

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b>
<b>AGENDA ITEM NO:</b>	<b>16 MAY 2019</b>
<b>SUBJECT:</b>	<b>BEST PRACTICE SUGGESTIONS FROM THE REPORT OF A REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE, 30 JANUARY 2019</b>
<b>LEAD OFFICER:</b>	<b>EXECUTIVE DIRECTOR OF RESOURCES, COUNCIL SOLICITOR &amp; MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	<b>CLLR SIMON HALL CABINET MEMBER •FINANCE AND TREASURY</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.  The Committee on Standards in Public Life (“the Committee”) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles which also form a part of the Council’s Code of Conduct for Members. The 30 January report is the conclusion of their review of the current state of ethical standards in Local Government and sets out a number of recommendations for improvements directed at legislative and governmental changes as part of ethical standards as well as a series of best practice suggestions directed to local authorities.	
<b>FINANCIAL IMPACT</b>  Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	

## **1. RECOMMENDATIONS**

The Ethics Committee is asked to:

1.1 Note the contents of the report

1.2 Recommend to Full Council that the Protocol on Staff-Member relations, Part 5B of the Constitution, be updated to include, as detailed in paragraph 3.10, a definition of bullying and harassment

- 1.3 Note the current compliance with best practice items 2- 4, 6, 7, 9-13 and 15 and the that no changes be made to the Code or Committee practices in that regard
- 1.4 Note that best practice items 11 and 12 are currently not applicable to the Council
- 1.5 In relation to Best Practice item 5, encourage Members to ensure that they complete the “Any other personal interest” section of the Register of Members interests where they consider that there are additional matters in respect of which declarations ought to be made
- 1.6 Note that the Council is in compliance with the statutory requirements as they relate to Best Practice item 8 and currently has one more Independent Person in post than the statutory minimum however given the matters highlighted within the report, recommend no changes to Council arrangements in relation to this element
- 1.7 Note that Best Practice item 14 is not a matter within the Ethics Committee remit but is a matter which is considered by General Purposes and Audit Committee as part of the Annual Governance Statement process and approval.

## **2. EXECUTIVE SUMMARY**

- 2.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics. This report follows the March 2019 report received by this Committee [https://democracy.croydon.gov.uk/documents/s14176/Agenda%20Item%209%20-%20Committee%20on%20Standards%20in%20Public%20Life\\_%20Ethics%20Cttee\\_Feb%202019%20updated.pdf](https://democracy.croydon.gov.uk/documents/s14176/Agenda%20Item%209%20-%20Committee%20on%20Standards%20in%20Public%20Life_%20Ethics%20Cttee_Feb%202019%20updated.pdf) regarding the outcome of the January 2019 Report of the Committee on Standards in Public Life and details, as requested, the gap-analysis between the Council’s current Code of Conduct and ethics arrangements and the best practice suggestions set out in the review by the Committee on Standards in Public Life for further consideration by Members.

## **3. DETAIL**

- 3.1 The Committee on Standards in Public Life (the Committee) was established in 1994 and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles. The full report, which runs to 108 pages and is therefore not attached, can be accessed here: <https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life>
- 3.2 The terms of reference for the Committee’s review were to:

- 3.2.1 Examine the structures, processes and practices in local government in England for:
  - a. Maintaining codes of conduct for local councillors
  - b. Investigating alleged breaches fairly and with due process
  - c. Enforcing codes and imposing sanctions for misconduct
  - d. Declaring interests and managing conflicts of interest
  - e. Whistleblowing
- 3.2.2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
- 3.2.3. Make any recommendations for how they can be improved
- 3.2.4 Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.
- 3.3 The Committee set out best practice recommendations for local authorities which they indicate should be considered a benchmark of good ethical practice, which the Committee expects that all local authorities can and should implement. The Committee has indicated that they propose reviewing the implementation of the best practice in 2020. A full set of the good practice recommendations are set out at Appendix A for Members' ease of reference.
- 3.4 Each of the best practice suggestions are dealt with in turn below alongside an analysis of the Council's current practice as well as additional information, where relevant.
- 3.5 **Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.
- 3.6 The Code currently provides that members must promote and support high standards of conduct when serving in their public post, in particular as characterised by the requirements of the Code, by leadership and example, including not doing anything which breaches the equalities legislation and observing the Council's Protocol on Staff - Councillor Relations. A copy of the current Code is at Appendix B.
- 3.7 Equalities legislation makes specific provision around what constitutes harassment in the employment context and is specifically incorporated within the Council's code by reference to the need to comply with Equalities requirements.

- 3.8 The Staff—Councillor Protocol, Appendix C hereto, sets out the behavior which staff and Members can respectively expect. This includes provisions that staff can expect from Members:
- (i) A working partnership
  - (ii) An understanding of and support for respective roles, workloads and pressures
  - (iii) Political leadership and direction
  - (iv) Respect, dignity and courtesy
  - (v) Integrity, mutual support and appropriate confidentiality
  - (vi) Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of employees in determining what reasonable requests are, having regard to the power relationship between Members and employees, and the potential vulnerability of employees, particularly at junior levels
  - (vii) That Members shall not use their position or relationship with employees to advance their personal interests or those of others or to influence decisions improperly
  - (viii) That Members shall at all times comply with the relevant Code of Conduct.
- 3.9 The Protocol goes on to explain what the various procedures to which the parties have recourse if things go wrong.
- 3.10 Members will note that despite the above requirements around compliance with the Protocol, there is no specific definition of either bullying or harassment within the current Code, nor is there a specific definition within the Protocol. Accordingly it is recommended that the Protocol be updated to include at 1.11 (vi) the following definition the recommendation proposed in relation to the above best practice suggestion is as follows:
- Not to be subject to bullying or harassment or to be intimidated or put under undue pressure or improper influence. This specifically includes any person who is involved in any complaint about any alleged breach of the Council's Member's Code of Conduct. Members should have regard to the seniority of employees in determining what reasonable requests are, having regard to the power relationship between Members and employees, and the potential vulnerability of employees, particularly at junior levels*
- (Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)*
- 3.11 **Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

- 3.12 The Code currently provides: “You are accountable for your decisions to the public and you must cooperate fully with whatever scrutiny is appropriate to your office as determined by the Council.” And the Council has determined a process by which complaints may be made in respect of Members’ Conduct and how these will be dealt with. In addition, whilst the Code does not prohibit Councillors specifically from making trivial, or malicious allegations, the assessment criteria provide that where the complaint appears to be simply malicious, politically motivated or tit-for-tat no further action will be taken. This applies whether the complainant is a Councillor or a member of the public.
- 3.13 In relation to specifically prohibiting “trivial or malicious allegations by Councillors” there is a query around why Councillors as complainants should be treated any differently in this context than any other complainants. An initial assessment of the complaint would still need to be undertaken to determine if the allegation in question was one which ought to be referred. In addition, there is specific provision within the assessment criteria in relation to allegations which appear to relate simply to the rough and tumble of political debate.
- 3.14 In light of the current provisions, no change is recommended in this regard.
- 3.15 **Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.
- 3.16 Croydon currently undertakes an annual review of the Code of Conduct and has made year on year updates to ensure that the Code remains appropriate. This has included updates to add specific reference to the Nolan Principles, updating wording to provide greater clarity on gifts and hospitality and a review of the assessment criteria and arrangements which are required to be in place to deal with Ethics complaints.
- 3.17 There is no specific provision for engaging with the public, including community organisations or neighbouring authorities as part of the Committee’s annual review process and there is a query around the utility of consulting with neighbouring authorities especially as the Codes of Conduct for London Boroughs are all different. Such consultation may perhaps be of more utility if a model code is re-introduced as a means of benchmarking but that would require firstly that the government accept and agree to implement the Committee on Public Life recommendations and secondly that they implement amendments to primary legislation.
- 3.18 Accordingly it is not recommended that changes be made at present to the current annual review process which the Committee undertakes as part of its work programme which enables the Committee to introduce changes considered necessary and appropriate to continue to foster ethical conduct.

- 3.19 **Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.
- 3.20 The Code of Conduct is published on the Council's website and forms part of the Council's constitution, which is also available on request in hard copy. As this is already undertaken, no recommendation is proposed.
- 3.21 **Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.
- 3.22 The Council's gifts and hospitality register is currently published as part of each individual councillors register and is updated in real time when gifts and hospitality are notified to democratic services. The gifts and hospitality is not accessible as a separate document and appears as part of the individual Councillors registers of interests. As this is already undertaken, no recommendation is proposed.
- 3.23 Whilst relating to non-pecuniary interests rather than gifts and hospitality (which is the subject of this Best Practice item), members' attention is specifically drawn to recommendation 5 of the Report on Standards in Public Life which encourages fulsome declarations of non-pecuniary interests. Whilst recommendation 5 will require legislative changes, in the intervening period the Committee may wish to affirm at this stage that all Members are encouraged to properly consider and declare any other personal interests which fall within the "Other Interests" category within the Declaration of Interests form. The form itself includes guidance and suggestions in this regard, to which Members are specifically referred.
- 3.24 **Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.
- 3.25 The Council has adopted assessment criteria, which were most recently reviewed in January 2019 and which are published on the Ethics pages on the Council's website and linked to the complaints forms online. These set the criteria against which allegations will be assessed, including in relation to public interest considerations, to determine if the matter ought to be referred for investigation or further action. As this is already undertaken, no recommendation is proposed.
- 3.26 **Best practice 7:** Local authorities should have access to at least two Independent Persons.
- 3.27 The Council currently has two independent persons appointed by Full Council although it is acknowledged that the statutory requirement is for one such Independent person and any additional requirement imposed for a second

independent person would require an amendment to legislation. As this is already undertaken, no recommendation is proposed.

- 3.28 **Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.
- 3.29 The Council's arrangements adopted under the Localism Act 2011 provide that the Monitoring Officer may consult with an independent person (IP) at the assessment stage to assist with reaching an opinion regarding any complaints received, at the discretion of the Monitoring Officer. The Council has also adopted Assessment Criteria which act as a guide for the Monitoring Officer when considering whether a matter is appropriate to be referred for investigation. These criteria were most recently reviewed by the Ethics Committee in March 2019 and resulted in updates being recommended to Full Council for adoption.
- 3.30 The Monitoring Officer continues to engage with an Independent Person where it has been considered appropriate to obtain an independent view in relation to allegations, particularly on controversial matters or when an independent view is required. In addition, the arrangements adopted by the Council in relation to investigation of complaints provide that the IP shall be consulted before a decision is taken, following investigation, to refer the matter to the Ethics Committee for hearing. The arrangements also provide the Monitoring Officer with the discretion to consult the IP outside of those express legislative provisions.
- 3.31 These provisions are in accordance with the legislative requirements regarding the involvement of the IP. For ease of reference, an extract from sections 28(6) and (7) of the Localism Act 2011 is included below and provides that:
- (6) A relevant authority other than a parish council must have in place—*  
*(a) arrangements under which allegations can be investigated, and*  
*(b) arrangements under which decisions on allegations can be made.*
- (7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority 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, and*
- (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.*

- 3.32 As can be seen, the Independent persons play an important role both for the authority in relation to the outcome of an investigation but also for any Member against whom a complaint has been made. Whilst Croydon has chosen to appoint two IP's, which is one more than is required by statute, there needs to be a careful balance in involving the IP's at non-statutory stages as there is the potential for concerns around conflicts to arise. If the Authority involves an IP at the initial stage and they recommend that the matter not be dismissed and it proceeds to investigation and the person complained about avails themselves of the ability to consult with the other IP, then there would be no additional independent person to involve at the decision making stage post investigation. This could give rise to concerns around earlier involvement in decision making or advising the Member complained about. If the Council made a decision to recruit and appoint an additional Independent Member that could provide a level of comfort in relation to the above concerns, however it is noted that the current provision within Croydon exceeds the statutory minimum requirements in terms of a single Independent Member. Furthermore, given the current arrangements, which do not include payment for allowances or expenses of the IP's, seeking to involve them in further decision making could create additional demands on their availability and time.
- 3.33 Given the above, no amendments are therefore recommended as a result of this suggestion.
- 3.34 **Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.
- 3.35 The Council's arrangements adopted under the Localism Act 2011 and which are set out clearly on the Ethics pages of the internet, provide in this regard that a minute of the decision of the Ethics Committee (or sub-committee as the case may be) will be prepared in consultation with the Chair of the Ethics Committee or sub-committee or Chair of the Hearings Panel, as the case may be, which will record the outcome and state the committee's reasons for the decision. This will be published on the Council's website once approved. It is an administrative matter to ensure that the minute reflects the above information however any such record will be subject to the need to comply with, among other matters, the provisions of the Data Protection Act 2018 and General Data Protection Regulation and the provisions of Schedule 12A of the Local Government Act 1972, as amended. As this is already undertaken, no recommendation is proposed.



- 3.36 **Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.
- 3.37 The Code of Conduct complaints page on the council's website includes a complaint form, assessment criteria and a detailed set of procedures which apply and the time frames within which the various processes will be undertaken. As this is already undertaken, no recommendation is proposed.
- 3.38 **Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.
- 3.39 Not applicable as Croydon does not currently have any Parish Councils.
- 3.40 **Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.
- 3.41 Not applicable as Croydon does not currently have any Parish Councils.
- 3.42 **Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.
- 3.43 The Monitoring Officer for Croydon has two Deputy Monitoring Officers who are authorised to act in her stead if needed or appropriate. In addition, the Council's currently adopted arrangements provide that the MO (or Deputy) may appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator. As this is already undertaken, no recommendation is proposed.
- 3.44 **Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.
- 3.45 This is not a matter which falls within the remit of the Ethics Committee. The General Purposes and Audit Committee considers and, if satisfied, approves the Annual Governance Statement which the Council is required to produce and public under the provisions of the Local Audit and Accountability Act 2014

("the 2014 Act") and the Accounts and Audit Regulations 2015 ("the Regulations").

3.46 The Act and Regulations provide that the annual governance statement should:

- Provide a meaningful but brief communication regarding the review of governance that has taken place including the role of the governance structures involved (such as the authority; the audit and other committees)
- Be high level, strategic and written in an open and readable style
- Focus on outcomes and value for money and relate to the authority's vision for the area.

and the annual governance statement should include:

- An acknowledgement of responsibility for ensuring that there is a sound system of governance (including the system of internal control) and refer to the authority's code of governance
- A reference to and assessment of the effectiveness of key elements of the governance framework in supporting planned outcomes and the role of those responsible for its development and maintenance
- An opinion on the level of assurance that the governance arrangements can provide
- An agreed action plan dealing with significant governance issues and also indicating how previous actions have been resolved
- A conclusion
- The signature of the leading member (or equivalent) and chief executive (or equivalent) on behalf of the authority.

3.47 In discharging this responsibility the Council is required to ensure that it complies with the principles laid out by the CIPFA/SOLACE Framework Good Governance in Local Government.

3.48 The most recent Annual Governance Statement can be accessed via the below link:

<https://democracy.croydon.gov.uk/documents/s8923/Annual%20Governance%20Statement%202017-18%20Appendix%201.pdf>

- 3.49 For Members' information, it is not currently a statutory requirement for the Council, as part of the annual governance statement, to publish details of any separate bodies which the Council has "set up or which they own", nor is it a requirement to detail "their relationship with those bodies" as part of such a statement. It should however be noted that within the Annual Governance Statement it is made clear that the Council's control framework extends to partnerships and other joint working and this is reflected in the Council's overall governance arrangements. Below is an extract from the most recent Annual Governance Statement:

*"Many of the Council's services are delivered in partnership with commercial organisations. Where this is the case, the Council ensures that proper governance is maintained by closely following procurement procedures when awarding contracts and then robustly monitoring those contracts. Increasingly, Council services are delivered in partnership with other local public sector organisations. The most significant arrangements are grouped under the umbrella of the Local Strategic Partnership (LSP) which is led by a board made up of the Leader, relevant Cabinet Members, relevant Chief Executives or equivalent. Each of the themes within the LSP is overseen by its own board."*

- 3.50 In light of the fact that this Best Practice item is not a matter within the Ethics Committee remit but is a matter which is considered by General Purposes and Audit Committee as part of the Annual Governance Statement process and approval and that statutory provisions in that regard, it is not recommended that any changes are proposed in this regard.
- 3.51 **Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.
- 3.52 The Monitoring Officer has regular weekly meetings with the relevant cabinet member and regular meetings with the CEO and the Leader. Executive Directors have regular monthly meetings with their relevant cabinet members and there are also Leadership meetings at which senior officers and cabinet members are present. The Monitoring Officer has regular meetings with the Leader of the Opposition and with the Whips of both political parties as appropriate. As this is already undertaken, no recommendation is proposed.

#### 4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

#### 5. LEGAL CONSIDERATIONS

- 5.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.
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**CONTACT OFFICERS:** Jacqueline Harris-Baker, Executive Director of Resources, Monitoring Officer and Council Solicitor (ext. 62328)

**APPENDICES:**

Appendix A –	List of best practice
Appendix B –	Part 5.I - Members' Code of Conduct (Constitution of the London Borough of Croydon)
Appendix C -	Part 5.B – Protocol on Staff – Councillor Relations (Constitution of the London Borough of Croydon)

**BACKGROUND DOCUMENTS:** None