

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>30 September 2021</b>
<b>SUBJECT:</b>	<b>Members' Code of Conduct</b>
<b>LEAD OFFICER:</b>	<b>Richard Ennis, Interim Corporate Director of Resources &amp; Section 151 Officer</b>
<b>WARDS:</b>	<b>All</b>
<b>CORPORATE PRIORITIES 2021-24:</b>	
A review of the member and officer codes of conduct to fully embed the Nolan Principles in all work is one of the strands of the Croydon Renewal Improvement Plan.	

### **FINANCIAL IMPACT**

Implementation of the recommendations within this report shall be contained within existing budgets.

### **RECOMMENDATION**

Ethics Committee is recommended to:

1. Consider the proposed revised version of the Members' Code of Conduct and associated guidance (Appendix 1);
2. Agree to recommend to Full Council that the revised Code of Conduct and guidance be adopted in replacement for the current Members' Code of Conduct in the Council's Constitution;
3. Agree to recommend to Full Council that any changes to the Members' Code of Conduct guidance should be delegated to the Ethics Committee.

## **2. EXECUTIVE SUMMARY**

- 3.1 Ethics Committee is asked to consider and recommend to Full Council the adoption of a revised version of the Members' Code of Conduct and supporting guidance. The proposal is to use the new national Model Member Code of Conduct, with a few clarifications and additions to reflect the Code previously in place in Croydon.
- 3.2 Proposed guidance on use of the Code also reflects national guidance produced by the Local Government Association: it is proposed to include the guidance as well as the Code in the Constitution, and that the Ethics Committee would therefore give weight to the guidance when considering alleged breaches of the Code of Conduct.

### **3. BACKGROUND**

- 3.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.
- 3.2 In 2020 the Local Government Association (LGA) conducted a national consultation exercise on a draft Model Member Code of Conduct. The draft had been developed in response to recommendations by the Committee for Standards in Public Life (CSPL) on Local Government Ethical Standards.
- 3.3 In January 2021 the LGA published its new Model Member Code of Conduct, and in July 2021 it published associated guidance.
- 3.4 At its May meeting, the Ethics Committee agreed in principle to adopt the Model Member Code of Conduct and asked officers to:
- consider inclusion of any elements of the current Croydon Member Code of Conduct in the new version;
  - move all explanatory wording into supporting guidance to make the Code as succinct as possible;
  - use language which is as easy to understand as possible.

### **4. PROPOSAL**

- 4.1 The proposed revised version of the Code of Conduct and associated guidance appears at Appendix 1.
- 4.2 The guidance is an edited version of explanatory text extracted from the LGA Model Code of Conduct, combined with the LGA's guidance. It sets out in more detail what the commitments in the Code mean in practice, for example:
- Definitions of bullying and harassment such as abuse of power, placing unreasonable expectations on someone in relation to their job and the relevance of the perception of the recipient of the behaviour;
  - Case studies which give real-life examples of what would and would not be a breach of the Code;
  - Detailed explanation of the requirements associated with registering interests.
- It is therefore equally important that members are familiar with the guidance as with the Code as this will be used to assess complaints made against Member conduct.
- 4.3 Adoption of this Code and guidance will ensure consistency with the same standards of conduct followed by councils elsewhere in the country, and with the recommendations of the CSPL. Additional provisions in the Model Code which reflect the content of changes to legislation recommended by CSPL are as follows:
- Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media;

- The Code of Conduct applies to a Member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority;
- Interests to be registered include unpaid directorships, trusteeships, management roles in a charity or a body of a public nature and membership of any organisations that seek to influence opinion or public policy;
- A councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, ‘if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter’;

A response from Government to recommendations by CSPL for changes to legislation is awaited.

4.4 The proposed Members’ Code of Conduct for Croydon replicates the LGA Model Code, with the addition of a few points reflecting previous practice in Croydon and needs identified by the Monitoring Officer, as follows (additional text in italics):

- Standards of councillor conduct: This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken. *This may include a hearing by a sub-committee of the Ethics Committee which has powers to take action in respect of individual Members in order to promote and maintain high standards of conduct. A list of the possible sanctions which the Hearings Panel may apply appears in the Hearings Panel Rules of Procedure.*
- 2. Bullying, harassment and discrimination:  
2.3 I promote *and value equality and diversity* and do not discriminate unlawfully against any person.
- 8. Code of Conduct. As a councillor:  
8.5 *I comply with the Council’s Constitution, all relevant Protocols contained within it and guidance issued from time to time by the Chief Executive, Chief Finance Officer and/or Monitoring Officer.*  
8.6 *I undertake essential Councillor training provided or commissioned by the Council.*
- 9. Interests. As a councillor:
  - I register and disclose my interests *in accordance with detailed provisions set out at Appendix B (see 4.5, below).*
  - *I make all decisions on merit, without discrimination or bias.*
- 10. Gifts and hospitality. As a councillor: ...  
I register with the Monitoring Officer 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* within 28 days of its receipt.

4.5 Appendix B of the Code gives further detail on disclosure of interests. This includes:

- Details of what is a 'Disclosable Pecuniary Interest', as set out in legislation (and in Table 1 of Appendix B). Where a matter arises at a meeting which directly relates to a Disclosable Pecuniary Interest, the Member must disclose the interest, not participate in any discussion or vote on the matter and **leave the room** unless they have been granted a dispensation. Arrangements for granting dispensations are set out in Article 12 of the Constitution;
- Members are also required to register 'Other Registrable Interests' such as school governorships or positions on boards of charities (details appear in Table 2 of Appendix B). Where a matter arises at a meeting which directly relates to an Other Registrable Interest, the Member must disclose the interest. ~~and may not speak on the matter unless members of the public are also allowed to speak at the meeting. Otherwise the Member may not take part in the discussion or vote on the matter and must leave the room unless they have sought and been granted a dispensation;~~
- Where a matter arises at a meeting which is not a Disclosable Pecuniary Interest but does **directly relate** to the Member's financial interest or wellbeing or that of a relative or close associate, the Member must disclose the interest and may not speak on the matter unless members of the public are also allowed to speak at the meeting. Otherwise the Member may not take part in the discussion or vote on the matter and must **leave the room** unless they have sought and been granted a dispensation;
- Where a matter arises at a meeting which **affects** the Member's own financial wellbeing or that of a relative or close associate, or that of a body included under Other Registrable Interests, the Member must disclose the interest. Whether or not the Member may stay in the room depends on the extent to which it affects their interests and 'whether a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest'.

4.6 Ethics Committee is asked to note that:

- The Independent Persons have been informed about the process to develop the draft to date and invited to comment on the draft Code of Conduct and guidance (no material changes have been proposed by any of the Independent Persons);
- Members are required to comply with the Council's Constitution, all relevant Protocols contained within it and **such reasonable** guidance issued from time to time by the Chief Executive, **Chief Finance Officer**, and/or Monitoring Officer. **In the event that one of the Council's Statutory Chief Officers issues such guidance, it will be reported to the next meeting of the Ethics Committee.** Ethics Committee is asked to give weight to the Code of Conduct guidance when considering alleged breaches of the Code of Conduct;

- The Protocol on Staff-Councillor Relations will be revised to support implementation of the new Code of Conduct, addressing, for example, the behaviours required to meet the requirements in the Code to treat others with respect and not to bully, harass or discriminate against others (which are mirrored in the Officer Code of Conduct). Workshops will be conducted with Members and Officers to inform the development of the new Protocol;
  - Member engagement with training on the Code and its guidance, and on associated Protocols, will be essential, both to ensure a common understanding of their requirements, and to provide assurance to the Improvement Panel and others of the importance placed on good governance by the Council. Ethics Committee is asked to promote this engagement.
- 4.7 Subject to the approval of Ethics Committee, opportunities will be scheduled for all members to be fully briefed on the proposed new Code prior to and following the meeting of Full Council. Training on the Code will also be incorporated into the member induction programme for May 2022.
- 4.8 Preparations will be made so that, once the revised Code of Conduct is adopted, processes for registering interests, gifts and hospitality are adjusted accordingly. Work is also underway by HR to ensure that the Officer Code of Conduct is consistent with the Member Code, where relevant.
- 4.9 It is proposed, in line with the approach recommended by the LGA, that the Ethics Committee review the Code of Conduct annually ongoing. It is however understood that the Government is preparing to respond to recommendations of the Committee on Standards in Public Life relating to sanctions for breaches of Member Codes of Conduct: if legislative changes were to take place the Council may wish to review its Code at an earlier stage.
- 4.10 The Member Code of Conduct is part of a suite of documents which supports high standards of Member conduct. In addition to the review of the Protocol on Staff Councillor Relations, work will also be undertaken as part of revisions to the Constitution, on:
- The Planning Code of Good Practice
  - Protocols for Licensing Hearings
  - Arrangements for investigations into complaints on Councillor conduct
  - The Scheme of Co-option.
- 4.11 Work is also underway to prepare for approval:
- An Access to Information Protocol
  - Guidance on use of social media for inclusion in the Members' Handbook.

## **5. CONSULTATION**

- 5.1 The draft Code has been informed by comments from Ethics Committee, and both the Model Code and guidance have been informed by a national consultation exercise consulted by the Local Government Association

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

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

Approved by: Matt Davis, Interim Deputy s151 Officer.

## **7. LEGAL CONSIDERATIONS**

7.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance and Deputy Monitoring Officer that the Localism Act 2011 section 27(1) ('the 2011 Act') places a duty upon the Council to ensure that its members and co-opted members maintain high standards of conduct. In discharging this duty the Council is required under section 27(2) to adopt a code of conduct for its members. Section 28(1) of the 2011 Act provides the contents of such a code must be consistent with the Nolan Principles of standards in public life namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Council's current adopted Members' Code of Conduct can be viewed here:

[www.croydon.gov.uk/sites/default/files/articles/downloads/Part%2051%20-%20Members%20Code%20of%20Conduct.pdf](http://www.croydon.gov.uk/sites/default/files/articles/downloads/Part%2051%20-%20Members%20Code%20of%20Conduct.pdf)

7.2 In addition, the 2011 Act section 28(6) requires the Council to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and have Arrangements under which decisions on allegations may be made. The Council's current Arrangements can be viewed here:

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

7.3 The 2011 Act section 29 requires Monitoring Officers to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on the Council's website.

7.4 The 2011 Act section 30 requires members to notify the Monitoring Officer of any Disclosable Pecuniary Interests of them or a spouse or a civil partner they live with, within 28 days of taking up office. In turn, the Monitoring Officer is required to enter any notified Disclosable Pecuniary Interest in the Council's register, as well as any other interest notified to them, whether or not it is pecuniary. 'Disclosable Pecuniary Interests' are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

7.5 There is no obligation by the Council to adopt a particular model of the Code of Conduct. The statutory duty is to adopt a code of conduct which complies with the requirements referred to in paragraph 7.1.

7.6 The proposed recommendations support the statutory requirement placed upon the Council in section 27(1) and 27(2) of the Act to adopt a code of conduct for its Members and ensure that they maintain high standards of conduct.

- 7.7 Further legal consideration will be provided on the implementation of the recommendations in the report.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law for and on behalf of the interim Director of Law and Governance and Deputy Monitoring Officer.

## **8. HUMAN RESOURCES IMPACT**

- 8.1 There are no direct human resources impacts for Croydon Council employees or staff as a consequence of this report and its recommendations.

Approved by: Gillian Bevan, Head of HR- Resources.

## **9. EQUALITIES IMPACT**

- 9.1 The proposed revised Members' Code of Conduct includes a commitment to promote equalities and not to discriminate unlawfully against any person. The associated guidance gives detailed examples of what might constitute bullying, harassment and discrimination.

Approved by: Gavin Handford, Director of Policy & Partnership

## **10. ENVIRONMENTAL IMPACT**

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

## **11. CRIME AND DISORDER REDUCTION IMPACT**

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

## **12. DATA PROTECTION IMPLICATIONS**

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

No. As part of the statutory requirements placed on Members and Co-opted Members there are requirements to make declarations of interest which are, in turn, published on the Council's website, subject to an interest being a 'sensitive interest'. A 'sensitive interest' (as defined in the Localism Act 2011) is an interest which, if disclosed, could lead to the Member, or a person connected with the Member, being subject to violence or intimidation.

Where a Member has a 'sensitive interest' they are required to notify the Monitoring Officer with the reasons why they believe it is a sensitive interest. If the Monitoring Officer agrees that the matter is a sensitive interest, the Monitoring Officer will withhold the interest from the public register.

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

Whilst the proposed changes to the Code do not change the statutory obligations on Members to make disclosures of interests or the requirements that such interests be published (including availability on the Council's website and the exceptions regarding sensitive interests) it is considered appropriate to undertake a revised DPIA and to update the Privacy Notices which are associated with registration of interests under the Code of Conduct to coincide with the adoption of the new Code by Full Council.

Approved by: Asmat Hussain – Interim Executive Director of Resources

## 13. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 13.1 To ensure that Croydon Council adopts a Member Code of Conduct which reflects national best practice.

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### APPENDICES TO THIS REPORT:

- 1: Revised draft Members' Code of Conduct and associated guidance**

**BACKGROUND PAPERS:** None