

# Ethics Committee Agenda



To: Councillor Louis Carserides (Chair)  
Councillor Clive Fraser (Vice-Chair)  
Councillors Jade Appleton, Mario Creatura, Helen Redfern and  
Esther Sutton

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

Reserve Members: Councillors Jeet Bains, Richard Chatterjee,  
Karen Jewitt, Humayun Kabir and Holly Ramsey

A meeting of the **Ethics Committee** which you are hereby summoned to attend, will  
be held on **Wednesday, 19 April 2023 at 6.30 pm** in the **Council Chamber**,  
**Croydon Town Hall, Croydon CR0 1NX**

Stephen Lawrence-Orumwense  
Monitoring Officer  
London Borough of Croydon  
Bernard Weatherill House  
8 Mint Walk, Croydon CR0 1EA

Marianna Ritchie, Democratic Services  
marianna.ritchie@croydon.gov.uk  
[www.croydon.gov.uk/meetings](http://www.croydon.gov.uk/meetings)  
Tuesday, 11 April 2023

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the meeting, we ask that you read the guidance on the recording of public meetings  
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## **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 8 February 2023 as an accurate record.

**3. Disclosure of Interests**

Members are invited to declare any disclosable pecuniary interests (DPIs) they may have in relation to any item(s) of business on today's agenda.

**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. Work Programme (Pages 9 - 12)**

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

**6. Member Gifts and Hospitality April 2023 (Pages 13 - 18)**

**7. Independent Person Selection (Pages 19 - 26)**

**8. Quarterly Complaints Report (Pages 27 - 42)**

**9. Social Media Guidance to Members (Pages 43 - 60)**

**10. 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**

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# Public Document Pack Agenda Item 2

## Ethics Committee

Meeting of held on Wednesday, 8 February 2023 at 6.30 pm in Council Chamber, Town Hall, Katharine Street, Croydon CR0 1NX

### MINUTES

**Present:** Councillor Louis Carserides (Chair);  
Councillor Clive Fraser (Vice-Chair);  
Councillors Jade Appleton, Mario Creatura, Helen Redfern and Esther Sutton  
Independent Members Ashok Kumar and Alan Malarkey

The committee was informed by the Chair that Anne Smith had retired as an Independent Person. The Chair, Councillor Redfern and Councillor Fraser expressed their many heartfelt thanks for the service Anne had made to the council and to the Ethics Committee, and all wished her well for her retirement.

### PART A

#### 17/22 Minutes of the Previous Meeting

The minutes of the meeting held on 21 September 2022 were agreed as an accurate record.

#### 18/22 Disclosure of Interests

There were none.

#### 19/22 Urgent Business (if any)

The council's Director of Legal Services and Monitoring Officer, Stephen Lawrence-Orumwense, had provided the committee with the council's proposed Outside Bodies Protocol, which the Chair had agreed should be reviewed at this meeting.

Members requested that comments should be included about how frequently members should report back from outside bodies.

**RESOLVED**, to consider and agree the draft Outside Bodies Protocol attached to the Report at Appendix 1.

#### 20/22 Work Programme

The interim Head of Democratic Services, Adrian May, introduced the Work Programme, highlighting that it had previously been expected that the Outside

Bodies Protocol would not be produced in time for this meeting but that fortunately it had been.

Officers also explained that the process for the recruitment of one and extension of the tenure of another Independent Person was needed and that they hoped this would be brought to the Ethics Committee in April.

**RESOLVED** to note, consider and comment on changes to the work programme as detailed in this report.

**21/22 Update on Ethics Complaints Received in the Third Quarter up to and including 30 September 2022**

The Director of Legal Services and Monitoring Officer explained the next three reports en bloc, as they all concerned the same subject matter. In response to questions, officers explained the filtering process with which complaints were dealt, and that the Monitoring Officer used discretion when discerning whether to consult Independent Persons, and that there had been no instances of this during the reporting period.

Members requested that the number of individuals making complaints and also a brief description of the nature of the complaint should be presented to the committee in Part B papers in future meetings.

Members also requested that there be a statement beside each complaint to inform them whether or not Independent Persons had been consulted.

**RESOLVED**, to note the contents of the report.

**22/22 Update on Ethics Complaints received in the Fourth Quarter up to and including 31 December 2022**

**RESOLVED**, to note the contents of the report.

**23/22 Annual Report on Ethics Complaints for 2022**

**RESOLVED**, to note the contents of the report.

**24/22 Recent Developments in Ethical Standards**

The Director of Legal Services and Monitoring Officer presented the report to members, outlining a case study of ethical standards in Planning matter, and mentioned that the Croydon Council Members' Code of Conduct dealt with the issues raised.

The Chair thanked officers for proactively identifying points of interest and benchmarking for the committee, and members requested taking a report on Ethical Standards to the Member Learning and Development Panel.

**RESOLVED**, to note the report.

**25/22 Member Gifts and Hospitality**

**RESOLVED:**

- 1.1. To note the requirements on Members with regards to declaring Gifts and Hospitality.
  
- 1.2. To note any Gifts and Hospitality declarations since 13 September 2022 (when Gifts & Hospitality report was last published).

The meeting ended at 7.43 pm

**Signed:**

**Date:**

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## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>19 April 2023</b>	
<b>REPORT TITLE:</b>	<b>ETHICS COMMITTEE: WORK PROGRAMME</b>	
<b>DIRECTOR:</b>	<b>Stephen Lawrence-Orumwense Director of Legal &amp; Governance</b>	
<b>LEAD OFFICER:</b>	<b>Adrian May, Interim Head of Democratic Services adrian.may@croydon.gov.uk</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>Public</b>
<b>WARDS AFFECTED:</b>	<b>N/A</b>	

### 1 SUMMARY OF REPORT

- 1.1 The report sets out the future work programme for the Ethics Committee Work Programme and for noting, consideration and comment.

### 2 RECOMMENDATIONS

For the reasons given in this report, the Ethics Committee is recommended to:

- 2.1 Note, consider and comment on changes to the work programme as detailed in this report.

### 3 REASONS FOR RECOMMENDATIONS

- 3.1 This report supports the role and responsibility of the Committee in terms of reviewing the current identified work programme.

### 4 BACKGROUND AND DETAILS

- 4.1 The table sets out the items currently scheduled for the Ethics Committee Work Programme. 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.

<b>Meeting date</b>	<b>Standing item(s)</b>	<b>Other items</b>
19 <sup>th</sup> April 2023	Members' dispensations Complaint Monitoring Work Programme Gifts & Hospitality	Independent Person/s (Recruitment & Selection)  Social Media Guidance for Members
5 <sup>th</sup> July 2023	Members' dispensations Complaint Monitoring Work Programme Gifts & Hospitality Legal & Ethics Update	Constitution Review related to Ethics Committee responsibilities.  Member Conduct and Complaints Process Review  Outside Bodies Protocol

Please note, the member attendance was proposed to come to April 2023 however as member attendance is a matter usually reported to Full Council and is not specifically within the role and remit of the Committee it no longer appears.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

5.1 No other options considered.

## **6 CONSULTATION**

6.1 This Work Programme is subject to consultation with Members of the Ethics Committee.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

7.1 Mayor's Business Plan - Priority 4 : Ensure good governance is embedded and adopt best practice

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

8.1.1 The implementation of the recommendations contained in this report shall be contained within existing budgets.

8.1.2 Please note, these are draft implications submitted by the author, and may be subject to change by Finance (any update will be given at meeting).

## **8.2 LEGAL IMPLICATIONS**

**8.2.1** There are no direct legal implications / consequences arising from the contents of this report.

**8.2.2** Please note, these are draft implications submitted by the author, and may be subject to change by Legal (any update will be given at meeting).

## **8.3 EQUALITIES IMPLICATIONS**

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

**8.3.2** Please note, these are draft implications submitted by the author, and may be subject to change by the Equalities team (any update will be given at meeting).

## **9. APPENDICES**

None

## **10 BACKGROUND DOCUMENTS**

None

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## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>19 April 2023</b>	
<b>REPORT TITLE:</b>	<b>MEMBER GIFTS AND HOSPITALITY</b>	
<b>DIRECTOR:</b>	<b>Stephen Lawrence-Orumwense Director of Legal &amp; Governance</b>	
<b>LEAD OFFICER:</b>	<b>Adrian May, Interim Head of Democratic Services adrian.may@croydon.gov.uk</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>Public</b>
<b>WARDS AFFECTED:</b>	<b>N/A</b>	

### 1 SUMMARY OF REPORT

- 1.1 Members must comply with the Members' Code of Conduct including the requirements around declaring gifts and hospitality. Appendix 1 to this report provides the details of gifts and hospitality declared by Members since the 31<sup>st</sup> January 2023 when the Committee were last updated on declarations of this nature.

### 2 RECOMMENDATIONS

For the reasons given in this report, the Ethics Committee is recommended to:

- 2.1 Note the requirements on Members with regards to declaring Gifts and Hospitality as detailed within the report.
- 2.2 Note any Gifts and Hospitality declarations made by Members' since 31 January 2023.

### 3 REASONS FOR RECOMMENDATIONS

- 3.1 This report supports the role and responsibility of the Committee related to reviewing the operation of the Member Code and monitoring compliance.

### 4 BACKGROUND AND DETAILS

- 4.1 As outlined in the Member Code of Conduct, Members agree to adhere to the following with regards to declaring gifts and hospitality:

- Members do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on their part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, license or other significant advantage.
  - Members register with the Monitoring Officer, within 28 days of receipt, any gift or hospitality with an estimated value of at least £50 or multiple gifts and/or instances of hospitality with a cumulative value of £50 or more when received from a single donor within a rolling twelve-month period .
  - Register with the Monitoring Officer any significant gift or hospitality that they may have been offered but have refused to accept.
- 4.2 In terms of submitting gift and hospitality declarations, Members notify the Monitoring Officer (or the Head of Democratic Services acting on behalf of the Monitoring Officer) via email - with the Member's online Register of Interests (on the Council's website) subsequently updated.
- 4.3 All Members of the Council are reminded quarterly (last edition was 23<sup>rd</sup> February 2023) via a Members' Newsletter of the gift and hospitality declaration requirements and submission process. The next Newsletter (and subsequent reminder) is scheduled to be sent at the end of April 2023. The reminder will include voting co-opted members (which it previously has not included).
- 4.4 Committee members are asked to note the gifts & hospitality declarations made as detailed in Appendix 1.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 No other options considered as regular reporting of gifts and hospitality is considered standard practice.

## **6 CONSULTATION**

- 6.1 The declarations are sent directly from the relevant member, with any clarification sought by Democratic Services on behalf of the Monitoring Officer and reported to the Ethics Committee.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

- 7.1 Mayor's Business Plan - Priority 4 : Ensure good governance is embedded and adopt best practice

## **8. IMPLICATIONS**

## **8.1 FINANCIAL IMPLICATIONS**

- 8.1.1** The implementation of the recommendations contained in this report shall be contained within existing budgets.
- 8.1.2** Please note, these are draft implications submitted by the author, and may be subject to change by Finance (any update will be given at meeting).

## **8.2 LEGAL IMPLICATIONS**

- 8.2.1** The Head of Litigation and Corporate Law comments on behalf of the Director of Legal Services and Monitoring Officer that the Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority and in discharging this duty, the Council must adopt a Code of Conduct dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.
- 8.2.2** This Code of Conduct must make provision for the declaration of certain interests (Disclosable Pecuniary Interests) and may make provision for the declaration of other interests. This Council has adopted a Code which also requires the declaration of "Other registerable Interests", the declaration of and restriction on participation for "Non-registerable interests" and the declaration of Gifts and Hospitality as detailed in the body of the report above.
- 8.2.3** Approved by Sandra Herbert on behalf of the Director of Legal Services and Monitoring Officer (11/04/2023).

## **8.3 EQUALITIES IMPLICATIONS**

- 8.3.1** There are no direct equalities impact consequences arising from the contents of this report.
- 8.3.2** Please note, these are draft implications submitted by the author, and may be subject to change by the Equalities team (any update will be given at meeting).

## **9. APPENDICES**

None

## **10 BACKGROUND DOCUMENTS**

None

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**Appendix 1 - Member Gifts and Hospitality Declarations**  
**31 January 2023 to 11<sup>th</sup> April 2023**

<b>Member</b>	<b>Person / Body from whom gift / hospitality received</b>	<b>Nature and value of gift or hospitality and date(s) received</b>
Cllr Stuart King	Meeting with Chief Executive of Croydon BID (Business investment District)	Hospitality – Lunch and a Soft Drink, Est. £22, 10 <sup>th</sup> February 2023.
Mayor Jason Perry	Opening of Treed Fitness Gym	Gift bag with health supplements and bunch of flowers, £Unknown, 4 <sup>th</sup> March 2023
	Meeting with the Winner of the Mayor’s Christmas Card Competition	Gift of a tie, est. £10, 30 <sup>th</sup> March 2023

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## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>19 April 2023</b>	
<b>REPORT TITLE:</b>	<b>SUCCESSION PLANNING FOR INDEPENDENT PERSONS</b>	
<b>DIRECTOR:</b>	<b>Stephen Lawrence-Orumwense Director of Legal &amp; Governance</b>	
<b>LEAD OFFICER:</b>	<b>Adrian May, Interim Head of Democratic Services adrian.may@croydon.gov.uk</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>Public</b>
<b>WARDS AFFECTED:</b>	<b>N/A</b>	

### 1 SUMMARY OF REPORT

- 1.1 The report provides a succession planning outline to ensure that the Council has sufficient Independent Persons to continue to perform its statutory functions under the Localism Act 2011 and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules) as detailed below
- 1.2 The report recommends authorising the Monitoring Officer to commence a recruitment process under the provisions of the Localism Act 2011 to ensure the pool of Independent Persons and should this first recommendation be approved and undertaken, recommends the composition of a panel for the Independent Person interview and selection process.

### 2 RECOMMENDATIONS

For the reasons given in this report, the Ethics Committee is recommended to:

- 2.1 Delegate to the Monitoring Officer authority to commence a recruitment process in line with section 28 of the Localism Act 2011 for the appointment of Independent Person/s to maintain a pool of five Independent Persons (currently there is one vacancy).
- 2.2 Agree the establishment of a Selection Panel of the Ethics Committee for the purposes of interviewing and shortlisting applicants for the role of Independent Person and making subsequent recommendations to this Committee for consideration and onward recommendation to Full Council for appointment. .

- 2.3 Agree the Selection Panel comprises three members of this Committee: the Chair and two further Members to be nominated and agreed by the Committee with advisory support to be provided by the Monitoring Officer, Democratic Services and a current Independent Person
- 2.4 Subject to agreeing recommendation 2.3 above, to nominate and agree the membership of the Selection Panel
- 2.5 Note the proposed time frame of the recruitment and subsequent reporting back to this Committee prior to onward recommendations to Full Council.
- 2.6 Subject to his agreement, to recommend the re-appointment of Ashok Kumar as Independent Person for a further term of 2 years from May 2023, which term shall be subject to appointment by Full Council annually.
- 2.7 Thank Anne Smith for her exemplary and invaluable service as Independent Person and to note her resignation as Independent Person.
- 2.8 Note that Independent Persons Don Axcell, Jennifer Gordan and Alan Malarkey remain Independent Persons who have been appointed for a term up to May 2025 but that this appointment is subject to re-appointment by Full Council annually.
- 2.9 Subject to appointment at Full Council, to authorise the Monitoring Officer to confirm those appointments to the Independent Persons and re-confirm to the Independent Persons the terms of appointment and standards of conduct expected.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 The recommendations ensure that the Council has sufficient Independent Persons to continue to perform its statutory functions under the Localism Act 2011 in respect of the Ethics Functions of the Authority and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules) in respect of disciplinary matters pertaining to Head of Paid Service, Section 151 Officer or Monitoring Officer .
- 3.2 In order to support the recruitment process proposed to be initiated by the Monitoring Officer, it is recommended that a panel of Members of this Committee be established to undertake interviews and shortlisting of appropriately qualified applicants to enable recommendations as to appointment of future Independent persons to be made.
- 3.3 The recommended re-appointment of Ashok Kumar provides for continuation of an experienced Independent Person for a further two years.

### **4 BACKGROUND AND DETAILS**

- 4.1 Section 28 of the Localism Act 2011 ("the Act") imposes a duty upon the Council to 'promote and maintain high standards of conduct by Members and Co-opted Members

of the Council'. The Council is required to adopt a Code dealing with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity. In addition, under Section 28(6) and (7) of the Act, the Council must have in place "arrangements" under which allegations that a Member or co-opted Member of the authority, or of a Committee or Sub-Committee of the authority, has failed to comply with the Council's Code of Conduct can be investigated and decisions made on such allegations. For Members' information, the arrangements as adopted by Full Council, can be accessed [here](#) <sup>1</sup>.

- 4.2 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member or co-opted Member against whom an allegation has been made.
- 4.3 In addition, the Council's arrangements provide that the Monitoring Officer may consult an Independent Person when considering, at assessment stage, whether or not an allegation ought to be referred for investigation. In other words to avoid the potential conflict of the same Independent Person having to advise different persons/bodies on the same matter, up to four Independent Persons might be involved in providing advice at different stages of and to different parties in the Ethics Process – one to advise the Member complained about, one who may advise the Monitoring Officer at Assessment Stage, one who might be consulted by the Authority at any other stage in the process and one whose views must be sought by the Council before it takes any final decision on an allegation of breach of the Code which is the subject of investigation.
- 4.4 The Council has delegated to the Ethics Committee the function of investigating and determining any allegations of a breach of the Code of Conduct. The Committee comprises five elected Members of the Council and the Independent Persons who are non-voting and act in an advisory capacity at Committee and at other stages of the process as detailed above.
- 4.5 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") which amend the earlier 2001 Regulations, make specific provision for the involvement of Independent Persons in relation to Disciplinary Action taken against Head of Paid Service, Section 151 Officer or Monitoring Officer.
- 4.6 Part 4J of the Constitution which incorporates the requirements of the Regulations provides that consideration of disciplinary action which could result in dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer will be the responsibility of the Appointments and Disciplinary Committee. In addition, an

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[https://www.croydon.gov.uk/sites/default/files/articles/downloads/Arrangements%20under%20the%20Localism%20Act%202011\\_July%202012.pdf](https://www.croydon.gov.uk/sites/default/files/articles/downloads/Arrangements%20under%20the%20Localism%20Act%202011_July%202012.pdf)

Independent Panel constituting at least two Independent Persons (who are appointed pursuant to the Localism Act 2011) will advise the Council on any recommendation from Appointments and Disciplinary Committee to dismiss Head of Paid Service, the Chief Finance Officer or the Monitoring Officer. Following any disciplinary hearing the outcome of which is a proposal to dismiss, the Independent Panel's views must be reflected specifically in the Report to full Council setting out the Appointments and Disciplinary Committee's recommendations. The full Council shall have regard to the recommendations of Appointments and Disciplinary Committee and the Independent Panel in reaching its decision on the matter.

- 4.7 The Council currently has 4 Independent Persons appointed by Full Council in May 2021 - Donald Axcell, Alan Malarkey and Jennifer Gordon having been appointed for 4 years and Ashok Kumar having been re-appointed for 2 years .
- 4.8 Anne Smith, who was first appointed by the Council as an Independent Person in 2012, resigned in November 2022. This Committee gives thanks to Anne Smith on behalf of the Council for her work as an Independent Person and contributions made to improving the council's governance including providing essential advice to inform the Council's governance reviews.
- 4.9 There is currently no requirement for a set term of office for the Independent Person role in law, nor is there a statutory maximum number of Independent Persons which a Council may appoint. However, the 2019 Committee on Standard in Public Life (CSPL) report on Local Government Ethical Standards recommended that it was best practice to have at least two Independent persons for purposes of running the Ethics process and as detailed above, the Council's disciplinary processes in relation to statutory officers also require the involvement of an Independent Panel of Independent Persons. This increases the need to ensure an adequate number of Independent Persons above to support the Council's functions especially as the Council continues to work on improved governance processes as part of it's improvement journey.
- 4.10 In addition, CSPL considered that the role of the Independent Person should be strengthened. They considered that security of tenure was important to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, they considered that restricted tenure could ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority although no evidence was provided in the report to support this view.
- 4.11 Whilst CSPL recommended to the Government in that 2019 report that the *Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once*, no such amendment has as yet been made by Government and is therefore not a legal requirement or barrier to term of appointment.
- 4.12 Having regard to the above, it is recommended that that Independent Persons appointed by Council, as a result of this selection process, are appointed for a term of 4 years. This can be reviewed if and when the Government considers making legislative amendments to the Act. .

Ashok Kumar has been appointed as an Independent Person since 2012. Mr Kumar has significant knowledge and expertise in the area of ethical standards and has provided valuable advice to Monitoring Officers and this Committee in relation to member standards during this time. Mr Kumar has advised that he is willing to remain as an Independent Person. It is recommended that the Committee, subject to full Council approval, seek his re-appointment for a further two years from May 2023, as this will support the induction of any new Independent Person/s appointed by this proposed recruitment and selection process and provide continuity of the support which Independent Persons provide to the Council.

- 4.13 It is therefore recommended to commence a recruitment and selection process to ensure a sufficient pool of Independent Persons to carry out statutory duties including in relation to any disciplinary matters described in the body of this report above. The maximum pool of Independent Persons is currently five.
- 4.14 Subject to agreement of the recommendations within this report, the outcome of the Selection Panel shall be reported to this Committee for onward recommendation to Full Council for a proposed term of appointment of 4 years, whilst noting that appointment within that term does ordinarily take place annually by Full Council.
- 4.15 With regards to likely timescales, the advert will be published in local press and online through the Council's website end of May/early June 2023 with the selection process taking place late June/early July (and thereafter the recommendation/s back to this Committee and onto Council).

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The Council could seek to appoint fewer Independent Persons or not to undertake a recruitment process at this stage, however maintaining a pool of five members is considered the optimal number for operational effectiveness (availability of IP members for panels, if and when required), ensuring that there are not conflicts if an Independent Person is consulted as part of the Ethics process as detailed more fully in paragraphs 4.2 and 4.3 above and also allows the retention of more experienced Independent Persons.

## **6 CONSULTATION**

- 6.1 No formal consultation has been undertaken in relation to this proposal. In the event that a recruitment process is agreed the Localism Act requires that this would involve a public advertisement and formal application process.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

- 7.1 Mayor's Business Plan - Priority 4 : Ensure good governance is embedded and adopt best practice

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

**8.1.1** No allowance is payable for the role of Independent Person. There are no employee costs arising from these appointments, and recruitment costs are minimal and can be funded from operational budgets.

**8.1.2** Please note, these are draft implications submitted by the author, and may be subject to change by Finance (any update will be given at meeting).

### **8.2 LEGAL IMPLICATIONS**

**8.2.1** The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority and in discharging this duty, the Council must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.

**8.2.2** The Council must also have in place arrangements under which allegations of breaches of the Code can be investigated, and under which decisions on allegations can be made.

**8.2.3** These arrangements must include provision for the appointment by the Council of at least one independent person—

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
  - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
  - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation.

**8.2.4** For these purposes a person is not independent if the person is a Member, co-opted Member or officer of the authority or a relative, or close friend, of a person who is a Member, co-opted Member or officer of the authority.

**8.2.5** A person may not be appointed as an Independent Person if at any time during the 5 years ending with the appointment the person was a Member, co-opted Member or officer of the authority.



- 8.2.6 Finally, a person may not be appointed unless the vacancy for an independent person has been advertised in such manner as the authority considers is likely to bring it to the attention of the public, the person has submitted an application to fill the vacancy to the authority, and the person's appointment has been approved by a majority of the members of the authority.
- 8.2.7 Remaining legal requirements and matters are set out within the body of this report.
- 8.2.8 *Approved by:* Sandra Herbert on behalf of the Director of Legal Services and Monitoring Officer (11/04/23).

### **8.3 EQUALITIES IMPLICATIONS**

- 8.3.1 The Equality Act 2011(section 149) places a public sector equality duty (section 146) on the Council. The duty requires the Council to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- 8.3.2 Having “due regard” to the need to advance equality of opportunity involves having due regard, in particular, to the need to encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 8.3.3 The law requires that the vacancy for an independent Person is advertised in such a manner as the Council consider is likely to bring it to the attention of the public. Subject to the statutory restrictions around applicant’s demonstrating ‘independence’ the vacancy would be available to all.
- 8.3.4 Please note, these are draft implications submitted by the author, and may be subject to change by the Equalities team (any update will be given at meeting).

### **9. APPENDICES**

None

### **10 BACKGROUND DOCUMENTS**

None

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# Agenda Item 8

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>19 APRIL 2023</b>	
<b>REPORT TITLE:</b>	<b>UPDATE ON ETHICS COMPLAINTS RECEIVED IN THE FIRST QUARTER UP TO AND INCLUDING 31 MARCH 2023</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER</b>	
<b>LEAD OFFICER:</b>	<b>Stephen Lawrence-Orumwense</b> <a href="mailto:Stephen.Lawrence-Orumwense@croydon.gov.uk">Stephen.Lawrence-Orumwense@croydon.gov.uk</a> <b>Ext: 27443</b>	
<b>LEAD MEMBER:</b>		
<b>DECISION TAKER:</b>	<b>ETHICS COMMITTEE</b>	
<b>KEY DECISION?</b>	<b>No</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>YES</b>	Public
<b>WARDS AFFECTED:</b>	<b>ALL</b>	

### 1. SUMMARY OF REPORT

- 1.1** The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This is the quarterly report to the Ethics Committee to update members on any complaints received by the Monitoring Officer during the first quarter of the year up to 31 March 2023.
- 1.2** The report is supported by Appendix A, which is an anonymised summary of complaints received, Appendix B which is a schematic of the Complaints process for members' information a draft and Appendix C, a draft note to all Members from the Monitoring Officer about expected standards of Conduct .

### 2. RECOMMENDATIONS

For the reasons set out in the report the Committee are asked:

- 2.1** to note the report contents.

### 3. REASONS FOR RECOMMENDATIONS

- 3.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This is the quarterly report to the Ethics Committee to update members on any complaints received by the Monitoring Officer during the first quarter of the year up to 31 March 2023. This information is subject to what is set out at paragraph 4.7 below.

## 4. BACKGROUND AND DETAILS

- 4.1 The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. Members will be aware that a new Code of Conduct was adopted by the Council in October 2021 and the complaints detailed in this report were subject to that new Code of Conduct.
- 4.2 Pursuant to the current arrangements which the Committee has approved on behalf of the Council, any complaints which pertain to Members Conduct are made in the first instance to the Monitoring Officer. The Committee on Standards in Public Life Report on Local Government Ethical Standards (2019) acknowledged the role of Monitoring Officers in receiving and filtering complaints:

### *Filtering complaints*

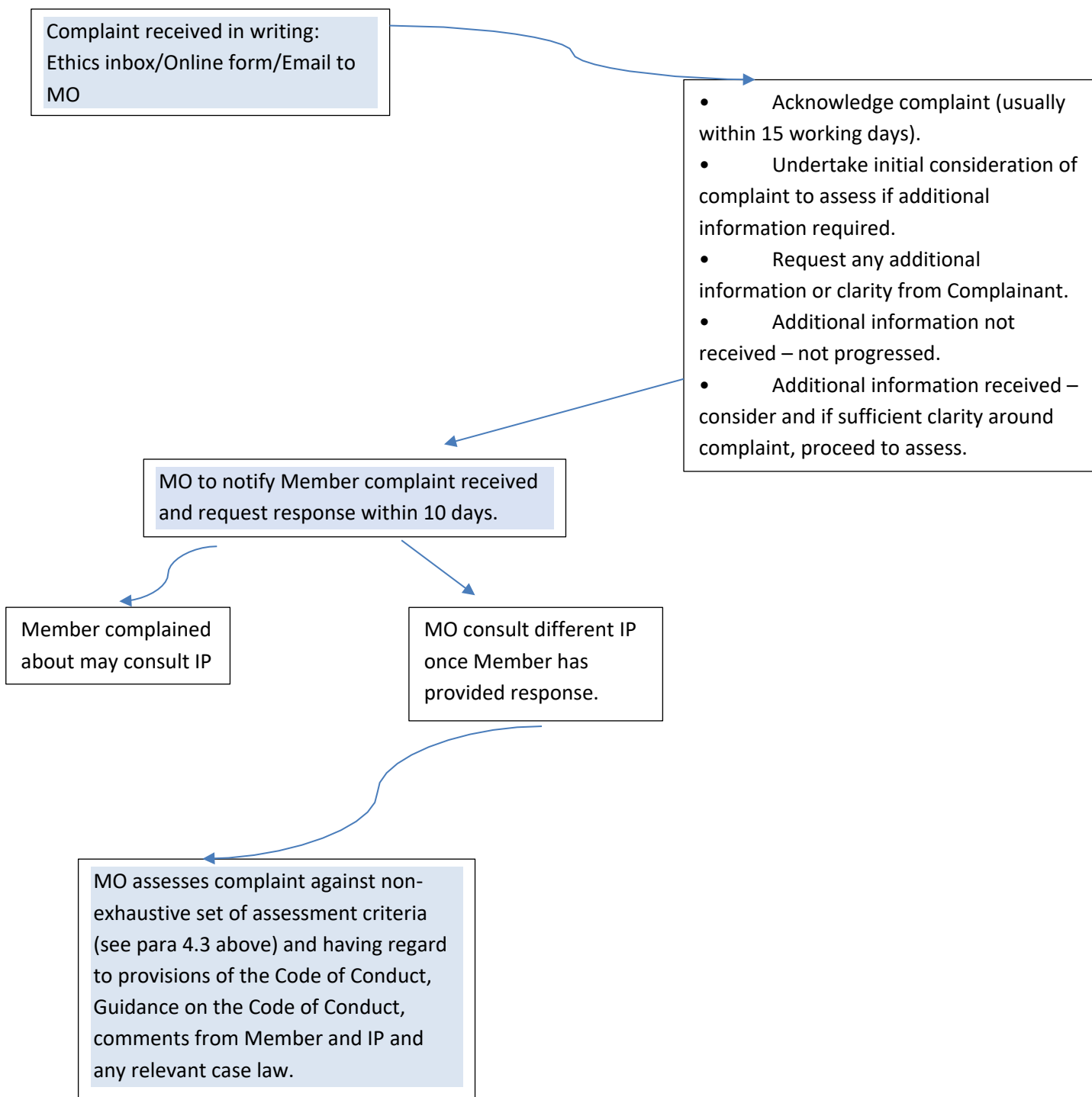
*The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so” (Chapter 3, Page 53).*

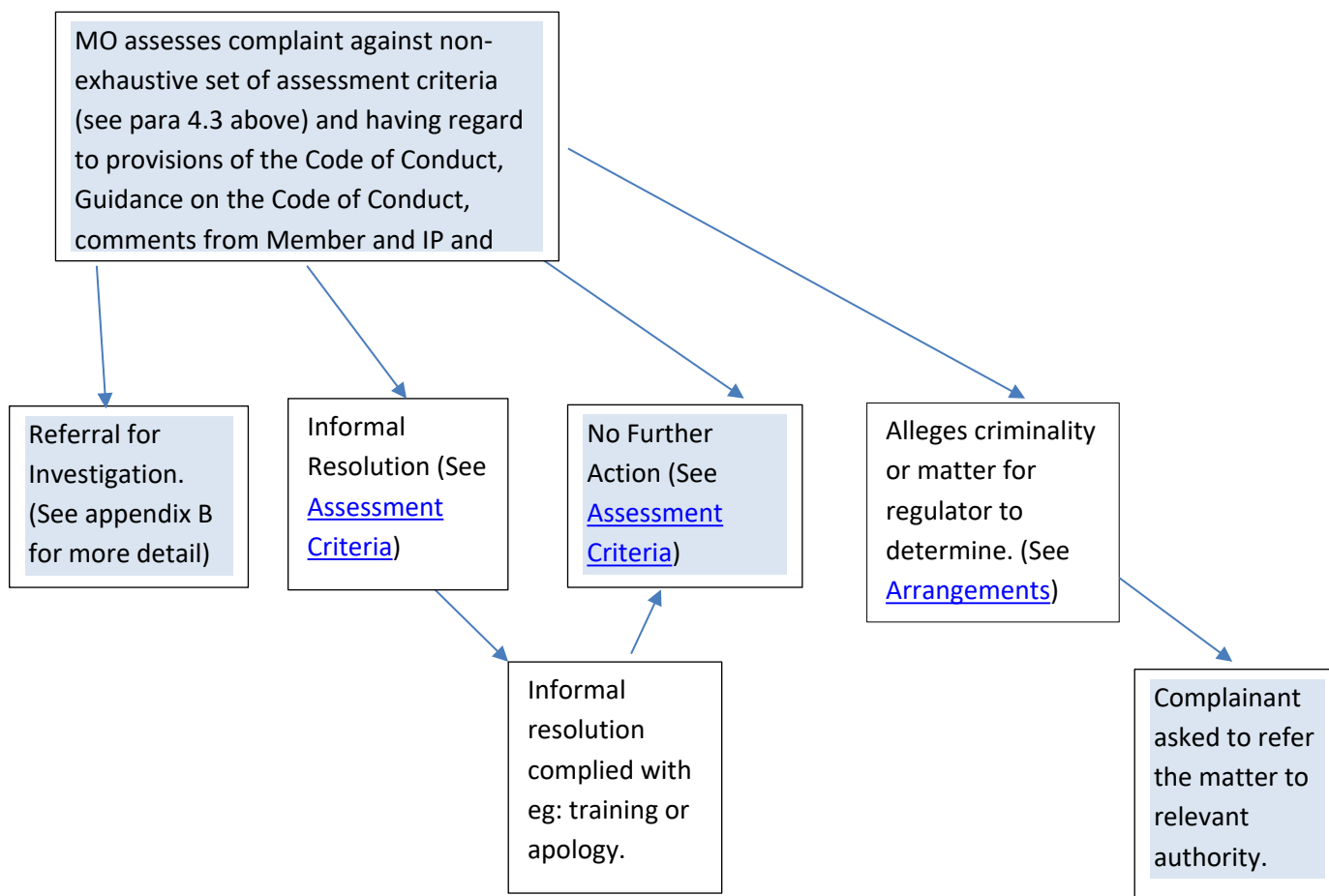
- 4.3 The Monitoring Officer has authority to undertake an initial assessment of the complaint in accordance with the Assessment Criteria which the Committee have specifically adopted for these purposes. The Assessment Criteria are not exhaustive but are summarised below.
- a. Does the allegation relate to a Disclosable Pecuniary Interest? If so, this is a police matter.
  - b. Is the complaint about someone who is still a Member? If not no further action can be taken.
  - c. Has the matter already been the subject of an investigation – if so, the Monitoring Officer is unlikely to consider further action in the public interest.
  - d. Has a period of 3 months elapsed since the alleged conduct occurred – if so the Monitoring Officer may consider no further action is appropriate.
  - e. Is the complaint sufficiently serious to warrant further action?

- f. Is the complaint malicious, politically motivated or tit-for-tat – if so the Monitoring Officer is unlikely to take action.
  - g. Is the complaint part of the ‘rough and tumble of political debate’ and conduct between Members – if so, the Monitoring Officer is unlikely to take action.
  - h. Has insufficient information been provided? If so, unless further information is provided no further action can be taken.
  - i. Is referring complaint the complaint for an investigation the best use of public resources and in the public interest? If not, no further action is likely to be taken particularly as no sanctions are available to the Council.
  - j. Does the complaint demonstrate a lack of understanding of the code or policies/procedures? If so, the complaint will likely be dealt with by recommending/arranging training.
  - k. Does the complaint relate to the manner in which meetings are conducted? If so, this will not be a matter in respect of which an investigation will be instituted.
  - l. Is the complaint one person’s word against another? If so, with no independent evidence it is unlikely further action will be taken.
  - m. Can the complaint be resolved informally without the need for an investigation e.g. by the offer of an apology. If so, the Monitoring Officer will take this into account in deciding what further action should be taken on the complaint.
- 4.4 The list is not exhaustive and a full copy of the criteria for assessment of complaints can be access [here](#).
- 4.5 The initial assessment by the Monitoring officer will indicate whether or not the complaint is one which ought to be referred for investigation. In reaching this decision, the Monitoring Officer may, although is not obliged to do so, consult with an Independent Person (IP) before reaching this decision.
- 4.6 If the matter is referred for investigation, the matter is then referred to Members in accordance with the [arrangements](#) for dealing with allegations of breach of the code of conduct under the Localism Act 2011.
- 4.7 This report provides an update on the first quarter of the year, up to 31 March 2023. Between the date of the last updating report which set out the fourth quarter of 2022, the Monitoring Officer has received 12 complaints, 7 of which are awaiting further information in order to allow the Monitoring Officer to consider against the assessment criteria, 4 have had comments from the member concerned and are being considered by the MO with assistance and views of an Independent Person and 1 is awaiting further comments from the complainant before being finalised as detailed in Appendix A. Appendix B confidential information which pertains to those complaints which have been completed and will need to be considered by Members in private session.
- 4.8 Appendix A summarises the information detailed in paragraph 4.7 above pertaining to the complaints which have been completed. It should be noted that any such disclosure

of information needs to have the necessary regard to the Councils' obligations under Data Protection and the processes adopted by the Council in relation to Code of Conduct complaints. The Committee also need to be mindful that the contents of Appendix A only represent complaints made and assessment decisions against the criteria as detailed in paragraphs 3.3 and 3.4 above rather than the outcome of an investigation and any necessary hearings in line with the Council's processes in this regard. None of the matters on Appendix A have progressed beyond the assessment stage.

4.9 For Members ease of reference, the process which is followed in relation to Assessment of Complaints received by the MO is set out below. A more detailed process is set out at Appendix B which includes the process through to determination following investigation and hearing:





4.10 In the last quarter, there has been a significant increase in the numbers of concerns raised about Code of Conduct matters (which have not led to formal complaints and engagement of the complaints process) as well as in formal code of conduct complaints and related queries under the Code of Complaint process. This has considerable resource implications in reviewing and addressing the matters raised, both those that engage the formal process and those that do not. Whilst the complaints detailed within this quarterly report are not yet finalised so that lessons learnt cannot yet be crystallised, the Monitoring Officer considers that there is a need to raise awareness on the standard of behaviour expected of members, in particular, in their interaction with one another whether in person or via media. Consequently, it is proposed that the Monitoring Officer sends a note to all members advising of the recent increase in Code of Conduct related matters and the need to adhere to the standards of behaviour expected by the Council's Code. It is proposed that both a copy of the Code as well as the guidance which supports the Code be attached. This is proposed as an awareness raising, as well as a preventative exercise designed to foster high standards of behaviour by members. Appendix C sets out this proposed note to Members.

## 5. ALTERNATIVE OPTIONS CONSIDERED

5.1 None

## 6. CONSULTATION

6.1 Not applicable.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

7.1 Reporting to Ethics Committee about complaints received under the ethics processes supports the Councils' priorities and Mayor's Business Plan by ensuring good governance is embedded and adopting best practice.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

8.1.1 There are no direct financial implications arising from this report. All costs are included within existing budgets and no pressures will be caused from this review.

8.1.2 Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. 04/04/23

### **8.2 LEGAL IMPLICATIONS**

8.2.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report although Members attention is specifically drawn to the information contained in paragraph 4.8 pertaining to disclosure of information in relation to Data Protection and the Council's ethics processes as well as the fact that the complaints detailed within this report only reflect the outcomes of assessment decisions and not findings following an investigation or hearing under the Localism Act 2011 requirements.

8.2.2 Comments approved by the Director of Legal Services and Monitoring Officer. (Date 04/04/2023)

### **8.3 EQUALITIES IMPLICATIONS**

8.3.1 The Council should pay due regard to section 149 of the Equality Act 2010 when exercising their functions. This includes having due regard to the Public Sector Equality Duty as detailed:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. (Section 149(1)(a))
- Advance equality of opportunity between people who share a protected characteristic and those who do not. (Section 149(1)(b))
- Foster good relations between people who share a protected characteristic and those who do not. (Section 149(1)(c))

8.3.2 The Council prohibits discrimination in any of its functions and will endeavour to investigate any complaints of this nature in accordance with the relevant processes and in a thorough manner sharing the outcome where appropriate.



**OTHER IMPLICATIONS**

8.4 None

**9. APPENDICES**

9.1 Appendix A: For General Release: Code of Conduct Complaints

Appendix B: For General Release: Process map: Complaints

Appendix C: For General Release: Note to Councillors on Code of Conduct

**10. BACKGROUND DOCUMENTS**

10.1 Not applicable.

**11. URGENCY**

11.1 Not applicable

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Appendix A: For General Release: Code of Conduct quarterly complaints							
Ref.	Nature of complainant	Member/Co-opted member?	Nature of the complaint	Initial Assessment Outcome	IP Consulted by MO	Initial assessment completed in Time	Referred for investigation
01/23	Councillor	Member	Disrespect	Awaiting further comment from Complainant as to proposed outcome	Y		
02/23	Councillor	Member	Disrespect, Bullying, unlawful discrimination	Awaiting further comment from complainant as to proposed outcome.	Y		
03/23	Member of the public	Member	Complainant requested to complete complaints form to provide information to consider the matter	N/A at this stage		N/A at this stage	N/A at this stage
04/23	Member of the public	Member	Disrepute. Inaccurate information disclosed	Currently at assessment stage.	Y		
05/23	Member of the public	Member	Disrepute. Inaccurate information disclosed	Currently at assessment stage.	Y		
06/23	Member of the public	Member	Disrepute. Inaccurate information disclosed	Currently at assessment stage.	Y		

Ref.	Nature of complainant	Member/Co-opted member?	Nature of the complaint	Initial Assessment Outcome	IP Consulted by MO	Initial assessment completed in Time	Referred for investigation
07/23	Member of the public	Unclear	Complainant requested to complete complaints form and provide further information.	N/A at this stage		N/A at this stage	N/A at this stage.
08/23	Member of the public	Member	Complainant requested to complete complaints form and provide further information	N/A at this stage		N/A at this stage	N/A at this stage
09/23	Member of the public	Member	Complainant requested to complete complaints form and provide further information	N/A at this stage		N/A at this stage	N/A at this stage
10/23	Member of the public	Member	Complainant requested to complete complaints form and provide further information.	N/A at this stage		N/A at this stage	N/A at this stage.

Ref.	Nature of complainant	Member/Co-opted member?	Nature of the complaint	Initial Assessment Outcome	IP Consulted by MO	Initial assessment completed in Time	Referred for investigation
11/23	Member of the public	Member	Complainant requested to complete the complaints form and provide information in relation to the complaint	N/A at this stage		N/A at this stage	N/A at this stage.
12/23	Member	Member	Complainant requested to complete complaints form and provide information in relation to the complaint	N/A at this stage		N/A at this stage	N/A at this stage.

Key:

IP: Independent Person

MO: Monitoring Officer

N: No

N/A: Not applicable

NFA: No further Action

Y: Yes

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Complaint received in writing:  
Ethics inbox/Online form/Email  
to MO

Assessment Criteria:

- Does the allegation relate to a Disclosable Pecuniary Interest? If so, this is a police matter.
- Is the complaint about someone who is still a Member? If not no further action can be taken.
- Has the matter already been the subject of an investigation – if so, the Monitoring Officer is unlikely to consider further action in the public interest.
- Has a period of 3 months elapsed since the alleged conduct occurred – if so the Monitoring Officer may consider no further action is appropriate.
- Is the complaint sufficiently serious to warrant further action?
- Is the complaint malicious, politically motivated or tit-for-tat – if so the Monitoring Officer is unlikely to take action.
- Is the complaint part of the 'rough and tumble of political debate' and conduct between Members – if so, the Monitoring Officer is unlikely to take action.
- Has insufficient information been provided? If so, unless further information is provided no further action can be taken.
- Is referring complaint the complaint for an investigation the best use of public resources and in the public interest? If not, no further action is likely to be taken particularly as no sanctions are available to the Council.
- Does the complaint demonstrate a lack of understanding of the code or policies/procedures? If so, the complaint will likely be dealt with by recommending/arranging training.
- Does the complaint relate to the manner in which meetings are conducted? If so, this will not be a matter in respect of which an investigation will be instituted.
- Is the complaint one person's word against another? If so, with no independent evidence it is unlikely further action will be taken.
- Can the complaint be resolved informally without the need for an investigation e.g. by the offer of an apology. If so, the Monitoring Officer will take this into account in deciding what further action should be taken on the complaint.

- Acknowledge complaint (usually within 15 working days).
- Undertake initial consideration of complaint to assess if additional information required.
- Request any additional information or clarity from Complainant.
- Additional information not received – not progressed.
- Additional information received – consider and if sufficient clarity around complaint, proceed to assess.

MO to notify Member complaint received and request response within 10 days.

Member complained about may consult IP

MO consult different IP once Member has provided response.

MO assesses complaint against non-exhaustive set of assessment criteria and having regard to provisions of the [Code of Conduct](#), [Guidance](#) on the Code of Conduct, comments from Member and IP and any relevant case

Complainant asked to refer the matter to relevant authority.

Alleges criminality or matter for regulator to determine.

Referral for Investigation.

Informal Resolution (See [Assessment Criteria](#))

No Further Action (See [Assessment Criteria](#))

Hearing Panel (usually on paper) to:  
• Arbitrate on facts and conclude whether there was a failure to comply with the Code  
• Seek and have regard to views of Independent Person

-Appointment of investigating Officer (IO) who undertakes investigation, interviews parties and prepares investigation report  
- Investigation report to include: Agreed facts, Facts not agreed and corresponding conflicting evidence. Conclusion

Informal resolution complied with eg: training or apology.

Decision in consultation with the IP:  
1.No further Action  
2.Informal Resolution  
3.Formal Sanction

IO finds evidence of failure to comply with Code:  
-MO satisfied (in consultation with IP) refers report to Hearings Panel for formal hearing or  
-In consultation with IP, seeks local resolution

IO finds no breach of Code.  
-MO satisfied – notify complainant/Member  
-MO dissatisfied (in consultation with IP)

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Dear Councillors,

### Code of Conduct and Standard of Behaviour

I am writing to you about the Council's Code of Conduct for Councillors and the recent significant increase in the numbers of formal complaints and queries about alleged breaches of the Code. This also acts as a reminder of the standards of behaviour expected of you in your interactions with fellow Members and members of the public.

As you will be aware, the Council has adopted a [Members Code of Conduct](#) which applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings for example Council meetings or ward surgeries
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

The Code of conduct forms part of the Council's statutory [Arrangements](#) which the Council has in place under the provisions of the Localism Act 2011. The Council has also adopted [Guidance](#) to assist you, officers and members of the public in understanding the duties which the Code places on Councillors.

Please take the opportunity to remind yourself of the contents of the Code of Conduct and the Guidance. Please can you take into account the requirements of the Code in your interactions with others and be mindful of the need to avoid behaviours including social media posting that could give rise to a breach of the Code.

Please do get in contact with me or one of my Deputy Monitoring Officers if you have any queries or concerns.

Yours Sincerely

Stephen Lawrence-Orumwense

Director of Legal Services and Monitoring Officer

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>19 APRIL 2023</b>	
<b>REPORT TITLE:</b>	<b>GUIDANCE TO MEMBERS: SOCIAL MEDIA</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER</b>	
<b>LEAD OFFICER:</b>	<b>Stephen Lawrence-Orumwense</b> <a href="mailto:Stephen.Lawrence-Orumwense@croydon.gov.uk">Stephen.Lawrence-Orumwense@croydon.gov.uk</a> <b>Ext: 27443</b>	
<b>LEAD MEMBER:</b>		
<b>DECISION TAKER:</b>	<b>ETHICS COMMITTEE</b>	
<b>KEY DECISION?</b>	<b>No</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>No</b>	Public
<b>WARDS AFFECTED:</b>	<b>ALL</b>	

### 1. SUMMARY OF REPORT

- 1.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This is a report to members about previously issued social media guidance for Members and it is recommended that this be re-issued to members alongside a covering letter from the Monitoring Officer and Chair of Ethics.
- 1.2 The report is supported by Appendix A, which is the previously agreed guidance for members in relation to Social Media usage.

### 2. RECOMMENDATIONS

For the reasons set out in the report the Committee are asked:

- 2.1 to agree that the attached guidance be re-circulated to Members alongside a covering letter from the Monitoring Officer and Chair of Ethics as an aide memoire to members on social media use and expectations.

### 3. REASONS FOR RECOMMENDATIONS

- 3.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. The Ethics Committee is also responsible for commenting on the content of guidance and advice to be issued to elected and non-elected Members, of which the previously approved social media guidance for Councillors forms a part.

#### **4. BACKGROUND AND DETAILS**

- 4.1 In May 2021, the Ethics Committee received a report on proposed draft social media guidance for Members, approved the guidance and agreed that it be circulated to members and form part of the Members' handbook. The Guidance incorporated best practice from the LGA at the time as well as reflecting guidance on social media issued to Council officers so there was parity between the two.
- 4.2 Social Media is a key communication tool used by the Council and many Councillors; it is also used by service users and key stakeholders. It has a significant role in the ability to connect with residents but is also important in the reputational management of the Council and the personal reputation of Members.
- 4.3 Whilst it is a useful tool for all walks of life, including assistance in performing the role of a Councillor, it was considered by the Monitoring Officer that it would be good practice to offer guidance to Members on its use from the perspective of the Code of Conduct, not least of all given the nature of some of the Code of Conduct complaints which had arisen in the past year. It is important to have safeguards in place to ensure that the benefits of social media are exploited, without breaching the law or code of conduct.
- 4.4 The previously agreed guidance is at Appendix A and was designed to raise awareness of the responsibilities of Councillors in relation to social media and to give guidance on the safe use of social media. It should be read in conjunction with the Members' Code of Conduct
- 4.5 It is considered that it would be helpful to circulate the previously agreed guidance once more to members alongside a covering letter from the Monitoring Officer and the Chair of Ethics to act as an aide memoire to members in relation to their social media use in their role as Councillor and to support and promote high standards in probity and ethics at the authority.
- 4.6 In particular, it is proposed to highlight, in the covering letter, the 10 principles of social media use for councillors as set out in the guidance, namely:
- Principles of integrity, professionalism, privacy, and impartiality should be observed when posting.
  - Posting items to social media is publication for the purposes of the laws of defamation and intellectual property.
  - Proper copyright and reference laws should be observed when posting online.

- When posting on your own social media accounts and referencing the Council or your role as a Councillor be clear about the capacity in which you are posting, for example clearly stipulating that your views are personal and purely your own.
- Discriminatory content is prohibited and may be unlawful and criminal.
- Be mindful of the Council's duties towards employees and others.
- You must not disclose any information which is contrary to data protection laws, is sensitive or confidential in nature including financial, operational, and legal information as well as personal information pertaining to employees, clients, service users or third parties.
- You should be mindful of giving rise to a perception of bias or predetermination where you are the decision maker, a member of the decision making body or are advising the decision maker.
- You should show respect for other's opinions. That does not mean you cannot disagree but do so in a manner which is appropriate – think about how you might interact if this were an in person conversation. Where individuals are expressing dissatisfaction about the Council you may be able to direct them to the right place to make their complaints.
- You should uphold the code of conduct when using social media and have regard to any guidance issued to Councillors from time to time by the Council in this regard.

## **5. ALTERNATIVE OPTIONS CONSIDERED**

5.1 None

## **6. CONSULTATION**

6.1 Not applicable.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

7.1 Reporting to Ethics Committee about complaints received under the ethics processes supports the Councils' priorities and Mayor's Business Plan by ensuring good governance is embedded and adopting best practice.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

**8.1.1** There are no direct financial implications arising from this report. All costs are included within existing budgets and no pressures will be caused from this review.

**8.1.2** Comments approved by Lesley Shields Interim Head of Finance – Resources & Assistant Chief Executive on behalf of the Director of Finance. (Date 30/03/2023)

## **8.2 LEGAL IMPLICATIONS**

**8.2.1** There is potential for breaches of various areas of law including in relation to defamation, copyright, harassment, incitement, data protection, discrimination and equalities, confidentiality and malicious and obscene communications in the use of social media. These are detailed more fully in Appendix A although Councillors are recommended to seek advice from the Monitoring Officer if they are unsure or have concerns. The Code of Conduct can also apply to communications by Members via social media and Members should also consider the degree to which they are in compliance with the Code when acting in that domain.

**8.2.2** Comments approved by the Director of Legal Services and Monitoring Officer. (Date 04/04/2023)

## **8.3 EQUALITIES IMPLICATIONS**

**8.3.1** The Council should pay due regard to section 149 of the Equality Act 2010 when exercising their functions. This includes having due regard to the Public Sector Equality Duty as detailed:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. (Section 149(1)(a))
- Advance equality of opportunity between people who share a protected characteristic and those who do not. (Section 149(1)(b))
- Foster good relations between people who share a protected characteristic and those who do not. (Section 149(1)(c))

**8.3.2** Council members represent all residents in the borough and as such are required to ensure that their conduct is within the requirement of Section 149. It is particularly important that their behaviour cannot be construed as discrimination, victimisation or harassment. Any complaints of this nature will be considered fully under the relevant processes and reported to the Ethics Committee where appropriate.

Approved by Denise McCausland Equality Programme Manager Date: 05/04/23

## **OTHER IMPLICATIONS**

**8.4** None

## **9. APPENDICES**

**9.1** Appendix A: Councillors and Social media: A Guide for Members

## **10. BACKGROUND DOCUMENTS**

**10.1** Not applicable.

## **11. URGENCY**

**11.1** Not applicable

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## **Councillors and Social media: A Guide for Members**

### **Introduction**

Social media includes online social networks, technology and methods through which people share content, opinions, information and ideas. They do this in the form of text, images, audio or video.

These include (but not exclusively):

- Social networking sites where individuals create profiles such as Facebook, Google+
- blogging or microblogging sites where individuals write articles or short posts such as Twitter, BlogSpot and Tumblr
- photo and video sharing sites where users upload visual content such as Flickr, Instagram and YouTube.
- If you cut away the jargon and buzz words, at its heart it's just people having conversations and sharing information. It is designed to be a two-way interaction not a marketing channel.

Social media has become an every-day communications tool for councillors and the people they represent, and the potential for councillors using social media is huge. Social media allows you to be innovative and responsive as well as providing links to useful sources of information or sign-posting to other organisations. But as with any form of communication, awareness of the impacts of your communication needs to be cultivated to be effective and responsible.

### **Summary of key points and principles for online participation:**

- Social media can be very useful in getting feedback on proposals and communicating information about your work as a councillor. However, remember that not everybody is on social media and so opinions expressed may not be representative.
- Social media is always on, so consider setting personal limits and establishing your own routine. You have no obligation to respond to posts and comments at any speed but it is often helpful to explicitly indicate that to users.
- Councillors are subject to the council's code of conduct when using social

media. Be professional, credible and responsible, accurate and fair; remember that you should take care to be clear that views you publish are your own and should credit others when these are the views and work of others. Know that your behaviour can impact negatively on the Council and on your fellow councillors.

- Consider the content of your communications carefully and apply this test – if you would be reluctant to say it face-to-face or in an official email, then it is probably inappropriate to say online.
- Always remember that participating online means your comments are permanently available and open to being republished in other media. Once something is posted on social media, it is difficult to retain control over how it will be used. Think about this when posting.
- Different platforms allow for different types of interactions. It is useful to indicate the aims and intended audiences of your different accounts.
- Stay within the legal framework and be aware that libel, defamation, copyright, equalities and data protection laws apply when using social media and know that you will also be responsible for ensuring that you abide by any applicable fair use policies which the relevant social media platforms have in place.
- An increase in complaints about members' use of social media has been acknowledged by the Committee on Standards in Public Life. One of the key issues is the capacity in which posts are being made by councillors. There is no clear definition and much depends on the facts in each case. Even where you do not disclose that you are a councillor, it can still be perceived that you are posting in that capacity. It is important therefore that you state in what capacity you are posting or tweeting/retweeting. It does not prevent issues arising, but it should help to provide clarity.

### **Benefits of social media for Councillors**

Social media has become an every-day communications tool for councillors and the people they represent, In addition, it is a useful source of intelligence:

- People will talk about local issues, their concerns and interests.
- You can find out about breaking news, the latest research or publication or the latest policy announcements from organisations which may impact your work.

- People often have little understanding of the councillor role and may have negative perceptions, but social media can give people a taste of what it is that councillors do and remind them that you are similar to them.
- Residents can be made aware of and provide feedback to your work and campaigns, including mobilising support and interest and gathering followers.
- You can have conversations with people who do not traditionally seek out their local representatives.
- Social media allows for immediate communication. You can pass on information and receive opinions in minutes. You can forward information from other people equally quickly (bearing in mind that you would then share equal responsibility in law for anything later seen to be untrue or defamatory)
- The local and sometimes national press will follow councillors on Twitter or Facebook. Social media is a growing source for stories for news outlets as each tweet or comment is effectively a mini-press release.

## **Online safety, personal security and digital citizenship**

### *Digital Citizenship:*

Digital Citizenship is about engaging in appropriate and responsible behaviour when using technology, and encouraging others to do so as well. It encompasses digital literacy, ethics, etiquette, online safety, norms, rights, culture and more.

Developing digital citizenship requires us to improve online political communications. It is about expressing our opinions while respecting others' rights and personas and avoiding putting them at risk or causing unnecessary distress. It is about respecting freedom of speech and dissidence while condemning abuse.

In any personal online biography, it is advisable to make clear that the views are those of the councillor in question and may not represent the views of the council. If space allows, you may also want to set out the aims of the page, the 'response' policy, such as "I welcome questions via email" and an 'engagement' policy, such as "abusive content will be reported/removed".

### *Personal Security:*

It is easy to put personal information online, such as your birthday, routines, places you frequent, future visits, holiday destinations, relationships, and opinions, etc, which are then available for anyone in the public domain to access. For personal safety, as well as identity security, you may want to consider whether it is appropriate for you to share personal information, images of friends and/or family and details of any routines.

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

Social media posts now include location-based information, particularly from mobile phones, which tells people exactly where you are or where you have been. Again, with personal security and privacy in mind, you may want to turn off these notifications.

You can 'search for yourself' to check what information you can find out about yourself, your family or your business on-line. Checking this regularly means you can check what is in the public domain and edit it if necessary and possible.

Concerning personal security, it is advisable not to include on social media details such as your personal phone numbers, addresses, details of family members or vehicle details.

A picture paints a thousand words, and a photo can relay personal information you may not want shared on social media. As such, it is advisable to only publish photos of family, friends and colleagues with your consent and theirs, to ensure photos don't reveal your home or places frequented with family members such as schools or care homes, and to disable automatic photo and location tagging so that you have to approve another user identifying you in a photo or being at a specific location. You may also want to make your family and friends aware that you will be following these precautions.

### *Online Safety:*

Some people say things via social media that they probably would not say in person, and they can post false information, insults or messages that you would not want to be associated with you. These can multiply and be shared quite rapidly. Councillors are not immune to being the subject of online abuse, bullying and harassment on social media.

Having a social media presence means that people can contact you at any time. This is great in terms of accessibility but means that they may expect you to reply immediately, which can create a sense of pressure. It is useful to set your own rules and limits for how you manage your social media presence.

You can be sent phishing requests and malicious software on social media the same as you can on email, so maintain the same level of vigilance.

Some individuals post socially unacceptable, defamatory, inciting or even intimidatory remarks to generate online activity on the back of advertising or promotion of ideologies, brands or events. Similarly, the term “internet troll” is used to refer to a person or group of people who deliberately start arguments or upset people by posting inflammatory or off-topic messages online with the deliberate intent of provoking readers into an emotional response or of otherwise disrupting normal discussion.

Social media can be a manner in which misinformation spreads. Very often articles that spread false information trigger strong emotional responses such as fear, anger or shock to maximise how much/quickly something is shared. Individuals posting online are responsible for the content of their posts even if they did not originally create it. Councillors should very carefully consider the content of new posts, posts they share and posts they support.

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

The usual requirements regarding confidential information, copyright, data protection, equalities, pre-election period restrictions, exempt reports, etc, apply to social media. Avoid publishing anything where there is doubt or seek permission in advance. There are also provisions in the Council's constitution about use of Social media during Council meetings.

To be an effective councillor you won't stop meeting people and posting leaflets simply because you are posting online. You will know your residents best - consider which channel works best for them to connect with you, online and offline.

### **Responsibilities of Councillors on Social Media**

Councillors are personally responsible for the content they publish on any form of social media. Publishing an untrue statement about a person which is damaging to their reputation may incur a defamation action for which you will be personally liable. The same applies if you pass on any similar untrue statements you receive.

Social media sites are in the public domain and it is important to ensure you are confident of the nature of the information you publish. Once published, content is almost impossible to control and may be manipulated without your consent, used in different contexts, or further distributed. The relatively permanent nature of a social media post means that it can follow an individual around their entire lifetime and even when deleted, another person may have captured a screen shot which could be reposted.

It is important at all times to respect confidentiality, financial, legal and personal information. For example, an exempt report, confidential contracts with sensitive commercial information, confidential details about regulatory functions or investigations, or information about complaints or individuals who have made complaints should not be disclosed. This could result in claims being brought against the council or against individual councillors to recover any loss or damage suffered as a result of such disclosure.

You can make use of stringent privacy settings if you do not want your social media to be accessed by the press or public. It is advisable to read the terms of service of any social media site accessed and make sure you understand their confidentiality / privacy settings.

Some councillors choose to have separate social media profiles for personal and council use. It is important to keep in mind, however, that even the strictest privacy settings is no guarantee for posts or actions to remain private. As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a public meeting.

It is recommended that councillors are clear in their communications whether they are making contact in their official councillor role or in a private capacity. However, councillors should bear in mind that if communications are made public, even if they are sent in a private capacity, that the media and the wider general public may not make the distinction.

The code of conduct for members and relevant legislation continues to apply online and in social media. If you are referring online in any way to your role as a councillor, you may be deemed to be acting in your “official capacity” and any conduct may fall within the code.

The rules of pre-determination and bias apply to decision making and provide that a Councillor who is pre-determined as to the outcome of a matter or is biased regarding the outcome would place council decision making at risk if they participated. Members sitting, in particular, on regulatory committees such as planning or licensing should be aware that they are allowed to have a view, but not go so far as to have predetermined their position on a matter. Any views aired on social media could be used as evidence of making a decision in advance of hearing all relevant information. The Council’s decision is then open to challenge and could be invalidated. It can prove difficult to be clear on the appropriate boundaries when you are championing an issue for residents – whether in person or on social media - and are then required to participate in the decision-making on that issue. If in doubt

about whether or not your participation in decision making is appropriate in relation to a matter, please seek advice from the Monitoring Officer before participating.

You should remember that officers within the council are employees of the council. Members have responsibilities toward them in relation to ensuring and maintaining the mutual relationship of trust and confidence owed to them. Where Councillors themselves make allegations against officers via social media (or otherwise), it can impact upon the mutual duty of trust and confidence between the officer and the Council.

You should also be aware of the Council's duty to its employees under the Health and Safety at Work etc. Act 1974 which provides, among other things that: "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees". In this regard you should be very careful when referring to officers on social media, ensuring instead that you are raising concerns or complaints through the appropriate council policies and procedures only.

You also need to be alive to inappropriate comments and content posted by third parties in response to your own posts. Whether by failing to respond at all or by actively engaging with third parties without addressing the offending content, this could be seen to undermine trust and confidence and at worst, be taken to condone such activity.

### **Dealing with harmful rumours and misinformation**

It is difficult not to engage when you are the subject of rumours, misinformation and smear campaigns. While it is always tempting to respond and clarify every rumour and falsehood circulated about you, it is also useful to think about the emotional, economic and time costs of engaging as in many cases, rumours disappear as quickly as they emerged. You may find the following suggestions useful

- Calmly try to understand who is behind the attack. Most of the time, they are people with a clear agenda trying to gain control or to manipulate.



- Correct the facts. This can be done with a formal statement or if you can identify the source, then do it publicly by correcting their posts with facts and evidence.
- Remember that rumours and misinformation are fed by repetition. It is good to defend your reputation but often the most efficient way is to do it once and then stop engaging this way.
- Leave the environment in which the rumour is being spread. A smear campaign tries to manipulate and gain control but no control can be gained if you do not participate. You may wish to advise your followers that you will be logging out of social media for a period of time, which gives the rumour time to calm down while protecting your own emotional and mental wellbeing.
- Rumours and smear campaigns can be very stressful and at times, they can feel very isolating. Keep your self-confidence by talking to family, friends and others in your support network. Some may also feel able to counteract rumours with factual information.
- If you can identify the source of the rumours and smear campaigns, you should document it and keep a record. This may be useful if disciplinary, police or legal action is required.

### **Legal Areas:**

The following is a list of legal areas which should be taken into account when using social media: -

- Defamation:** if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages.
- Copyright:** publishing information that is not yours, without permission, may also result in an award of damages against you.
- Harassment:** it is an offence to pursue a course of conduct against a person that is likely to cause alarm, harassment, or distress.
- Data protection:** do not publish personal data of other people, including photographs, without their express permission to do so.
- Incitement:** it is an offence to incite any criminal act.

f. **Discrimination and ‘protected characteristics’**: it can be unlawful to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010).

g. **Malicious and obscene communications**: it is an offence to send malicious or obscene communications.

h. **Judicial review** of decisions on the basis of bias and/or predetermination.

i. **Confidentiality** of information which you may receive by virtue of your role as a councillor. Breaches of duties of confidentiality (whether implied or express) can happen in all contexts, including via social media. An exempt report, confidential contracts with sensitive commercial information, confidential details about regulatory functions or investigations, or information about complaints or individuals who have made complaints might be disclosed. This can result in claims being brought against the council or against individuals to recover any loss or damage suffered.

## **10 Principles: social media for Councillors:**

1. Principles of integrity, professionalism, privacy, and impartiality should be observed when posting.
2. Posting items to social media is publication for the purposes of the laws of defamation and intellectual property.
3. Proper copyright and reference laws should be observed when posting online.
4. When posting on your own social media accounts and referencing the Council or your role as a Councillor be clear about the capacity in which you are posting, for example clearly stipulating that your views are personal and purely your own.
5. Discriminatory content is prohibited and may be unlawful and criminal.
6. Be mindful of the Council’s duties towards employees and others.

7. You must not disclose any information which is contrary to data protection laws, is sensitive or confidential in nature including financial, operational, and legal information as well as personal information pertaining to employees, clients, service users or third parties.

8. You should be mindful of giving rise to a perception of bias or predetermination where you are the decision maker, a member of the decision making body or are advising the decision maker.

9. You should show respect for other's opinions. That does not mean you cannot disagree but do so in a manner which is appropriate – think about how you might interact if this were an in person conversation. Where individuals are expressing dissatisfaction about the Council you may be able to direct them to the right place to make their complaints.

10. You should uphold the code of conduct when using social media and have regard to any guidance issued to Councillors from time to time by the Council in this regard.

### **Further information and support**

If you have any queries or are unsure about any of the guidance contained in this document, please contact the Council's Monitoring Officer in the first instance.

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