

## STANDARDS COMMITTEE

16 MAY 2024

### REPORT OF THE MONITORING OFFICER

#### A.1 REPORT OUTCOME OF MEMBERS' CODE OF CONDUCT INVESTIGATION

##### PART 1 – KEY INFORMATION

###### PURPOSE OF THE REPORT

In accordance with paragraph 7 of the District Council's Complaints Procedure, the Monitoring Officer is required to refer a matter for a hearing before the Standards Committee, where an investigation concludes that there is evidence of a failure to comply with the Members' Code of Conduct and the Monitoring Officer has determined informal resolution is not appropriate.

This Part A Report provides background information and advice with regard to the Code of Conduct, legislation and procedures.

###### EXECUTIVE SUMMARY

A complaint was received in August 2023 from Councillor Ernest Gibson ("the Complainant"), an elected Member of South Tyneside Council and the Chairman of the Local Government Association Coastal Special Interest Group, regarding the alleged behaviour of District Councillor Nick Turner under this District Council's Members' Code of Conduct. **The Code of Conduct is attached as Appendix A.**

The Local Government Association ("LGA") is the national membership organisation for Principal Councils. In view of the diversity of Councils in membership of the LGA, it has a number of Special Interest Groups ("SIG"). Through these SIGs, all Councils with common characteristics can form groupings to express a sectional interest. The LGA website indicates that it has 21 SIGs at present. The LGA expects SIGs to have at least 10 Councils in membership. SIGs are able to speak for their interests as part of the LGA provided that their policies or statements do not conflict with, or undermine, LGA policy as a whole, or damage the interests of other member authorities. SIGs are able to make representations direct to Government and elsewhere on matters arising directly from their special interest, and to obtain LGA assistance in doing so. The LGA Coastal SIG exists to champion the collective interests of coastal communities by increasing awareness and debate on environmental, economic and social issues at all levels in relation to the coast. It has a membership of 57 coastal local authorities. Together it covers 60% of England's coastline and serves 16 million people.

The Complaint was submitted on 16<sup>th</sup> August 2023, and referred to the alleged behaviours of Councillor Turner at two virtual meetings of the SIG on 5<sup>th</sup> June and 29<sup>th</sup> June 2023, in that Councillor Turner had contravened this Council's Members' Code of Conduct. Councillor Turner was the sole attendee at these meetings from Tendring District Council.

Complaints received relating to the Code of Conduct must be dealt with in accordance with the Council's formally adopted Complaints Procedure, as set out in Part 6 of the Council's Constitution (Part 6.19 to 6.34) (**Complaints Procedure is attached as Appendix B**), which was adopted by full Council on 26<sup>th</sup> November 2013.

On 25<sup>th</sup> August 2023, the Monitoring Officer decided that it was reasonable and appropriate that the Complaint merited further investigation. The parties were informed of this decision and that an external investigator would be appointed. Section 5 of the Council's Complaints Procedure sets out how an investigation is conducted and under Section 5.6, the Investigation Report must contain a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

Mr Melvin Kenyon, of Kenyon Brabrook Ltd, was appointed as the external investigator and following a thorough investigation concluded that there was sufficient evidence to show that Councillor Turner, based on a balance of probabilities and the evidence available, had breached Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Council's Code of Conduct.

All parties have had the opportunity to comment on the Investigation Report and the findings contained therein. The report was finalised on 10<sup>th</sup> January 2024.

If an investigation concludes that there is evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 7.1 provides the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, where it can reasonably be resolved without the need for a hearing by the Standards Committee.

Although the procedure does not require consultation with an Independent Person if the Monitoring Officer considered informal resolution was not an appropriate course of action, and that the matter should be referred for a hearing before the Standards Committee, it was considered that seeking their view was beneficial prior to making the decision.

### **HEARING & DECISION:**

In summary, the Standards Committee conducts a hearing under the Hearing Procedure before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

In accordance with paragraph 7.1.2 of the Council's Complaints Procedure the Investigator's Report will be kept confidential and will remain in Part B, until the day of the hearing in order to protect the parties.

Procedures relating to the hearing are set out within the body of the Report and are attached as **Appendix C**. The Standards Committee reviewed the Hearing Procedures at its meeting on 24<sup>th</sup> April 2024 (Minute No. 22).

Should the Standards Committee determine that a Member has failed to comply with the Code of Conduct they have the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. The actions available to the Standards Committee are set out in Paragraph 8.1 of the Complaints Procedure.

### **RECOMMENDATION**

**That the Standards Committee:-**

**(a) notes the contents of the Report in readiness for deciding whether to exclude**

**the press and public before a Hearing is undertaken; and**

**(b) notes the Monitoring Officer's advice in respect of the exclusion of the Press and Public, as contained within the Report.**

### **REASONS FOR THE RECOMMENDATIONS**

Provides the Committee with sufficient information to prepare for a Hearing prior to any resolution to exclude the Public and Press for a Part B item on the agenda.

Allows the Committee to note the Monitoring Officer's advice not to pass the exclusion of Press and Public for Part B, so that the Investigator's Report, the findings, evidence and representations can be undertaken in the public domain, as envisaged by the Council's adopted Complaints Procedure.

### **ALTERNATIVE OPTIONS CONSIDERED**

The case of R (Harvey) v Ledbury Town Council 2018 (R Taylor v Honiton TC) made clear that allegations of a failure to follow an authority's Code of Conduct can only be considered in accordance with the principal authority's standards arrangements.

Councillor Turner did offer a further apology (to the one offered at the outset, when the complaint was received), having read the Investigator's Report for any offense caused by his actions, which was described as unintended and unconscious on his part. However, there was no acceptance of the breach of the Code of Conduct, the evidence presented of the breaches thereof, and even having seen the final report an apology has not been offered by Councillor Turner to Tendring District Council, despite appearing to represent the Council at the SIG. Therefore, in the circumstances, the Monitoring Officer determined that it is not appropriate to seek a further apology as part of an informal resolution, but to refer the matter to the Standards Committee for a hearing to be undertaken by Members in accordance with the District Council's formally adopted Complaints Procedure. Upon consultation one of the Council's Independent Persons agreed with this course of action.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

One of the themes of the Corporate Plan for 2024-28 adopted at full Council in November 2023, is **FINANCIAL SUSTAINABILITY AND OPENNESS** - Tough decisions will not be shied away from, but will be taken transparently, be well-informed, and based upon engagement with our residents.

The Council's Annual Governance Statement (a statutory document which sits alongside the Statement of Accounts, which is inspected by External Audit and which follows the CIPFA format) covers the 7 principles of Local Code of Governance (for Local Government) and expects adherence with **Principle A** - Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law.

The Council has adopted a number of documents which collectively form the Council's arrangements under the Localism Act 2011 to fulfil its statutory duty to promote and maintain high standards of conduct, some of which are contained within the Constitution.

Reference to the Members' Code of Conduct, Procedures and Protocols are referred to throughout the body of the Report, explaining their relevance to the context of the report.

## **MEMBERS' CODE OF CONDUCT**

Under Section 27(2) of the Localism Act, on 22<sup>nd</sup> November 2022, the Council adopted a new, revised Tendring District Council Members' Code of Conduct with a commencement date of 23<sup>rd</sup> May 2023. In doing that it adopted the Local Government Association Model Code of Conduct which had been drafted in 2020 (version 3). This is set out as **Appendix A** to this report.

The Code deals with the conduct that is expected of Members and co-opted Members of the Council when they are acting in that capacity as required by Section 27 of the Localism Act.

The Code is intended to be consistent with the Seven Principles of Public Life – the Nolan principles. These are referred to in the preamble to the Code, under the heading “General Principles of Councillor Conduct” and are attached as Appendix A of the Code.

The Code applies whenever a person is acting in their capacity as a Member or co-opted Member of the Council. In the preamble, under the heading “Application of the Code of Conduct”, the Code says that it applies: “when you are acting in your capacity as a councillor which may include when you misuse your position as a councillor and 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”.

In making the Complaint the Complainant referred specifically to General Conduct, Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Code.

### **“General Conduct**

#### **1. Respect**

##### **As a Councillor:**

##### **1.1 I treat other councillors and members of the public with respect**

##### **1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority

employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

## **2. Bullying, harassment and discrimination**

### **As a Councillor:**

#### **2.3 I promote equalities and do not discriminate unlawfully against any person**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

## **5. Disrepute**

### **As a Councillor:**

#### **5.1 I do not bring my role or local authority into disrepute**

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct."

## **WHEN DOES THE CODE OF CONDUCT APPLY?**

Under section 27(2) of the Act a relevant authority "must in particular, 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". This section of the Act narrowed the remit of the previous national Code of Conduct with the result that a council can only investigate matters where a Member was acting as a councillor or as a representative of the council at the time of the alleged incident.

Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by a code of conduct; a link to that person's membership of their authority and specifically their role as a councillor is needed.

Some activities clearly have no link with the council such as a purely domestic matter or something that a Member may do while employed in work completely unrelated to the council. *"Councillors must actually be engaged on council business or commenting on council business or acting as a representative of the authority to be deemed "within capacity"*.

In the Decision Notice to refer the matter for investigation, the Monitoring Officer asked that the question of the capacity in which the Subject Member was attending the SIG be specifically explored though the investigation.

The Local Government Association has published supporting guidance ("the Guidance") which helps with understanding of, and consistency of approach towards, the Model Councillor Code of Conduct (which was subsequently adopted by the Council and many other authorities in England). **This Guidance is attached to the report as Appendix D** and was issued to all Councillors together with the Code of Conduct upon re-election and appointment of office.

## **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

### **LEGISLATION:**

#### **LOCALISM ACT 2011**

Under section 27(1) of the Localism Act 2011 ("the Act") a "relevant authority" (which includes a local council) is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".

Under section 27(2) of the Act a relevant authority "must in particular, 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".

Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with the prescribed Principles of Standards in Public Life – the so-called "Nolan principles".

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level, which endangers public confidence in democracy.

Under section 28(6) of the Act, principal authorities must have in place - (a) arrangements under which allegations can be investigated; and (b) arrangements under which decisions on allegations can be made.

By section 27(7), arrangements put in place under subsection (6)(b) must include provision for the appointment by the principal authority of at least one "independent person" 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.

Section 28(11) of the Act provides that if a member or co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding - (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

### **LOCAL GOVERNMENT ACT 1999**

Statutory Guidance on the Best Value Duty is issued to local authorities under section 26 of the Local Government Act 1999 and they are required to have regard to the guidance under the 1999 Act. The draft guidance issued in the July 2023 “Best Value Standards and Intervention” provides greater clarity to local government on how to fulfil the Best Value Duty by describing what constitutes best value and the standards expected. Culture is one of the seven themes of best value and is described as: “*the culture of a local authority is determined by its shared values, ethics and beliefs, how decisions are made, as well as how elected members and officers behave, interact and carry out their roles*”.

### **HUMAN RIGHTS ACT 1998**

Section 6 of the 1998 Act states it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

Article 10(1) of the European Convention on Human Rights gives a right to freedom of expression which includes the right to hold opinions and to receive and impart information and ideas without interference by a public authority, subject in Article 10(2) to qualification in respect of such specified public interest such as “formalities, conditions, restrictions or penalties as are prescribed by law”. The judgment of Hickinbottom J in *Heesom v. Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) considered the scope of, and legitimate restrictions to, a politician's right of freedom of expression under article 10 of the European Convention on Human Rights (“the ECHR”) and at common law. Further information is contained within the Part B report.

### **THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (ENGLAND) REGULATIONS 2000 - APPOINTMENTS TO OUTSIDE BODIES:**

A principal Council such as Tendring District Council appointments to outside bodies are a function to be exercised by the Executive. Tendring District Council’s Executive is its Cabinet (which is comprised of the Leader and other Cabinet Members). The Leader of the Council has responsibility for appointments to Outside Bodies by virtue of the allocation of responsibilities set out in the Council’s Constitution at clause 4.4.2 within Schedule 3 of Part 3 of that Constitution.

Under the **Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012** there is a requirement for executive decisions to be recorded and published.

### **CONSTITUTION**

### **STANDARDS COMMITTEE TERMS OF REFERENCE, COMPOSITION & TRAINING REQUIREMENTS (relevant to undertaking a hearing)**

## **TERMS OF REFERENCE:**

### **Part 3, Responsibility of Functions, Scheme of Delegated Powers - Schedule 2 - Responsibility for Council (Non-Executive) Functions (Part 3.24 & 25):**

#### **Proceedings:**

1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;
2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;
3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and
4. Any determination by the Committee, which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.

#### **COMPOSITION & TRAINING:**

### **Part 2, Article 9 – Standards Committee (Part 2.25):**

#### **9.01 Composition:**

- No more than one Member shall be a Member of its Cabinet;
- No Member will be permitted to participate in meetings of the Standards Committee or its Sub-Committee unless they have undertaken specific Standards Committee training;
- No substitute Members will be permitted, unless they have undertaken specific Standards Committee training

### **PART 4 COUNCIL PROCEDURE RULES - SECTION 2 – COMMITTEE MEETINGS:**

#### **Council Procedure Rule 33.3 - Training Members of the Audit, Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees (Part 4.29)**

- A Member cannot sit as a member of the Standards Committee unless they have received specific training with regard to the Hearings Procedure and participation in Hearings.

Confirmation will be provided by the Monitoring Officer at the Standards Committee meeting as to whether all Councillors sitting on the hearing have undertaken the relevant training.

#### **MEMBERS' CODE OF CONDUCT TRAINING:**

Full Council, at its meeting in November 2022, decided (Minute no. 51) to adopt the Local Government Association's Model Members' Code of Conduct, for the purposes of Sections 27 & 28 of the Localism Act 2011 (TDC's Code of Conduct), commencing from the Annual Council Meeting in May 2023 and that all the duly elected Tendring District Council members attend mandatory training sessions on the new Code of Conduct.



Mandatory training was delivered by the Monitoring Officer on two occasions for District Councillors and Councillor Turner attended on 21<sup>st</sup> June 2023.

#### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

Under Section 5(1)(b) of the Local Government and Housing Act 1989, local authorities must provide a Monitoring Officer with sufficient resources to perform their duties. Resources can include the cost of outsourcing an investigation to another organisation or individual. This can be particularly helpful if it is a complex investigation which may absorb an individual's time or where it is politically high-profile or contentious or where there are possible conflicts of interest and it is therefore helpful to have somebody independent from the authority carrying out the investigation. For this case, a decision was made to outsource the investigation for capacity and resource implications, no conflicts of interest exist. Both parties were informed of the reasons for the investigation within the Monitoring Officer's decision in August 2023.

Member Investigation Costs of £12,000 were built into the Council's expenditure budget through the GENERAL FUND REVENUE - 2023/24 Savings and Cost Pressures Identified as part of 2024/25 Budget Process (reported to Full Council on 13 February 2024). These costs will increase by the need for the hearing and preparation thereof.

#### **ASSOCIATED RISKS & MITIGATION**

It is vital that the public has confidence in the high standards of local government, and that there is transparency about the conduct of councillors and the mechanisms for dealing with alleged breaches of the Codes of Conduct. Equally, it is vital that councillors themselves have confidence in these mechanisms, and that investigations into such complaints abide by the principles of natural justice.

The case of R (Harvey) v Ledbury Town Council 2018 (R Taylor v Honiton TC) made clear that allegations of a failure to follow an authority's Code of Conduct can only be considered in accordance with the principal authority's standards arrangements.

When a matter is referred for investigation or other action, it does not mean that a decision has been made about the validity of the allegation. It simply means that the authority believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.

The process for dealing with Code of Conduct complaints must be fair and be seen to be fair.

The Local Government Association's ***Guidance on Member Model Code of Conduct Complaints Handling issued in September 2021*** confirms there is no prescription in the legislation that says a matter has to go to a hearing or how that hearing may be conducted. Whatever approach is adopted it must follow the rules of natural justice, in line with the principle of proportionality the approach may depend upon the seriousness of the issue. For example, if the Council is satisfied that the investigation has allowed all sides to have their say the Panel or Committee may simply review the report without further reference to the parties.

The Council has adopted the Complaint and Hearing Procedures and reviewed these recently in accordance with best practice. It is important the Committee follow the Hearing

Procedures as adopted and follow the rules that apply to committees. The rules around access to information also apply as they do to other committees – that is the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters. Committee members should bear in mind that it is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and councillors, have confidence in its procedures and findings. Decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the local authority and the public.

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND & SUMMARY OF THE INVESTIGATOR'S INVESTIGATION & CONCLUSIONS:**

##### **SUMMARY OF COMPLAINT**

A complaint was received in August 2023 from Councillor Ernest Gibson (“the Complainant”), an elected Member of South Tyneside Council and the Chairman of the Local Government Association Coastal Special Interest Group (“SIG”) regarding the alleged behaviour of District Councillor Nick Turner under the District Council’s Members’ Code of Conduct

The Complaint referred to the alleged behaviours at two virtual meetings of the SIG on 5<sup>th</sup> June and 29<sup>th</sup> June 2023, in that Councillor Turner had contravened the Council’s Members’ Code of Conduct and in particular Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Code (details set out in the Code of conduct section above).

Full details of the complaint are not set out in the Part A report, but are included within the Part B report.

##### **COUNCILLOR’S RESPONSE**

On 18<sup>th</sup> August 2023, Councillor Turner responded by email to the Monitoring Officer, stating he was unaware of the complaint from the LGA Coastal SIG. He resigned from the SIG with immediate effect, and stated that he was shocked at how what he had said could be so misconstrued and that he obviously didn’t understand the modern mind. Councillor Turner expressed his view that he ‘always found the truth to be the best way forward and that sometimes needs pressure to emerge from overview and scrutiny’. Councillor Turner specifically responded to the comments made within the complaint and apologised unreservedly for any offence given. Full details of the Response are not set out in the Part A report, but are included within the Part B report.

##### **DECISION NOTICE TO REFER FOR EXTERNAL INVESTIGATION**

In the 25<sup>th</sup> August 2023 Decision Notice the Monitoring Officer:-

- (i) presented the relevant paragraphs of the Members’ Code of Conduct;

- (ii) summarised the Complaint (*not repeated here*);
- (iii) summarised the Subject Member's response (*not repeated here*);
- (iv) made a recommendation that an external investigation take place "due to the circumstances and the seriousness of the allegations" (*detail not repeated here*); and
- (v) gave the reasons for the decision.

The Monitoring Officer wrote: "*Both parties' comments have been sought in accordance with the Members' Code of Conduct Complaints Procedure before considering whether this case merits further investigation.*

*Whilst it is acknowledged that Councillor Turner has resigned from the LGA's Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Councillor Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated.*

*However, there is also the potential for a huge detrimental impact on the working relationship between the Council, and external stakeholders not only within the meetings but far wider. The LGA, agencies, organisations and local authorities across the Country within the SIG are national bodies and the actions of Councillor Turner are likely to be found in breach of the Code of Conduct. The alleged behaviour directed towards individuals needs to be investigated, as does whether Councillor Turner has brought the District Council into disrepute on such a national platform.*

*I would also like the investigation to explore how, and in what capacity, Councillor Turner was attending the LGA Coastal SIG, as this is not an Outside Body appointment made by the Leader. It is however, disclosed as an Other Registerable Interest on Councillor Turner's form. I have been informed Council officers may have attended with him in the past.*

*Whilst acknowledged from the information on the LGA Coastal SIG, Tendring District Council is a member and would appropriate to be so, this is not an outside body we have appointed to or can locate membership details. Although, the officer who may have had the records, has recently left the Council."*

#### **INVESTIGATOR'S CONCLUSIONS:**

We conclude, based on the balance of probabilities and the evidence available to us, that:

1. Councillor Turner breached paragraph 1.1 of the Tendring District Council Code of Conduct by failing to treat other councillors with respect.
2. Councillor Turner breached paragraph 1.2 of the Code by failing to treat local authority employees, employees, and representatives of partner organisations with respect and failing to respect the role they play.
3. Councillor Turner breached paragraph 2.3 of the Code by failing to promote equalities and behaving in a discriminatory manner.
4. Councillor Turner breached paragraph 5.1 of the Code by bringing his own role and

Tendring District Council into disrepute.

The Investigator's evaluation and conclusions on capacity, and the allegations are set out in detail in Section 9 of the Investigators Report (currently held in Part B).

### **APOLOGY & INFORMAL RESOLUTION**

Councillor Turner did offer an apology at the outset, when the complaint was initially received, however, the Monitoring Officer's thoughts were captured in the Decision Notice dated 25<sup>th</sup> August 2023, being as follows:

*"Whilst it is acknowledged that Councillor Turner has resigned from the LGA's Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Cllr Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated.*

Having read the Investigation Report, it is noted that Councillor Turner had offered a further apology for offense caused by his actions, which was described as unintended and unconscious on his part. However, the Monitoring Officer did not consider these as being appropriate or proportionate and she therefore determined to refer the matter to the Standards Committee for a hearing to be undertaken by Members.

### **HEARING PROCEDURES**

#### **Paragraph 7 of the Complaints Procedure - what happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either refer the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation.

##### **7.1.1 Informal Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with one of the Independent Persons and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or mediation and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee or Sub-Committee (*and the Town or Parish Council*) for information, but will take no further action.

##### **7.1.2 Hearing**

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will

report the Investigation Report to the Standards Committee or Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and available for public and press inspection, however, the Investigator's Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, may adjourn the meeting for a short period and deliberate together in private. The hearing will then be reconvened and the Decision will be announced in public. It is expected that this will usually be on the same day.

The Standards Committee or Sub-Committee, with the benefit of any comments or advice from one of the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the decision is contrary to a recommendation from the Investigating Officer and/or Monitoring Officer, detailed reasons will be required to be published in the Decision Notice. The Decision of the Standards Committee or Sub-Committee will also be reported to the next meeting of Full Council.

If the Standards Committee or Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

### **Hearing Procedures:**

The Council's Hearing Procedures were approved by the Standards Committee in March 2014 and reviewed at its meeting held on 24<sup>th</sup> April 2024 (minute no. 22) and are included as **Appendix C**. This procedure supplements Section 7.1.2 of the Council's Complaints

Procedure and a copy has been provided to the both the Complainant and the Member the subject of the Complaint.

All Hearings will be held in Public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applies, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing will be held in Private.

**With regards to the Exclusion of the Press and Public, the Council's Monitoring Officer's advice is as follows:**

"Acting in accordance with paragraph 7.1.2 of the Council's Complaints Procedure the Investigator's Report will only be kept confidential and remain in Part B, until the day of the Hearing to protect the parties. The Committee is required to decide whether to pass a resolution *"under Section 100A(4) of the Local Government Act 1972, for the press and public to be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act"*. In making the decision, the Committee will give consideration to whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Article 6 of the Human Rights Act 1998 *establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article (as set out in Part 5 of the Council's Constitution - Access to Information Procedure Rules Part 5.4 to 5.6)*. Consequently, it is recommended that the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator's Report in Public."

**The Hearing will proceed as follows:**

- **Opening of the Hearing by the Chairman of the Standards Committee**
- **Hearing the Complaint – Presentation of the Report by the Monitoring Officer and/or the Investigating Officer**
  - Any documentary evidence or other material
  - Witnesses as considered necessary
  - Representations to substantiate the conclusion that the Councillor has failed to comply with the Code of Conduct
- **Hearing the Complaint – Questions by the Respondent Councillor**
  - Questions to the Investigating Officer
  - Any witnesses called by the Investigating Officer(questions only, not cross-examination and only through the Chairman – no statements)
- **Hearing the Complaint – Committee Members' Questions**
  - Questions to the Investigating Officer
  - Any witnesses called by the Investigating Officer(questions only, not cross-examination and only through the Chairman – no statements)
- **The Respondent Councillor's case – by the Respondent Councillor (or their representative)**
  - Present their case

- Call any witnesses as required by the Councillor
- Representations as to why they consider that they did not fail to comply with the Code of Conduct

The Investigating Officer may question the Respondent Councillor and/or any witnesses (not cross-examination and only through the Chairman).

- **Summing Up by Investigating Officer and the Respondent Councillor (or their representative)**
- **An Independent Person to provide views, to be taken into account, by the Committee before it makes its decision on an allegation, which has been investigated (section 28(7) of the Localism Act 2011)**
  - These views should be given in the formal meeting, prior to the Committee retiring to deliberate.
- **The Committee's Deliberations as to whether there has been a failure to comply with the Code of Conduct**  
(retire to consider and deliberate in private with Officers supporting the Committee to provide procedural advice and record the reasons for the decision).
- **The Committee's Decision as to whether there has been a failure to comply with the Code of Conduct announced by the Chairman with detailed reasons, which will be included within the published Decision Notice.**
- **Representations as to Sanction (if the Committee's determines there has been a breach of the Code of Conduct)**
  - By the Respondent Councillor.
- **An Independent Person to provide views, to be taken into account, by the Committee before it makes its decision on any sanctions (section 28(7) of the Localism Act 2011)**
  - These views should be given in the formal meeting, prior to the Committee retiring to deliberate.
- **The Committee's deliberations as to Sanction(s) to be applied**  
(retire to consider and deliberate in private with Officers supporting the Committee to provide procedural advice and record the reasons for the decision)
- **The Committee's decision as to Sanction(s) to be applied.**

#### **Paragraph 9 of the Complaints Procedure - What happens at the end of the hearing?**

- 9.1 At the end of the hearing, the Chairman will announce the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-

Committee, and send a copy to the Complainant and to the Member (*and to the Town or Parish Council if appropriate*), make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.

#### **MATTERS FOR CONSIDERATION BY THE COMMITTEE**

The Committee will receive and consider the Investigator's Report (currently held in Part B), its findings on capacity and the complaint, witness evidence (orally or in writing) and representations submitted during the hearing from both the Investigator and the Respondent Councillor and form an evaluation of the evidence, findings and conclusions within the Investigator's Report.

The Committee is required to determine:

- (a) was Councillor Turner acting in official capacity; and if so
- (b) is there sufficient evidence to satisfy, on a balance of probabilities, that one or more of the following paragraphs of the District Council's Code of Conduct were breached:
  - (i) Paragraph 1.1 – I treat other councillors and members of the public with respect;
  - (ii) Paragraph 1.2 – I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play;
  - (iii) Paragraph 2.3 - I promote equalities and do not discriminate unlawfully against any person; and
  - (iv) Paragraph 5.1 – I do not bring my role or local authority into disrepute.

These matters are covered within Section 9 of the Investigator's Report, currently held within Part B.

In its deliberations the Committee should consider the impact of Article 10, which is covered in Part B in more detail.

#### **CONSULTATION REQUIREMENTS WITH THE INDEPENDENT PERSON**

##### **Paragraph 11 of the Complaints Procedure - Who are the Independent Persons?**

11.1 The Council has appointed four Independent Persons to support the Standards Committee and its Sub-Committee.

11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person Protocol which sets out some general principles.

The Independent Person Protocol is contained with Part 6 of the Council's Constitution at Part 6.39 to 6.41. Arrangements put in place by the Council under Section 28 (6)(b) of the Localism Act 2011 must include provision for the appointment by the authority of at least one Independent Person, 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 in any other such circumstances it considers appropriate.

The Protocol sets out the expected conduct of the Council's Independent Persons (IP) when carrying out their consultation functions in relation to an allegation that a Member of the District Council has failed to comply with the relevant Council's Code of Conduct. The Independent Person can give views but is not the decision maker.

Paragraph 9 of the Protocol states - *"The outcome of any prior consultation with the IP undertaken by the MO [Monitoring Officer] will be included within any written report presented to the Standards Committee or Sub-Committee for their consideration. The IP's views must be sought before a decision is made after a complaint has been investigated. This will be undertaken by the MO in the first instance, but in some circumstances, it may be appropriate for the Committee or Sub-Committee to do this directly."*

An Independent Person was not consulted at the stage a decision was made that the complaint merited investigation. The Monitoring Officer has discretion to consult and due to the content of the complaint, did not consider it necessary to do so on this occasion.

One of the Council's appointed Independent Persons, Jane Watts, was consulted by the Monitoring Officer once the finalised Investigation Report was received concluding that evidence existed that the Code of Conduct had been breached. The consultation was undertaken prior to the Monitoring Officer finalising her decision to refer the matter to the Standards Committee for a hearing – these comments are contained within the Part B report.

Paragraph 22 of the Protocol states - *"In each complaint, when necessary;*

- (a) one IP will be selected by the MO for initial consultation and if required, available to the Standards Committee or Sub-Committee for consultation as part of the Complaints Procedure and in accordance with the Localism Act 2011; and*
- (b) if requested by a party, the other IP will be made available to the Complainant or to the Member subject of the complaint – see paragraph 20 above."*

The Monitoring Officer informed Councillor Turner that he could speak to an Independent Person and offered the services of David Irvine, however at the time of writing, no request for such contact has been received from Councillor Turner.

Paragraph 10 of the Protocol states - *"Whilst conducting hearings, if the Standards Committee or Sub-Committee meetings are adjourned for members' deliberations, an IP may be invited into these deliberations and invited to comment."* However, the decision in *Watson v. General Medical Council [2005] EWHC 1896* supports the principle that the Independent Persons should not provide their views to the Committee in private, as all sides must be able to hear and comment, as they are expressing opinions and views, which can be distinguished from legal or procedural advice to the panel. However, such advice must be repeated in open session. Therefore, it was considered appropriate to amend the District Council's Hearing Procedures to ensure that it is clear the Independent Persons will not retire with the Committee, but will provide their views in the formal meeting. These amendments were approved by the Standards Committee at its meeting on 24<sup>th</sup> April 2024 (minute no. 22).

In accordance with the Localism Act 2011 and as set out in paragraph 10.3 of the Complaints Procedure, the Standards Committee must consult an Independent Person on their views and have taken these into consideration before making any their decision

(following their deliberations) as to whether a Councillor's behaviour constitutes a failure to comply with the Code of Conduct.

Should the Committee determine a failure to comply with the Code of Conduct has been found an Independent Person must have been consulted and their views taken into consideration before the Standards Committee takes any decision as to any action.

Paragraph 7.1.2 of the Complaints Procedure states:

*"The Standards Committee or Sub-Committee, with the benefit of any comments or advice from one of the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct, and dismiss the complaint.*

*If the Standards Committee or Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter".*

## **SANCTIONS**

The sanctions which are afforded to the Committee, if they determine that the Code of conduct has been breached, are set out at Section 8 of the Complaints Procedure and are repeated below:-

### **8. What action might the Standards Committee or Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

8.1 The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-

- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
- 8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;
- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to (*or recommend that the Town or Parish Council*) arrange training for the Member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (*or recommend to the Town or Parish Council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Town or Parish Council*);
- 8.1.7 Recommend to relevant Group Leader (or in the case of un-grouped

Members, recommend to Council or to Committee) the withdrawal of (*or recommend to the Town or Parish Council that it withdraws*) facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or

8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee) the exclusion of (*or recommend that the Town or Parish Council exclude*) the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.

8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.

8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

The Monitoring Officer noted in the Decision Notice of 25<sup>th</sup> August 2023 that, pending completion of the Investigation, "the Leader of the Conservative Group, Councillor G Guglielmi, has suspended Councillor Turner from the Conservative Group and removed him from Committees whilst the investigation takes place. The Leader of the Council has done the same with regards to outside bodies." Since this time, Councillor Turner has left the Conservative Political Group on the Council and has sat as a non-aligned Councillor (i.e. not within a Political Group). At the time of writing, Councillor Turner does not serve on any Council committees or outside bodies on behalf of the Council.

Appeals are covered within Section 13 of the Council's Complaints Procedure, which states:

13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee.

13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

As with all decisions made by a local authority, they are subject to legal challenge by way of Judicial Review if one of the administrative grounds are made out.

## **APPENDICES**

- **Appendix A – Code of Conduct**
- **Appendix B - Complaints Procedure**
- **Appendix C – Hearing Procedures**

- **Appendix D – Guidance on the Local Government Association Model Councillor Code of Conduct dated 8<sup>th</sup> July 2021**

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