If you think you are being subjected to intimidation:

- Make sure your immediate safety isn't at risk: if it is, contact the police.
- If you are concerned about your personal safety, raise this with the Council's Security Manager and police, so that they can help you review your own security and personal safety and there is a record of the impact the incident/ behaviour is having. This could include an impact on your personal or work activities and those of your family.
- If possible, record or diarise the encounter or communication as soon as possible after the event. Save a copy of an email or letter. You can write in a diary a record of a phone call or face-to-face discussion, and keep a screen shot of a social media incident. You can also take photos of damage or even a computer screen. Even if this is the first or only incident for you, others may also have been subjected to intimidation and a collective record is important if future action is to be taken. It's also important that incidents relating to the same individual(s) is recorded as such evidence could be critical in a criminal prosecution.
- Every situation will be different and it will need a personal judgement about whether it is worthwhile to pursue the incident, ignore it or politely acknowledge contact. The Council's Security Manager can discuss the incident with you to help you make your decision.
- Raising the incident with the Council's Security Manager and/or anyone nominated by your political group to provide support will also help establish if others have been subject to the same or similar behaviour.
- If a serious potential crime has occurred, formally report it to the police (and to the Council's Security Manager) particularly if there has been a serious threat to life or anticipated violence. The Council will be able to check if the individual(s) who is alleged to have been intimidating is on its register of potentially violent people (the 'Red File') and if not, to ensure that the name is added.
- If the letters, phone calls, social media communications and/or emails continue, you may need to consider further steps such as advising the individual that such abuse will be referred to the police and that you will not correspond with you further.

- The Monitoring Officer can provide advice on the potential to take out an injunction against an individual who continues to behave in an abusive or intimidatory manner.

The SHIELD principles

- **Safeguard** – where possible, protect yourself online and in person. For example, set out in any online biography or page that abusive, threatening or intimidatory communication or actions will be reported, utilise security features, take personal safety precautions and have a point of contact in the local police for any incidents.
- **Help** – in any situation ensure you are safe before you take further action and get help if needed by calling the police. If the threat is not immediate, you can report it by calling 101 and contact the Council’s Security Manager and/or someone with a role to provide support from your political group.
- **Inform** – you can inform the individual or group that you consider their communication or action as intimidating, threatening or abusive. There is a growing movement of ‘digital citizenship’, which encourages the labelling of poor online conduct as a way of challenging such behaviour.
- **Evidence** – if you consider that a communication or action is intimidatory, threatening or abusive, gather evidence. For example, photos, recordings, screen-shots, letters, emails, details of witnesses, etc.
- **Let people know** – report the incident to your social media platform/officers/party contact/lead member/the police; depending on the nature and severity of the incident(s). Be prepared that the police and courts will look to determine if the incident is intimidation based on the theoretical opinion of the average person.
- **Decide** – determine whether you want to continue receiving communications from the individual or group and block or mute if on social media where appropriate. Decide if you want to pursue any action to inhibit the ability of the individual or group to approach you.

Intimidation on the telephone

- Continue to be polite and try to stay calm – ensuring you are safe
- If you have a recording function on your phone, particularly a mobile phone, switch this on. You can also use your mobile phone to record a landline call by switching on the voice recording function and holding it to the landline phone: indicate to the person on the phone that you consider that they are trying to intimidate you and that calls may be recorded
- Try to identify what the complaint is about if there is one
- Try to identify the name, address and telephone number if you can
- Remember not to reveal any personal details
- Sometimes a suggestion that the caller refers the matter to the Council’s procedure for complaints about Members (or council services, as appropriate) may result in a solution for the caller
- If the call continues with threats, abuse and/or intimidation, you can end the call, letting the caller know you will do this
- Make a note of any details of the call you can remember, particularly the person’s phone number
- If you are concerned, make a report to the Council’s Security Manager.

Your mental health

Being abused or intimidated, whether in person or remotely, can have an impact on your mental health. If you are feeling anxious or worried, or if it is affecting your daily routines such as sleeping or eating, or if you have any other concerns about your health, do speak to your GP. You can also access free counselling and health and wellbeing support through the [Employee Assistance Programme](#).

Personal safety

An important role of a ward councillor is to keep in touch with their residents and communities. This includes helping individuals with any problems they might have, which might extend beyond just the delivery of council services. These contacts are usually rewarding and non-adversarial. However, councillors can find themselves in a position where they need to manage angry and frustrated residents who often contact their elected representative when they feel that they have no other avenue to pursue. Often councillors will deal with constituents on a face to face basis when alone.

The purpose of this section of the guidance is to set out what personal safety and security measures you could take to prevent and deal with those rare circumstances when you might find yourself in situations where you are concerned for your safety.

Most councillors will not experience any problems during their term(s) of office, but a little time given to the preparation and planning can reduce any risk.

You are encouraged to:

- assess personal risks in carrying out your public duties
- recognise potential danger from personal contact or internet / postal communication and take appropriate action
- be proactive in considering personal safety through, for instance, buying a personal alarm, ensuring your partner, friend or relative has information on your activities, and ensuring your mobile telephone is charged
- if possible, vary daily routines, such as leaving and returning home at the same time or on the same route.

Key points

- Consider your personal safety and incorporate it into planning any public duties or interaction, with advice and support from the Council's Security Manager.
- Much personal safety is common sense, but it is useful to remind yourself of the advice.

Ward surgeries

The arrangements you can make will vary according to your local circumstances and it will be a fortunate councillor who can find premises for their surgery which meet every aspect of good practice and are also accessible to their constituents.

The following suggestions are designed to help make a ward surgery safer and more effective:

- Not holding surgeries alone in an otherwise empty building. Try to get someone to act as receptionist. This not only makes you safer, but also makes it much easier to manage a busy surgery. If you are currently holding surgeries alone, you could discuss how this can be overcome with fellow councillors or council officers.
- If you cannot avoid holding surgeries on your own, you can try to reduce any risk by considering the layout of the room, for example, sitting nearest to the door with the constituents seated on the other side of the table. Seating is best set out at an angle of 45 degrees (seating directly opposite can be confrontational). You can make sure there are no heavy items in the room that could be used as weapons and generally declutter the room.
- If possible, a separate and comfortable waiting area for constituents allows for a preliminary assessment.
- Have a plan for any helpers or staff regarding what to do in an emergency that you review and test regularly. This could include having an emergency word or phrase you can use to ask for assistance.
- Have an incident log book to record any incidents. This should include all types of unacceptable behaviour and should be dated, timed and signed in case further action is required.
- If you are at the stage of looking for suitable premises in which to hold a surgery, the following can help when considering personal safety:
 - council premises (e.g. libraries) during opening hours or other premises where there are many other people about
 - premises close to members of staff or other people in case you need assistance
 - premises where the names of any visitors for councillors are recorded
 - premises where there is a comfortable waiting area
 - easy access to a landline or an alarm linked to reception
 - a clear and agreed procedure for dealing with a call for assistance
 - is in view of a public area or a reception
 - a vision panel in the door
 - a swift means of escape and any visitors are not able to lock the door from the inside.
- It can be useful to make the following personal security checks:
 - Are council staff/friends/family aware of where and when I am holding my surgery? Will they check on me if the meeting takes longer than expected? Do they know how to contact me?
 - How do I call for help if I need to? Have I got my mobile phone with me, is the battery charged and can I get a signal? Do I have a personal safety alarm with me that is working?
 - Is the visitor displaying signs of irrational, aggressive or confrontational behaviour? Am I sat at their level and using eye contact and open and gestures to display a helpful attitude?
 - Do I think it is safe for me to conduct this surgery? Do I need to consider other options, such as a fellow councillor supporting me during the surgery? Do I need to call the police?
 - Have I checked the room to make sure it is set up correctly with no items lying around that could be used as weapons?
 - Is my chair nearest the door, so I can get out quickly if I need to?

- Am I aware of the quickest way out of the area or building and is there a safe location identified for me to go in case of any issues?

You may find it helpful to systematically assess any risks associated with the venue (or potential venue) for your ward surgery, using the points in this guidance. If you would like to use a template to do this, or would like any further advice having done so, contact the Council's Security Manager.

You can also undertake conflict resolution training if you want to have additional skills in dealing with a potentially volatile situation.

Dealing with a variety of behaviours

It is inevitable that some of the people you will meet will be angry or upset. Calmness in the face of whatever comes up will help you and your constituents.

If you are subjected to offensive, threatening, intimidating, racist, homophobic or derogatory remarks, you are within your rights to bring the meeting to an end and seek assistance. It is recommended that you take a detailed note of the incident and person(s) involved and let the Council's Security Manager know about the incident. You can decide if you want to inform the police.

Some constituents seeking a councillor's help may have additional needs or a mental health condition, and it is important that they are still able to seek advice and representation from their councillor. They may just require suitable adjustments to be made and for an understanding of the nature of their condition. Advice on supporting such individuals is available from a number of organisations, including the [Autistic Society](#) and [Mind](#).

Home visits

Councillors do sometimes visit residents in their homes, especially those who are elderly, disabled, have additional needs or where they simply want to see for themselves the conditions that are the subject of complaints.

It is for each councillor to decide whether a particular home visit should be made, especially if the person to be visited is unknown to the councillor. Most councillors trust their own instincts as to whether to meet someone alone. However, if you have any doubts about the safety of the premises you are to visit and the purpose of the visit is not about the premises itself then arrange for the meeting to take place at a neutral venue.

If a home visit is undertaken, the following general personal safety issues can be considered and planned before the visit:

- arrange the visit during normal working and daylight hours, if possible
- if appropriate, ask the Council's Security Manager to refer to the 'Red File' scheme of potentially violent people
- let somebody know who you are visiting, providing details of address, date and time of visit and expected duration
- keep a record of your whereabouts. This might include making a call on your mobile during the home visit, telling the resident that there is such a record or that you are

expected elsewhere at a specific time. It would be advisable to let colleagues or family members know when you expect to finish.

During a home visit, you can consider the following specific personal safety advice:

- consider calling the person before the meeting to confirm arrangements and establish their mood/state of mind
- set up a code word or phrase for use on the telephone that you can use to raise the alarm. This needs to be something you have agreed with someone which will alert them that you think you might have a problem
- park your car so that it can be driven away easily and park in a well-lit area near other vehicles, if possible
- stay alert when approaching the property, and look around the garden for obvious dangers, for example dogs or prowlers
- after knocking, stand back and to the side of the door and do not stand on the edge of any steps
- be aware of potential weapons
- you can ask for any dogs or other pets to be secured
- assess the situation and mood of the resident. Also note any other people in the property and their mood
- if in any doubt or you feel threatened, do not enter, make an excuse and leave
- only sit down when the resident does
- where possible, sit in an upright chair as this is easier to stand up from without a barrier. If you have to sit in an armchair or settee, sit on the edge near the arm. This will enable you to stand up more easily. Look for any alternative escape routes if the situation changes and you feel threatened, make an excuse and leave. Back out rather than turning your back on the resident.

If a serious situation occurs, vacate the premises immediately and report the incident.

If you are unable to leave immediately when a serious situation occurs, you can:

- place defensive barriers between yourself and the resident
- continue talking to the resident, reassuring them that you mean them no harm
- set off your personal alarm, if you have one, or scream or shout to attract the attention of others. The use of reasonable force to protect yourself can be a last resort.

Potentially violent persons register

The council has a database of the names and addresses of known violent people (or people who have threatened violence), to be shared across the Council to assist in protecting the health and safety of staff and contractors. It is not a database of people that staff think could be violent, nor is it a scheme for registering other concerns about people or premises.

Prior to undertaking a home visit, you can contact the Security Manager about potentially violent persons and he will check the Red File for you.

Lone working

If you are working alone you might consider the following:

- leaving details of where you are going and how long you will be with a partner, friend or colleague
- checking that your mobile telephone is charged and switched on
- carrying a personal alarm
- making regular check-in calls to a partner, friend or colleague or asking them to call you at regular intervals
- teaming up with another councillor in your own or a neighbouring ward
- carrying out a risk assessment and discussing it with another councillor or the Council's Security Manager, if there are a number of risks associated with a particular visit, for their view on whether a visit should be undertaken.

Personal callers to councillors' private homes

Most councillors seek to maintain a balance between their personal and public lives and do not want to encourage any callers at their private homes. Publicity as to how to contact councillors and details of ward surgeries reduces the chances of unwanted callers. Contact details for councillors can be found on the council's website, although councillors do not need to show their address on the published election nomination paper or on the council's website.

If a visit is to take place at your private home, it is recommended that this only takes place via a pre-arranged appointment, ideally with another person in support.

It is inadvisable to see an unannounced caller in your home. You can suggest making an appointment, but if you have any doubts as to their intention or if they appear angry/aggressive, then contact the police.

If you believe you are safe, you can try to identify their name and address and the nature of the issue they want to discuss, conducting any discussion outside the house.

If you do feel under threat you can carry a personal alarm, perhaps keeping it at the door for easy access.

If you have another person with you inside the house they could take a photo of the person or film the encounter, but be aware that this is likely to inflame the situation if the person is aware of it and they may become more aggressive – this should really be a last resort if you want evidence for the police.

If more than one individual who are not known to you turns up unannounced and you are concerned that they pose a threat it is advisable to contact the police and decline to open the door.

Once the incident is over, record as much as you can, including descriptions, should you decide to take any action over the matter. If you are concerned, report the incident to the council and/or the police.

Home security

As a person with a public profile it is advisable to maintain a decent level and awareness of home security. The following is general advice on what to consider in making your home safe and secure:

- Try to make it clear via boundaries the difference between public and private space. Front boundaries should be kept low so they don't provide hiding places and to enable good natural surveillance.
- Keep fences and walls in a good state of repair and consider your planting to reduce the availability of handholds and to put off prospective intruders
- Remember to lock your garages, outbuildings, sheds, etc. Ensure they are fitted with high-quality and secure locking devices, and you can add extra locks if you are concerned.
- Ensure tools and ladders, which could be used to access your home, are locked away, and remove anything that could potentially be used to cause damage, such as loose bricks or large stones.
- If possible, keep your dustbin and recycling bins secure until collection day to prevent them being used as climbing aids.
- Obscure the view into your home by fitting blinds, curtains or film including glazed exterior doors. Get into the habit of closing curtains or blinds when occupying a well-lit room.
- Do not label your keys – if you need to identify keys, use a colour-code theme, and keep control of your door keys. Make sure you know who has copies and if you cannot account for all the keys, change the locks. Do not give keys to people you do not know, eg trades people.
- If you are planning on installing a home alarm or CCTV, the police recommend that you select an installer who is affiliated to one of the recognised alarm and CCTV inspectorate bodies, such as the **National Security Inspectorate** (NSI) or the **Security Systems and Alarms Inspection Board** (SSAIB).
- In order to identify visitors at night, good external lighting is recommended, alongside low wattage lighting is recommended to illuminate all external doors, car parking and garage areas and footpaths leading to your home.
- Additional useful information is available at **SecuredbyDesign**.

Attendance at meetings

Members of the Council have to attend evening meetings which often finish after dark. It is possible, depending on the nature and outcome of the meeting, that members of the public may leave feeling angry or upset. In such instances, you may wish to ask to be accompanied to your car or nearest public transport by colleagues or officers who also attended the meeting.

Demonstrations

It is possible, due to the nature of the difficult decisions that Members have to make, that you may experience a protest against such decisions. If this does occur:

- Stay calm – such protests may feel intimidating but will not necessarily lead to a physical threat
- Remain inside, close and lock doors and windows and draw the curtains/ blinds
- Inform the police

- If you are concerned that the protest is an aggressive one, and it is safe for you to do so, note descriptions of individuals and vehicles present so you can pass these onto the police.

It is not recommended to confront the protestors.

Travelling

When travelling **by car**, it is advisable to consider your personal safety by:

- having your keys in your hand or easily accessible
- investigating whether an area will be dark and isolated when you return to your car
- parking where possible, under street lighting and not in dark, deserted streets or isolated car parks
- parking on the ground floor in multi-storey car parks away from stairs and lifts and reversing into the parking space
- always locking the car doors when you get into the car and when leaving it
- taking boxes/bags to the car when other people are around
- always carrying a torch with you
- looking around your vehicle as you approach in case someone is crouching down
- looking inside before entering your vehicle to ensure no one is hiding there (even if the doors were locked)
- avoiding placing handbags, valuables or other such items on the passenger seat
- parking on the left hand side of the road facing the way you want to drive off
- trying to park in a space where you will not be blocked in
- avoiding having identifying stickers in your car locking the door at service stations when you go to pay
- ensuring your vehicle has sufficient fuel for the journey and refuel during daylight hours;
- not getting out if you are followed in your vehicle, and ensuring the car is locked, flashing your lights and sounding your horn to attract attention
- not winding down your window if someone taps on it, unless the individual is known to you.
- Be alert to any visual changes to your vehicle. If you notice a suspicious object on or near the vehicle, do not approach or enter it. Contact the police and give them the location and registration number of your vehicle.
- Don't leave laptops, documents, parking permits or papers in unattended vehicles, as they may identify you.

When travelling **by public transport**, it is advisable to consider your personal safety by:

- having the right change or your pass available so that you do not have to bring out your purse or wallet
- ensuring that you know travel times – particularly the details of the last bus / train of the day
- waiting for a bus or train in a well-lit place near other people, whenever possible, and paying attention to your environment
- carrying "emergency" money so that if a bus or train does not turn up, you are able to call a taxi
- sitting on the lower deck and near the driver if a bus is empty or it is after dark

- on trains, choosing carriages that are well-populated and not hesitating to move seats if you feel uncomfortable where you are
- on trains, if you sit next to the door make sure that you keep your mobile telephone close to you. A common crime is for a thief to grab a telephone and make a dash just as doors are closing
- avoiding compartments which have no access to corridors or other parts of the train
- sitting with other people and avoiding empty carriages
- if you do feel threatened, making as much noise as possible to attract the attention of the driver or guard
- if you can, arranging for someone to meet you at the bus stop or train station, particularly if travelling at night or in an unfamiliar area. If this is not possible, try to walking near other people with whom you feel safe, and walk purposefully to your destination
- always carrying the telephone number of a trusted, licensed company with you
- ensuring any pre-booked licensed minicab driver has ID and it that it matches the driver and the vehicle's photographic licence. If it does not, do not get in the cab
- when booking a taxi or minicab, asking for the driver's name, as well as the make and colour of the car. Confirm the driver's details when they arrive – is it the taxi or minicab you ordered?
- sharing a taxi or minicab with a friend and sitting in the back of the car are good safety strategies
- minicabs that pick up fares on the street, without being pre-booked, are illegal, uninsured and potentially very dangerous.

When travelling **by bike**, it is advisable to consider your personal safety by:

- keeping your bike in good working order
- wearing a fluorescent belt or jacket and always using lights
- wearing a cycling helmet;
- securing your bicycle with a good quality chain and padlock.

When **walking**, it is advisable to consider your personal safety by:

- checking that you know where you are going
- considering what your walk will be like at night if you are travelling at that time.
- being prepared to walk a longer way around to keep safe
- wearing comfortable shoes that you can move quickly in, if you need to
- considering carrying a personal alarm, and if you do, making sure that it is accessible
- tucking a scarf or long hair inside your coat
- carrying any bag or handbag across your shoulder.

Reporting incidents

If you consider any incident to be severe, contact the police. Even if an incident is not considered serious enough to involve the police, it should always be reported to the council. If you have been subject to, or witnessed a hate incident or crime you have a duty to report it. By taking appropriate action you may help to prevent a similar incident reoccurring.

Terrorist-level threats

Although the purpose of this guide is not to cover this in detail, it provides a good opportunity to highlight the current safety advice should such an incident occur.

The main 'Stay Safe' principles are to "Run – Hide – Tell". If you would like more information you can refer to the **National Counter Terrorism Support Office's website**.

Members and social media

Key points

- Social media can be very useful in getting feedback on proposals and communicating information about Members' activities. However, remember that not everybody is on social media and so opinions expressed may not be representative.
- Social media is always on, so 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.
- Members are subject to the Council's Code of Conduct when using social media.
- 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.
- 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.

Online safety, personal security and digital citizenship

Digital Citizenship, which has begun to be taught in schools, 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.

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.

In any personal online biography, it is advisable to make clear that the views are your own 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 removed".

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 you share personal information, images of friends and/or family and details of any routines.

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.

Social media platforms have different privacy options. You can choose different levels and change them depending on your own preferences.

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.

It is advisable not to include on social media details such as your personal phone numbers, home address, details of family members or vehicle details.

A photo can relay personal information you may not want shared on social media. 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.

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.

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.

Be aware of safeguarding because social media sites are often misused by offenders. Safeguarding is everyone's business – if you have any concerns about other site users, you have a responsibility to report these.

The usual protocols regarding confidential information, copyright, data protection, pre-election periods, exempt reports, etc, apply to social media. Avoid publishing anything where there is doubt or seek permission in advance.

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.

Be aware that social media is the principal form in which misinformation spreads. It is a civic responsibility to stop the spread of this and misinformation. Very often articles that spread false information trigger strong emotional responses such as fear, anger or shock to maximise shareability. Individuals posting online are responsible for the content of their

posts even if they did not originally create it. Members should very carefully consider the content of new posts, posts they have shared and posts they support.

Be aware that 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, often for their own amusement.

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, and in particular female, LGBTQ+ and BAME councillors, are unfortunately increasingly the subject of online abuse, bullying and harassment on social media. See the section below on handling abuse on social media for advice on how to manage this.

The Local Government Association provides [guidance and tools to support councillors in their online communications](#), including rules of engagement for councillors and candidates. The Council's social media guidance is on the intranet: for advice contact press@croydon.gov.uk

Responsibilities of Members on social media

Members 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.

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.

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.

Some Members 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.

The Members' Code of Conduct and relevant legislation continues to apply online and in social media. If you are referring online in any way to your role as a Member of the Council, you are deemed to be acting in your "official capacity" and any conduct may fall within the code.

Managing or moderating your own Facebook group or page

You may wish to set up your own councillor or community page on Facebook. These are valuable platforms to promote local information, news, events or council developments or seek people's views on community or council proposals.

Members of the community and others can contribute and comment in an interactive manner and whilst most is constructive and uses acceptable language, some individuals may use bad language or 'cross the line' into abuse or harassment.

It is useful to indicate at the top of the page, what the purpose of the page is and what the intended audience is.

If you are a Group or Page administrator, Facebook provides you with a range of tools to manage and moderate other people's content or contributions to your Group or Page for more serious breaches of standards. You can:

- block certain words or apply a 'profanity filter' in the settings, this will stop such postings appearing in your page
- hide or delete comments, photos or tags
- ban or remove someone from your pages

Useful guidance and instructions are available on the 'Banning and Moderation' section of Facebook.

Administering a large Group can be a lot of work, particularly if group members are active. If that's the case, you might want to share the responsibility with other councillors, friends or trusted community members. **Guidance** on making other people or administrators is available on Facebook.

Managing your Twitter account

Twitter works differently than Facebook in many ways and allows different kinds of interactions. Facebook posts can be more informative because they do not have a limit to the number of characters. Twitter posts are limited to 280 characters and tend to have a shorter lifespan than Facebook posts.

When someone follows you on Twitter your posts will appear on their news feeds, giving them a real-time opportunity to comment on them. Abuse, harassment and intimidation can take place and escalate quickly. Twitter does not automatically remove abusive or threatening posts but there are actions you can take:

- Protect your Tweets so they will only be visible to your followers. You will have the choice to accept or decline people's request to follow you.
- Filter Notifications - if you're receiving unwanted replies or mentions from accounts you do not follow, you can filter the types of notifications you receive.
- Consider carefully what you post before doing it. With 250 characters available to explain often complex ideas, Twitter posts can easily be taken out of context.

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. Councillors and supporting officials have shared some strategies they have found useful to deal with this:

- 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 supporting officers are there to give advice, support and provide facts.
- Remember that rumours and misinformation are fed by repetition. It is good to defend your reputation but councillors and supporting officials find that the most efficient way is to do it once and then stop engaging this way.
- Leave the environment 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 further disciplinary or legal action is required.

Handling abuse on social media

Any intimidation or abuse on social media is subject to all the same potential criminal prosecutions as other forms of intimidation, with the additional criminal offences relating specifically to electronic communications.

You are best placed to determine whether a post or interaction is abusive or intimidating, and if you feel intimidated you can take action to report it.

Good digital citizenship encourages the labelling of abusive and inappropriate online material so that both the perpetrator and others viewing it can also know it is not acceptable. However, it does not necessarily follow that the police or courts will regard it as intimidatory behaviour in law as they have to apply their own 'average person' tests – also known as 'reasonableness tests' or the '[Clapham omnibus](#)' test.

Every situation will be different, and it will need a personal judgement about whether it is worthwhile to pursue the incident, ignore it or politely acknowledge.

Key points

- Keep a record of any abuse
- Carefully consider how and whether to respond to inaccurate or defamatory social media comments
- Report any abuse to the social media companies for its deletion or to raise concerns about an account

Keep a record

If you have received online abuse, even if you are not overly concerned or if you intend to ignore it, you should consider keeping a record should any incidents escalate in the future. You can simply 'screen shot', 'clip' or 'snip' tweets or posts on your phone, tablet or computer.

You may also decide to warn the perpetrator that you are keeping a record of all messages and may refer them to the appropriate authorities, which may stop them posting further comments or might encourage them to delete them.

Tackling abuse on social media

In any situation that arises on social media, you will need to decide whether you want to engage in a discussion or ignore it, and whether the communication is abusive, intimidatory or threatening.

When determining whether to engage or ignore, you'll need to balance the risks and likely success of either approach in stopping the situation. Engaging in online discussion could defuse it through the use of humour or similar, or could inflame the situation further. There is no right or wrong here. However, it is likely that the person posting has less of a following or public profile than you and by engaging you can increase their audience.

If the communication is abusive, intimidatory or threatening, then keep a record of it (such as a screen shot). You can post that you find the communication abusive, intimidatory or threatening if you want to highlight the poor online behaviour, and report it to the social media platform and to the police. You can also make the Council aware (via the Security Manager) that you have been subjected to online abuse, intimidation or threats in your role as a councillor so they can keep a record or take action as well.

If you think there are threats to your personal safety or security, you can ask for advice from the police. It may be useful to refer to the section on the legislation applicable to harassment and abuse to see if the communication falls into any of the categories so you can describe it to the police in these terms.

Perhaps most distressing is when multiple users all send abusive messages in quick succession or at the same time. This can be overwhelming and the structure of Twitter in particular means that the more posts and retweets, the more others see it, and they can be encouraged to add to the abuse. It can escalate very quickly. There are sadly some who will willingly add to the abuse for their own amusement, even if they are unaware of the details. This is a difficult situation to handle, particularly if the information is being held by another user. If this occurs, you are advised to make a record of the abuse, inform the social media

platform, the Council and the police if any of the tweets make significant personal threats. You may wish to remove the original post if you can. Often these things burn themselves out very quickly and the perpetrators move onto the next trend or victim.

If someone has posted some inaccurate information about you or the Council, and if the information is defamatory (a false statement that could harm your reputation), again, the first step is to gather evidence. You may then want to contact the individual initially to request that the tweet or post be deleted; some individuals may have made a mistake without malice and will remove their post immediately. Depending on the nature of the tweet or post and the number of followers who may have viewed the tweet, you may wish to seek a correction and/or an apology.

If this approach is unsuccessful or where a defamatory tweet or post causes serious concern or is part of a concerted campaign, in addition to informing the Council, you may wish take legal advice and to issue a "notice and take-down" letter via your solicitor (assuming you are able to locate the perpetrator). Although you may not have the intention of proceeding further, the threat of legal action is often a powerful deterrent and can prompt a swift and successful resolution.

If the tweet or post is a complaint about a council service, you can ask for contact details and pass the information to officers to follow up on and inform the individual that this is the course of action you are taking. This may help defuse any tensions.

Twitter: muting or blocking accounts

You may wish to unfollow, mute or even block a person or group who is persistently tweeting you or is being abusive or intimidatory. Guidance about to mute and block is available from Twitter, but in summary:

- *Muting* allows you to remove an account's tweets from your timeline but does not go as far as unfollowing or blocking the account. Muted accounts will not know that they have been muted and you can 'unmute' them at any time.
- *Blocking* allows you to restrict specific accounts from contacting you, seeing your tweets or following you. Unlike muting, the perpetrators can find out that they have been 'blocked' and may accuse you of avoiding their scrutiny; this may be a small price to pay if their behaviour is checked and can be easily rebutted if necessary.

Twitter: reporting abuse

Twitter itself promotes '**Rules**' encouraging constructive debate but it explicitly prohibits behaviour "...that crosses the line into abuse, including behaviour that harasses, intimidates, or uses fear to silence another user's voice".

If tweets are so offensive that you believe they violate Twitter's rules, you can **report** them to Twitter who may decide to take action. For further information about how to report 'violations' visit Twitter's how to report **violations** page.

If someone sends threatening, abusive or offensive messages via any social networking site, they could be committing an offence. The most relevant offences are 'harassment' and 'malicious communications'.

According to the police, harassment means a 'course of conduct' (i.e. two or more related occurrences) and the messages do not necessarily have to be violent in nature, but must be oppressive and need to have caused some alarm or distress.

An offence relating to malicious communications may be a single incident, but for an offence to have been committed, a message must be indecent, grossly offensive, obscene or threatening or menacing.

Facebook: tackling abuse

Facebook has slightly different '**Community Standards**' to Twitter and alternative methods of dealing with complaints.

You are also more likely to encounter community or campaign groups or pages which facilitate scrutiny of you, fellow councillors or your local council on Facebook, and some will have been set up specifically with that purpose in mind. If these groups are not moderated effectively, they can provide a conduit for abuse and harassment.

There is no right or wrong way with regards responding to a group or page which regularly criticises the Council or councillors; some believe that it is beneficial to engage constructively, to explain, inform or signpost and hopefully improve awareness, understanding and support, whilst others are more reluctant as it will require emotional energy and time and the likelihood of successful engagement may be limited.

If you are concerned about comments or postings about you in a group or page, you can report the post to the group administrator. If you are concerned about a group that is abusive and you think it has broken Facebook's Community Standards, you can **report** the group to Facebook.

Although Facebook encourages respectful behaviour and takes action to protect 'private individuals' from bullying and harassment, it permits 'open and critical discussion of people who are featured in the news or have a large public audience based on their profession or chosen activities'. Facebook does take action around 'credible threats' and 'hate speech'. There is a range of options for you to manage abuse or harassment on Facebook and full instructions are available on the Facebook **help page**:

- if you want a post removed from Facebook, you can ask the person who posted it to **remove it**
- if you don't like a story that appears in your news feed, you can **hide it**
- if you are not happy with a post you're tagged in, you can **remove the tag**
- you can **leave a conversation** at any time, though the other people in the conversation will be notified and you will no longer receive messages from the conversation
- you can **unfriend** or **block** another user; they will no longer be able to tag you or see things you post on your timeline
- If the post goes against Facebook's Community Standards you can **report** it to Facebook.

Blogs: tackling abuse

Blogs are a quick and easy way to set up mini-websites to discuss and air views on matters of interest.

Occasionally, blogs may take an interest in local, community matters and some have been set up specifically to scrutinise the local council or councillors. At other times, councillors may face negative comments on their own blog.

While scrutiny is a key part of local democracy and accountability, on occasions, some blogs may make unfair comments or untrue allegations or may include abusive or threatening commentary. Unlike Facebook and Twitter, there are no 'community rules or standards' to moderate or challenge such content.

Depending on the nature of the comments, councillors therefore have several choices:

- ignore them altogether and hope that few people read and become aware of the comments
- engage with the blogger and seek to assure, inform or correct the comments as appropriate. Bear in mind that this course of action may fuel and prolong the debate and abusive comments further
- if you are concerned that the blogger is harassing you, threatening you, spreading malicious communications or is defaming or libelling you, you may wish to record any evidence (such as screen shots) and seek further legal advice or refer the matter to the police.

Practical tips for handling online abuse

Councillors and supporting officials have shared the following practical tips, based on their experience and best practices, to prevent and handle online abuse:

1. **Set expectations** – point people to your [rules of engagement](#) and apply these consistently.
2. **Lead by example** – do not post comments that could be considered abusive, and avoid posting false or unverified information.
3. **Consider content** – some content will be more controversial than others. Consider before posting how you will manage engagement with this, for example only engaging in comments on the policy itself or directing people to consultation documents.
4. **Defuse conflict** – waiting to respond can take the heat out of situations, as can reframing your own language.
5. **Know when to step back** – you do not have to engage with abusive or threatening behaviour. You can set the record straight with factual information if you wish, but you can step away when you want to.
6. **Protect your privacy** – set different passwords for different accounts, and do not post information that can allow people to identify your whereabouts outside of official council business.
7. **Understand privacy settings** – there is a range of settings to help you manage who can see or comment on your posts.
8. **Get and give support** – where you feel able, provide support to fellow councillors online, and reach out to colleagues and the Council for support where needed.

9. **Record abuse** – screenshot comments and keep a record of abusive or threatening communications.
10. **Report serious issues** – if you feel unable to deal with online abuse yourself or have any concerns about your safety, report this to the Council's Security Manager and/or the police.

[Glitch](#) is a charity working to end online abuse which provides useful resources.

What does the law say?

This section sets out the legislation that applies to intimidation with the aim of helping councillors who are experiencing intimidation or abuse to classify it according to the legislation.

Key points

- Threats to kill, rape, commit serious violence, stalking and property damage are all criminal offences
- Intimidating behaviour that is face-to-face or by letter, telephone call or online is a criminal offence
- Members are encouraged to make a record of these incidents and report them. Even if it does not result in a criminal investigation or conviction, it is important that the collective scale of the issue is reported.

Legal background

Whilst the law on physical and verbal intimidation and abuse is better established and known, the law has been catching up with developments in the area of communication generally and the recent seriousness of intimidation arising from the conduct of democracy. This includes the speed and available uses of the internet as well as the subsequent significant growth in the use of social media in both promoting political causes and discussions with residents and voters.

Members are not employees of the Council and do not have the benefit of safeguards in employment legislation if they suffer intimidation. You will be supported to undertake your duties safely and without fear or intimidation. Your political party may also offer support.

In undertaking your activities as a Member, you are protected by the same legislation relating to intimidation or threats as to any member of the public.

Balancing freedom of speech and its limitations

The right to freedom of expression is a fundamental human right of the greatest importance and a lynchpin of any democracy. However, it is not an absolute right as indicated in the three articles numbered 9, 10 and 14 of the European Convention on Human Rights. The key elements appear in article 10, which sets out that the freedom includes the right to hold opinions and to receive and impart information and ideas without interference from a public council.

The elements that have a bearing on councils are:

- Interests of public safety
- Prevention of disorder or crime
- Protection of health or morals
- Protection of the reputation or rights of others
- Preventing the disclosure of information received in confidence

All the above have been incorporated within UK legislation and thus restrict the extent to which freedom of speech is permitted.

Severity of intimidation

If you are feeling intimidated, then that experience is legitimate and should be your own test as to whether you want to report the situation. In determining whether an act is classed as intimidation in law, the police and the courts will apply their own tests based on the existing legislation and 'reasonableness'. However, legislation, guidance and case law evolves and this should not put you off reporting a situation and seeking a resolution should you feel you have been intimidated. In summary:

Threats to kill, rape, serious violence or actual common assault, damage to property (such as arson) should be reported to the police. You may wish to review your own personal safety precautions and possibly those of your family. Harassment and stalking would also require police involvement, particularly if there were a number of occurrences. Action following intimidation arising from both face-to-face and online contact will depend upon the circumstances such as the number of communications or contacts, extent of obscene or violent language and whether the activity continued for a period of time including whether the abuser resorted to more than one method of abuse.

You are encouraged to record all instances that cause concern and in reporting to the police consider the requirement for detailed evidence to prove the case "beyond all reasonable doubt".

There have been a number of cases arising from the provisions of the 1997 Protection from Harassment Act where judges have provided guidance as to when the intimidation complained about should require the involvement of the civil or criminal law. The judge in the case of *Dowson and Others v Chief Constable of Northumbria* [2010] EWHC 26 set out six steps under the 1997 Act:

1. there must be conduct which occurs on at least two occasions
2. which is targeted at the individual
3. which is calculated in an objective sense to cause alarm or distress, and
4. which is objectively judged to be oppressive and unacceptable
5. what is oppressive and unacceptable may depend on the social or working context in which the conduct occurs
6. a line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways such as "torment" of the victim, "or an order which would sustain criminal liability".

Although the courts look at the conduct from an objective point of view, the victim's reaction to the intimidation will be subjective and it will be for that individual to decide upon the action which is taken. The courts will also take a view on whether the perpetrator knows or ought to know that their conduct amounts to harassment.

Appendix – summary of offences and relevant legislation

This table sets out the range of offences classed as intimidatory offences. These range from face-to-face encounters to online activity.

Conduct	Legislation	Comment
The Act defines anti-social behaviour as “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”	Anti-social Behaviour, Crime and Policing Act 2014	
Improper use of public electronic communications network	Communications Act 2003 – Section 127	Sending message which is grossly offensive or of an indecent, obscene or menacing character.
Racially or religiously aggravated offences	Crime and Disorder Act 1998 – Sections 28 – 32	Hate crimes relating to racial or religious issues. Crimes relating to disability, transgender status or sexual orientation, treated as factors in sentencing. Subject to Law Commission review.
Cyberbullying	s360 of the Sentencing Act 2020 Malicious Communications Act 1988 Communications Act 2003 s 38 of the Criminal Justice and Licensing (Scotland) Act 2010 Defamation Act 2013	The Defamation Act 2013 does not create a criminal offence but is a way of seeking redress against certain conduct
Discrimination due to Age, sex, gender, sexual orientation, marital status, disability, race	Discrimination - The Equality Act 2010	The Equality Act 2010 does not create a relevant free-standing criminal offence but is a way of

Conduct	Legislation	Comment
including colour, nationality, ethnic or national origin. religion		seeking redress against certain conduct
Restraining orders on conviction or on acquittal	Protection from Harassment Act 1997 – Sections 5 and 5A	Section 5A inserted in Domestic Violence Crime and Victims Act 2004 and both sections give court wide discretion to restrain defendant from contact with victim.
Stalking, involving fear of violence or serious alarm or distress	Protection from Harassment Act 1997 – Section 4A	Inserted by Protection of Freedom Act 2012, also requiring conduct “on at least two occasions”.
Harassment which puts people in fear of violence	Protection from Harassment Act 1997 – Section 4	Requirement that the conduct has taken place “on at least two occasions”.
Offence of stalking	Protection from Harassment Act 1997 – Section 2A	Inserted by Protection of Freedom Act 2012 and examples are detailed in 1997 Act
Prohibition of harassment	Protection from Harassment Act 1997 – Section 1	Applies when one or more people are subjected to harassment
Intimidation arising from investigation into or given evidence about an offence	Criminal Justice and Public order Act 1994 – Section 51	Applies if intimidation is reported to police and prosecution takes place
Unauthorised access to computer material	Computer Misuse Act 1990 – Section 1	Hacking into computer
Common assault and battery	Criminal Justice Act – Section 39	Common law offence which includes fear of, rather than actual, violence
Sending letters or other communications with intent to cause distress or anxiety	Malicious Communications Act 1988 – Section 1	Electronic communications and networks included in Criminal Justice and Police Act 2001 and Communications Act 2003

Conduct	Legislation	Comment
Using threatening, abusive words or behaviour which may cause unlawful violence or harassment and alarm	Public Order Act 1986 – Section 4 and Section 4A	Applies for displaying any written material such as banners or posters
Threats to destroy or damage property	Criminal Damage Act 1971 – Section 2	“Without lawful excuse” or which could endanger life
Destroying or damaging property	Criminal Damage Act 1971 – Section 1	“Without lawful excuse” or being reckless as to action. Arson could, also, amount to threat to kill
Threats to kill	Offences Against the Person Act 1861 – Section 16	Threat “without lawful excuse”
Spread of rumours, slandering or vicious personal verbal attack on a person to destroy or damage that person's reputation or confidence	Defamation Act 2013 Section 1 of the Malicious Communications Act 1988	The Defamation Act 2013 does not create a criminal offence but is a way of seeking redress against certain conduct. Section 1 of the Malicious Communications Act 1988 criminalises the sending of a communication where the content is false and known or believed to be false by the sender and one of the purposes of sending is to cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

Appendix 5: Members' social media guidance

Social media: a guide for Members

1. What is 'social media'?

Social media includes online social networks and other ways in which people share content, opinions, information and ideas. They do this with text, images, audio or video. The aim is for two-way communication.

Some examples:

- Social networking sites where individuals create profiles and/ or networks such as Facebook and Nextdoor
- Blogging or microblogging sites where people write articles or short posts such as Twitter
- Sites where you can upload photos and/or videos, such as Instagram, TikTok and YouTube.

2. What are the benefits of using social media?

Social media offers huge potential to:

- **Communicate** with your constituents – both listening and getting messages out there very quickly –
 - People often have little understanding of the councillor role and may have negative perceptions: social media can give a taste of what councillors do and remind people of what you have in common;
 - Residents can be made aware of and provide feedback on 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.
- **Reach a wider audience** - local and sometimes national press will follow councillors on Twitter or Facebook, looking for news stories - each tweet or comment is effectively a mini-press release.
- **Share** useful links– put people in touch with local community groups and helpful information from beyond the borough.
- **Provide insight** – pick up valuable intelligence about local issues, interests and concerns by following local social media accounts.

- **Keep up to date** - find out about relevant news, research and innovations from outside the borough.

3. Dos and don'ts of using social media as a Member

DO:

- Show respect for others' opinions. That does not mean you cannot disagree but do so in a manner which is appropriate and consider the content of your communications carefully. Apply this test: if you wouldn't say it face-to-face, in a public meeting or in an official email, it's probably inappropriate to say online. When people express dissatisfaction about the Council you may be able to direct them to the right place to make their complaints.
- Be professional, credible, responsible, accurate and fair: you are subject to the Members' Code of Conduct when using social media in your role as a Member and your behaviour can impact negatively on the Council, your fellow Members, the Council's staff and the wider public.
- State clearly what capacity you are posting/ tweeting in – as a Member or private citizen? This can help to provide clarity – though people may sometimes perceive you as a Member when you think you are acting privately.
- Be clear that views you publish are your own and credit others when these are the views and work of other people.
- 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. It may be manipulated without your consent, used in different contexts, or further distributed even when you have deleted it.
- Consider how to use different platforms for different types of interactions: it is useful to indicate the aims and intended audiences of your different accounts.
- Use privacy settings if you do not want your social media to be accessed by the press or public. Read the terms of service of any social media site you use and make sure you understand their confidentiality / privacy settings. However, even the strictest settings are no guarantee that posts will remain private.
- Be aware of inappropriate comments and content posted by other people in response to your own posts. If you don't respond, or if you actively engage with those people without addressing the inappropriate content, this could be seen to

undermine trust and confidence and at worst, be taken to condone such activity (see 'Dealing with harmful rumours and misinformation' below).

- 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. Don't share pictures of children or vulnerable adults without consent.
- Maintain the same level of vigilance on social media as you would for emails- you can be sent phishing requests and malicious software through these routes too.

DON'T:

- Feel you have to respond to posts and comments at top speed all the time. Consider establishing your own routine for responses and make people aware of this.
- Forget that not everybody is on social media: the opinions you hear may not be representative of all views. You will know your residents best - consider which channel works best for them to connect with you, online and offline.

You can find more information about online safety and digital citizenship in the guidance on Member safety in the Members' handbook.

The Local Government Association provides [guidance and tools to support councillors in their online communications, including infographics you can pin to social media profiles setting out the ways in which you intend to engage with people online.](#)

4. What are Members' responsibilities when using social media?

- **Accuracy** - Members are personally responsible for the content they publish on any form of social media. Publishing an untrue statement which is damaging to someone's reputation may lead to a defamation action for which you will be personally liable and you may have to pay damages. The same applies if you pass on any untrue statements you receive. Avoid publishing anything where there is doubt or seek permission in advance.
- **Being lawful** – libel, defamation, copyright, equalities and data protection laws all apply when using social media and you are responsible for abiding by any 'fair use' copyright policies which the social media platforms have in place. Do not publish personal data of other people, including photographs, without their

express permission to do so, and if you publish any information that is not yours, without permission, this may result in an award of damages against you.

- **Confidentiality** – the Member Code of Conduct includes clear obligations and guidance relating to confidentiality. Again, if confidential information is disclosed, this could result in claims being brought against the council or against individuals to recover any loss or damage suffered.
- **Probity in decision-making** – Members sitting on regulatory committees such as planning or licensing in particular 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 would then be open to legal challenge and could be invalidated.

It can be difficult to be clear on the appropriate boundaries when you are championing an issue for residents – whether in person or on social media - and you 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.

- **Good working relationships** – Members (and officers) are required to comply with the Protocol on Staff – Councillor Relations. Any concerns, comments or complaints about officers should be made through the appropriate channels and not on social media.

5. Dealing with harmful rumours and misinformation

It is difficult not to respond 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. Often, 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.

Further information

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.

REPORT TO:	ETHICS COMMITTEE 30 October 2021
SUBJECT:	ETHICS COMMITTEE: WORK PROGRAMME
LEAD OFFICER:	Asmat Hussain, Executive Director of Resources and Monitoring Officer (Interim)
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:	
Organisational design: consideration of the business processes, systems, budgeting, workforce, capacities and capabilities that will reflect the requirements of the operating model.	
FINANCIAL IMPACT	
The implementation of the recommendations contained in this report shall be contained within existing budgets.	
1. RECOMMENDATIONS	
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)
30 September 2021	Members' dispensations Complaint Monitoring and Associated Matters Register of Gifts & Hospitalities Work programme	Members' Code of Conduct Access to Information Protocol Members Development Plan Update
17 November 2021	Members' dispensations Complaint Monitoring and Associated Matters Register of Gifts &	Members' Handbook Members' Safety Protocol (incl. Social Media) Review of Cllr Complaints

	Hospitalities Work programme	arrangements
9 February 2022	Members' dispensations Complaint Monitoring and Associated Matters Register of Gifts & Hospitalities Work programme	Member Officer Protocol Draft Annual Council Report Practical guidance for Members handling confidential information Register of Gifts & Hospitalities Annual Report DPIs Annual Report Members Complaints Annual Report Member Attendance Statistics (annual)
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.

CONTACT OFFICER:

Cliona May, Senior Democratic Services Officer, Council & Regulatory

APPENDICES TO THIS REPORT:

None

BACKGROUND DOCUMENTS:

None

This page is intentionally left blank