

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>15 NOVEMBER 2023</b>	
<b>REPORT TITLE:</b>	<b>REVIEW OF ETHICS ARRANGEMENTS</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>DECISION TAKER:</b>	<b>ETHICS COMMITTEE</b>	
<b>KEY DECISION?</b>	<b>No</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>No</b>	
<b>WARDS AFFECTED:</b>	<b>ALL</b>	

## 1. SUMMARY OF REPORT

- 1.1 In April 2023, Grant Thornton published its Interim Auditor's Annual Report on the London Borough of Croydon (2019-20, 2020-21 and 2021-22) which include a recommendation that the Council should continually review arrangements for overseeing standards and codes of conduct.
- 1.2 This report sets out the outcome of the review of the Council's Members Code of Conduct and arrangements for dealing with allegations of breach of the Code. The report confirms that the Council's arrangements are effective and in accordance with the statutory requirements. There are tidying up amendments required to the Code and the arrangements which will be the subject of a further report to the Committee.

## 2 RECOMMENDATIONS

The Committee is asked to note:

- 2.1 The recommendation of the April 2023 Grant Thornton Interim Annual Report on the London Borough of Croydon (2019-20, 2020-21 and 2021-22) and the Monitoring Officer review of the Council's Ethics arrangements.
- 2.2 That a further report be presented to the Committee on the proposed tidying up amendments to the ethics arrangements (i.e., Members Code of Conduct and arrangements for dealing with allegations of breach of the Code).

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 Following the recommendation in the April 2023 Grant Thornton Interim Annual Report on the London Borough of Croydon (2019-20, 2020-21 and 2021-22), the Monitoring Officer has undertaken a review of the Council's Members Code of Conduct (including Registration and Disclosure of Interests) and the arrangements for dealing with allegations of breach of the Code of Conduct and found that they are in accordance with the law and best practice. However, some tidying up and clarification amendments are required to the Council's Code of Conduct and arrangements.

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

- 4.1 The Council must promote and maintain high standards of conduct by its members and co-opted members. The Council is required to adopt a code dealing with the conduct that is expected of members when they are acting in their capacity as members. The Council must ensure that its code of conduct includes appropriate provisions for registering and disclosing Pecuniary interests and Interests other than pecuniary interests.
- 4.2 In October 2021, the Council adopted a revised Members' Code of Conduct that includes the following:
  - a) General principles of Councillor conduct
  - b) Application of the Code of Conduct
  - c) Standards of Councillor Conduct
  - d) General Conduct
  - e) Gifts and hospitality
  - f) Seven Principles of Public Life
  - g) Registering Interests
  - h) Non-participation in the case of Disclosable Pecuniary Interest
  - i) Disclosure of Other Registerable Interests
  - j) Disclosure of Non-Registerable Interests
  - k) Explanation of Disclosable Pecuniary Interest and Other Registerable Interests.

There is complimentary supporting guidance to enable Members to better understand the nature and extent of their obligations under the Code.

- 4.3 The Council must have arrangements in place to deal with complaints that its code of conduct has been breached, including arrangements for complaints to be investigated

and decisions on allegations to be made. In July 2012, the Council adopted its arrangements that include the following: a) Making a complaint; b) Deciding whether it should be investigated and the Assessment Criteria; d) Investigation process and outcome; and e) Hearing procedure and sanctions available in the event of a finding of breach of the Code. The Council's arrangement can be accessed here: <https://www.croydon.gov.uk/council-and-elections/council-committees-and-meetings/committees-boards-and-meetings/ethics-committee/members-code-conduct>

4.4 In April 2023, Grant Thornton, the Council's External Auditors published its Interim Auditor's Annual Report on the London Borough of Croydon for the years 2019-20, 2020-21 and 2021-22. The Report states that there were:

“number of other issues raised across this interim Annual Auditor's Report suggests there were wider issues with underlying cultural standards in 2020-21 and 2021-22. The Council has an Ethics Committee which is responsible for consideration of matters relating to probity and ethics, including matters pertaining to Member conduct and compliance with the Members Code of Conduct. The Council also has an Appointments and Disciplinary Committee and an Audit and Governance Committee. However, the litany of findings from the Public Interest Reports in October 2020 and January 2022 and other advisors and regulators suggests that even where standard processes are complied with, there have been underlying significant weaknesses in organisational culture. The form of procedures often did not follow through to the underlying substance of cultural behaviour.

At an operational level, the Council did have processes in place during 2020-21 for declaring conflicts of interest. However, during our work we found other anomalies, in addition to incorrect processes having potentially been used for decision making and around the Chief Executive's severance. For example, in 2020-21, only one gift for £15 was declared on the gifts and hospitality register all year (suggesting a risk that it may be incomplete). In 2021-22, nine Members failed to send in conflict of interest declarations on time and had to be reminded.

The Council is working diligently to try to improve. In March 2022, the Council's arrangements for its Constitution were reinforced to reflect the importance of the Nolan Principles. Nevertheless, the scale of the challenge is daunting given the past well documented failures to uphold these principles in the past.”

The Report recommended that the “Council should continually review arrangements for overseeing standards and codes of conduct. The Ethics Committee, in overseeing standards, should be mindful that the substance of cultural behaviour is as critical as the procedural form”.

4.5 The External Auditors recommendation appears to be based on findings in declaring interest and registering gifts and hospitality and for the years 20-21 and 20-22.

- 4.6 The governance issues relating to the former Chief Executive severance payment has been dealt with and was the subject of a report by the Monitoring Officer to the Appointment and Disciplinary Committee on 27 April 2022 and 13 October 2022 and Full Council in November 2022. The Monitoring Officer found that the Council must clearly demonstrate that lessons have been learnt and that it has now embedded best practice in the form of the statutory guidance on severance payments. The exit of the former Head of Paid Service has significant local and wider public interest. There should have been proper records kept of the conversations between the Leader, Monitoring Officer, former Chief Executive, Section 151 Officer, and Director of HR relating to the exit. There should have been some initial enquiries to establish the facts and to inform any future decision making. The Leader of the Council chaired the committee which made the decision without any consideration of any conflict of interest. Legal advice (Counsel's opinion) should have been sought on merits, chances of success and quantum of damages of any potential ET claim. This should have informed the decision on settlement. The ethos of the Openness and Accountability in Local Pay Guidance, as the title clearly suggest, is that there should be more transparency and scrutiny of senior officer's exit payment. There should be compliance with the constitutional and statutory requirements for notice and agenda papers to be sent to members in advance of the meeting. Democratic Services should have attended the closed session of meetings to make sure proper minutes are taken of the deliberations that informed the decision made. There must be consideration given to managing any conflicts of interest arising. The Council now has measures in place to address these findings.
- 4.7 The fact that only one gift and hospitality was registered in 20-21 is likely to be due to the then Covid restrictions which significantly impacted social interactions and hospitality during this period. Members are required to 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. Also, any significant gift or hospitality that have been offered but have refused to accept. Currently, the Committee at its meetings reviews reports on gifts and hospitality registered by members. An example of the Member Gift and Hospitality report going to the Committee can be accessed via this link: <https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=171&MIId=2911&Ver=4>. There is a quarterly newsletter that is sent to all members reminding them of the requirements and process for declaring and registering gifts and hospitality received. They are also reminded to update their register of interest in the event of any changes in circumstances.
- 4.8 The External Auditors report alludes to the importance of the Committees oversight of members conduct. The Committee already receives both quarterly and annual reports on Members' Code of Conduct complaints considered pursuant to the Ethics Complaints Process which allows members to oversee this element of the operation of the procedures and the trends in complaint and comment as they see fit. As such, it is considered that the Ethics Committee do already regularly review how such complaints are dealt with. Members will be aware that other Codes of Conduct of the authority –

such as the Officers' Code of Conduct – are not within the remit of this Committee and are not addressed within this report or review.

4.9 Following the External Auditors recommendation, the Monitoring Officer has undertaken a review of the Council's Members' Code of Conduct and the arrangements for dealing with complaints for breach of the Code. In undertaking the review, the Council's arrangement was benchmarked against 31 other London Boroughs to identify best practice. The review also had regard to the Local Government Association (LGA) [Guidance](#) on Member Model Code of Conduct Complaints handling, published in September 2021 and the Committee on Standards in Public Life 2019 Local Government Ethical Standards [report](#). The review found that:

- a) The Council's Code of Conduct and current arrangements for dealing with complaints of breach of the code complies with the statutory requirements and accords with most of the best practice requirements set out in the Committee on Standards in Public Life 2019 report<sup>1</sup>.

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<sup>1</sup> 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. **This is catered for in the Council's Code and Guidance to Members.**

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. **This is catered for in the Council's Code and Guidance to Members.**

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. **Members receives annual and quarterly reports on complaints and operation of the Code. A new Code was adopted in 2021 and is has now been reviewed alongside the ethics complaints arrangements.**

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. **There is a dedicated Ethics Committee website for this purpose and the Code is part of the Council's Constitution.**

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. **The Ethics Committee receives reports at each meeting updating them on the gifts and hospitality received during the previous period since the last updating report. The Gifts and hospitality register for each individual member is updated and published on the Council's website and updated as and when members notify democratic services of the changes – in other words at far more regular intervals than quarterly.**

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered. **This is catered for in the Council's arrangements.**

Best practice 7: Local authorities should have access to at least two Independent Persons. **The Council has more than 2 Independent Persons and currently recruiting.**

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. **This is catered for in the Council's arrangements and is current practice.**

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. **This is catered for in the Council's arrangements.**

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. **There is a dedicated Ethics Committee website for this purpose.**

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. **Not applicable as there are no parish councils in the borough.**

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

- b) There are some tidying up and clarification amendments required to the Council's Code of Conduct and arrangements. This may for example include:
- i) In the Code under "Disclosure of Other Registerable Interests" making it clear that Member must leave the meeting room if the matter directly relates to the financial interest or wellbeing of one of the Members' Other Registerable Interests.
  - ii) In the Code under "Standards of councillor conduct" attaching a link to Guidance for members on the Code which is referred to.
  - iii) Confirming within the Constitution the published arrangements which are available via the Council's website.
  - iv) Update the arrangements to reflect current officer post titles and contact details, make the references gender neutral and third person rather than first, update regulator details and similar typographical updates.
  - v) Update the arrangements to make clear that a Deputy Monitoring Officer may undertake the Monitoring Officer functions in the Monitoring Officers stead as necessary.

4.10 The proposed amendments are to be the subject of a further report to the Committee.

## 5. ALTERNATIVE OPTIONS CONSIDERED

5.1 There were no alternative options considered. It is imperative that the Council review the standards arrangement following the Interim Auditor's Annual Report recommendation.

## 6. CONSULTATION

6.1 As indicated above, the Council's standards arrangement was benchmarked against other London Boroughs.

## 7. CONTRIBUTION TO COUNCIL PRIORITIES

7.1 Ensuring that the Council's Ethics Complaints process is fit for purpose via this review and associated recommendations supports the Councils' priorities and Mayor's Business Plan by ensuring good governance is embedded and adopting best practice.

## 8. FINANCIAL IMPLICATIONS

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with adequate training, corporate support and resources to undertake this work. **Not applicable as there are no parish councils in the borough.**

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. **This is catered for in the Council's arrangements.**

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. **The Audit and Governance Committee receive reports regarding the Council's Annual governance statement which addresses such matters as such matters are not within the remit of the Ethics Committee.**

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

- 8.1 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.

Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. (Date 07/11/2023)

## **9. LEGAL IMPLICATIONS**

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

Comments approved by the Director of Legal Services and Monitoring Officer. (Date 02/11/2023)

## **10. EQUALITIES IMPLICATIONS**

- 10.1 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))

The recommendations in the report do not give rise to any equalities implications.

Comments approved by Naseer Ahmad for the Equality Programme Manager, 02/11/2023.

## **11. APPENDICES**

None.

## **12. SUPPORTING DOCUMENTS**

- April 2023, Grant Thornton Interim Auditor's Annual Report on the London Borough of Croydon (2019-20, 2020-21 and 2021-22).
- Members Code of Conduct
- Arrangements for dealing with allegations of breach of the Members' Code of Conduct under the Localism Act 2011.

End