

# Ethics Committee Agenda



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

Independent Members Anne Smith and Ashok Kumar

Reserve Members: Karen Jewitt, Felicity Flynn, Maddie Henson,  
Callton Young, Jeet Bains and Gareth Streeter

A meeting of the **Ethics Committee** which you are hereby summoned to attend, will be held on **Monday, 26 November 2018 at 6.30 pm in F10 - Town Hall**

JACQUELINE HARRIS BAKER  
Director of Law and Governance  
London Borough of Croydon  
Bernard Weatherill House  
8 Mint Walk, Croydon CR0 1EA

Annette Wiles  
020 8726 6000 x64877  
annette.wiles@croydon.gov.uk  
[www.croydon.gov.uk/meetings](http://www.croydon.gov.uk/meetings)  
Friday, 16 November 2018

Members of the public are welcome to attend this meeting.  
If you require any assistance, please contact the person detailed above, on the righthand side.

N.B This meeting will be paperless. The agenda can be accessed online at [www.croydon.gov.uk/meetings](http://www.croydon.gov.uk/meetings)

## **AGENDA – PART A**

**1. Apologies for Absence**

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

**2. Minutes of the Previous Meeting (Pages 5 - 8)**

To approve the minutes of the meeting held on 18 October 2018 as an accurate record.

**3. Disclosure of Interests**

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

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

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

**5. Review of the Council's Whistleblowing Policy (Pages 9 - 22)**

To receive the report of the Director of Law reviewing the Council's Whistleblowing Policy.

**6. Work programme (Pages 23 - 24)**

To consider the work programme for the Committee for the remainder of the 2018/19 Municipal Year.

**7. Dispensation Applications for Members (Pages 25 - 30)**

To receive the report of the Director of Law on Members' dispensations

for consideration, if any are received.

**8. Exclusion of the Press and Public**

The following motion is to be moved and seconded where it is proposed to exclude the press and public from the remainder of a meeting:

“That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information falling within those paragraphs indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended.”

**PART B**

**9. Dispensation Applications for Members**

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

This page is intentionally left blank

## Ethics Committee

Meeting held on Thursday, 18 October 2018 at 6.30 pm in F4 - Town Hall

### MINUTES

**Present:** Councillor Clive Fraser (Chair);  
Councillor Pat Clouder (Vice-Chair);  
Councillors Joy Prince and Helen Redfern

**Apologies:** Councillors Mario Creatura and Patricia Hay-Justice and Independent Members Anne Smith and Ashok Kumar

### PART A

#### 23/18 **Minutes of the Previous Meeting**

The minutes of the meeting held on 4 June 2018 were agreed as a true and accurate record. A copy was signed by the Chair for the record.

Members requested an update regarding minute number 22/18. Officers advised the application involving Councillor Stranack remained deferred pending receipt of further information from him.

#### 24/18 **Disclosure of Interests**

There were none.

#### 25/18 **Urgent Business (if any)**

There were no items of urgent business.

#### 26/18 **Code of conduct and complaints process**

The Deputy Monitoring Officer and Head of Litigation & Corporate Law provided an introduction highlighting that the purpose of the item was for the Committee to conduct an annual review to ensure they are content with the Code of Conduct and Complaints Process as adopted.

In response to Councillor questions, it was established that:

- There is no formal process for the allocation of cases between the two Independent Persons appointed by the Council. An Independent Person would be allocated to a complaint by the Monitoring Officer having regard to workload and availability. If a Councillor objects to the allocation of a

particular Independent Person on grounds of a conflict of interest, this would be addressed by the Monitoring Officer;

- The 15 working day timeframe for acknowledging any complaint is to provide flexibility. Most complaints are acknowledged within three working days (the corporate standard). However, a longer timeframe is allowed so that there can be an initial assessment of the information provided. Where needed, this would allow for additional information to be sought from the complainant at the point of acknowledgement;
- The number of complaints against the code during this year will be reported at the Committee's meeting in February 2019; and
- The Committee raised that the Council should be seen to act reasonably and fairly in cases where there was a good reason for a complaint not having been made in the three months following any incident. The Committee also considered that the three month timeframe should not act as a barrier to the assessment of a complaint where there was good reason for the lateness of the complaint submission. As a result, the Committee wished the Assessment Criteria to be revised to allow the Monitoring Officer to assess such complaints where it was appropriate to do so.

**RESOLVED:** the Committee resolved to (1) note the report and confirm the arrangements relating to decision making on Member complaints under the Code of Conduct save for an amendment to the three month restriction for making a complaint about a member. This is to enable the Monitoring Officer to exercise discretion where this is appropriate and (2) **RECOMMEND** to Full Council revision to the adopted Assessment Criteria for reviewing complaints against Councillors as follows: Assessment Criteria 4 to read, "Where the period of time that has passed since the alleged conduct occurred is such that there would be little benefit in taking further action at the time of receipt of the complaint for these purposes, it is considered that when the period of three months has elapsed since the alleged conduct occurred and no complaint has been received then this criterion will be likely to be engaged and the Monitoring Officer may consider that, in the circumstances of the case, it is appropriate to take no further action after the three month period".

## 27/18 **Case law update**

The Deputy Monitoring Officer and Head of Litigation & Corporate Law introduced the Harvey and Ledbury Town Council case highlighting this demonstrates the need to use the Councillor Code of Conduct and not the grievance process when addressing matters of Councillor conduct.

In response to member questions, it was clarified that Croydon's Code of Conduct does reflect the required process as laid down in law and emphasised by this case.

Members were advised the second case explained the degree to which the advice of an Independent Person can be subject to a Freedom of Information (FOI) request.

Finally, Members were provided with an update on the Committee on Standards in Public Life review to which the Committee had provided a formal response. It was noted that whilst this Committee would need to consider any recommendations resulting from the review, it is likely that these will require legislation.

**RESOLVED:** the Committee noted the report.

**28/18      Disclosure and Barring Service (DBS) checks for Members**

The Deputy Monitoring Officer and Head of Litigation & Corporate Law introduced the item noting that the change in the law on the use of disclosure and barring checks regarding Councillors had now been reflected in the revised draft protocol. Whilst it had previously been the practice to check Councillors who sat on relevant panels (eg: corporate parenting, fostering etc) the law was now much more restrictive. This reflected the provisions of the Protection of Freedoms Act and the revised definition of “regulated activity” which largely related to unsupervised access to children, young people and/or vulnerable adults.

**RESOLVED:** the Committee (1) noted the contents of the report and (2) approved the revised protocol in respect of disclosure and barring checks for Members.

**29/18      Work programme**

**RESOLVED:** The Committee noted the contents of the report.

**30/18      Dispensation applications for Members**

No requests for personal dispensations were received.

**31/18      Exclusion of the Press and Public**

No requests for personal dispensations were received and therefore this item fell.

**32/18      Dispensation Applications for Members**

No requests for personal dispensations were received and therefore this item fell.

The meeting ended at 7.05 pm

**Signed:**

.....

**Date:**

.....



## Croydon Council

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE 26 November 2018</b>
<b>AGENDA ITEM:</b>	
<b>SUBJECT:</b>	<b>REVIEW OF WHISTLEBLOWING POLICY</b>
<b>LEAD OFFICER:</b>	<b>DIRECTOR OF LAW AND GOVERNANCE AND MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR HALL CABINET MEMBER FOR FINANCE AND RESOURCES</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The continued development of and the promotion of new initiatives to enhance ethical standards is a key component of the Council's approach to ethical and corporate governance and falls within the Ethics Committee's remit.	
<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> This is not a key decision.	

### For general release

#### 1.RECOMMENDATIONS

That Committee is asked to:

- 1.1 Note and endorse the contents of the report and the revisions to the Whistleblowing Policy.

#### 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, this is often referred to as a "protected disclosure".
- 2.2 A desk top review of the Council's current Whistleblowing Policy has been undertaken and is recommended for approval.

### 3. DETAIL

3.1 In support of the Council's statutory duties the Council's Whistleblowing Policy is aimed at fostering a climate of openness and transparency in which individuals in the workplace feel that they will be able to raise issues of concern that will be appropriately investigated. It also provides the facility to raise these with Protect (Previously Public Concern at Work) an independent organisation from whom independent advice can be sought.

3.2 Whilst there is no standard form of template for a Whistleblowing Policy guidance was issued in 2015 by the Department for business Innovation and Skills (DBIS) called *Whistleblowing Guidance for Employers and Code of Practice*. A copy can be accessed via the attached link:

<https://www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers>

The guidance gives useful tips about what a policy should include and how an employer should deal with disclosures that are made and has been considered as part of this review exercise.

3.3. Members can also view other Whistleblowing Policies which have been issued by authorities in London on the London Council's website and which have been considered as part of this exercise. A link to this website is attached below:

<https://www.londoncouncils.gov.uk/node/2916>

3.4 The revised Policy proposed following the desktop review is attached as Appendix 1. Consideration has been given to the DBIS guidance, other policies issued by London authorities and any changes required to assist those who may wish to make use of the Policy ensuring also that it meets the current needs of the Council.

The proposed revisions to the Policy include:

- References to Public Concern at Work changed to Protect;
- Clarification of the definition of "Whistleblowing";
- Clarification that the disclosure to qualify as a "protected disclosure" must be in the 'public interest'; and.
- Inclusion of a list of "Prescribed Persons" to whom a "protected disclosure" can be made, where the person making it does not wish to use the Council's own disclosure policy.

3.5 Member's may wish to note in particular the following sections of the Policy which set out it's 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

- 3.6 Members are referred in particular to the provisions in paragraph 9 regarding confidentiality. The Policy provides that the Monitoring Officer will not disclose the identity of any person making a disclosure without the Discloser's express consent. Where a concern is not able to be resolved without the Discloser's identity being revealed e.g. where it is necessary for the Discloser to give evidence this will be discussed with the Discloser and how the matter should best proceed. If the concern is raised through Protect the Discloser's personal details will not be passed to the Monitoring Officer without the Discloser's express consent.
- 3.7 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 should be dealt with under the Employee Complaint's Procedure. In order to make a protected disclosure, which would bring concerns specifically within the Whistleblowing Policy rather than the Employee Complaints Procedure, the disclosure must be one which is made in the public interest.
- 3.8 To support officers who may be asked to assist in the investigation of a complaint under the Whistleblowing Policy and to promote the Policy, a training event, facilitated by Protect is proposed to be held next year. This will be supported by staff communications to ensure that all those who may wish to make use of the Policy are aware of it and understand when it applies.
- 3.9 An annual report is made to this Committee which provides a summary of the number of disclosures which have been made over the year and a brief summary of the nature of the concern raised. No personal detail can be provided in view of the obligations regarding confidentiality save where the express consent of the Discloser is provided. The next report is due to be provided to the committee on 27 February 2018.

#### **4. CONSULTATION**

The Director of HR has been consulted on the proposed revised report. Separately the revised Policy is due to be considered by the Council's Corporate Staff Consultation Panel on 20 November. Members will be updated orally on the outcome of their views at the meeting.

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

- 5.1 The confidential reporting service is provided by Protect at a cost of £750 p.a. plus 20p per employee.

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

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

---

**CONTACT OFFICER:** Jacqueline Harris Baker, Director of Law and Governance  
(ec.t 62328 )

**BACKGROUND DOCUMENTS:** None

# Whistleblowing Policy and Procedure

*Revised – November 2018*

Delivering for Croydon

**CROYDON**  
[www.croydon.gov.uk](http://www.croydon.gov.uk)

## 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. Whistleblowing is when someone raises a concern about a possible fraud, crime, danger or other serious risk that could threaten colleagues, members of the public, councilors or the Council's own reputation, i.e. there is a public interest aspect to it.

Employees and others who have serious concerns about any aspect of the council's work such concerns 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; this may lead to concerns being ignored. 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 is are intended to ensure that a suspicion of wrongdoing can be dealt with speedily and effectively raised without fear of reprisals and provide information about how the Council will respond. 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 or staff or any other person or persons acting on its behalf:

- Abuse of clients, [improper](#) discrimination against or [improper](#) 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
- [Deliberate](#) [Concealment of information relating to](#) 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 carrying out](#) Council work
- The staff of Council contractors [employed on carrying out](#) 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
<a href="#">People - Jennifer Duxbury Resources - Jennifer Wade</a>	<a href="#">Ext 47156</a> <del>Ext 47156</del>
People - Leonard Asamoah	Ext 62384
Place - Shayne Coulter	Ext 65631
Resources - David Hogan	Ext 63327
Resources - Jonathan Bradbourne	Ext 18334
Resources - Simon Maddocks	Ext 65575

[or such other specialist of independent assessor as the Monitoring Officer may designate.](#)

## 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), [whose contact details are set out below.](#)

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 6600 (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.

Alternatively the Discloser can contact the or confidential reporting facility provided by the Council - [Protect- \(formerly Public Concern at Work\) 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 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 [ProtectPCaW](#), **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 [ProtectCaW](#) 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 [usually](#) 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~~ there is no evidence 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, has raised concerns which are known to be untrue, or where the Discloser knows that there are no reasonable grounds for the allegation, may result in disciplinary action~~ in which case ~~it the matter~~ 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.

**Commented [A1]:** Since 2013 'good faith' has been removed as a requirement of a 'qualifying disclosure'. The test is now whether the Discloser has a reasonable belief that the matter is in the 'public interest'.

The Designated Assessor's recommendations will be made to the Council's Monitoring Officer and the Executive Director of Resources Finance\* & Assets, to decide whether or not they agree with them in whole or part. 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 [believe that the information being passed on is substantially true i.e. more than just suspicion and](#) have reasonable grounds for believing that disclosure [within the organisation](#) 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.

[There are a number of public authorities to whom you may make such a disclosure.](#)

[These are referred to as prescribed people and bodies. A complete list of prescribed people and bodies and their contact details as well as guidance can be found on the Department for Business, Energy & Industrial Strategy website <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>](#)

Formatted: Font: 12 pt, Not Bold

Formatted: Font: Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Font: Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Font: Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Font: Not Bold

Formatted: Font: 12 pt, Not Bold

## 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 Employment Rights Act 1996 \(as amended by the Public Interest Disclosure Act 1998\) provides legal protection for workers who raise concerns about matters which are 'qualifying disclosures' Such disclosures might be "protected disclosures" even if the worker is mistaken.](#) 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 concerns 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 [Protect Public Concern at Work](#) Tel: [020 3117 2520](tel:02031172520) [0207 404 6609](tel:02074046609) (advice line) (<https://www.pcaw.org.uk/> (Website)).

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.

Periodic reports will be presented to the Council's Ethics Committee detailing the number of incidents which have been reported including a brief summary of the nature of the issues raised in the allegation. Personal information regarding a Discloser will not be available save with the express consent of the Discloser.

## 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 (Director of Law and Monitoring Officer)  
Resources Department  
7th Floor, Zone C  
Bernard Weatherill House  
8 Mint Walk  
Croydon  
Surrey  
CR0 1EA

[Jacqueline.Harris-Baker@croydon.gov.uk](mailto:Jacqueline.Harris-Baker@croydon.gov.uk)

[Tel: 020 8726 6000](tel:02087266000) ext. 62328

[Sandra Herbert \(Head of Litigation and Corporate Law and -Deputy Monitoring Officer\)](#)

[Resources Department](#)  
[7th Floor, Zone C](#)  
[Bernard Weatherill House](#)

[8 Mint Walk](#)  
[Croydon](#)  
[Surrey](#)  
[CR0 1EA](#)

[Email: Sandra.Herbert@croydon.gov.uk](mailto:Sandra.Herbert@croydon.gov.uk)

[Tel: 020 8726 6000 ext. 62928](tel:02087266000)

## **ETHICS COMMITTEE WORK PROGRAMME 2018 – 2019**

This table sets out the Ethics Committee Work Programme for 2018/2019; the items were agreed by the Panel at its first meeting of the municipal year on 23 May 2018. This Work Programme will be considered at every meeting of the Committee to enable it to respond to issues of concern and incorporate any additional items.

**Chair:** Councillor Clive Fraser

**Vice Chair:** Councillor Pat Clouder

### **Democratic Services Support:**

For further information on the Work Programme of the Ethics Committee, please contact:- Annette Wiles, Senior Democratic Services and Governance Officer, Council and Regulatory

**Tel:** 020 8726 6000 ext 64877; **Email:** [annette.wiles@croydon.gov.uk](mailto:annette.wiles@croydon.gov.uk)

**ETHICS COMMITTEE  
WORK PROGRAMME 2018 – 2019**

Meeting date	Standing item(s)	Other item(s)
26 November 2018	Members' dispensations	Report on review of Council's Whistleblowing Policy  Member learning and development panel revised terms of reference (Deferred)
27 February 2019	Members' dispensations	Annual Whistleblowing Report  Annual update on member complaints  Annual update on members' learning and development  Annual update on use of RIPA
1 May 2019	Members' dispensations	TBC



<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>26 November 2018</b>
<b>SUBJECT:</b>	<b>DISPENSATIONS APPLICATIONS FOR MEMBERS</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS BAKER, DIRECTOR OF LAW AND GOVERNANCE</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 (i) and (iv) above, which involve an objective assessment of whether the requirements are met, it is appropriate to delegate dispensations on these grounds to the Monitoring Officer for determination. The Monitoring Officer is permitted, but not required, to consult with the Ethics Committee prior to determining an application for dispensation on grounds (i) or (iv).
- 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. 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.

---

**CONTACT OFFICERS:** Jacqueline Harris Baker,  
Director of Law and Governance  
(ext 64985)

**BACKGROUND DOCUMENTS:** None

**Appendices:** Appendix 1 – Dispensation Criteria

This page is intentionally left blank

**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

This page is intentionally left blank