

Ethics Committee Agenda



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

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

Reserve Members: Councillors Jeet Bains, Simon Hoar and Karen Jewitt

A meeting of the **Ethics Committee** which you are hereby summoned to attend, will be held on **Thursday, 9 December 2021** at **6.30 pm** in **Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX**

JOHN JONES
Monitoring Officer
London Borough of Croydon
Bernard Weatherill House
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Cliona May
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www.croydon.gov.uk/meetings
Wednesday, 1 December 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/13907-Ethics-Committee>

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.

AGENDA – PART A

1. Apologies for Absence

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

2. 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.

3. 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.

4. Member Code of Conduct (Pages 5 - 64)

Ethics Committee is asked to agree guidance to accompany the newly adopted Members' Code of Conduct which reflects national guidance produced by the Local Government Association.

5. Access to Information Protocol (Pages 65 - 86)

For the Committee to consider the revised draft Protocol.

6. Dispensation Applications for Members (Pages 87 - 92)

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

7. Complaint Monitoring and Associated Matters (Pages 93 - 100)

For the Committee to receive an update regarding any complaints or investigations undertaken by the Monitoring Officer during the last quarter to 31 October 2021.

8. Work Programme (Pages 101 - 104)

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

9. 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

10. 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.

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REPORT TO:	ETHICS COMMITTEE 9 December 2021
SUBJECT:	Members' Code of Conduct
LEAD OFFICER:	Richard Ennis, Corporate Director of Resources (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. Review feedback that is to be provided from a small group of Members convened to review the draft Members' Code of Conduct guidance (Appendix 1) and:
 - i) Agree any amendments to the draft guidance; and
 - ii) Agree that the guidance be published in the Members' Handbook; and
 - iii) Agree to recommend to Full Council that the Members' Code of Conduct guidance be added to the Members' Code of Conduct in the Council's Constitution;
2. Identify a small group of Members from the Committee to work with officers to review the Protocol on Staff-Councillor Relations.

1. EXECUTIVE SUMMARY

- 1.1 Ethics Committee is asked to agree guidance to accompany the newly adopted Members' Code of Conduct which reflects national guidance produced by the Local Government Association.
- 1.2 The guidance has been prepared both to give clarity to Members on their duties under the Code of Conduct and also for use by the Monitoring Officer and Ethics Committee when considering alleged breaches of the Code of Conduct.

2. BACKGROUND

- 2.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.
- 2.2 At its September meeting the Committee considered a new draft Members' Code of Conduct and associated guidance, based on the new national model code and guidance. The Code includes a duty for Members to comply with reasonable guidance issued from time to time by the Chief Executive, Chief Finance Officer and/or Monitoring Officer. The meeting agreed that the proposed Members' Code of Conduct and associated guidance be recommended for adoption to Full Council, subject to some amendments agreed by the Committee.
- 2.3 Two Member development sessions on the draft Code and guidance were provided on 4th October.
- 2.4 At Full Council on 11th October, the Council agreed to adopt the new Members' Code of Conduct and appendices A and B, as amended by Ethics Committee. An amendment to the recommendation from Ethics Committee to adopt the amended guidance (Appendix C) was moved and adopted:

to note Appendix C to enable Council members to attend training sessions on the Code of Conduct and to raise comments and questions about Appendix C which will be considered by the Ethics Committee at its meeting on 17 November 2021.

- 2.5 As no Members raised any further questions on the guidance a small group of Members was convened to consider the draft guidance and will report back to the Committee.
- 2.6 The Committee is asked to review the guidance, agree that it be published within the Members' Handbook and recommend to Full Council its adoption within the Constitution. Adoption of the guidance alongside the Code will ensure consistency with the same standards of conduct followed by councils elsewhere in the country and demonstrates good governance practice by the Council. Once the guidance is adopted, the Committee has delegated power to make amendments to the guidance so that, for example, further clarification can be provided where needed.

3. PROPOSAL

- 3.1 The proposed guidance to accompany the Members' Code of Conduct appears at Appendix 1.
- 3.2 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. Members are advised to understand the guidance as a whole, rather than focusing on individual sections in isolation: the Monitoring Officer and Committee will similarly consider all relevant parts of the guidance when considering alleged breaches of the Code and decide if it is appropriate in the particular circumstances under consideration.

- 3.3 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 Committee for Standards in Public Life.
- 3.4 Following the Council meeting, all Members were invited to raise queries or comments on the guidance and were offered the opportunity to attend a further training session on the subject. At the time of writing this report, no responses had been received.

3.5 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). The Committee is asked to identify a small group of Members to work with officers to review the Protocol in light of best practice in other councils.
- 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 on an ongoing basis.
- A report on the newly revised Officer Code of Conduct appears elsewhere on this agenda.

- 3.6 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.
- 3.7 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.
- 3.8 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.

4. CONSULTATION

- 4.1 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.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

Approved by: Matt Davis, Interim Deputy s151 Officer.

6. LEGAL CONSIDERATIONS

- 6.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance 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.
- 6.2 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.
- 6.3 In addition, the 2011 Act section 28(6) requires the Council to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and have Arrangements under which decisions on allegations may be made.

- 6.4 The recommendations in this report are seeking to approve the draft guidance which is to accompany the code of conduct in the Members Handbook along with it being recommended to Full Council so that the guidance can be added to the Members' Code of Conduct in the Council's Constitution.

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.

7. HUMAN RESOURCES IMPACT

- 7.1 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.

8. EQUALITIES IMPACT

- 8.1 The 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: Denise McCauseland, Equalities Manager

9. ENVIRONMENTAL IMPACT

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

10. CRIME AND DISORDER REDUCTION IMPACT

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

11. DATA PROTECTION IMPLICATIONS

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

No. As part of the statutory requirements placed on Members and Co-opted Members there are requirements to make declarations of 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.

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

The newly adopted Member's Code of Conduct does 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). A revised DPIA is being undertaken and Privacy Notices associated with registration of interests under the Code of Conduct are being reviewed.

Approved by: Richard Ennis, Corporate Director of Resources.

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 To ensure that Croydon Council Members are supported to comply with the Member Code of Conduct in a way which reflects national best practice.

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

APPENDICES TO THIS REPORT:

- 1: Members' Code of Conduct guidance**

BACKGROUND PAPERS: None

MEMBER CODE OF CONDUCT GUIDANCE

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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 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.

¹ Ahmed v United Kingdom (2000) 29 EHRR 1

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.

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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 the Council'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, the Council 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"?

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

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

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 Registrable Interests (ORI); and**
- **Non-Registrable 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-registrable 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 registrable interests (ORIs)

If you have an 'Other Registrable Interest' – that is an interest which falls within the categories in Table 2 - the Code says you should not vote on 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 Registrable 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 registrable as an 'other registrable 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 vote on the matter.

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 DPIs 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 registrable 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-registrable interests

A Non-registrable 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-Registrable 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 registrable interest' or a non-registrable 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 you have an 'other registrable interest' you must not vote on the matter and if the matter is a non-registrable 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 area 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.

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 Registrable Interests** (as set out in Table 2), you must disclose the interest and may not vote on the matter 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 Registrable 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

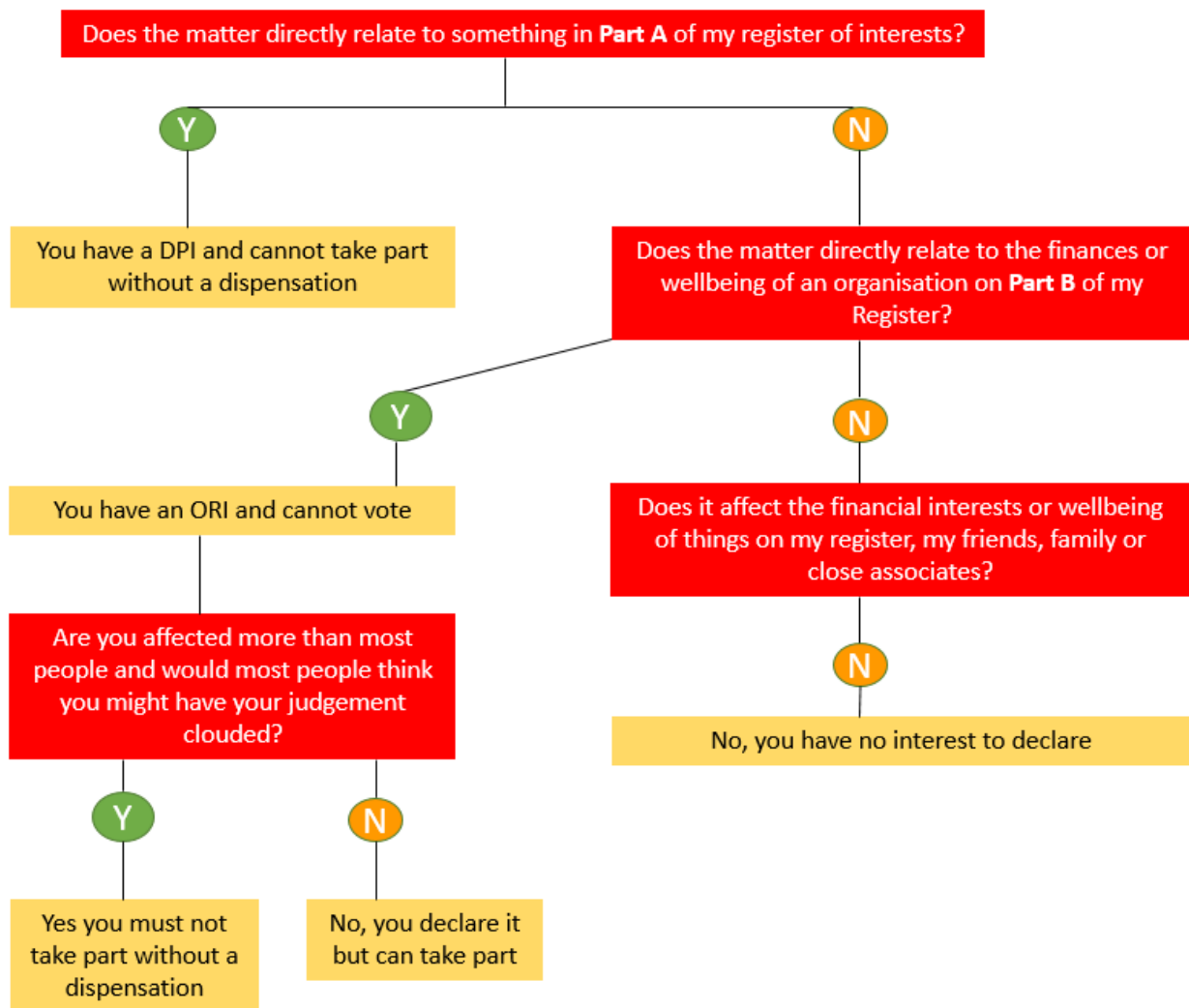
must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

No	Type	Speak*	Vote	Stay	Example	Comments
1	DPI	No	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	Yes	No	Yes	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
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 Councillor objects in private capacity to neighbours' planning application: cannot sit on Planning Committee (because they are a statutory consultee)	Directly relates to finances of you, partner (not a DPI)- a relative or close associate Unforeseeable 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.

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REPORT TO:	ETHICS COMMITTEE 9 December 2021
SUBJECT:	Protocol on Members' rights of access to information
LEAD OFFICER:	Richard Ennis, Corporate Director of Resources (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 revised 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 Director of Resources will arrange briefings for Members and Officers on the implications and operation of the Protocol.

2. EXECUTIVE SUMMARY

- 2.1 A revised 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 revised 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 At its September meeting, officers brought a revised draft of the Protocol back to the Committee. The draft was 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.
- 3.4 Further comments and questions were raised and officers were asked to review and revise the draft Protocol in light of these comments.

4. PROPOSAL

- 4.1 A revised draft Access to Information Protocol appears at Appendix 1.
- 4.2 Questions and concerns raised at the September meeting of the Committee are shown with responses below:
- i) The Committee requested clarification of the position in relation to a decision by Council in October 2020.

At its meeting on 25 January 2021, Council agreed that the implementation of recommendations agreed at Council on 12 October 2020, specifically to amend the Constitution to establish Cabinet Member Advisory Committees (CMACs); to amend the definition of Key Decisions; and to amend the procedure for Council rules, be delayed until the 2021/22 municipal year, subject to appropriate resources and capacity being available in the Council budget 2021/22.

In light of a significant increase in the number of other meetings (e.g. General Purposes and Audit, Cabinet and Council) it has not been

possible to identify the required resources and capacity to enable this implementation.

Work is now underway to consider the constitutional implications arising from the governance referendum, which requires consideration of all aspects of the Executive decision making process. It will be a matter for the directly elected Mayor to decide what support they require to the executive decision-making process from May 2022.

- ii) The Protocol should set out the rights of access to information for members of CMACs.

The proposed revised Protocol does not do so because Cabinet Member Advisory Committees have not been implemented. As changes to the Constitution are made in due course, the Protocol will be revised as appropriate.

If CMACs had been implemented at this time, members of CMACs would not have any legal entitlement to information over and above their existing rights to information as Members.

- iii) It should be the responsibility of officers to explain to Members the reason why information is not supplied and to cite relevant legislation.

The Protocol provides clarity on the specific and limited circumstances in which it would be inappropriate for officers to provide the information requested. Officers will however be expected to provide responses to any part of an enquiry where the requested information can be provided through the appropriate use of redaction and/or a confidential briefing. Both these measures will be subject to officers acting within reasonable cost parameters.

The following relevant sections of the Protocol, with proposed amendments to respond to this point, are shown below:

Para 2.4 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, including reference to the legal reason for the decision. The Officer will provide the Member with any part(s) of their request which can be provided through reasonable expenditure of resources;...*

Para 2.4 iv) –

Where a response would otherwise lead to the dissemination of particularly sensitive information ... 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 Director of Legal Services.*

Para 2.8 –

*Any Member may request a copy of an exempt report, demonstrating their 'need to know'. The Director of Legal Services reserves the right not to provide exempt information to any Member not ordinarily entitled to it if they believe **the 'need to know' has not been demonstrated, or the information is wanted for an improper purpose or if the member has a financial or personal interest relating to the matter...** In such cases, the Director of Legal Services will advise the Member as to the legal reason/s why access to the exempt report has been denied.*

- iv) What happens if a scrutiny councillor requests important information which is not included in the scrutiny work programme?

The legislation is clear that the rights of access to information for scrutiny councillors applies to 'matters which they are scrutinising'. The new scrutiny arrangements allow for the regular review of the scrutiny work programme to ensure that it best meets the needs of the council. There is no legal right for scrutiny to see information which does not meet the legal definition above.

- v) How can a councillor call in a decision if it is not on a scrutiny work programme and they cannot access the exempt report?

Shadow Cabinet Members, Scrutiny leads (for both majority and minority Groups), Group Whips (both Groups) and the Majority Group secretary have access to exempt reports to Cabinet, subject to limits set out in para 2.7 of the Protocol.

It would be expected that discussions about potential call-in of Cabinet decisions will take place within Group meetings, where those members who have had access to exempt reports will be able to advise Group colleagues on whether they believe the grounds for call-in have been met.

In such discussions, Members who have received such exempt reports must not share these reports with colleagues who are not entitled to access them.

- vi) What recourse do Members have if officers do not provide the information in 10 days?

The introduction of the Members' Enquiries system, and its use also to record requests for information will enable performance against this timescale to be logged and reported (in addition to automatic chasing of outstanding responses). These reports will be shared with departmental leadership teams so that directors and those reporting to them can be held accountable by corporate directors for their performance.

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.

- vii) The Protocol should be clarified in relation to members' entitlements to extant documents and that recent extant documents should be supplied very quickly.

The Protocol is relevant to extant documents (and makes specific reference at 2.4 ii) to circumstances where the document is not extant).

Para 2.4 vii) –

Officers will aim to respond quicker than the ten clear working days timescale wherever resources and other priorities permit.

- viii) Those parts of the Protocol which relate to scrutiny are endorsed by the Committee as such officers should be following these principles.

Provisions within the Protocol relating to scrutiny reflect the statutory rights of scrutiny members and so already apply. The Council's directors are being reminded of their responsibilities in relation to information for scrutiny.

Logging timescales of responses to requests from scrutiny takes place at present and is reported as part of the Corporate Performance Framework report to Cabinet.

- ix) Members need an opportunity to inform the design of the Members' enquiries app through a workshop before it is finalised.

A workshop has been held to enable Members to see the new system and give feedback on required improvements. Further testing by pilot users is scheduled for early December 2021 with the aim of ensuring that Members' feedback informs the design of the app before it is finalised.

- x) Revise the flowchart:
- make it clearer who to contact and how in each instance

- include the requirement to cite relevant legislation if access is refused

The updated flowchart (which appears at Appendix 2 and will be added, once agreed, to the Members' Handbook) is designed to make it easy for Members to see the different kinds of entitlements to information:

- All members and members of the public
- Members with a 'need to know' – e.g. to support their role as ward members, to deal with case work
- Members of a Committee or holding certain defined roles
- Scrutiny Members

Members will be given contact information and training when the Members enquiries app is launched. The post titles of Democratic Services Manager and Statutory Scrutiny Officer are given in the flowchart as the postholders may change over time, but it will be a core responsibility of their role to ensure that all Members are aware of them and know how to contact them. Current postholders are:

- Head of Democratic Services: Stephen Rowan
- Statutory Scrutiny Officer: Simon Trevaskis

- 4.3 The opportunity has also been taken to clarify the legislation referred to at para 1.5 a) of the Protocol and the description of regulations at 1.5 c).
- 4.4 As previously advised, 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 being 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.
- 4.5 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 earlier drafts.

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 1972 ('the 1972 Act'), as amended primarily by the Local Government (Access to Information) Act 1985, 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, 2012 Regulations or the common law 'need to know' principles then the information is likely to be confidential and as such the Member will also be bound by the rules of confidentiality. In that case Members should not publish or otherwise disclose the information to a third party.
- 7.14 This report is looking to introduce a Protocol to assist Members when requesting information from the Council having regard to the legislation and common law principles set out above. The Protocol will sit alongside the access to information procedure rules that appear at Part 4B of the constitution.

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 for Croydon Council staff or employees 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. This includes making reasonable adjustments for any Member in respect of a disability.

Approved by: Denise McCausland, Equalities Manager.

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: Richard Ennis, Corporate Director of Resources

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 Director of Legal Services 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 Act 1972, as amended primarily by 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 (i.e. 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 (e.g. 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 the Council and for Members of an** 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 (e.g. 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, **including reference to the legal reason for the decision**. 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 Director of Legal Services.

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 (e.g. 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 Director of Legal Services 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 Pecuniary Interest).

- 2.8 Any Member may request a copy of an exempt report, demonstrating their 'need to know'. The Director of Legal Services reserves the right not to provide exempt information to any Member not ordinarily entitled to it if they believe **the 'need to know' has not been demonstrated, or** the information is wanted for an improper purpose or if the member has a financial or personal interest relating to the matter... **In such cases, the Director of Legal Services will advise the Member of the legal reason/s why access to the exempt report has been denied.** (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 Director of Legal Services 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 Director of Legal Services 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.

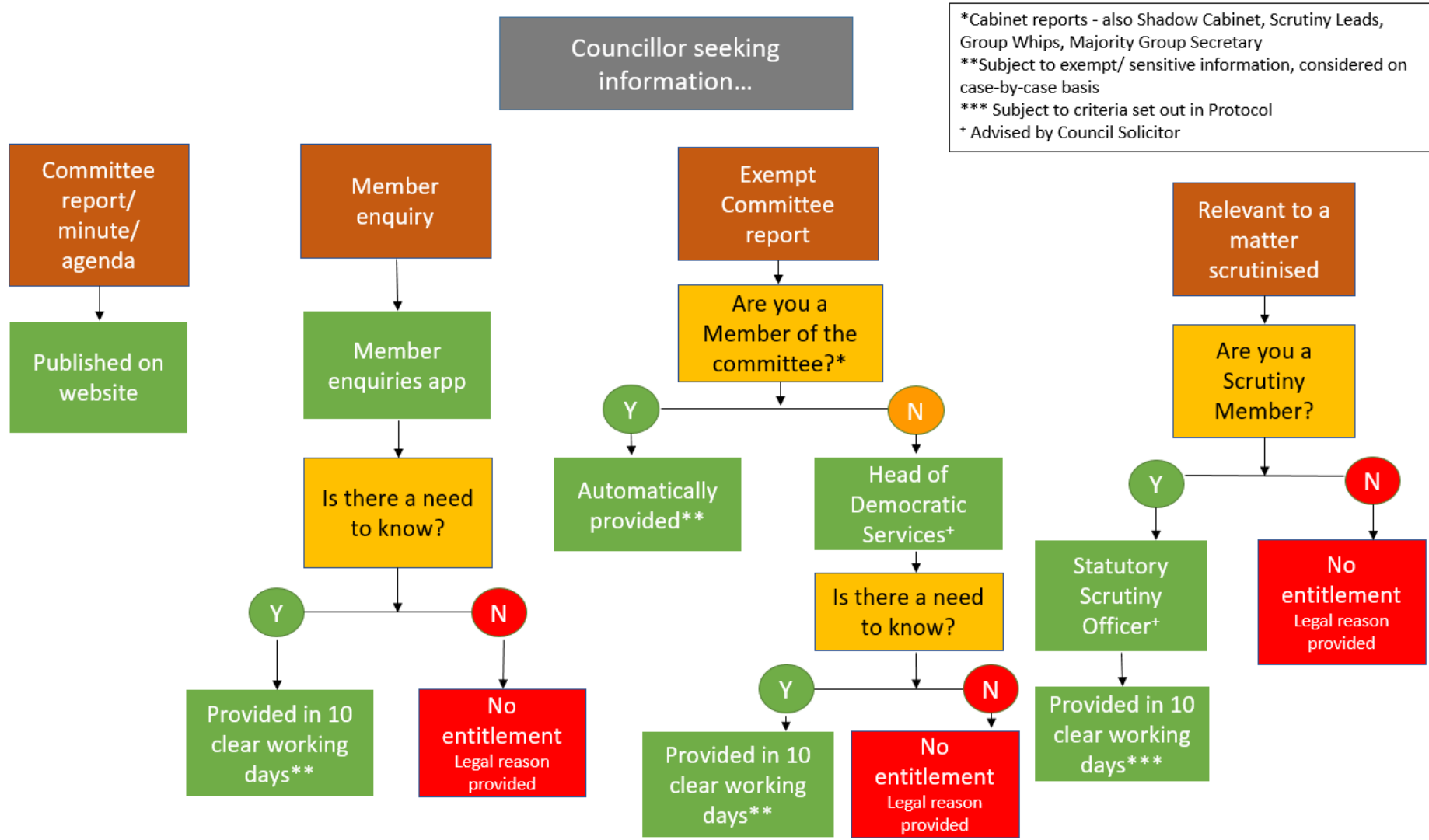
7.2 Any disputes relating to the rights of access of any person under these rules or any statutory provision or common law rights shall be referred to the Monitoring Officer of the Council.

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 9 December 2021
SUBJECT:	Dispensation Application for Members
LEAD OFFICER:	John Jones, Monitoring Officer
WARDS:	All
PUBLIC/EXEMPT:	Public

SUMMARY OF REPORT:

Following statutory amendments to the ethics regime, full Council adopted a new Code of Conduct in 2011 and delegated to the Monitoring Officer and the Ethics Committee the power to consider dispensations under the new ethics regime.

The Council has further agreed to adopt a new Code of Conduct at its meeting on Monday 11 October 2021. That Code is based on the new national Model Member Code of Conduct produced by the Local Government Association.

The Council currently does not have any outstanding applications for dispensations, however should any be received following the dispatch of the agenda they will be circulated on the evening for consideration.

COUNCIL PRIORITIES 2020-2024

The Committee is empowered to consider any applications for a grant of dispensation in the circumstances set out in paragraph 2.2 (8) of Part 3 of the Constitution.

[Council's priorities](#)

FINANCIAL IMPACT:

There are no additional costs arising from the recommendations in this report.

RECOMMENDATIONS:

In the event that any new applications for dispensations are received, the Committee is asked to:

- 1.1. Consider any new applications from Members and determine whether to grant the dispensation, and if so, the grounds upon which to grant the dispensation and the length of time for which such dispensation is to be granted.

1. DETAIL

- 1.1. Under Section 31 of the Localism Act 2011 (“the Act”), a Member or co-opted Member who has a disclosable pecuniary interest (DPI) in a matter to be considered or being considered at a meeting of the authority at which that Member or co-opted Member is present and the DPI is one which the Member or co-opted Member is aware of, the Member or co-opted Member may not participate or participate further in any discussion or vote on the matter at the meeting unless he/she has first obtained a dispensation in accordance with the Council’s dispensation procedure.
- 1.2. Under the Council’s new Code of Conduct adopted on 11th October 2021, when a matter arises at a meeting that directly relates to the financial interest or wellbeing of the Member or co-opted Member’s Other Registrable Interests (as set out in Table 2 of Appendix B to the Code), the Member or co-opted Member must disclose the interest and not vote on the matter unless they have first obtained a dispensation in accordance with the Council’s dispensation procedure.
- 1.3. Where a matter arises at a meeting which directly relates to the Member of co-opted Member’s financial interest (and is not a DPI) or a financial interest or wellbeing of a relative or close associate, the Member or co-opted Member must disclose the interest. They may only speak on the matter if members of the public are also allowed to speak at the meeting; otherwise they may not participate or vote on the matter unless they have first obtained a dispensation in accordance with the Council’s dispensation procedure.
- 1.4. The Council has adopted dispensation criteria which are attached for Members’ ease of reference at Appendix 1. There are 5 circumstances in respect of which a dispensation may be granted, namely:
 - i) That so many members of the decision-making body have disclosable pecuniary interests (DPIs) in a matter that it would “impede the transaction of the business”;
 - ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
 - iii) That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - iv) That, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
 - v) That the authority considers that it is otherwise appropriate to grant a dispensation.

- 1.5. The Council has determined that in respect of grounds (i) and (iv) above, which involve an objective assessment of whether the requirements are met, it is appropriate to delegate dispensations on these grounds to the Monitoring Officer for determination. The Monitoring Officer is permitted, but not required, to consult with the Ethics Committee prior to determining an application for dispensation on grounds (i) or (iv).
- 1.6. In respect of grounds (ii), (iii) and (v) above, assessment of these grounds involve a value judgement and are less objective and Council has therefore considered it appropriate that the discretion to grant dispensations on these grounds is delegated to the Ethics Committee, after consultation with the Independent Person.
- 1.7. The Council currently does not have any outstanding applications for dispensations, however should any be received following the dispatch of the agenda they will be circulated on the evening for consideration.
- 1.8. In considering the matter, the Ethics Committee is required to assess whether, in light of the contents of the application, the public interest in excluding a Member from participating where a Disclosable Pecuniary Interest exists is outweighed by the considerations set out in the application which support the public interest in the Member being able to participate.
- 1.9. The Committee is also asked to set out the time period in respect of which it is appropriate to grant the dispensation. In this regard, Members should be mindful of the fact that any dispensation may not be granted for a period exceeding four calendar years, nor is it recommended that a dispensation be granted for a period longer than the remaining term of office of the relevant Member.

2. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

3. LEGAL CONSIDERATIONS

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

4. HUMAN RESOURCES IMPACT

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

5. EQUALITIES IMPACT

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

CONTACT OFFICER:

John Jones
Interim Monitoring Officer

APPENDICES TO THIS REPORT:

Appendix 1 – Dispensation Criteria

BACKGROUND DOCUMENTS:

There are no unpublished documents upon which this report has been based

Determination of Dispensation Applications:

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

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

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

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

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

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

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

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

Adopted: July 2012

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REPORT TO:	ETHICS COMMITTEE 9 DECEMBER 2021
SUBJECT:	UPDATE ON ETHICS COMPLAINTS RECEIVED UP TO AND INCLUDING 31 OCTOBER 2021
LEAD OFFICER:	JOHN JONES, INTERIM 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 quarterly report to the Ethics Committee to update members on any complaints or investigations undertaken by the Monitoring Officer during the last quarter to 31 October 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 July 2021 is accessible here:

https://democracy.croydon.gov.uk/documents/s32625/Rpt_Quarterly%20Complains_%20Ethics%20Cttee_Sept_%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 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 quarterly report to Members which covered complaints between 31 March 2021 up to and including 31 July 2021, the Monitoring Officer has received no new complaints this quarter up to and including 31 October 2021. There were 2 complaints 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.
- 3.8 In respect of the 2 matters which were in progress at the time of the last quarterly report, both were assessed and no further action taken.
- 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 progressed beyond the assessment stage.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

Approved by: Matt Davis Interim Director of Finance.

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 3.9 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 immediate human resources impacts arising from the recommendations in this report for Croydon Council employees or staff.

Approved by: Gillian Bevan Head of HR, Resource and ACE

8. EQUALITIES IMPACT

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

Approved by: D.McCausland Equality Programme Manager

9. ENVIRONMENTAL IMPACT

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

10. CRIME AND DISORDER REDUCTION IMPACT

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

11. DATA PROTECTION IMPLICATIONS

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

NO

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

NO

CONTACT OFFICER: John Jones, Interim Monitoring Officer

APPENDICES TO THIS REPORT

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

BACKGROUND DOCUMENTS: None

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Ref.	Nature of complainant	Member/Co-opted member?	Nature of the complaint	Initial Assessment Outcome	Initial assessment completed in Time	Referred for investigation
22/21	Member of the public	Member	Making reps on planning application	NFA. Acted in accordance with Council procedures	Y	N
23/21	Member of the public	Member	Making reps on planning application	NFA. Acted in accordance with Council procedures	Y	N

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Agenda Item 8

REPORT TO:	ETHICS COMMITTEE 9 December 2021
SUBJECT:	ETHICS COMMITTEE: WORK PROGRAMME
LEAD OFFICER:	John Jones Interim Monitoring Officer
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON: Consideration of the future work programme enables the smooth and efficient running of the Committee in accordance with the Council's value for money requirements.	
FINANCIAL IMPACT: The implementation of the recommendations contained in this report shall be contained within existing budgets.	
1. RECOMMENDATIONS: 1.1. Members of the Ethics Committee are asked to consider and comment on the work programme as detailed in this report.	

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)
9 December 2021	Members' dispensations Complaint Monitoring and Associated Matters Work programme	Member Code of Conduct Guidance Officer Code of Conduct Access to information Protocol
9 February 2022	Members' dispensations Complaint Monitoring and Associated Matters Work programme	Protocol on Staff Councillor Relations Draft Annual Council Report Practical guidance for Members handling confidential information

Meeting date	Standing item(s)	Other item(s)
		Register of Gifts & Hospitalities Annual Report DPIs Annual Report Members Complaints Annual Report Member Attendance Statistics (annual) Annual Council Report Member Learning and Development Induction Programme

3.1 At the Ethics Committee on 30 September 2021, the Committee agreed to cancel the scheduled meeting in April 2022, as the additional meeting in September had been agreed.

4. **CONSULTATION**

4.1. The Work Programme is subject to consultation with 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. **LEGAL CONSIDERATIONS**

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

7. **HUMAN RESOURCES IMPACT**

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

8. **EQUALITIES IMPACT**

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

CONTACT OFFICER: Michelle Ossei-Gerning
Democratic Services Officer
Council & Regulatory

APPENDICES TO THIS REPORT: None

BACKGROUND DOCUMENTS: None

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