

For General Release

REPORT TO:	ETHICS COMMITTEE
AGENDA ITEM NO:	19 FEBRUARY 2021
SUBJECT:	COMPLAINT UNDER THE COUNCILLOR CODE OF CONDUCT
LEAD OFFICER:	SANDRA HERBERT DEPUTY MONITORING OFFICER
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: 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.	
FINANCIAL IMPACT Whilst implementation of the recommendations contained in this report can be contained within existing budgets in the event that an investigation is required this may incur additional costs relating to the remuneration of an independent investigator, external advice and training of Members.	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATIONS

The Committee is asked to:

1.1 Note the contents of the report;

1.2 Agree to the establishment of an Assessment Sub-Committee for the purpose of supporting the Monitoring Officer's consideration of complaints regarding the conduct of elected members which may be received against the Council's Assessment Criteria for Member complaints

1.3 Agree that the Assessment Sub-Committee shall comprise three members of this Committee to be nominated by the Committee on a proportional basis;

1.4 Agree that the Local Government Association be requested to provide training for the members sitting on the Assessment Sub-Committee in this additional role;

1.5 Agree that the Independent Person may be consulted on the complaint and their views referred to the Assessment Sub-Committee for consideration; and

1.6 TO RECOMMEND TO FULL COUNCIL that the Arrangements agreed by the Council under section 28(6) of the Localism Act and the terms of reference for the Ethics Committee, if necessary, be updated, for the avoidance of doubt, to reference the discretion of the Monitoring Officer to refer a complaint to an Assessment Sub-Committee of the Ethics Committee for Member' views to assist the Monitoring Officer in discharging her duties in regard to the assessment of complaints received concerning elected and co-opted members.

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.

2.2 It is understood that there is a likelihood of complaints being made regarding councillor conduct in the context of the circumstances which gave rise to the Grant Thornton Report in the Public Interest.

2.3 The Ethics Committee has an overarching function within its terms of reference set out in Part 3 'Responsibility for Functions' of the Constitution to support the statutory role of the Monitoring Officer. The establishment of an Assessment Sub-Committee is being proposed to enable that support to be enacted in regard to these complaints.

2.4 Members are recommended to establish an Assessment Sub-Committee to assist the Monitoring Officer with her statutory responsibility to assess the complaints which may be received.

The Assessment Sub-Committee's functions will be to:

- support the assessment of the complaints and the consideration of whether the threshold for commencing a formal investigation has been met for a decision by the Monitoring Officer;
- consider the views of the Independent Person (where sought and obtained); and
- offer the views of the Sub-Committee to the Monitoring Officer in order for a decision to be taken by that officer.

2.5 It is also proposed that the Council's formal Arrangements that the Council has in place to enable it to discharge its responsibilities in regard to complaints against elected members and the terms of reference for this Committee be updated for the avoidance of doubt, to reference the discretion of the

Monitoring Officer to refer a complaint to an Assessment Sub-Committee of the Ethics Committee for Member' views to assist the Monitoring Officer in discharging her duties in regard to the assessment of complaints received concerning elected and co-opted members.

3. DETAIL

- 3.1 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 adopted Members' Code of Conduct can be viewed here:

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Part%205I%20-%20Members%20Code%20of%20Conduct.pdf>

- 3.2 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.

- 3.3 Pursuant to the current Arrangements which the Council has approved any complaints which pertain to the conduct of an elected or co-opted member are made in the first instance to the Monitoring Officer.

- 3.4 Assessment of the complaint is undertaken by the Monitoring Officer having regard to the Assessment Criteria which the Council has adopted for these purposes. The Assessment Criteria, can be viewed here:

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/assessment-criteria-january2019.pdf>

- 3.5 The Monitoring Officer's decision, following initial assessment will indicate whether or not the complaint is one which ought to be referred for investigation. If that occurs, subject to the outcome of any investigation, the matter could then result in a Hearings Panel being convened in accordance with the Arrangements for dealing with allegations of breach of the code of conduct which have been adopted by the Council under the Localism Act 2011. The Arrangements can be viewed here:

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

- 3.6 The 2011 Act also goes on to provide in section 28(7) that the Council must make provision for the appointment by the Council of at least one Independent Person whose views (a) are to be sought and taken into account by the Council before it makes its decision on an allegation that it has decided to investigate and (b) whose views may be sought by the Council in relation to an allegation

at any other time and (c) whose views may be sought by a Member if that person's behaviour is the subject of an allegation.

- 3.7 It is understood that there is a likelihood of complaints being made regarding councillor conduct in the context of the circumstances which gave rise to the Grant Thornton Report in the Public Interest. In these circumstances it is proposed that an Assessment Sub-Committee be set up to support the assessment of those complaints by the Monitoring Officer in taking her decision as to whether a threshold has been passed for any next steps to be triggered.
- 3.8 The views of the Independent Person may be sought and taken into account in the consideration of a complaint by the Assessment Sub-Committee.
- 3.9 If a complaint is received, the subject members will be notified that a complaint has been made about their behaviour and asked if they wish to provide any written information in response.
- 3.10 The Assessment Sub-Committee will be a committee formed under the Local Government Act 1972 and the legal requirements for publishing agendas, minutes and calling meetings will apply in the usual way. Schedule 12A of the Act as amended will be applied where it is necessary to exclude the public and press from the meeting if confidential and exempt information will be disclosed.
- 3.11 Following the conclusion of the Assessment Sub-Committee, the Monitoring Officer will take into account the views of the Sub-Committee and the Independent Person (where sought and obtained) and have regard to the Assessment criteria and any other relevant consideration in reaching her decision. If the decision is to trigger a formal investigation into a complaint, then a Hearings Panel will need to be convened to hear the outcome of the investigation in accordance with procedures adopted by the Ethics Committee for the purpose. Membership of the Hearings Panel is drawn from the Ethics Committee and constitutes three members. Membership of the Assessment Sub-Committee will preclude also being able to be a member of the Hearings Panel for the same complaint.
- 3.12 Training will be provided by the LGA for members of the Assessment Sub-Committee regarding the adopted procedures for the assessment of complaints concerning elected and co-opted members.
- 3.13 It is also proposed that full Council be recommended to update the Council's formal Arrangements adopted by the Council under section 28(6) of the Localism Act 2011 under which allegations can be investigated and decisions on allegations made and the terms of reference for this Committee, if necessary. It is proposed that these Arrangements make clear the discretion of the Monitoring Officer to refer a complaint to an Assessment Sub-Committee of the Ethics Committee for Member' views to assist the Monitoring Officer in discharging her duties in regard to the assessment of complaints received concerning elected and co-opted members at any time.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 4.1 There are no costs arising directly from the recommendations detailed in this report. Should Members agree to the establishment of an Assessment Sub-Committee which resolved to undertake an investigation this may incur additional costs relating to the remuneration of an independent investigator, external advice and training for Members.

Approved by: Geetha Blood interim Head of Finance on behalf of the Director of Finance Investment and Risk.

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.

CONTACT OFFICERS: Sandra Herbert, Head of Litigation and Corporate Law and Deputy Monitoring Officer (ext 62928)

BACKGROUND DOCUMENTS: None.