

STANDARDS COMMITTEE

16 MAY 2024

REPORT OF THE MONITORING OFFICER

B.1 REPORT OUTCOME OF MEMBERS' CODE OF CONDUCT INVESTIGATION – REFER MATTER FOR A HEARING TO BE CONDUCTED

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.

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

This Part B Report appends the Investigation Report and provides additional information and guidance for the Committee to consider through the Hearing process.

EXECUTIVE SUMMARY

The Part A Report (A1) provides a detailed Executive Summary regarding the complaint under consideration by the Committee. Councillor Ernest Gibson ("the Complainant"), an elected Member of South Tyneside Council and the Chairman of the Local Government Association (LGA) Coastal Special Interest Group (SIG) made a complaint ("the Complaint") regarding the alleged behaviour of District Councillor Nick Turner under this District Council's Members' Code of Conduct (**The Code of Conduct is Appendix A to the A1 Report**).

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) (**Appendix B to the A1 Report**), which was adopted by full Council on 26th November 2013. Details of the complaint are referred to within the body of this report and in the **Final Investigation Report attached as Appendix E**.

On the 25th 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. The complaint and the Monitoring Officer's Decision Notice was used to define the scope of the investigation (as set out in Section 5 of the Investigation Report). Councillor Turner's initial response to the Complaint is included at section 5.2 of the Investigation Report.

Following a thorough investigation (the approach and formal interview methodology is set out in Section 6 of the Investigation Report) it was 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. Further information on Capacity and the Findings are referenced below.

Both parties had the opportunity to comment on the draft Investigation Report and the findings contained therein. Through consideration of the draft report, Councillor Turner did not indicate that he disputed the contents, the evidence presented or that he would wish to make further representations to those included within his interview. Councillor Turner's response is set out in Section 6.3 of the Investigation Report. The Investigation Report was finalised on 10th January 2024 and formally sent to Councillor Turner on 23rd February 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, by the Monitoring Officer that seeking their view was beneficial, prior to making the decision. The consultation response is contained later on in the report.

Councillor Turner and the Complainant were notified that the Monitoring Officer had exercised her discretion to refer the matter to the Standards Committee so that the Investigation Report could be considered by Members through the hearing process.

HEARING & DECISION:

The Standards Committee conducts 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.

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 to protect the parties. Advice as to the exclusion of public and press is contained within the Part A report (A1).

Procedures relating to the hearing are set out within the body of the A1 Report and attached as **Appendix C to that report**.

INVESTIGATION REPORT & EVIDENCE

The report should be treated as an explanation of all the essential elements of the case and a justification for why the Investigation has concluded that there has been a breach of the Code of Conduct or not. The report should cover the agreed facts, any disputed facts, whether those facts amount to a breach of the Code or not; and the reasons for reaching

that conclusion.

In many cases, the Committee may not need to consider any evidence other than the Investigation Report and any other supporting documents. However, the Committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The Standards Committee must determine whether, having considered the report and the evidence presented, Councillor Turner was acting 'in capacity', despite not being formally appointed to the LGA Coastal SIG as an Outside Body on behalf of Tendring District Council.

Should the Standards Committee, following consultation with the Independent Person determine, on a balance of probabilities that Councillor Turner has failed to comply with the Members' Code of Conduct, they have the power to take action as may be relevant, 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 and included within the A1 Report.

RECOMMENDATION

That the Standards Committee in undertaking a Hearing in accordance with the Council's Hearing Procedures, as set out in Appendix C to report A1:-

- (a) determines, on a balance of probabilities, whether Councillor Nick Turner was acting 'in capacity' at the meetings of the Local Government Association Coastal Special Interest Group on 5th and 29th June 2024 and if so;**
- (b) whether, on a balance of probabilities, he failed to comply with Paragraphs 1.1, 1.2, 2.3 and/or 5.1 of the District Council's Members' Code of Conduct (with detailed reasons to be provided to support that determination);**
- (c) subject to (b), determine what action, if any, the Committee should take as a result of any such found failure, following consultation with an Independent Person; and**
- (d) considers any further recommendations arising through the Hearing Procedure.**

REASONS FOR THE RECOMMENDATIONS

Complaints received relating to 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) (**Appendix B to the A1 Report**), which was adopted by full Council on 26th November 2013.

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.

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.

ALTERNATIVE OPTIONS CONSIDERED

As set out in the Part A Report (A1) within the Standards Committee agenda.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

As set out in the Part A Report (A1) within the Standards Committee agenda.

MEMBERS' CODE OF CONDUCT

Under Section 27(2) of the Localism Act, on 22nd November 2022, the Council adopted a new, revised Tendring District Council Members' Code of Conduct with a commencement date of 23rd May 2023. In doing that, it adopted the Local Government Association Model Code of Conduct which had been drafted in 2020 (version 3).

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

2. Bullying, harassment and discrimination

As a Councillor:

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

5. Disrepute

As a Councillor:

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

LEGAL REQUIREMENTS

Legislation and Constitutional matters are addressed in the Part A (A1) Report.

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights as the outcome of any hearing will not impact upon the rights of the councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice (*R (Greenslade) v Devon County Council* 2019). That means that the councillor must know what they are accused of and be given the opportunity to comment on the allegations.

Any investigation should therefore bear in mind some key principles:

73. Proportionality: That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example, where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up.
74. Fairness: The investigation should make sure that the subject Member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report.
75. Transparency: As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case.
76. Impartiality: An investigator should not approach an investigation with pre-conceived ideas and should avoid being involved where they have a conflict of interest.

The Investigation Report must make one of the following findings on the balance of probabilities that:

77. there have been one or more failures to comply with the Code of Conduct; or
78. there has not been a failure to comply with the Code.

If the Monitoring Officer decides the matter should be referred for a hearing, the Investigation Report should be accompanied by information explaining that a hearing will be held and the procedure to be followed. Councillor Turner was notified on 29th January 2024 that the matter would be referred for a hearing and he was provided with a copy of the Hearing Procedures adopted and approved in March 2014. Councillor Turner was subsequently provided (on 7th May 2024) with the revised Hearing Procedures approved

by the Standards Committee on 24th April 2024 and he was requested to confirm the following information in writing:

79. whether he would wish to be represented at the hearing and if so, by whom;

80. whether he disagreed with any of the findings of fact in the investigation report, including reasons for any of these disagreements;

81. whether he would wish to give evidence to the hearing, either verbally or in writing;

82. whether he would wish to call relevant witnesses to give evidence to the Standards Committee;

83. whether he would request any part of the hearing to be held in private; and

84. whether he would request any part of the investigation report or other relevant documents to be withheld from the public.

An update will be provided to the Committee prior to the meeting. Councillor Turner was previously notified that the Investigator was not intending on calling any of the witnesses who had given evidence through the investigation. Further information is set out with regards to witnesses later on within the Report.

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 and provided a useful structure to follow when considering allegations and evidence in relation matters which could concern Article 10. The relevant paragraphs are set out below to demonstrate the decision making process and matters to take into account in the balancing exercise.

Paragraph 50 of the Judgement:

In considering that issue, the case tribunal adopted the three-stage process used by Wilkie J in [Sanders No \(1\)](#) (at [72]), and by Beatson J in [Calver](#) (at [39]), which the tribunal set out as follows:

"1. Can we as a panel as a matter of fact conclude that the [Appellant's] conduct amounted to a relevant breach of the Code of Conduct?

2. If so, was the finding of a breach and the imposition of a sanction prima facie a breach of article 10?

3. If so, is the restriction involved one which is justified by reason of the requirement of article 10 subparagraph 2."

Question 1 requires consideration of the Code of Conduct interpreted without reference to article 10 rights, those being taken into consideration in question 2. Those three questions go

primarily to breach. The tribunal considered the actual sanction to be imposed separately, in their Sanction Decision. It is rightly common ground before me that, if article 10 is engaged and a prima facie breach of it found, then the actual sanction imposed has to be proportionate and justified under article 10(2).

Paragraph 53 of the Judgement:

53. Therefore, on the Wilkie J approach, the questions for me to consider in this appeal with regard to breach are as follows:

i) Leaving aside any restriction on interpretation as a result of article 10 and common law rights of freedom of expression, was the case tribunal entitled as a matter of fact to conclude that the Appellant's conduct in respect of each of incidents of which complaint was made breached the provisions of paragraphs 4 and/or 6 of the relevant Code of Conduct?

ii) If so, was the finding in itself a prima facie breach of article 10(1)?

iii) If so, was the restriction involved by the finding justified by reason of article 10(2)?

Paragraph 73 of the Judgement:

73. Furthermore, the general approach of the case tribunal to breach cannot be faulted. They referred to the three-stage approach of Wilkie J in Sanders No 1 – as I have indicated, appropriately setting out the questions they needed to answer – and they rigorously and meticulously applied that approach to each alleged breach of the Codes of Conduct. In respect of several, they found that, although the Appellant was in breach of the Code on the basis of a bare interpretation of its provisions, to make a finding of breach would breach the Appellant's article 10 rights (e.g. the use of the words "a shambles" and "shambolic" to describe the management of the Adult Social Services Department at the Scrutiny Committee meeting on 14 February 2007 (see paragraph 91(i) below)). Of course, this court is required to exercise particular scrutiny because of rights of expression involved – often, here, with enhanced protection. However, the assessment of whether the facts as found amounted to (say) a failure to show respect and consideration to others in circumstances such that it was necessary to restrict the Appellant's right of freedom of speech requires an evaluative judgment involving a number of factors (including the restriction of the right to speak) that have to be weighed together. Therefore, despite the small margin of appreciation in respect for article 10 in the political arena, the matter involves a relatively open-textured standard upon which many factors operate. Consequently, this court should be cautious before interfering (see paragraph 46(v) above).

Paragraph 46(v) of the Judgement:

46. Of course, the extent of the deference to be given will depend upon the nature of the issue involved, and the circumstances of the case (see E I Dupont De Nemours & Co v S T Dupont [2003] EWCA Civ 1368 at [94] per May LJ). The greater the advantage of the tribunal below, the more reluctant the appeal court should be to interfere (Assicurazioni Generali at [15]). Applying that general proposition, the courts have considered a wide spectrum of cases.

v) Similarly, where an evaluative judgment has to be made on the primary facts, involving a number of different factors that have to be weighed together. In respect of such open-textured issues, Beatson J said in Calver (at [46]):

"The relevant legal principles in this area do not provide the panel or the court with bright

lines... They lead to a process of balancing a number of interests."

R (Mullaney) v Adjudication Panel for England [2009] EWHC 72 (Admin) at [95]-[96] per Charles J is to the same effect. These are therefore matters of balance and degree, in respect of which different tribunals could legitimately come to different conclusions: and the more factors there are to weigh, and/or the vaguer the standard being applied, the more reluctant an appellate court will be to interfere (Assicurazioni Generali at [18], citing with approval Pro Sieben Media AG v Carlton UK Television Limited [1999] 1 WLR 605 at page 612).

Paragraph 99 of the Judgement:

99. I accept that the balancing exercise in respect of this incident required care; but the tribunal clearly had the enhanced protection of article 10 well in mind – that is clear from paragraph 15 of the Breach Decision – and also the private and public interests that were on the other side of the balance. Their consideration of these matters was meticulous, and their analysis unimpeachable. In the circumstances, I cannot say that the tribunal's conclusion that this was a breach of the Code, and their finding of such breach was proportionate and justified under article 10(2), were wrong.

Paragraphs 147-149 of the Judgement:

147. The Appellant does not now challenge the finding that the words were said, nor could he. The consideration and analysis of the evidence by the tribunal over 21 pages (paragraphs 6.1-6.28 of the Findings of Fact) are meticulous. Mr Henderson simply submits that there is no basis for the conclusion that the Appellant's right of free speech – with its enhanced protection – could be overridden in this case.

148. I disagree. The case tribunal set out why they considered a finding of breach was proportionate and justified (paragraph 42 of the Breach Decision):

"The comments are made in the context of a course of conduct detrimental to Susan Lewis. Comments were said to an officer directly accountable and answerable to Susan Lewis. They were made early after Maureen Harkin had commenced work with the Authority. They were said with the intention of undermining Susan Lewis. The Respondent had been advised previously in writing by the Chief Executive of the appropriate route and procedure, in particular appraisal, to follow if he had issues as to Susan Lewis's performance."

149. In my view, those reasons are compelling. I cannot say that the tribunal's conclusion was wrong.

Guidance on the Local Government Association Model Councillor Code of Conduct dated 8th July 2021 (Appendix D – Part A (A1)):

Speaking about freedom of expression the Guidance says: "The requirement to treat others with respect must be balanced with the right to Freedom of Expression. Article 10 of the European Convention on Human Rights protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.

However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on

freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. Democracy depends on people being free to express, debate and criticise opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting. A balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.”

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 adopted Members’ Code of Conduct

The Complaint referred to the alleged behaviours at two virtual meetings of the SIG on 5th June and 29th June 2023, in that Councillor Turner had contravened the Council’s adopted 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 Members’ Code of Conduct section above).

The Full Details of the Complaint are contained within the Investigator’s Report (Appendix E) at Section 5.1.

COUNCILLOR’S RESPONSE:

Full details of the Subject Member Response to the Complaint are set out in Section 5.2 of the Investigator’s Report.

DECISION NOTICE TO REFER FOR EXTERNAL INVESTIGATION:

In her 25th 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 her decision (as set out within the A1 Report).

INVESTIGATION:

The Complaint and the Monitoring Officer’s Decision were used as the Scope of the Investigation.

The Formal Interview Methodolgy is set out in Section 6.2 of the Investigator’s Report, confirming that evidence was gathered at formal interviews from the following people (listed in the order in which the Investigator interviewed them):

- (i) Councillor Ernest Gibson – Complainant, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor;
- (ii) Sidonie Kenward - Marine and Terrestrial Planner at the Marine Management Organisation;
- (iii) Beccy MacDonald-Lofts – Lead Officer for the LGA Coastal Special Interest Group;
- (iv) Ross MacLeod - Public Affairs Manager (Water Safety), RNLI;
- (v) Rhys Hobbs - Environmental Resilience and Adaptation Manager, Cornwall Council;
- (vi) Councillor Derek Bastiman – Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor;
- (vii) Alysha Stockman - Partnerships Engagement Support Officer at East Suffolk Council;
- (viii) Councillor Noel Galer – Great Yarmouth Councillor;
- (ix) Councillor Nick Turner – Subject Member and Tendring District Councillor; and
- (x) Nick Hardiman – Expert Adviser – Coast |National FCRM at the Environment Agency.

INVESTIGATION FINDINGS – Section 7 of the Investigation Report

In the course of every investigation whether a subject member is “in capacity” must be established. 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”. If a subject member is not found to be in capacity, then a code of conduct is not engaged.

In this case, the Monitoring Officer specifically requested the Investigation:-

“to explore how and in what capacity Councillor Turner was attending the LGA Coastal SIG, [since] 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 [of the SIG] and it would appropriate [for it] to be so, [yet] this is not an outside body we have appointed to, or [for which we] can locate membership details. Although, the officer who may have had the records, has recently left the Council.”

The Investigation Report sets out in detail what does ‘*In capacity mean*’ with reference to case law and the Local Government Association’s supporting guidance. Information is provided regarding the Council’s Records for Outside Bodies, its website, expenses claimed, subscription invoices paid and Councillor Turner’s Register of Interests. Details of interviews with Councillor Turner, Councillor Gibson and Beccy MacDonald-Lofts in Section 7.4 of the Investigator’s Report provide evidence as to whether Councillor Turner was acting ‘in capacity’ at the LGA’s Coastal SIG. Evaluation and Conclusions on ‘*in capacity*’, are set out in section 9.1.1 of the Investigator’s Report and the Monitoring Officer agrees with this assessment and would have no reason to depart from it. The Standards Committee must determine whether, having considered the Report and the

evidence summarised, Councillor Turner was acting in capacity, even though he was not formally appointed to the LGA Coastal SIG as an Outside Body on behalf of Tendring District Council.

ALLEGATIONS:

Section 9.2. of the Investigator's Report looks at the potential breaches of four paragraphs of the Code as identified by the Complainant and reference is made to the LGA's Guidance (Appendix D to the Part A Report (A1)). The detail of Section 9.2 is not repeated here but the Committee is expected to pay particular attention to the content under each allegation and the application of the Code, the Guidance and the evaluation and conclusions of the evidence in respect of both meetings held on 5th and 29th June 2023.

The Monitoring Officer, in referring the outcome of the Investigation to the Standards Committee for determination after undertaking a Hearing and with due regard to the requirements of decision making by a public authority, wishes to draw the Committee's attention to the protection and right of freedom of expression afforded by Article 10, and that interference with this right must be justified, necessary and proportionate in addition to the positive duties to promote and eliminate discrimination under the Equality Act 2010.

RESPECT

Addressing the question of whether the Respect provision of the Model Code is 'a gag on councillors', the Guidance says:

"This provision of the Code (Paragraph 1) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through councillors' arguments and public debate are an essential part of the cut and thrust of political life. Councillors should be able to express their opinions and concerns in forceful terms. Direct language can sometimes be appropriate to ensure that matters are dealt with properly. The code is not intended to stifle the expressions of passion and frustration that often accompany discussions about local authority business."

Speaking about freedom of expression the Guidance says: *"The requirement to treat others with respect must be balanced with the right to Freedom of Expression. Article 10 of the European Convention on Human Rights protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.*

However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. Democracy depends on people being free to express, debate and criticise opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting. A balance must still be struck between the right of individuals to express points

of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.”

DISCRIMINATION

“The Equality Act 2010 imposes positive duties on local authorities to promote equality and to eliminate unlawful discrimination and harassment. Under the Act your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner. You must be careful not to act in a way, which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority’s fulfilment of its positive duties under the Act. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct. If you are unsure about the particular nature of the duties of your authority you should seek advice from the monitoring officer or parish clerk.

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.”

DISREPUTE

The Guidance says the following about 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. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public’s confidence in your ability to discharge your functions as a councillor or your local authority’s ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor’s behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

- 1. reducing the public’s confidence in them being able to fulfil their role; or*
- 2. adversely affecting the reputation of your authority’s councillors, in being able to fulfil their role.*

Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute.

EVALUATION - 5th JUNE MEETING:

The Committee are guided to Section 9.2.5 of Appendix E, to consider the Investigator’s evaluation of the conduct described to have taken place at the 5th June 2023 meeting and the evidence provided by the witnesses and Councillor Turner himself. As Monitoring Officer, presenting this report, the following text was particularly important and in her view

summarises the conclusion that there is sufficient evidence on a balance of probabilities to support that the Code of Conduct was breached by Councillor Turner at this meeting:

“When we spoke to Cllr Turner, he suggested that his behaviour as described in the Complaint, was an exaggeration and was not sufficient to breach the Code. However, at the same time, he seemed to us to be recognising that his behaviour had not been acceptable. Amongst other words, he described himself as having been “out of court”. He had “instantly realised [he] was becoming disruptive”, he “definitely went too far”, was “robust” and “firm”. He recognised that he had “upset people” and that he was a “contentious” person. “They may not like it, but I stick to my guns”, he said. However, he denied making “personal attacks” saying “they are being paranoid”. In any event, he saw fit to “apologise unreservedly for any offence given”.

When we spoke to Cllr Turner we were left in no doubt that he feels strongly and passionately about defending the coastline in Frinton (and, indeed, about other local issues). But, at the same time, it appeared to us that he had failed to control his strength of feeling at the 5th June meeting and that the Chair of the meeting also failed in her efforts to control him. His passion for his town cannot serve as anything other than an explanation for his unacceptable behaviour at the meeting. It does not excuse that behaviour.

In behaving as he did we conclude that Cllr Nick Turner breached the Tendring District Council Code of Conduct by showing a lack of respect by attacking in a personal way two of those who attended the meeting and by failing more generally to respect others who had attended the meeting. In behaving as he did he brought his own role as a councillor into disrepute and, in acting as he did whilst he was a representative of Tendring District Council on an outside body, he brought his Council into disrepute.”

EVALUATION - 29th JUNE MEETING:

The Committee are guided to Section 9.2.6 of Appendix E, to consider the Investigator's evaluation of the conduct described to have taken place at the 29th June 2023 meeting and the evidence provided by the witnesses and Councillor Turner himself. As Monitoring Officer, presenting this report, the following text was particularly important and in her view summarises the conclusion that there is sufficient evidence on a balance of probabilities to support that the Code of Conduct was breached by Councillor Turner at this meeting:

“To some extent his behaviour on 29th June appeared to mirror his behaviour at the 5th June meeting.

- *Interviewees referred to Cllr Turner's derogatory comments about an external organisation, on this occasion the RNLI, with which he had “an axe to grind”.*
- *He made what felt like a personal attack, this time on Ross MacLeod who was at the meeting to represent the RNLI.*
- *Witnesses spoke of his unwillingness to be diverted away from trying to focus on the business of the meeting on issues local only to him – this time, for example, in challenging the RNLI's decision to change the class of lifeboat in Walton and Frinton.*
- *They spoke of his behaviour being part of a pattern over the years.*
- *Cllr Turner showed a “low level of self-awareness” and was “oblivious to the offence*

he was causing”.

- Witnesses said he was “not helpful or constructive”, he was “very rude”, “derogatory” and “offhand”. He was disrespectful towards others - “He sees no good in the efforts of anyone else and just doesn’t accept other people’s comments, decisions, or explanations.”
- They spoke of Cllr Turner being “in transmit mode”; he “wasn’t willing to listen to what other people had to say”.
- In behaving as he did, in the eyes of some, he damaged the reputation of the SIG, this time in front a much larger audience, some of whom had not attended previously.
- Once again Cllr Turner felt that he had to “apologise unreservedly for any offence given”.

Based on this evidence we conclude that Cllr Turner again breached the Tendring District Council Code of Conduct by showing a lack of respect by attacking a representative of an external organisation in a personal way and by failing more generally to respect others who had attended the meeting. In behaving as he did he brought his own role as a councillor into disrepute and, in acting as he did whilst he was a representative of Tendring District Council on an outside body, he brought his Council into disrepute.

However, during this meeting, Cllr Turner went further than he had done at the 5th June meeting.

...

On the balance of probability we therefore tend to the conclusion that Cllr Turner made the remarks he made out of ignorance rather than malice and that his language was clumsy and patronising rather than being rooted in what might be described as out-and-out racism, which might have attracted criminal sanction.

Notwithstanding his motives, based on the evidence available to us and the balance of probability, it appears to us that Cllr Turner breached the Tendring District Council Code by exhibiting discriminatory behaviour. In particular (and using the words of the Guidance), he (i) made comments, slurs, jokes, statements, questions, or gestures that were derogatory or offensive to an individual’s or group’s characteristics; (ii) promoted negative stereotypes relating to individual’s or group’s characteristics; (iii) made racial or ethnic slurs, insults or jokes: and (iv) showed intolerance toward religious customs.

In reaching that conclusion we note what appear to be pertinent words from the Guidance which say, “A councillor’s personality and life experiences will naturally incline them to think and act in certain ways. They may form views about others based on those experiences, such as having an affinity with someone because they have a similar approach to life or thinking less of someone because they are from a different generation. This is known as “unconscious bias” and it can lead people to make decisions based on biases or false assumptions. Councillors need to be alert to the potential of unconscious bias and ensure they make decisions based on evidence, and not on assumptions they have made based on biases.”

We also note and agree with the words of an interviewee who appeared to us to be saying that, even though she did not feel personal offence at what he had said, Cllr

Turner's behaviour had reflected badly on the community he represented as a councillor. In other words, he had brought Tendring District Council into disrepute."

The draft report was shared with the Complainant and the Subject Member. Councillor Turner's response is included at Section 6.3 of the Investigator's Final Report.

CONCLUSIONS FROM INVESTIGATION

Based on the balance of probabilities and the evidence available, that:

1. Councillor Nick 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 Investigator's Report.

Having considered the Investigation Report thoroughly, the evidence presented, Councillor Turner's responses at the interview and to the draft report, the Monitoring Officer is in agreement with the conclusions reached through the investigation and in accordance with the Complaints Procedure, has referred the matter to the Standards Committee to hold a hearing, to determine whether Councillor Turner's behaviour constitutes a breach of the Code of Conduct on all four paragraphs.

CONSULTATION WITH INDEPENDENT PERSON PRIOR TO HEARING STAGE

From Lisa Hastings, Monitoring Officer to Independent Person via email on 25th January 2024:

"Dear Jane,

Further to Karen's email and to progress to the next stage of the process, in respect of the complaint against Cllr Turner, I am required to decide either to refer the matter for a hearing before the Standards Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation. I have included the relevant extracts from the procedure for ease of reference

Although the procedure does not require me to consult an Independent Person if I consider that informal resolution is not an appropriate course of action, and that the matter should be referred for a hearing before the Standards Committee, I feel seeking your views would be beneficial.

Councillor Turner offered an apology at the outset, when the complaint was received, however, at the time I considered this to be an apology which did not demonstrate being sorry for the alleged conduct, it appeared more about that others were offended by his actions and a lack of the impact of those behaviours. Throughout the investigation,

Councillor Turner has offered further apologies and these are captured within the Investigator's Report however, again, I do not consider these to be sufficient to recognise the seriousness and scale of the complaint, the national platform on which the behaviours were witnessed, the number of agencies involved and the potential damage to Tendring District Council. There is no acceptance of the Code of Conduct, breaches thereof, even having seen the final report and an apology has not been given to TDC. Therefore, in the circumstances, I feel that it is not appropriate to seek a further apology but to refer the matter to the Standards Committee for a hearing to be undertaken by Members."

Reply from Independent Person to Monitoring Officer via email on 25th January 2024.

"Dear Lisa,

Having read the investigator's report, I am in complete agreement with you - I don't think either mediation or an informal resolution is appropriate in this case.

I don't think Councillor Turner believes that his conduct needs to change; he seems to think that others are too sensitive if they find him disrespectful, overbearing or are offended by what he says.

Kind regards,

Jane"

HEARING PROCEDURES & EVIDENCE

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? Full Details on the Council's procedures are provided within the Part A Report (A1).

Hearing Procedures:

The Council's Hearing Procedures were reviewed and amended by the Standards Committee at its meeting held on 24th April 2024 (Minute No. 22). This procedure supplements Section 7.1.2 of the Council's Complaints Procedure and a copy has been provided to Councillor Turner. Upon receipt of the notification that a Hearing was required and of a copy of Hearing Procedures, Councillor Turner requested the Investigator to call witnesses in support of his report. This was not considered necessary however, witness statements were provided for the following witnesses and these statements are attached as Annex 1-9:

- Annex 1 – witness statement of Cllr Ernest Gibson, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor
- Annex 2 – witness statement of Sidonie Kenward, Marine and Terrestrial Planner at the Marine Management Organisation
- Annex 3 – witness statement of Beccy MacDonald-Lofts, Lead Officer the LGA Coastal Special Interest Group
- Annex 4 – witness statement of Ross MacLeod, Public Affairs Manager (Water Safety), RNLI
- Annex 5 – witness statement of Rhys Hobbs, Environmental Resilience and Adaptation Manager, Cornwall Council
- Annex 6 – witness statement of Cllr Derek Bastiman, Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor

- Annex 7 – witness statement of Alysha Stockman, Partnerships Engagement Support Officer at East Suffolk Council
- Annex 8 – witness statement of Cllr Noel Galer, Great Yarmouth Councillor
- Annex 9 – witness statement of Nick Hardiman, Expert Adviser – Coast National FCRM at the Environment Agency

Councillor Turner requested that the following witnesses were called on his behalf so that his team could question them at the hearing. Requests were sent, however, all of them who responded declined to attend, wishing to rely on their written statements only. Beccy Macdonald-Lofts however, did agree to answer any written questions from Councillor Turner, the Chairman of the Committee or the Committee itself. Councillor Turner has been provided with the information, which has been acknowledged, any response received will be provided to the Committee.

WITNESS	ORGANISATION	RESPONSE
Sidonie Kenward	Senior Marine Planner, Marine Management Organisation	Thank you for the opportunity to attend however I politely decline. My detailed statement covers everything.
Ross MacLeod	Public Affairs Manager (Water Safety), RNLI	Thanks for the email and apologies for the delay. After careful consideration I've decided to politely decline Cllr Turner's request to attend the hearing as I don't have anything further to add to the information already provided.
Beccy MacDonald-Lofts	Lead Officer, Local Government Association Coastal Special Interest Group Co-Secretariat All Party Parliamentary Group for Coastal Communities	Unfortunately, I will be away attending a conference in Blackpool on that day and so it is looking very unlikely that I will be able to attend. However, if Cllr Turner, the Chair or Committee have any questions for me please do feel free to send them over and I will send you a written response.
Councillor Gibson	South Tyneside Council	No response received
Councillor Bastiman	Conservative member of North Yorkshire Council	No response received
Councillor Noel Galer	Great Yarmouth Councillor	No response received

Nick Hardiman	Expert Adviser – Coast National FCRM at the Environment Agency	No response received
Rhys Hobbs	Environmental Resilience and Adaptation Manager, Cornwall Council	No response received

EVIDENCE

The Committee, through its chairman, controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. The Local Government Association’s Guidance on Member Model Code Complaints Handling issued in 2021 states:

“In many cases, the panel may not need to consider any evidence other than the investigation report and any other supporting documents. However, the panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report”.

“The panel can ask that these questions be directed through the chair. The panel can also question witnesses directly and the Independent Person should also be asked if they wish to ask any questions.”

“If the panel believes, however, that questions are irrelevant or oppressive then the chair should stop that particular line of questioning.”

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. However, the panel has the right to govern its own procedures”

MATTERS FOR CONSIDERATION BY THE COMMITTEE

The Committee will receive and consider the Investigator’s Report, its findings on capacity and the complaint, witness evidence 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.

Once considering whether on a matter of fact and balance of probabilities that the conduct complained of breached the Code of Conduct, consideration should be given to Article 10. In that does this finding, in itself a prima facie breach of Article 10 and if so, whether an interference can be justified through being necessary and proportionate, in balancing the private and public interests that were on the other side.

CONSULTATION WITH THE INDEPENDENT PERSON

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 take these into consideration before making 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 be consulted on their views and taken into consideration before the Standards Committee takes any decision as to any action to be imposed. Full details of the Consultation requirements with Independent Persons are set out in Part A Report (A1).

SANCTIONS

The sanctions which are afforded to the Committee at Section 8 of the Complaints Procedure are as follows:-

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 her Decision Notice of 25th August 2023 that, pending completion of the Investigation, "the Leader of the Conservative Party, Cllr G Guglielmi, has suspended Cllr Turner from the Conservative Party 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. At the time of writing, the Councillor Turner does not serve on any Council committees or outside bodies on behalf of the Council.

APPENDICES

Appendix E – FINAL INVESTIGATION REPORT - prepared by Melvin Kenyon for the Monitoring Officer, Tendring District Council – issued 10th January 2024

- Annex 1 – witness statement of Cllr Ernest Gibson, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor
- Annex 2 – witness statement of Sidonie Kenward, Marine and Terrestrial Planner at the Marine Management Organisation
- Annex 3 – witness statement of Beccy MacDonald-Lofts, Lead Officer the LGA Coastal Special Interest Group
- Annex 4 – witness statement of Ross MacLeod, Public Affairs Manager (Water Safety), RNLI
- Annex 5 – witness statement of Rhys Hobbs, Environmental Resilience and Adaptation Manager, Cornwall Council

- Annex 6 – witness statement of Cllr Derek Bastiman, Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor
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