

# Ethics Committee Agenda



To: Councillor Oliver Lewis (Chair)  
Councillor Joy Prince (Vice Chair)  
Councillors: Pat Clouder, Mario Creatura, Donald Speakman and Mike Selva

Mr Ashok Kumar - Independent Person (Non-Voting)  
Mrs Anne Smith - Independent Person (Non-Voting)

Reserve Members: Councillors Patricia Hay-Justice, Steve Hollands,  
Karen Jewitt, Maggie Mansell, Dudley Mead and Andrew Rendle

A meeting of the **ETHICS COMMITTEE** which you are hereby summoned to attend,  
will be held on **Wednesday 1st February 2017** at **6:30pm** in **Committee Room F9,**  
**Town Hall, Katharine Street, Croydon**

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

JUNE HAYNES  
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[www.croydon.gov.uk/agenda](http://www.croydon.gov.uk/agenda)  
24 January 2017

Members of the public are welcome to attend this meeting. If you require any assistance,  
please contact June Haynes as detailed above.

## **AGENDA - PART A**

**1. Apologies for absence**

**2. Minutes of the Last Meeting (Page 1)**

Minutes of the Last Meeting

**3. Disclosure of Interest**

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 in excess of £50. 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 Business Manager at the start of the meeting. The Chairman will then invite Members to make their disclosure orally at the commencement of Agenda item 3. Completed disclosure forms will be provided to the Monitoring Officer for inclusion on the Register of Members' Interests.

**4. Urgent Business (if any)**

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

**5. Exempt Items**

To confirm the allocation of business between Part A and Part B of the Agenda.

**6. UPDATE ON MEMBERS LEARNING AND DEVELOPMENT (Page 5)**

UPDATE ON MEMBERS LEARNING AND DEVELOPMENT

**7. UPDATE ON WHISTLEBLOWING (Page 7)**

UPDATE ON WHISTLEBLOWING

**8. REGULATION OF INVESTIGATORY POWERS ACT 2000 (Page 19)**

REGULATION OF INVESTIGATORY POWERS ACT 2000

**9. RECENT CASE LAW ON THE REGULATION OF COUNCILLOR CONDUCT (Page 23)**

RECENT CASE LAW ON THE REGULATION OF COUNCILLOR CONDUCT

**10. DATES OF FUTURE MEETINGS FOR 2017/18**

DATES OF FUTURE MEETINGS FOR 2017/18

**11. DISPENSATION APPLICATIONS FOR MEMBERS (Page 27)**

DISPENSATION APPLICATIONS FOR MEMBERS

**12. [The following motion is to be moved and seconded as the “camera resolution” where it is proposed to move into part B 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 item 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.

**AGENDA - PART B**

**B1. DISPENSATIONS APPLICATIONS FOR MEMBERS (if necessary)**

DISPENSATIONS APPLICATIONS FOR MEMBERS (if necessary)

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## ETHICS COMMITTEE

**Meeting held on Wednesday 23 November 2016 at 6:36pm in Room F5, Town Hall, Katharine Street, Croydon, CR0 1NX**

### MINUTES – PART A

- Present:** Councillor Oliver Lewis (Chair)  
Councillor Joy Prince (Vice Chair)  
Councillors: Pat Clouder, Mario Creatura, Mike Selva and Donald Speakman
- Mr. Ashok Kumar, Independent Person (non -voting) and  
Mrs. Anne Smith, Independent Person (non-voting).
- Also in Attendance:** Jacqueline Harris-Baker, Acting Council Solicitor and Monitoring Officer.
- A19/16                      Apologies for Absence**
- None
- A20/16                      Minutes of the last meeting**
- The Committee **RESOLVED** that the Part A minutes of the meeting held on Monday 8 February 2016 be signed as a correct record.
- A21/16                      Disclosure of Interest**
- There were no disclosures of a pecuniary interest at this meeting, not already registered.
- A22/16                      Urgent Business (if any)**
- It was noted that there were no items of business to be considered as a matter of urgency.
- A23/16                      Exempt Items**
- There were no exempt items of business to consider at this meeting.
- A24/16                      GIFTS AND HOSPITALITY DECLARATIONS UNDER THE CODE OF CONDUCT (agenda item 6)**
- The Acting Council Solicitor and Monitoring Officer presented the report and confirmed that under the Code of Conduct for gifts

and hospitality, accumulative gifts and hospitality received in excess of £50 are required to be declared. The Committee were concerned that the qualifying limit had been set too low, as this didn't take into account those elected Members that are routinely engaging with external officers, working outside the borough and partners that may wish to make presentations in the form of a gift or hospitality. The Committee agreed to recommend amendment of the Code in the form of additional requirements, as worded in paragraph 3.5 of the Report, to reflect that circumstances whereby a Member may be in receipt of multiple gifts.

The Committee asked how the existing Register is managed and how disclosures are kept up-to-date. It was confirmed that the Register and gifts and hospitality declarations are available online. In addition, any guidance should highlight to new and existing Councillors that the annual declaration will also include an up-to-date list of gifts and hospitality.

The Committee **RESOLVED** to **RECOMMEND** to full Council that changes be made to how gifts and hospitality are to be declared on the Members' Register under the Code of Conduct as set out in the Report and that;

A reminder be given by the Monitoring Officer to all Members of their obligations regarding the declaration of gifts and hospitality in accordance with the Code of Conduct and the process for doing so.

## **A25/16**

### **ANNUAL UPDATE ON ETHICS COMPLAINTS RECEIVED** (agenda item 7)

The Chair reported that some Croydon specific complaints had been received but the reasons for complaint had been relatively low level. The Monitoring Officer gave further detail reporting that 5 complaints had been received.

In respect of 2 complaints, no further information was provided, on request, to enable consideration of the matter. The 3 that had been assessed against the initial assessment criteria, did not proceed to investigation. In each instance the overall summary was that they were not sufficiently serious to warrant further investigation.

The Committee **RESOLVED** to note the contents of the report and to receive a similar update next year.

**A26/16**

**WORK PROGRAMME OF THE COMMITTEE** (agenda item 8)

The Chair reported that one further meeting had been diarised for the current municipal year and directed Members to the previously distributed work programme.

The Committee **RESOLVED** to note the contents of the report.

**DISPENSATION APPLICATIONS FOR MEMBERS** (agenda item 9)

**A27/16**

The Committee were informed that no dispensation applications had been received.

Members requested that if any dispensations are granted by the Monitoring Officer between meetings, could the outcome be reported to the Ethics committee.

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**Part B –**

**None**

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The meeting ended at 6:46pm

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<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>1 February 2017</b>
<b>AGENDA ITEM NO:</b>	<b>6</b>
<b>SUBJECT:</b>	<b>UPDATE MEMBER LEARNING AND DEVELOPMENT 2016-17</b>
<b>LEAD OFFICER:</b>	<b>ACTING COUNCIL SOLICITOR &amp; MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall be responsible for receiving reports from the Monitoring Officer on matters of probity and ethics for consideration.	
<b>FINANCIAL IMPACT</b> There are no additional financial implications arising from the contents of this report.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A	

**1. RECOMMENDATION**

The Committee is asked to:

- 1.1 Note the contents of the report.

**2. EXECUTIVE SUMMARY**

- 2.1 The report provides a log of Member Learning and Development activity in 2016. This activity is regularly monitored by the Member Learning and Development Panel.

**3. DETAIL**

- 3.1 The report at Appendix 1 sets out the learning and development activity undertaken in the municipal year 2016-2017.

**4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

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

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**CONTACT OFFICERS:**

Jacqueline Harris-Baker, Acting Council Solicitor,  
and Monitoring Officer (ext 62328)

**BACKGROUND DOCUMENTS:** None

**Appendix 1**

**MEMBER LEARNING AND DEVELOPMENT 2016-2017**

<b>EVENT</b>	<b>DATE</b>	<b>ATTENDANCE</b>
Planning and Probity	1 and 2 June 2016	8 + 5
Pension Committee Skills	7 June 2016	10
Licensing Committee Training	15 June 2016	15
Direct Payments	11 and 12 July 2016	7 + 8
Communication & Story-Telling (Conservative group)	September 2016	Conservative group
Planning Referrals Training	4 autumn sessions	65
Prevent Duty	10 November 2016	12
Spacehive	17 January 2016	4
Project Griffin (anti-terrorism training)	2 February 2016	15
Producing Video course	21 January & 4 March	11

Individual learning and development events

- Cllr T Pollard (“Being an effective Councillor – delivering difficult news”)
- Cllr Godfrey (Prince2 programme management)
- Cllr Jewitt (Dealing with Dangerous Dogs & Associated Antisocial Behaviour)
- Cllr Rendle (National Autism conference)

# Croydon Council

For General Release

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>1 FEBRUARY 2017</b>
<b>AGENDA ITEM NO:</b>	<b>7</b>
<b>SUBJECT:</b>	<b>UPDATE ON WHISTLEBLOWING</b>
<b>LEAD OFFICER:</b>	<b>COUNCIL SOLICITOR, DIRECTOR OF DEMOCRATIC AND LEGAL SERVICES &amp; MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	

## 1. RECOMMENDATION

The Committee is asked to:

- 1.1 Note the contents of the report

## 2. EXECUTIVE SUMMARY

- 2.1 The Whistleblowing legislation under the Public Interest Disclosure Act 1998 requires employers to refrain from dismissing workers and employees, or subjecting them to any other detriment because they have made a protected disclosure ("whistleblowing"). Whistleblowing occurs when an employee or worker draws attention to a concern or concerns of wrongdoing in their organisation.

## 3. DETAIL

- 3.1 The Council uses Public Concern at Work, a third sector provider, (PCaW) to provide independent advice to those who may wish to either raise a concern

with the Council to be considered under the Whistleblowing Policy or make a referral to another statutory body. This enables employees to call for confidential advice on whistle blowing and related issues.

- 3.2 A Whistleblowing situation occurs when an employee draws attention to a concern or concerns of wrongdoing in the organisation which pertains to matters of public interest often referred to as a *“protected disclosure”*.
- 3.3 In support of the Council’s statutory duties in this regard, the Council’s Whistleblowing policies are aimed at fostering a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised if they raise concerns about wrongdoing in their organisation to an appropriate officer within the organisation and also provides the facility to raise these with PCaW an independent organization from whom advice could be sought.
- 3.4 A copy of the Council’s Whistleblowing policy is attached as Appendix 1. Member’s may wish to note the following sections of the policy which set out its aims and method of operation, as well as the safeguards for employees, who may wish to make use of its provisions; sections:

**2. Aims of the Policy**

**5. Designated Assessors**

**6. Making a Disclosure**

**9. Safeguards and Confidentiality**

- 3.5 A distinction is drawn between a situation where Council employees may wish to raise a grievance or a complaint of bullying and/or harassment which can be dealt with under the Employee Complaints Procedure. In order to make a protected disclosure, which would bring concerns specifically within the ambit of the Whistleblowing procedure rather than the Employee Complaints Procedure, the disclosure must be one which is made in the public interest. As such, it is likely that the appropriate route for some complaints which may in the past have been raised under the Whistleblowing procedure, is now via the Employee Complaints Procedure.
- 3.6 For the calendar year 2015, three disclosures were formally investigated under the Whistleblowing policy. For two, there was no case to answer, while the remaining investigation resulted in a member of staff being dismissed and is the subject of a pending prosecution.

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

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

#### **5. LEGAL CONSIDERATIONS**

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

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**CONTACT OFFICERS:**

Jacqueline Harris-Baker, Acting Monitoring Officer and Acting Council Solicitor (ext 62328)

**BACKGROUND DOCUMENTS:**

None

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# 1. Introduction

One of our corporate values is being Honest and Open. This means we are committed to providing high quality services and promoting the highest standards of openness, probity and accountability. Employees and others who have serious concerns about any aspect of the council's work should be able to raise these concerns without fear of victimisation, discrimination or disadvantage.

It is in the best interests of the Council, our team, our residents and customers that wrongdoing is exposed and dealt with effectively. Members of staff are often the first to realise that there may be something seriously wrong within an organisation. In many circumstances it will be appropriate for staff to raise their concerns with their line manager and the whistleblowing procedure is not intended to discourage this. However, where staff may be cautious about expressing their concerns because they feel that speaking up would be disloyal to their colleagues or to their employer, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice. Alternatively, there may also be circumstances where a member of staff has reported their concern to their line manager and received an unsatisfactory response.

This policy and procedure are intended to ensure that a suspicion of wrongdoing can be dealt with speedily and effectively. It seeks to balance safeguards for members of staff who raise genuine concerns about malpractice against the need to protect other members of staff or Members of the council against uninformed or vexatious allegations, which can cause serious difficulty for innocent individuals.

## 2. Aims of the Policy

- To promote the council's values to be honest and open and take responsibility throughout the council by inviting all members of staff to act where necessary in order to uphold the reputation of the council and maintain public confidence.
- To provide safeguards so that members of staff feel able to raise concerns about malpractice ('a disclosure') within the council, without fear of adverse repercussions to the individual and an effective mechanism for investigation of those concerns.
- To provide feedback on action taken and advice on how to pursue those concerns further if the individual is not satisfied with the outcome.

"Malpractice" for the purpose of this policy, includes the following on the part of another Council member of staff or any other person or persons acting on its behalf:

- Abuse of clients, improper discrimination against or relationship with clients;
- Fraud or financial irregularity;
- Corruption, bribery or blackmail;
- Other criminal offences;
- Failure to comply with a legal or regulatory duty or obligation;

- Miscarriage of justice;
- Endangering the health or safety of any individual;
- Endangering the environment which results permanent damage;
- Improper use of authority or powers;
- Serious financial maladministration arising from the deliberate commission of improper conduct
- Unethical or improper conduct or conduct which breaches Council policies or falls below the standards which the Council subscribes to; and
- Concealment of any of the above.

### **3. Application of the Policy**

This policy is intended to tackle any concerns of malpractice which are made in the public interest by:

- A member of staff of the Council
- Agency staff and self-employed staff employed on Council work
- The staff of Council contractors employed on Council work.

For the purposes of this policy an individual who has grounds to believe that malpractice has occurred, is occurring or is likely to occur in connection with the Council is referred to as 'the Discloser'. Members of the Council who are concerned about a particular matter should consult the Council's statutory Monitoring Officer (Council Solicitor and Monitoring Officer).

### **4. This Policy *Does NOT Apply To***

- The relationship between members of staff, their managers and the council, for which the employee complaints procedure or collective dispute procedures are more appropriate.
- Concerns and complaints by members of the public to which the corporate complaints procedure will apply.
- Agency, self-employed or contract workers as an alternative to such dispute resolution procedures as are set out within their contract with the Council.
- Concerns or complaints about the behaviour of Members of the Council (Councillors) to which the Members Code of Conduct will apply.

### **5. Designated Assessors**

The Council's Monitoring Officer will designate at least five senior members of staff of appropriate experience and standing within the Council as "Designated Assessors". On instruction by the Council's Monitoring Officer (or their Deputy), Designated Assessors are responsible for the preliminary investigation of disclosures and to make recommendations to the Council's Monitoring officer as to what further steps, if any, should be taken. The Monitoring Officer will co-ordinate the training of the Designated Assessors in the use of this procedure.



A Designated Assessor may decline to investigate a disclosure on reasonable grounds such as:

- With the agreement of the Monitoring Officer (or their Deputy) a Designated Assessor may seek assistance from another officer where specialist knowledge or additional support which may be required for proper investigation of the disclosure.
- The Monitoring Officer may revoke any such designation as necessary and appoint new Designated Assessors.

The Designated Assessors are:

Department / Officer	Tel. No / Extension
Place - Shayne Coulter	Ext 65631
Resources - David Hogan	Ext 63327
Resources - Simon Maddocks	Ext 65575
People - Jennifer Duxbury	Ext 47156
People - Leonard Asamoah	Ext 62384
Resources - Steve Morton	Ext 61600

## 6. Making a Disclosure

An individual who has grounds to believe that malpractice has occurred, is occurring, or is likely to occur in connection with the Council and believes that the disclosure is in the public interest, may report these concerns to the Monitoring Officer (or their Deputy).

As soon as practicable the Discloser should communicate the disclosure through the Council's Monitoring Officer (or their Deputy) or confidential reporting facility provided by the Council - Public Concern at Work (PCaW) Tel: 0207 404 6609 (advice line). They will provide advice. Should the Discloser wish them to do so, they will also provide details of the allegations to the Monitoring Officer (or their Deputy) who will refer it to a Designated Assessor to be dealt with in accordance with this procedure. The initial disclosure should be made:

- Wherever possible, in writing.
- Otherwise orally, e.g. by telephone or at interview with a Designated Assessor.

The Discloser should provide as much supporting written evidence as possible about the disclosure, the grounds for the belief of malpractice and indicate why they have not felt able to raise their concerns through normal management channels.

Where a disclosure is made through PCaW, **if requested** by the Discloser, full details of the allegations will be recorded and a report passed on to the Monitoring Officer (or their Deputy) for referral to one of the Designated Assessors. Disclosers

are encouraged to give details of their identity. If, in making a disclosure to PCaW the Discloser provides details of their identity these will not be passed to the Monitoring Officer or any other Council employee without the Discloser's express consent (and see Section 9 below).

Anonymous disclosures are much less powerful but may nevertheless be considered having regard to:

- The seriousness of the issues raised.
- The credibility of the concern.
- The likelihood of confirming the allegation through other suitable sources.

On receipt of the disclosure, where their identity is known, the Designated Assessor will offer to interview the Discloser in confidence. The interview should take place as soon as practicable after the initial disclosure but no later than within 3 weeks of the matter being referred to the Designated Assessor by the Monitoring Officer. The Discloser may be accompanied by a local trade union representative or work colleague. The Designated Assessor may be accompanied by another officer to take notes. These notes will not identify the Discloser. For safeguards in relation to confidentiality, see Section 9 below.

The purpose of the interview will be for the Designated Assessor to:

- Obtain as much information as possible from the Discloser about the grounds of the belief of malpractice including why the disclosure is considered to be in the public interest.
- To consult with the Discloser about further steps which could be taken.

## **7. Enquiries and Report by Designated Assessor**

As soon as practicable after the interview (or after the initial disclosure if no interview takes place) and where possible, within 3 weeks of the interview or initial disclosure if no interview takes place, and after consultation with the Monitoring Officer (or their Deputy), the Designated Assessor will determine their recommendations as to the further steps that should be taken such as:

- A report to the police or other appropriate public authority;
- Investigation by the Council's Internal Auditor (this will be the usual course where there are allegations of financial irregularities);
- A full investigation either internally by the Council or externally e.g. by the Council's auditors or by investigators appointed by the Council;
- Action under the Council's Employee Complaints Procedure;
- Referral for consideration under other specific procedures (e.g. child protection); and
- No further action (the basis for which see below).

The grounds on which the Designated Assessor may recommend no further action are as follows:

- If satisfied that the Discloser has not shown that malpractice within the meaning of this procedure has occurred, is occurring or is likely to occur;
- If satisfied that the Discloser is not acting in good faith e.g. after investigation it appears that the disclosure is wilfully malicious or vexatious, in which case it may be referred for disciplinary action;
- If the matter concerned is already the subject of legal proceedings, or has already been referred to the Police or other public authority; and
- If the matter is already, has already been, or should be, the subject of proceedings under one of the Council's other procedures relating to staff.

The Designated Assessor's recommendations will be made to the Council's Monitoring Officer and the Director of Finance & Assets to decide whether or not they agree with them. They shall consider the recommendations and reach a decision on whether the recommendations are agreed, as soon as is reasonably practicable.

The recommendation will be made without revealing the identity of the Discloser except in the circumstances set in Section 9 below.

Once it has been decided what further steps (if any) should be taken, the Designated Assessor or the Council's Monitoring Officer (or designated nominee) will, where their identity is known, inform the Discloser of the decision. If no further action is proposed, the Designated Assessor will give the Discloser the reasons for this in writing.

If the Council's Monitoring Officer and the Executive Director of Resources decide not to implement fully any such recommendations, that decision, with reasons, will be reported in the next periodic report to the Ethics Committee. The Discloser shall also be advised of such an outcome. Where in the opinion of the Monitoring Officer and the Executive Director of Resources, it will not conflict with any other need for confidentiality, the Discloser may also be notified of the reasons why the recommendations are not to be implemented.

## **8. External Disclosure**

It is recognised that in exceptional circumstances, or if dissatisfied after using this procedure, an individual might wish to make a disclosure without using the Council's procedure. However, individuals considering such a step are advised to take legal advice before making an external disclosure. They may make an external disclosure:

- On a confidential basis, directly with bodies such as the external auditor or other appropriate public authority or such person as may be prescribed by the Secretary of State under Section 43F of the Public Interest Disclosure Act 1998. Before taking any such action, the Discloser is encouraged to inform the Monitoring Officer or Designated Assessor where one is already undertaking an investigation;

- If they have reasonable grounds for believing that disclosure would lead to evidence being concealed or destroyed or that the Discloser will be subjected to a detriment as a result of making the disclosure.
- On a confidential basis for the purpose of taking legal advice.

## 9. Safeguards and Confidentiality

If a genuine concern is raised under this policy, the Discloser will not be at risk of losing their job or suffering any form of reprisal as a result. The Council will not tolerate the harassment or victimisation of anyone raising a genuine concern in the public interest and it would be considered a disciplinary matter to victimise anyone who has raised a genuine concern.

With these assurances, the Council hopes that a person will raise their concern of malpractice openly. However it is recognised that there may be circumstances when a person would prefer to speak to someone confidentially first regarding their concerns. If this is the case, the Discloser should inform, at the outset, the person they discuss their concern with. If the Discloser asks for their identity not to be disclosed, the Council will not do so without the Discloser's consent unless required by law. There may be times when a concern is not able to be resolved without revealing the Discloser's identity, for example where personal evidence is essential. In such cases, how the matter can best proceed will be discussed with the Discloser.

If the Discloser decides not to tell us who they are (and therefore the concern is raised anonymously) it will be more difficult for matter to be investigated thoroughly and the Council will not be able to protect the Discloser's position or to provide them with feedback. Accordingly the Discloser should not assume the Council can provide the assurances offered in the same way if they report a concern anonymously. If a person is unsure about raising a concern independent advice can be obtained from Public Concern at Work Tel: 0207 404 6609 (advice line).

Therefore any document, report or recommendation prepared by the Designated Assessors in relation to the matter will not identify the Discloser, unless:

- The Discloser has consented to this in writing; or
- There are grounds to believe the Discloser has acted maliciously; or
- Where the Designated Assessor is under a legal obligation to do so; or
- Where the information is already in the public domain; or
- On a strictly confidential basis to the Designated Assessor's administrative assistant/administrative support; or
- On a strictly confidential basis to a professionally qualified lawyer for the purpose of obtaining legal advice.

The Designated Assessor will ensure that all information relating to the disclosure (including that held electronically) is kept secure so that, as far as practicable, only the Designated Assessor shall have access to it.

Disclosers are under an obligation to use all reasonable endeavors to ensure that they and their representative or work colleague (if any) keeps this matter strictly confidential save, as permitted under this procedure, as required by law or until such time as it comes into the public domain.

The Discloser will not be required by the Council, without his or her consent, to participate in any enquiry or investigation into the matter established by the Council unless there are grounds to believe that the Discloser may have been involved in the misconduct or malpractice.

Where the Discloser participates in any enquiry or investigation, that participation will usually be required to be on an open rather than a confidential basis. The obligations of the Designated Assessor detailed above will remain in relation to the identity of the individual as the original Discloser of information.

## **10. Review**

This policy and procedure may be amended from time to time by the Council following periodic review by the Ethics Committee. Any comments or suggestions about the policy and procedure should be referred to the Council's Monitoring Officer.

**For general advice on the procedure please contact:**

Jacqueline Harris-Baker (Acting Council Solicitor and Monitoring Officer)  
Resources Department  
7th Floor, Zone C  
Bernard Weatherill House  
8 Mint Walk  
Croydon  
Surrey  
CR0 1EA  
020 8726 6000 ext. 62328

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For General Release

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>1 February 2017</b>
<b>AGENDA ITEM:</b>	<b>8</b>
<b>SUBJECT:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000</b>
<b>LEAD OFFICER:</b>	<b>ACTING BOROUGH SOLICITOR AND ACTING MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CABINET MEMBER:</b>	<b>Councillor Hamida Ali - Communities, Safety and Justice</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> Monitoring compliance with the Regulation of Investigatory Powers Act supports the Council's approach to corporate governance.	
<b>FINANCIAL IMPACT</b> The recommendation contained in this report has no financial implications	
<b>KEY DECISION REFERENCE NO:</b> This is not a key decision.	

## **1. RECOMMENDATION**

The Committee is asked to:

- 1.1 Note the use of the Regulation of Investigatory Powers Act 2000 by the Council over the past calendar year.

## **2. EXECUTIVE SUMMARY**

2.1 The purpose of this report is to inform the Committee how the powers available to the Council under Regulation of Investigatory Powers Act 2000 (RIPA) have been used over the last calendar year.

## **3. DETAIL**

3.1 RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Evidence obtained by any covert surveillance could be subject to challenges under Article 8 of the European Convention on Human Rights (ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA makes lawful what might otherwise be a breach of Article 8 of the ECHR and protects the Council from any civil liability. A public authorities "core functions" are the specific public functions

it undertakes when providing services, in contrast to the “ordinary functions” which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc). Therefore a public authority may only engage in the use of RIPA when in performance of its “core functions”.

3.2 Using RIPA, but only for the purpose of investigating crime and disorder, the Council is able to:

- Carry out covert directed surveillance;
- Use covert human intelligence sources;
- Acquire data relating to communications (e.g. telephone subscriber information).

3.3 ‘Covert’ in this context means carried out in a manner calculated to ensure that those subject to the surveillance are unaware that it is or may be taking place. It usually involves personal observation, the use of CCTV, or accessing communications data such as mobile phone number subscriber or website details (see paragraph 2.6 below). However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect’s home to observe them, or listening to or obtaining the contents of telephone call or emails; such intrusive surveillance can only be carried out by the Police and government security services.

3.4 Further, even where the covert investigations are for the purpose of preventing crime and disorder, the Council must also show that the surveillance is necessary and proportionate and can be balanced against an individual’s right to their private and family life.

3.5 Covert Human Intelligence Sources (CHIS) are individuals who by the nature of the situation they are in are able to provide information in a covert manner to aid an investigation. The use of CHIS is very tightly controlled under RIPA and historically the Council has not made use of this aspect of RIPA.

3.6 It should also be noted that in respect of communications data, no information regarding the actual content of the communication can be obtained by a local authority. The information obtained is information regarding who pays the bill for a phone, website or where an item of post originated etc. This type of information is most often obtained as part of a Trading Standards investigation where, for example, they are trying to identify and/or locate a trader in counterfeit goods operating from a website, or rogue trader who has billed (often a vulnerable) person for work and where the only point of contact is via a mobile phone number.

3.7 In respect of the use of the powers under RIPA the Council has had in place a Corporate Policy and Procedure to ensure their proper use. Local Authorities require judicial approval from a Court for the use of covert directed surveillance, covert human intelligence sources (CHIS) and access to communications data (i.e. billing and subscriber information), and the use of RIPA to authorising directed surveillance is now limited to cases where the offence under investigation carries the possibility of minimum custodial sentence of 6 months or more being passed on conviction. When



access to communications is sought or for test purchasing exercises (investigations into underage sales of alcohol and tobacco), this restriction does not apply.

### **3.8 Authorisation Arrangements**

Overall supervision of the Council's use of RIPA lies with the Acting Borough Solicitor and Acting Monitoring Officer. Day to day monitoring of and advice on authorisations, to ensure that the issues of necessity and proportionality are fully considered and to ensure that all applications meet the necessarily high standard that is required. The application is then made to the Magistrates by an authorised officer in the Corporate Legal Team. In accordance with statutory requirements, this team also maintains the Council's Central Register of covert surveillance applications. Currently there are 5 Council officers nominated by their Executive Directors who are able to authorise an application for the use of the powers available under RIPA. These officers are those whose services undertake specific enforcement activities and/or investigations.

### **4.0 Occasions when RIPA has been used to Support Investigations**

4.1 The occasions and outcomes where the use of the powers available under RIPA to aid investigations was authorised during 2016 are set out below:

- Directed Surveillance - 1 Investigation (Investigation ongoing - fraud/theft)
- Communications Data - 3 Investigations (Trading Standards (joint investigation - Trading Standards case closed) / Environmental: fly-tipping/illegal waste transfer (prosecuted, sentencing pending) / Environmental: street trading (Fixed Penalty Notice))

4.2 The Council's use of these powers, its policy and procedures are subject to inspection and audit by the Office of the Surveillance Commissioner and in respect of covert surveillance authorisations under RIPA and the Interception of Communications Commissioner Inspections in respect of communications data. During these inspections individual applications and authorisations are also closely examined and Authorising Officers are interviewed by the inspectors.

4.3 With the changes being brought about by the passing into law of the Investigatory Power Act 2016, these organisations will be brought together as the Investigatory Powers Commissioner, who will have oversight of the inspection regime. The Act, also for local authorities revises definitions of what is considered to be communications data and also the processes for obtaining it as well as placing additional responsibilities and sanctions upon those who process applications. These changes will be taken into account within a revised policy document, which the Committee will be asked to consider at a later date, once final guidance has been received.

4.4 Under the code of practice that govern the use of RIPA and the Council's own requirements, officers whose day to day work may require them to be aware to the issues surrounding the use of RIPA are required to be trained. In May 2016, 21 staff from across the Council attended a training event facilitated by Act Now Training.

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

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

## **6. LEGAL IMPLICATIONS**

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

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<b>CONTACT OFFICER:</b>	Jacqueline Harris-Baker, Acting Borough Solicitor and Acting Monitoring Officer (ext 62328)
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<b>BACKGROUND PAPERS:</b>	None
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<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>1 FEBRUARY 2017</b>
<b>AGENDA ITEM NO:</b>	<b>9</b>
<b>SUBJECT:</b>	<b>RECENT CASE LAW ON THE REGULATION OF COUNCILLOR CONDUCT</b>
<b>LEAD OFFICER:</b>	<b>ACTING COUNCIL SOLICITOR &amp; ACTING MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider and recommend revisions to the Code of Conduct.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	

## 1. RECOMMENDATION

The Committee is asked to:

- 1.1 Note the outcome of recent case law in relation to the regulation of Councillor conduct.

## 2. EXECUTIVE SUMMARY

- 2.1 This report provides details of the decision by the High Court in relation to a Judicial Review of a decision by a Town Council. Whilst it deals with some procedural issues relating to instances where there is a complaint in relation to a Town Councillor and the correct body to investigate and decide on the complaint, it is of particular interest to the Council in relation to the consideration of sanctions which the court indicated could be imposed on a Councillor found to be in breach of the relevant Code of Conduct.

## 3. DETAIL

- 3.1 In R( Taylor) V Honiton Town Council [2016] EWHC 3307 (Admin) handed down by the High Court on 21 December 2016, Mr Taylor, the claimant was seeking an order to quash a decision by Honiton Town Council to impose sanctions on him following a breach of the Code of Conduct.

- 3.2 The issue in the case turned on the exercise of functions regulated by ss27-28 of the Localism Act 2011 relating to standards of conduct. The claimant had raised issues with the Town council's involvement in funding the "Beehive Community Centre" and his disagreement with the direction of travel of the project lead him to publish a letter which alleged "conspiracy to use money ... for an improper purpose", "scams on ratepayers" and "offences" by the Town Council but also make a number of comments which were said to impugn the integrity and professional reputation of the Town Clerk. As a result, the Town Clerk made a complaint to the District Council, East Devon.

For members information, where a Code of Conduct complaint arise in a Town Council, the provisions of the Localism Act require that this complaint be referred to the District Council, unlike in London Boroughs where a complaint about a Councillor would be dealt with by the relevant Borough.

- 3.3 The Monitoring Officer of the District Council had attempted to resolve the matter informally, however when this was unsuccessful, an investigator was appointed to investigate the allegation of a breach of the Code of Conduct and it was subsequently decided by the investigator that Cllr Taylor had failed to comply with the obligations to treat others with courtesy and respect.
- 3.4 Following this investigation, the matter was referred to a meeting of East Devon's Standards Hearings Sub-Committee and following a hearing, the Sub-Committee determined that Cllr Taylor had failed to treat the Clerk with respect in that he had publicly accused her of criminal behaviour, namely conspiracy to obtain a loan by deception. It went on to recommend three sanctions: Censure of Cllr Taylor, Publication of the findings of the Hearings Sub-Committee and that Cllr Taylor receive training on the Code of Conduct and Councillor behaviour before the end of the financial year.
- 3.5 The matter was then remitted back to the Town Council to determine the sanctions to be imposed in light of the finding of fact by the District Council. The Town Council, in addition to imposing the sanctions recommended by the District Council, the Town Council imposed a number of additional sanctions – restrictions on the claimant speaking at meetings, removal of the claimant from committees, restrictions on his attendance at meetings even as a member of the public and restrictions on the claimant attending the Council offices other than in the company of the Mayor.
- 3.6 Cllr Taylor challenged these sanctions broadly on the basis that the Town Council had no power to make such a decision and were improperly imposed. Following this correspondence and prior to Cllr Taylor issuing the JR proceedings, the Town Council had withdrawn the sanctions imposed however Cllr Taylor still went on and issued proceedings against the Town Council and as part of those proceedings, alleged that the District Council's involvement should only have been as investigator and advisor and that the Town Council should have been decision maker on both the breach and the sanctions. Cllr Taylor did not, however, challenge the decision of the District Council that he had breached the Code.

- 3.7 The Court was satisfied that the effect of the Localism Act provisions was such as to place the duty of investigation and decision regarding the allegations against members of the Town Council on the District Council as the principal authority, particularly as arrangements for decision making must involve independent persons and it would have frustrated that important safeguard to hold that a town or parish council had a duty to reconsider the principal authorities' decision and substitute its own.
- 3.8 The second point which the court considered was whether the District Council was able to recommend that Cllr Taylor undergo training as a sanction following breach of the Code of Conduct.
- 3.9 The court considered previous case law in this area, particularly Hickinbottom J's decision in *Heesom V Public Services Ombudsman for Wales (Welsh Ministers Intervening)* [2014] EWHC 1504 (Admin) [2015 P.T.S.R 22 which undertook an analysis of the ability to impose sanctions following the abolition of the former Standards Regime by the Localism Act 2011.
- 3.10 Of particular interest to members will be the following extract from the Judgement at paragraph 39 onwards:

*"Parliament clearly contemplates that a relevant authority may take "action" following a finding of non-compliance with a code, and does not seek to define or limit what action that may be. The abolition of the old regime carries with it, as Hickinbottom J observed, the abolition of the power to disqualify and suspend but otherwise the powers appear to be undefined, at least where the breach does not involve any impropriety in relation to pecuniary interests. It also means that suspension and disqualification are not available as sanctions for non-compliance with any action taken in respect of a failure to comply with a code of conduct. This means that any action which required a councillor to do anything could not be enforced by suspension as a means of securing compliance. As the Welsh Government observed the only sanction where the criminal law was not involved in England was the ballot box.*

*40. That said, the fact that a requirement cannot be enforced by suspension does not mean that it should not be imposed. Provided that it is lawful, which in this context includes fully respecting the important right to freedom of expression enjoyed by members of local authorities in the interests of effective local democracy, a sanction may be imposed which requires a member of a local authority to do something. It must be proportionate to the breach."*

- 3.11 The Court went on to indicate that Cllr Taylor had made a very serious error of judgement in accusing the Clerk of criminal conduct when there was not the slightest justification for doing so and as such the Court found that training was proportionate.
- 3.12 Where such a requirement is made (i.e training in this instance) but the Member refuses to comply, the Court indicated that the only sanction is publicity of such failure with the impact that such conduct may reduce the

confidence of the electorate in a member so that he or she is not re-elected. Equally, it may not but that is a matter for the electorate.

- 3.14 Members can view the judgement in full at:  
<http://www.bailii.org/ew/cases/EWHC/Admin/2016/3307.html>

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

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

#### **5. LEGAL IMPLICATIONS**

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

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<b>CONTACT OFFICERS:</b>	Jacqueline Harris-Baker Acting Council Solicitor and Monitoring Officer (ext 62328 )
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<b>BACKGROUND DOCUMENTS:</b>	None
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**Croydon Council**  
For General Release

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>1 FEBRUARY 2017</b>
<b>AGENDA ITEM NO:</b>	<b>10</b>
<b>SUBJECT:</b>	<b>DISPENSATIONS APPLICATIONS FOR MEMBERS</b>
<b>LEAD OFFICER:</b>	<b>ACTING BOROUGH SOLICITOR AND ACTING MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR SIMON HALL</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall consider dispensations for Members under the new ethics regime.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A	

**1. RECOMMENDATION**

The Committee is asked to:

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

**2. EXECUTIVE SUMMARY**

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

**3. DETAIL**

- 3.1 Under Section 31 of the Localism Act 2011 ("the Act"), a Member or co-opted Member who has a disclosable pecuniary interest (DPI) in a matter to be considered or being considered at a meeting of the authority at which that Member or co-opted Member is present and the DPI is one which the Member or co-opted Member is aware of, the Member or co-opted Member may not participate or participate further in any discussion or vote on the matter at the

meeting unless he/she has first obtained a dispensation in accordance with the Council's dispensation procedure.

- 3.2 The Council has adopted dispensation criteria which are attached for Members' ease of reference at Appendix 1. There are 5 circumstances in respect of which a dispensation may be granted, namely:
- i) That so many members of the decision-making body have disclosable pecuniary interests (DPIs) in a matter that it would "impede the transaction of the business"
  - ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. ;
  - iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
  - iv) That, without a dispensation, no member of the Cabinet would be able to participate on this matter or
  - v) That the authority considers that it is otherwise appropriate to grant a dispensation.
- 3.3 The Council has determined that in respect of grounds 1 and 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 (i) or (iv).
- 3.4 In respect of grounds (ii), (iii) and (v) above, assessment of these grounds involve a value judgement and are less objective and Council has therefore considered it appropriate that the discretion to grant dispensations on these grounds is delegated to the Ethics Committee, after consultation with the Independent Person.
- 3.5 The Council has received the attached applications for a dispensations set out at Appendix 2.
- 3.6 In considering the matter, the Ethics Committee is required to assess whether, in light of the contents of the application, the public interest in excluding a Member from participating where a Disclosable Pecuniary Interest exists is outweighed by the considerations set out in the application which support the public interest in the Member being able to participate.
- 3.7 The Committee is also asked to set out the time period in respect of which it is appropriate to grant the dispensation. In this regard, Members should be mindful of the fact that any dispensation may not be granted for a period exceeding four calendar years, nor is it recommended that a dispensation be



granted for a period longer than the remaining term of office of the relevant Member.

**4. CONSULTATION**

None.

**5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

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

**6. LEGAL IMPLICATIONS**

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

**7. HUMAN RESOURCES, EQUALITIES, ENVIRONMENT AND CRIME AND DISORDER IMPACT**

7.1 None

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**CONTACT OFFICERS:**

Jacqueline Harris-Baker,  
Acting Borough Solicitor and Acting  
Monitoring Officer  
(ext 64985)

**BACKGROUND DOCUMENTS:**

None

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**Determination of Dispensation Applications:**

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

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

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

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

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

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

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

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

Adopted: July 2012

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