

# Ethics Committee Agenda



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

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

Reserve Members: Councillors Patricia Hay-Justice, Steve Hollands, Karen  
Jewitt, Dudley Mead, Andrew Rendle and Wayne Trakas-Lawlor

A meeting of the **ETHICS COMMITTEE** which you are hereby summoned to attend,  
will be held on **Wednesday 6th September 2017 at 6:30pm in Room F5, the Town  
Hall, Katharine Street, Croydon CR0 1NX**

JACQUELINE HARRIS-BAKER  
Director of Law and Monitoring Officer  
London Borough of Croydon  
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[www.croydon.gov.uk/agenda](http://www.croydon.gov.uk/agenda)  
29 August 2017

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

## **AGENDA - PART A**

**1. Apologies for absence**

**2. Minutes (Page 1)**

To approve the minutes of the meeting held on 1 February 2017 as an accurate record.

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

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

To receive notice 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. Regulation of Investigatory Powers Act 2000 – April 2017 Inspection of the Council by the Office of Surveillance Commissioners (Page 5)**

To receive the report of the Director of Law detailing the findings of the recent Office of the Surveillance Commissioner (OSC) Inspection, which documents the Council's use of the powers available under Regulation of Investigatory Powers Act 2000 (RIPA) since the last inspection.

**7. Recent Case Law Update (Page 9)**

To receive the report of the Director of Law detailing a recent Judicial Review of a local authority decision to investigate a Member and implications arising from that decision.

**8. Members' Dispensations (Page 15)**

To receive the report of the Director of Law on Members' dispensations for consideration, if any are received.

**9. Draft Work Programme for 2017/18 (Page 21)**

To consider a draft work programme for the Committee for the 2017/18 Municipal Year.

**10. Exclusion of the Press & Public**

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. Minutes**

To approve the Part B minutes of the meeting held on 1 February 2017 as an accurate record.

(Exempt under paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972 as amended)

**B2. Members' Dispensations**

To receive the report of the Director of Law on Members' dispensations for consideration, if any are received.

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## ETHICS COMMITTEE

**Meeting held on Wednesday 1 February 2017, at 6.30pm in Room F9, Town Hall,  
Katharine Street, Croydon, CR0 1NX**

**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 Acting Monitoring Officer and Howard Passman, Information Officer

The Chair announced that the Council had made a decision to hold future meetings paperless, this would be delivered by a three stage process.

- Meeting 1 (6 September 2017) – the agenda will be provided electronically and hard copies will be circulated;
- Meeting 2 (15 November 2017) – the agenda will be sent electronically and a few hard copies will be available at the meeting; and
- Meeting 3 (28 February 2018) – the agenda will be provided electronically only.

The Committee **NOTED** the decision.

**A01/17            Apologies for Absence**

None

**A02/17            Minutes of the last meeting**

The Committee **RESOLVED** to approve and sign the minutes of the last meeting held on 23 November 2016.

**A03/17            Disclosure of Interest**

None

**A04/17            Urgent Business**

None

**A05/17            Exempt items**

The Committee **RESOLVED** that the allocation of business in the agenda

be confirmed, as printed.

**A06/17      Update on Members Learning and Development** (agenda item 6)

Officers introduced the report and Councillor Mario Creatura, in his capacity as a Member of the Members L&D Committee reported that the year had seen lots of learning across all parties and that this had taken place internally and externally. Statutory learning events had also taken place.

Councillor Pat Clouder suggested that once an event had been scheduled that those Members that were unable to attend would benefit from a “mop up” sessions which would act as a catch all. Councillor Creatura agreed to report this suggestion back to the Members L&D Panel.

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

**A07/17      Update on Whistleblowing** (agenda item 7)

Officers presented the updated policy which had been implemented as an additional piece of governance to give staff a safe and anonymous outlet to raise concerns. This service had been contracted to Public Concern at Work who provide a telephone hotline and advise service, staff are able to discuss options which can internal resolved or another referred to an external organisation like the Ombudsman.

Of the 3 whistleblowing referrals received, initial investigations had resulted in referrals having no further action. The remaining concern had been investigated and resulted in a pending prosecution for fraud. The detail and outcome would be presented at the next meeting once known.

The committee suggested a addition to the policy to consider that along with the option to be accompanied by a trade union representative the wording could include “or work colleague or friend as unions representatives are dwindling in numbers. Officers agreed to take away the suggestion and to review the policy.

The Committee suggested increasing publicity to encourage an increase in the number of whistleblowing referrals.

The Chair suggested including whistleblowing in the committee work programme for next year when the Committee could review the instances and outcomes.

The Committee **RESOLVED** to note the contents of the report and to include whistleblowing in the work programme for next year

**A08/17      Regulation of Investigatory Powers Act 2000 (agenda item 8)**

The Committee received a presentation regarding the Regulation of Investigatory Powers Act 2000 (RIPA). This mechanism is employed to undertake covert activity when investigating crimes. The RIPA had been used 4 times this year; of these one had been referred to trading standards and investigation continues, one had resulted in a small fine and one is awaiting sentencing.

Under new legalisation local authority officers are now personally accountable.

The Committee **RESOLVED** to note the use of the Regulation of Investigatory Powers Act 2000 by the Council over the past calendar year.

**A09/17      Recent Case Law on the Regulation of Councillor Conduct  
(agenda item 9)**

The Chair introduced this item and confirmed to the Committee that it was good practice to continue to receive updates and to reflect on outcomes regarding regulations of Councillor conduct.

The Committee agreed that examples given in the report, the punishments were lenient and there appeared to be no further sanctions or checks to ensure compliance.

The Acting Monitoring Officer was in a position to report that locally Members took complaints seriously once approached.

The Committee **RESOLVED** to note the outcome of recent case law in relation to the regulation of Councillor conduct.

**A10/17      Dates of Future Meetings for 2017/18**

The Committee **RESOLVED** to agree the dates of future meeting to be held in the municipal year 2017/18.

Wednesday 6 September 2017  
Wednesday 15 November 2017  
Wednesday 28 February 2018  
Wednesday 9 May 2018 (if necessary)

**A11/17      Dispensation Applications for Members (agenda item 11)**

The Committee **RESOLVED** to consider applications for dispensation from Councillor Paul Scott and Councillor Jamie Audsley and determined

whether to grant the dispensation, and if so, the length of time for which such dispensation is to be granted.

Councillor Paul Scott and Councillor Jamie Audsley's dispensation applications were approved and would expire in June 2018.

**A12/17**

**Camera resolution** (agenda item 12)

The motion to move the camera resolution was proposed by Councillor Oliver Lewis, seconded by Councillor Pat Clouder.

The Committee **RESOLVED** that under Section 100A(4) of the Local Government Act, 1972, that 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.

**PART B MINUTES – for agenda item B1 - are provided separately and are exempt from public disclosure under paragraphs 1 and 2 of Schedule 12a to the Local Government Act 1972 (as amended).**

Meeting ended 7.10pm



**For General Release**

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>6 September 2017</b>
<b>AGENDA ITEM NO:</b>	<b>6</b>
<b>AGENDA ITEM:</b>	<b>APRIL 2017 INSPECTION OF THE COUNCIL BY THE OFFICE OF SURVEILLANCE COMMISSIONERS</b>
<b>SUBJECT:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS-BAKER, DIRECTOR OF LAW AND 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**

- 1.1 The Committee is asked to note the findings of the recent Office of the Surveillance Commissioner (OSC) Inspection, which documents the Council's use of the powers available under Regulation of Investigatory Powers Act 2000 (RIPA) since the last inspection.

**2. EXECUTIVE SUMMARY**

- 2.1 The OSC undertook an inspection of the Council's use of RIPA on 5 April 2017 and provided the report of the inspection to the authority on received 10 May 2017. The report concluded that there was a clear commitment on the part of those officers involved in both operational and supervisory roles, to maintain proper standards.
- 2.2 The OSC is responsible for the inspection of the Council's use of directed surveillance powers, and the inspection examined the arrangements made by the Council to secure compliance with the statutory provisions which govern the use of covert surveillance.
- 2.3 As has been previously reported to the Committee, 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".

- 2.4 In the context of RIPA, 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). The Council may only utilise RIPA for the purpose of investigating criminal offences. When the Council does so, it is able to carry out covert directed surveillance; use covert human intelligence sources and/or acquire data relating to communications (e.g. telephone subscriber information).
- 2.5 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, which is undertaken in accordance with such authorisation, makes lawful what might otherwise be a breach of Article 8 of the ECHR and will offer a measure of protection to the Council from civil liability in relation to an Article 8 breach.
- 2.6 As a general trend, the Inspector noted there has been a move towards the preference of overt methods and that a more limited use of RIPA by the Council as is evident in many other authorities. The Inspector did not however, observe a decrease in willingness by Council officers to recognise and use the relevant powers available, where appropriate to do so.

### **3. KEY FINDINGS**

- 3.1 The OSC examined the training documentation, including the training file and the register of attendees who attended the most recent training event for Council officers, which was facilitated by 'Act Now Training'. The Inspector raised participation in a refresher courses prior to officers undertaking their responsibilities under RIPA. The Council is aware that, under the code of practice that governs the use of RIPA and its own internal requirements, officers whose day-to-day work may require them to be aware of the issues surrounding the use of RIPA are required to be trained.
- 3.2 As part of the inspection, the Inspector considered and commented on the Council's RIPA Policy document. It was noted that the Council's current Policy document does not include the use of social media and the Inspector has recommended that it is revised to include this.
- 3.3 The Inspector further commented that Corporate Policy and Procedure is of *'high quality', 'rated as "admirable"'* by the previous OSC inspector, and *'is balanced and easy to follow'*. Members may wish to note that in addition to the Council's RIPA Policy document, an Aide-memoir had been issued to the Council officers who undertake RIPA activities, which includes the use of Social Media in investigations in addition to specific pieces of advice provided separately in respect of individual investigations. As part of the proposed amendments, this advice will be expanded upon and included within the revised policy document.

- 3.4 The Inspector examined authorisation documentation since the previous inspection in March 2014. The authorisation process is designed 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.
- 3.5 The Inspector commented positively on the fact that *'the observations in the previous report had been acted upon and the underlying paperwork was sound.'* The Inspector has recommended that the Council should use download and populate a standard electronic record, to record authorisations. The Council does currently record authorisations in that manner, but not in the layout expressed by the Inspector to be his preference. As part of the revision of the policy documentation, this preferred layout will be adopted.
- 3.5 The Inspector met with and interviewed officers from the Corporate Anti-Fraud Team and Trading Standards, as well as officers from Legal Services. Additionally this year the Inspection included a visit to the Council's CCTV Control Room. The Council's use of CCTV is for overt surveillance, however there are occasions when other organisations such as the Police, Department of Work and Pensions and Her Majesty's Revenue and Customs use the Council's CCTV (under the Council's supervision) for covert surveillance. The Inspector commented that the CCTV Control Room is operating to a good and efficient standard with the operators having considerable experience and local knowledge. It was noted that the incident report record book is in good order, with records of the authorisations requested.
- 3.6 In conclusion, the Inspector commented *"The RIPA team, both supervisory and operative, have accumulated considerable experience between them and their inter communications and wish to operate at a high standard was evident..." "I found a clear commitment to maintain proper standards of awareness and training so as to be ready when the occasion demands."*

#### **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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#### **CONTACT OFFICER:**

Jacqueline Harris-Baker, Director of Law  
and Monitoring Officer (Ext. 62328)

**BACKGROUND PAPERS:**

Exempt

**For General Release**

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>6 September 2017</b>
<b>AGENDA ITEM NO:</b>	<b>7</b>
<b>SUBJECT:</b>	<b>RECENT CASE LAW UPDATE</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS-BAKER, DIRECTOR OF LAW AND MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider 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. RECOMMENDATIONS**

The Committee is asked to:

- 1.1 Note the outcome of recent case law.

**2. EXECUTIVE SUMMARY**

- 2.1 This report provides details of the Judicial review of a local authority decision to investigate a Member and implications arising from that decision.

**3. DETAIL**

- 3.1 In *Hussain v Sandwell Metropolitan Borough Council* [2017] EWHC 1641 (Admin) a Councillor who had been the subject of formal investigatory procedures by the authority sought a Judicial review of the Council's actions.
- 3.2 Investigations by and on behalf of the council into alleged wrongdoing by elected council members had been undertaken and the claimant is a member of the council who was alleged to have been engaged in procuring the sale of council assets at a substantial undervalue and using his influence to have parking tickets issued to his family cancelled.

- 3.3. Documents before the Court refer to a “culture” which pervaded the Authority whereby members were “the bosses” and the Council was “open for business”. Documents also refer to members bullying employed officials and officers who were compliant in carrying out the members wishes. In 2014 various allegations were circulating in the press (including on the BBC) and on social media to the effect that there was serial and long standing wrongdoing by elected members especially in relation to the disposal of Council property.
- 3.4 To assist in the pre-formal investigation an external firm of solicitors was instructed to collect, collate and review the documentary evidence, to establish facts, and to formulate advice as to the appropriate action to take. The exercise included the conducting of voluntary interviews with relevant members. The solicitors interviewed the Claimant upon two separate occasions about allegations made against him. The interviews were recorded and transcripts made.
- 3.5 Regrettably, towards the end of the process, the solicitor made some personal and derogatory observations about the Claimant and his family to a Council Official (the Chief Executive). This caused the Chief Executive to address whether it was proper to continue with the external lawyers given the risk of bias. Ultimately, it was decided that, given the advanced stage of the solicitor's investigation, the work should be completed but that all the evidence and the resultant report should then be submitted to Leading Counsel for independent and objective advice on the merits of the investigation, the implication of the solicitor's derogatory comments, as to whether the solicitors report should be published, and as to appropriate next steps.
- 3.6 Following receipt of the solicitor's report in April 2016, Leading Counsel was instructed and he advised in May 2016. The gist of the advice was that there was a serious case to be met by the Claimant and that the solicitor's report and the Opinion should be placed into the public domain to address criticisms then being made in the press that the Authority was suppressing wrongdoing and not taking its investigatory obligations seriously. Counsel also advised that the formal arrangements under the Localism Act 2011 for investigations into alleged breaches of the member's Code of Conduct should now be initiated.
- 3.7 This opinion by Leading Counsel led the Chief Executive to initiate the formal investigatory procedures under the Localism Act 2011. The investigation got underway. The Council's Monitoring Officer instructed two members of the Legal Service to act as Investigating Officers. The Claimant agreed to be interviewed as part of the process.
- 3.8 At about this time elections to appoint a new Leader of the Council occurred. Several members indicated that they would stand for election. This included a member who was a subject of the investigation (Councillor Jones). It is argued, by reference to contemporaneous press coverage, that certain Labour candidates (in particular Councillor Eling) used the press to promote their candidature for Leader. The ongoing investigations became a “political” issue with Councillor Eling, who was standing against Councillor Jones, pressing for publication of the solicitor's report and the Opinion and continuation of the investigation. The submission is now made that this was to undermine the position of Councillor Jones and that the decision by the Council to continue

with the investigation and to publish the solicitor's Report and the Opinion was politically motivated.

- 3.9 Also at this time the Council indicated to the Claimant that it intended to publish the solicitor's report and the Opinion in accordance with Leading Counsel's advice. This led the Claimant to seek permission to apply for judicial review and an order prohibiting publication. Permission was refused by Mr Justice Cranston. On the day of the refusal the Council placed the solicitors report and the Opinion into the public domain. Later they also placed a report of the Council's Audit Committee into the public domain. Subsequently the Court of Appeal granted permission to claim judicial review. By this point in time the application for an injunction to restrain publication was academic.
- 3.10 The Council's investigation into the allegations was stayed pending the outcome of the judicial review. The stay covers the matters that Leading Counsel identified as warranting investigation but also various other allegations, also involving property transactions, which are said to have occurred in the late 1990's and which also involve the Claimant. The stay prevents the reference of all the allegations to the Council's Standards Committee which is the body convened to hear and adjudicate upon allegations of breach of duty by members.
- 3.11 As part of the Judicial Review proceedings, the Claimant Councillor challenged the investigations and attempted to prevent the council concluding them and summoning him before its Standards Committee under the provisions of the Localism Act 2011 (Sections 27 and 28).
- 3.12 The Claimant's grounds for judicial review included that the council had acted ultra vires (i.e. beyond its powers), that the process had been politically motivated, and that there had been bias which continued to taint the process going forward. He also challenged the procedures under the Data Protection Act 1998 (DPA 1998) and the European Convention on Human Rights (ECHR).
- 3.13 In addition, one of the issues raised was the fact that the council had conducted a 'pre-formal investigation', i.e. an investigation not conducted under the arrangements put in place under Localism Act 2011 for the formal investigation of breaches under the Code of Conduct applicable to elected members. During this pre-formal stage the Council purported to exercise powers conferred upon it pursuant to the Local Government Act 1972 ("LGA 1972").
- 3.14 The Administrative Court dismissed the application by the claimant Member for judicial review of the defendant's initiation of formal investigatory procedures and publication of documents. The Court found that the authority had power to conduct the investigations it had and did not find itself tainted by bias, nor had it erred by publishing the documents, which had been within its powers and which were not in breach of data protection principles.
- 3.15 The judgment clarifies that 'pre-formal investigations' are permissible. Green J ruled that the council had 'ample power' (for example under section 151 of the Local Government Act 1972) to conduct the initial pre-formal investigation into allegations of serious misconduct. He also rejected the submission that the council did not have the power to investigate under Localism Act any alleged

misconduct occurring prior to the coming into force of Localism Act in July 2012. There was no amnesty for serious misconduct.

- 3.16 The Court indicated that an allegation submitted to formal investigatory arrangements can cover conduct pre and post-dating the coming into effect of Localism Act. The Code that will then govern the conduct being investigated will be that operative at the time of the behaviour in question.
- 3.17 In relation to allegations of breach of the Data Protection Act 1998, the Claimant argued that the publication of the pre-investigation report was unlawful under prohibitions contained in the DPA 1998 and Article 8 ECHR. The effect of publication upon the Claimant professionally and personally and upon his family personally has been serious. Evidence was placed before the Court to this effect by the Claimant in his witness statements. It is also said that the documents contain errors and are not therefore accurate.
- 3.18 It was argued for the Claimant that for the publications to have been justified they had to satisfy the principles laid down in the DPA 1988, and they did not. Publication was not necessary: to comply with any legal obligation that the authority was subject to; for the exercise of any of the authority's proper legal functions; for the exercise of any other functions of a public nature in the public interest; or, for the purposes of a legitimate interest pursued by the authority, these, in outline, being the legal bases under the DPA 1998 relied upon by the Council to justify publication. The Claimant recognised that it was too late to seek relief preventing publication but he sought a declaration and damages.
- 3.19 The Court found that there was a strong public interest in the rate payers of the borough having explained to them the nature of the allegations, the evidence both for and against the Claimant, and the views of independent lawyers. It was fair to publish because it proved to the public that the officers were taking their responsibilities seriously and not concealing possible wrongdoing, which was the prevailing impression. Public confidence in financial probity, which includes transparency, especially in times of financial austerity, is very important.
- 3.20 Accordingly, Green J also rejected complaints that the council had erred by publishing the report of the pre-formal investigation. There is an important public interest, with respect to allegations against a councillor, in openness and transparency. Both go hand in glove with accountability. There was no breach of DPA 1998 or Article 8 ECHR.
- 3.21 Green J further rejected the allegations of causative actual and apparent bias and political motivation. He reached a clear conclusion and ruled that the council's procedures can continue.
- 3.22 In terms of practical implications for the authority of the judgement: the judgment upholds the scope of the powers of local authorities generally to investigate alleged member impropriety, and ultimately to do so in accordance with the formal arrangements under Localism Act 2011. The forum for the member to present his case fully will then be the Standards Committee. The judgment recognises that there is a powerful public interest in serious allegations being thoroughly and fairly tested and adjudicated upon. Moreover,



when there is a flaw in a pre-formal investigation steps can and should be taken to prevent this infecting what follows.

- 3.23 Furthermore, it highlights that any investigation undertaken under the ethics regime must always be subject to the overriding principle of fairness. Subject to that, primacy must be given to the importance of a thorough investigation in the public interest when there is a prima facie case. If issues acquire a 'political' flavour to them that is not a reason for the council, as a body, to act differently.

#### **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, Director of Law and Monitoring Officer (ext 62328)
<b>BACKGROUND DOCUMENTS:</b>	None

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## For General Release

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>6 September 2017</b>
<b>AGENDA ITEM NO:</b>	<b>8</b>
<b>SUBJECT:</b>	<b>DISPENSATIONS APPLICATIONS FOR MEMBERS</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS-BAKER, DIRECTOR OF LAW AND 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.: N/A</b>	

### 1. RECOMMENDATION

The Committee is asked to:

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

### 2. EXECUTIVE SUMMARY

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

### 3. DETAIL

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

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

3.2 The Council has adopted dispensation criteria which are attached for Members' ease of reference at Appendix 1. There are 5 circumstances in respect of which a dispensation may be granted, namely:

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

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

3.6 In considering the matter, the Ethics Committee is required to assess whether, in light of the contents of the application, the public interest in excluding a Member from participating where a Disclosable Pecuniary Interest exists is outweighed by the considerations set out in the application which support the public interest in the Member being able to participate.

3.7 The Committee is also asked to set out the time period in respect of which it is appropriate to grant the dispensation. In this regard, Members should be mindful of the fact that any dispensation may not be granted for a period exceeding four calendar years, nor is it recommended that a dispensation be

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

#### **4. CONSULTATION**

4.1 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,  
Director of Law and 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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**ETHICS COMMITTEE**  
**DRAFT FOR 2017/18 WORK PROGRAMME**

<b>6 September 2017</b>	RIPA 2017 Inspection  Case law update  Draft Work Programme			<b>Regular Item</b> Members' Dispensations
<b>15 November 2017</b>	Update on Member Complaints  RIPA Policy			<b>Regular Item</b> Members' Dispensations
<b>28 February 2018</b>	Annual Whistleblowing report  Update on Members' L&D			<b>Regular Item</b> Members' Dispensations
<b>9 May 2018 ( if necessary )</b>	Annual update on use of Regulation of Investigatory Powers Act 2000			<b>Regular Item</b> Members' Dispensations

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