

COUNCIL

26 NOVEMBER 2013

AGENDA ITEM 18

ADDENDUM REPORT OF THE MONITORING OFFICER AND CORPORATE DIRECTOR (CORPORATE SERVICES)

A.3 **PROPOSED NEW STANDARDS ARRANGEMENTS**

(Report prepared by Martyn Knappett)

The Conduct Committee, at its meeting held on 19 November 2013, considered the proposed new standards arrangements. Whilst endorsing those proposed arrangements, during debate Members made a number of comments, which the Monitoring Officer agreed to reflect through amended documents and recommendations to Council on 26 November 2013.

The minutes of the Conduct Committee, which set out the Committee's comments have been separately circulated to Members for consideration under item 13 (j) on the Council agenda.

The Cabinet, at its meeting on 21 November also considered the report to Council and

RESOLVED

- (1) That Cabinet notes the comments made by the Conduct Committee;
- (2) That the proposed new Standards Framework be endorsed and the recommendations to Full Council set out in the report attached as Appendix 1 be supported; and

RECOMMENDED

- (3) That the Council's Constitution, is amended as set out in Appendix 1, subject to the amendments suggested by the Conduct Committee.

A revised report, together with appendices, is attached as Appendix A to this addendum report. The amendments, which reflect the comments made by the Conduct Committee, are highlighted in the text for ease of reference.

RECOMMENDED

That Council approves the recommendations (a) to (q) set out in the revised report attached as Appendix A.

COUNCIL

26 NOVEMBER 2013

REPORT OF MONITORING OFFICER AND CORPORATE DIRECTOR (CORPORATE SERVICES)

A.3 PROPOSED NEW STANDARDS ARRANGEMENTS

(Report prepared by Lisa Hastings and Martyn Knappett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report on the outcomes of a review into Members' conduct arrangements and to seek Council's approval of a new Standards Framework, including a new Members' Code of Conduct and a revised Committee structure and working arrangements to fulfil the Council's statutory duty to promote and maintain high standards and instil public confidence in Councillors' behaviour.

EXECUTIVE SUMMARY

Context

- The Localism Act 2011 introduced new arrangements, for adoption at local level, promoting and maintaining high standards of conduct by Members and dealing with complaints about Members with effect from 1 July 2012. At its meeting held on 22 May 2012 (Minute 19 refers), the Council agreed new arrangements commensurate with the Act.
- Practical application of these new arrangements for dealing with complaints received about Members resulted in concern being expressed about, and a loss of confidence in, the way the new arrangements were working.
- Both the Conduct Committee and Cabinet have asked for a review of the new conduct arrangements to be carried out and the review has now been completed.

Proposals

This report builds on the outcomes of that review, together with the lessons learnt from the operation of the new arrangements across a range of Councils and proposes a new Standards Framework for this Council which includes the following key features:

- A revised, clearer and more specific **Members' Code of Conduct** (which underpins all of the other arrangements).
- Terms of Reference for a **Standards Committee** to replace the current Conduct Committee together with a **Town and Parish Councils Standards Sub-Committee**.
- **An enhanced role for the Monitoring Officer** to manage the complaints process in accordance with the agreed policies and delegations and a Member commitment to accept the decisions and respect the recommendations of the Monitoring Officer.
- Different arrangements and roles for the **Independent Persons** – reduced from 5 to 3 and contributing via individual consultation rather than as a Panel investigating and reporting.

- Greater emphasis on **Group Leaders** taking responsibility for dealing with complaints early on and resolving complaints informally where possible.
- **Clear timescales** throughout the process both for officers and Group Leaders.
- **Delegations to the Monitoring Officer** in accordance with the adopted Complaints Procedure including determining where formal investigations are required in most cases and granting dispensations on all 5 grounds set out in the Localism Act.
- Use of **investigating officers from Councils outside Essex** where possible.
- A revised and much more thorough **Complaints Procedure** including a **flowchart** setting out the process to be followed.
- A clear statement of the roles of the Monitoring officer in a **Monitoring Officer's Protocol**.
- A clear statement of the roles of the Independent Persons in an **Independent Person's Protocol**.

RECOMMENDATIONS

It is recommended that:

- (a) The Council approves the proposed new Standards Framework set out in this report and that it replaces the Conduct Arrangements which were agreed by the Council in May 2012.
- (b) Council notes the outcomes of the review of the existing Conduct arrangements as detailed in the Executive Summary in Appendix A.
- (c) The Members' Code of Conduct set out in Appendix B, be approved and that all Town and Parish Councils in the Tendring District be invited by the Monitoring Officer to adopt the same Code for their own Councils.
- (d) All Tendring District Council members review their Declarations of Interests and provide any updates to the Monitoring Officer in accordance with the Code of Conduct.
- (e) The Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Councils' Standards Sub-Committee set out in Appendix C, be approved.
- (f) The Chairman, Vice-Chairman and membership of the Standards Committee be as four Conservative, one Labour, one Independent and one Tendring First Member as follows:
 - Councillor N Stock (Chairman);
 - Councillor R Heaney (Vice chairman);
 - Councillor P Honeywood;
 - Councillor F Nicholls;
 - Councillor T Howard;
 - Councillor I Johnson and
 - Councillor J Hawkins

That when conducting a hearing regarding a specific complaint the Chairmanship will pass to a member of the Committee who is not of the same political group as the Member complained about (or the complainant

if that person is also a Member of the Council).

- (g) The Membership of the Town and Parish Councils Standards Sub-Committee be three (TDC) members of the Standards Committee together with 3 co-opted, non-voting Town and Parish Council representatives nominated by Tendring District Association of Local Councils.
- (h) That the TDC membership of the Sub-Committee consists of **Councillors P Honeywood and F Nicholls and Councillor T Howard** and that the Sub-Committee appoints a Chairman from the TDC membership.
- (i) The Monitoring Officer Protocol, as set out in Appendix D, be approved.
- (j) The Independent Person's Protocol, as set out in Appendix E, be approved.
- (k) The number of Independent Persons appointed by the Council be reduced to three with effect from the commencement of the 2014/15 Municipal Year and that authority be delegated to the Monitoring Officer to bring about the revised arrangements with regard to the Independent Persons in the manner set out in this report.
- (l) The current Independent Persons appointment will end on 6th May 2014, unless resolved otherwise in the interim.
- (m) The Complaints Procedure, as set out in Appendix F, be approved.
- (n) The Standards Committee adopt hearing procedures setting out how complaints will be considered by the Standards Committee when conducting a hearing based on the principles in this report.
- (o) The Council's Constitution be amended by the deletion of the current Members' Code of Conduct and the Terms of Reference for the Conduct Committee and that they be replaced by the Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Councils' Standards Sub-Committee, the revised Members' Code of Conduct, the Complaints Procedure, The Monitoring Officers Protocol and the Independent Persons Protocol.
- (p) Authority be delegated to the Monitoring Officer to make any consequential amendments to the Constitution arising from the adoption of the proposals set out in this report.
- (q) **After six months of operation, a review of the new standards arrangements be carried out by the Standards Committee for reporting to Council.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

It is important that both Members and the wider community, including the general public and external stakeholders have confidence in the Council's procedures for dealing with complaints about Members. This report and the attached appendices set out proposals to address concerns that have been raised and amend the current arrangements to promote

and maintain high standards of conduct.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Any changes to the procedures can be implemented within the Council's existing budget and resources.

Risk

There is a risk that the new proposals may not address concerns raised and it is proposed that the arrangements be further reviewed by the Monitoring Officer in May 2014 after six months of operation.

The External Auditor's 2013 Audit Plan makes reference to the following:-

"The Council needs to continue to develop a culture of openness, transparency, trust and confidence between members and in member and officer relationships. Reflecting honestly and openly on handling of recent complaints and concerns, the Council's members should positively identify the actions it needs to take to embed a culture of strong ethical and corporate governance at all levels in the Council. We therefore strongly recommend the Leader of the Council, working with all members and the Council's senior management team, continue to take these actions forward."

This has been carefully considered when the proposed arrangements have been developed. All Members have been given the opportunity to contribute to the review of the arrangements to date and the development of the proposed arrangements has been progressed in consultation with Group Leaders.

LEGAL

The Localism Act 2011 ("the Act") places a statutory duty upon Councils to promote and maintain high standards of conduct amongst its own Elected Members and any co-opted Members. Strong ethical governance is critical to the corporate governance of the authority and also supports the Council's decision making processes across the organisation.

The Act requires Councils to adopt a code dealing with the conduct which is expected of Members and also have in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct. There is also a specific requirement to appoint an Independent Person to have involvement in the process.

The definition of Disclosable Pecuniary Interests (DPIs) is contained within the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Section 27(12) of the Act requires that the Council must publicise the adoption, revision or replacement of its Code of Conduct.

The standards provisions within the Act equally apply to Town and Parish Councils and the Monitoring Officer's role of contributing to the promotion of high standards extends to advising Town and Parish Councils in relation to conduct matters. Any new arrangements will be promoted to the Town and Parish Councils to adopt where necessary.

It is worth noting the recent criticisms of the new standards regime within the 14th report from the Committee on Standards in Public Life. The most damning quote in respect of

local government standards was: "The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely". On 24 January 2013, the President of the Association of County Secretaries and Solicitors (ACSeS), a professional association for Monitoring Officers, wrote an open letter to Brandon Lewis MP, in which he stated "ACSeS has raised with your department a number of issues concerning interpretation of the standards provisions where the drafting has given rise to doubt and ambiguity. However, we have not received a response which has the benefit of apparent legal input. In the absence of certainty from the legislation, some authorities have properly and reasonably sought external legal advice. As you will appreciate, the wording of the Act and relevant Regulations does not always lend itself to the particular interpretation that Ministers might desire."

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

The content of this report does not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Localism Act 2011 brought in new arrangements for promoting high standards of Members' conduct and dealing with complaints about Members with effect from 1 July 2012.

In May 2012, the Council agreed new arrangements commensurate with the Act. These included a revised Code of Conduct, arrangements for implementing and updating a new Register of Members' interests, a different procedure for dealing with complaints about Members, the setting up of a Conduct Committee and the appointment of Independent Persons.

Following the practical application of these new arrangements to complaints received about Members, widespread concern was expressed about the way in which the new arrangements were working. This resulted in a loss of confidence in the arrangements from both Members and across the wider community.

At a meeting of the Conduct Committee in October 2012, Members discussed the need for a thorough review of the processes and procedures of the Conduct Committee and in November 2012, the Cabinet resolved "That an investigation be carried out into the way the recent complaint against Councillor Halliday was dealt with, with particular regard to any mistakes made and any instances of bias, and that the outcomes of this be reported to the Conduct Committee and made available to Cabinet members."

The Cabinet's decision was called in and was referred back to Cabinet which decided that the decision should stand.

In accordance with the minutes of the meetings of the Conduct Committee and Cabinet, a full and thorough review of Members' conduct and complaint arrangements has been carried out, led by the Chief Executive and undertaken by the Corporate Director (Public

Experience).

Many of the recommendations from the review have been incorporated into the proposals now set out in this report following further review and consideration by the Monitoring Officer. **A copy of the Executive Summary of Recommendations from this report is attached at Appendix A.**

CURRENT POSITION

A new Monitoring Officer (Lisa Hastings) was appointed in July 2013, and since her appointment has considered the recommendations made in Appendix A, and has also taken account of the experience and learning from other Councils following the first year of operation of the new arrangements under the Localism Act. Consultation has also taken place with Members and Group Leaders from all parties to reach a consensus on the enhanced procedures for Tendring District Council as a whole.

The outcome of these various stages of work is the proposed new Standards Framework for the Council.

The proposed new Standards Framework consists of five key elements. Each of these is set out as a separate appendix to the report and is explained and summarised in the text below.

The five elements are:

- The Members' Code of Conduct - Appendix B.
- The Terms of Reference and Delegated Powers for the Standards Committee and the Town and Parish Councils' Standards Sub-Committee – Appendix C.
- The Monitoring Officer Protocol – Appendix D
- The Independent Persons Protocol – Appendix E
- The Complaints Procedure – Appendix F

The documents set out in these appendices collectively strengthen the Council's arrangements for fulfilling its duty to promote and maintain high standards of conduct and to building public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven Principles of Public Life.

The overall approach of the new arrangements is to seek:-

- A focus on clarity of information and training for Members to increase awareness and support good standards of behaviour;
- Proportionality and natural justice – responses to complaints which are proportionate to their seriousness and considered and heard in accordance with principles of natural justice;
- Timeliness – with clear timescales for the various stages of complaints to be progressed;
- Checks, balances, reporting requirements and delegation to the Monitoring Officer of key elements of the process to maximise independence from the political process, and
- Early and informal intervention to resolve complaints wherever possible (including an expectation that Group Leaders will play a key role).

With this approach, it is hoped that the focus and emphasis of the Committee's work will be positive and proactive rather than on only being reactive and dealing with complaints. It is further envisaged that, through a stronger role for Group Leaders in managing group discipline and involvement in a mediated resolution where complaints do arise, the need to utilise the full formal complaints procedure can be minimised in the future.

MEMBERS' CODE OF CONDUCT

The Council adopted its Code of Conduct in May 2012, which contained reference to the seven Principles of Public Life and the requirements in relation to interests, and was based on the minimum requirements of the Localism Act 2011. The Monitoring Officer has considered the feedback from Members during the review of the existing arrangements which clearly highlighted feelings of immense frustration with the former process by all those involved.

In addition, the experience of working with the current Code and comments received since her appointment have been taken into account, relating to the assessment of evidence and whether breaches were proved or not, demonstrates the need for a clearer and more detailed Code of Conduct against which judgements can be made.

The Monitoring Officer has undertaken research on Codes of Conduct adopted by other authorities using the models proposed by the Local Government Association (LGA) and Department of Communities and Local Government, and a Code prepared by the Public Law Partnership and the experiences of those authorities in applying them over the past year in order to develop an effective Code for this Council.

The Council is therefore recommended to adopt a revised Code of Conduct, as set out in Appendix B. This Code is a revised version of the LGA Code of Conduct, against which a legally trained or otherwise suitably qualified investigator, would be able to assess the evidence produced in support of a complaint to form a clear recommendation for the Committee or Sub-Committee to consider when determining a complaint.

The proposed Code underpins the whole approach being adopted and is:

- Longer and fuller than the existing Code,
- Clearer and more specific than the existing Code,
- More meaningful – with definitions and explanations rather than just the seven principles, and
- Clearer regarding Member's interests.

It will be a clear and informative reference point for Members who are required to adhere to the Code and an essential tool for the Monitoring Officer and those charged with giving advice and making decisions regarding conduct issues.

The proposal to change the Code of Conduct is fully compliant with the Localism Act 2011 (Section 28(5)(a)) which states that: "A relevant authority may revise its existing code of conduct".

The proposed Members' Code of Conduct is attached at Appendix B.

MEMBER DECISION MAKING ARRANGEMENTS

It is proposed that the Conduct Committee be replaced by a Standards Committee, together with a Town and Parish Councils' Standards Sub-Committee.

The Terms of Reference and Delegated Powers for the Committee and the Sub-Committee are set out in Appendix C. The following is a brief summary of the key features of each body.

The **Standards Committee** will be politically balanced and will have seven Members. No more than one member shall be a member of the Cabinet and Group Leaders will not be permitted to serve on the Committee.

The principal role of the Committee will be to promote and maintain high standards of conduct by Members and adherence to the seven Principles of Public Life as set out in the Members' Code of Conduct.

The Committee will also conduct hearings into complaints against District Councillors where a formal investigation has been carried out. On such occasions the Committee will receive a clear recommendation from the Monitoring Officer as to whether a breach of the Code of Conduct has occurred. It will then be for the Committee to formally determine the recommendation of the Monitoring Officer and the appropriate sanction to be applied.

The Committee will have a standing Chairman elected by the Full Council, but when the Committee is convened to conduct a hearing in respect of a complaint, the meeting will be chaired by one of the Members of the Committee who is not from the same political Group as the Member who is the subject of the Complaint (nor of the same Group as the complainant if that is a Member of the Council). The Committee, when it convenes, will appoint the Chairman for the meeting on the above basis.

It will be a requirement that all members of the Committee undertake training by the Monitoring Officer in relation to the Council's statutory duty and the TDC Code of Conduct and Standards Framework before participating in the consideration of any conduct hearings.

Furthermore it is proposed that there will be named substitute Members from each Group with a seat on the Committee and that they too will be required to undertake the same training before participating in consideration of any conduct hearings.

The **Town and Parish Councils' Standards Sub-Committee** will consider all matters relating to complaints against individual Town and Parish Councillors.

It will consist of three Members of the Standards Committee and three co-opted non-voting members who will be Town or Parish Councillors nominated by the Tendring District Association of Local Councils (TDALC). It will be a requirement that the nominees put forward by TDALC will be of independent standing and that they will not have been either District or County Councillors in the four years prior to their nomination.

In accordance with Local Government legislation only the District Council Members on the Sub-Committee can vote so in order to give the maximum profile to the views and judgements of the Town and Parish Council members their views and recommendations will be recorded in the minutes of the meeting.

The **Delegated Powers** for the Standards Committee include a number of important delegations of power to the Monitoring Officer, which are:

- Dealing with complaints in accordance with the Council's policy and the Complaints Procedure.
- Carrying out the initial assessment of all complaints (including if they wish consulting with one of the Independent Persons) and making an initial decision of taking no further action, seeking informal conciliation and settlement, or, (in all but exceptional circumstances), to initiate a formal investigation.
- To carry out the investigation, or to commission an investigation by a suitably qualified person outside the Council (all investigations relating to complaints against TDC Members will be carried out externally).
- To grant dispensations in respect of Members interests on all five of the grounds set out in the Localism Act 2011.

Proposed Terms of Reference and delegated powers for the Standards Committee and the Town and Parish Councils Standards Sub-Committee are set out at Appendix C.

THE ROLE OF THE MONITORING OFFICER

The Monitoring Officer has a central role in the operation of the new Standards Framework and throughout the whole Complaints Procedure and, as has been set out above, has significant delegated powers.

It is therefore important to ensure that the role of the Monitoring Officer is clearly explained and understood by those making complaints, those complained about, Officers, Members and the wider public.

In order to achieve this a Monitoring Officer's Protocol has been drawn up which sets out the Statutory basis of the role, the obligations on the Monitoring Officer and the relationship between the Monitoring Officer and the Committee, Sub-Committee, Town and Parish Councils, Independent Persons and the other key elements of the Complaints Procedure.

The idea of having a protocol was initially introduced in the report to Council on 2 July 2013 when the Monitoring Officer was appointed.

The proposed Monitoring Officer's Protocol is set out in Appendix D.

INDEPENDENT PERSONS

The Localism Act requires Councils to appoint at least one "Independent Person" to introduce an element of independence into the Standards and Conduct arrangements.

The Independent Person has three roles

- To be available to complainants to give their independent view and advice;
- To be available to the person who is the subject of the complaint to give their independent view and advice, and
- To be available to the Monitoring Officer to give their independent view and advice.

An Independent Person must be consulted before a decision is made after a complaint has been referred for investigation and where requests are made for dispensations, the

Independent Persons may be consulted in other such circumstances, which the Council deems appropriate. The Complaints Procedure refers to the consultation requirements in more detail.

It is not the case that the Independent Persons should work together as a panel nor that they should be charged with carrying out investigations, gathering evidence, or making recommendations to Member decision making bodies. The role the Independent Persons were asked to undertake in the Councils Conduct arrangements since June 2012 has placed them in a difficult position which is to be regretted and their forbearance is appreciated.

It is therefore necessary to make a significant change to the way in which the Independent Persons appointed by the Council engage in the complaints process.

The specific proposals are that the number of Independent Persons should be reduced from five to three and that their roles, acting as individuals rather than as a panel, should be to carry out the functions set out above. The specific role they would carry out for successive complaints would rotate, on a basis to be determined by the Monitoring Officer.

It is furthermore proposed that the best way to enable the new Standards Framework to succeed with a fresh start is for new appointments to the roles of the three Independent Persons, positions to be made with effect from the date of the Annual Council on 6 May 2014. However in order to cover the transition period between now and May 2014, it is proposed to ask the current Independent Persons to remain in position with their terms of appointment coming to an end on 5 May 2014.

It is proposed that the three positions of Independent Person be advertised in the local press and authority be delegated to the Chief Executive and the Monitoring Officer to review the applications received, interview suitable candidates and to make recommendations to Full Council as to who should be appointed.

To provide clarity and confidence in the Independent Person's role a Protocol has been drafted and is set out in **Appendix E**.

COMPLAINTS PROCEDURE

A Complaints Procedure has been produced, which follows accepted national good practice and incorporates those matters highlighted by the review, setting out the roles and responsibilities of those involved in the complaints process. The intention is that the procedure is easily understood by all parties and gives public confidence in the Council's procedure and arrangements.

The Complaints Procedure is underpinned by the Code of Conduct and sets out how individual complaints against Members of the District and Town and Parish Councils will be dealt with.

During the consultation with members, the procedure to be followed by the Standards Committee when conducting a hearing was raised. It is noted that some authorities have adopted the practice and recorded in their procedures, for the Committee to adjourn for the Committee Members, considering the complaint, to deliberate in private and reconvene the meeting for the Decision. The next Standards Committee are requested to approve, draft hearing procedures produced by officers giving consideration to deliberation of a complaint in private, within the legislative framework

The proposed Complaints Procedure is set out at Appendix F.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A Review of existing arrangements – Executive Summary of Recommendations

Appendix B Revised Members' Code of Conduct

Appendix C Terms of Reference of the Standards Committee and the Town and Parish Councils' Standards Sub-Committee

Appendix D – Monitoring Officer Protocol

Appendix E – Independent Person Protocol

Appendix F – Complaints Procedure

Extract from 2012/13 Review undertaken by Corporate Director (Public Experience)

Executive Summary of Recommendations

General :

- 1. A proportionate response is adopted when dealing with a complaint about an elected Member as the sanctions available to the Council in dealing with such complaints are limited.**
- 2. The severity of the breach ought to influence the response.**
- 3. Mediation is introduced (in appropriate circumstances) as part of the early response to a complaint.**
- 4. Group Leaders have a specific role in Group discipline and this is used as a way to speedily resolve a straight forward complaint.**
- 5. The Council adopts the set of overriding presumptions for dealing with complaints about Members.**

Proposed Arrangements :

- 6. The Conduct Committee in its current form is disbanded and is replaced by a Member Development and Conduct Committee which has a broader remit of promoting good standards of member behaviour at the Council as well as dealing with Member complaints.**
- 7. The number of Independent Persons be reduced to three and that two of the three be invited to attend the Member Development and Conduct Committee with non-voting rights on a rotation/availability basis.**
- 8. That two Parish or Town Councillors of independent standing be invited to attend meetings of the Member Development and Conduct Committee on a non-voting basis.**
- 9. That a booklet setting out the roles and responsibilities of those involved in dealing with a Member complaint be agreed and made publicly available.**
- 10. The Statutory Officer Panel is disbanded in favour of an initial review of a complaint about an elected Member by the Monitoring Officer, in consultation with one of the Independent Persons.**
- 11. That the investigation of complaints be managed and overseen by the Monitoring Officer with routine investigations being carried out in house**

and an expectation that the investigation of more contentious, complex or politically sensitive complaints will be undertaken by a third party commissioned by the Monitoring Officer.

12. The sanctions available for dealing with Member conduct issues be agreed as follows:

- a) Require a Member to apologise in public or private (This sanction should only be applied following mediation resulting in agreement or a full investigation and decision by the Member Development and Conduct Committee. NB Members can apologise at any stage of their own volition.)**
- b) Require a Member to attend training**
- c) Censure of a Member by the Member Development and Conduct Committee**
- d) Member Development and Conduct Committee recommends Council recommending censure of a Member**
- e) Send a report to the Council to censure a Member**
- f) Require the Monitoring Officer to publish a report on the Council's website or in the local media**
- g) Or a combination of any of the above.**

**TENDRING DISTRICT COUNCIL
MEMBERS' CODE OF CONDUCT**

1. Introduction

- 1.1 Trust and confidence in public office-holders and institutions are important for the functioning of local authorities. This is particularly true in the case of elected office-holders. The Council has therefore adopted this Code of Conduct to promote and maintain high standards of conduct in public life. It is each Councillor's responsibility to comply with the provisions of this Code.
- 1.2 The Code of Conduct applies to all elected Councillors, voting co-opted members and appointed members.

2. When does the Code of Conduct apply?

- 2.1 In this Code "meeting" means any meeting of
- (a) Tendring District Council ("the Authority");
 - (b) the Executive of the Authority
 - (c) any of the Authority's or its Executive's committees, sub committees joint committees, joint sub-committees, or area committees (including working parties); or
 - (d) informal meetings with other Members and/or Officers relating to the discharge of the Authority's functions.
- 2.2 The Code of Conduct applies—
- (a) whenever you conduct the business, or are present at a meeting, of the Authority; or
 - (b) whenever you act, claim to act or give the impression you are acting in the role of Member to which you were elected or appointed; or
 - (c) whenever you act, claim to act or give the impression you are acting as a representative of the Authority (including representation on outside bodies); or
 - (d) at all times and in any capacity, in respect of conduct identified in paragraphs 3.4(a) and 3.5; or
 - (e) in respect of any criminal offence for which you have been convicted during your term of office.
- 2.3 Where you are elected, appointed or nominated by the authority to serve on any other authority or body you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body.

- 2.4 Where you are elected, appointed or nominated by the authority to serve on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, unless it conflicts with any other lawful obligations to which that other body may be subject.

3. Rules of Conduct

- 3.1 As a Member of Tendring District Council you shall have regard to the Seven Principles of Public Life.

Selflessness Holders of public office should act solely in terms of the public interest.

Integrity Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty Holders of public office should be truthful.

Leadership Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

These general principles are the underlying principles behind the rules of conduct set out below.

3.2 **In fulfilling your Duties and Responsibilities**

You must **not**:

- (a) **breach** your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) **disrespect** others;
- (c) **bullying or harass any person; or**
- (d) do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the Authority.

3.3 **Information**

You must not:

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

3.4 **Conduct**

You must:

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
- (b) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the Authority.
- (c) comply with any request of the authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.

3.5 **Use of your Position**

You must not:

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of the Authority—
 - (i) imprudently;
 - (ii) in breach of the Authority's requirements;

- (iii) unlawfully;
- (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed;
- (v) improperly for political purposes; or
- (vi) improperly for private purposes.

3.6 Decision Making

You must:

- (a) when participating in meetings or reaching decisions regarding the business of the Authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the Authority's officers, in particular by—
 - (i) the Authority's head of paid service;
 - (ii) the Authority's s.151 Officer/ Chief Finance Officer;
 - (iii) the Authority's Monitoring Officer/ Chief Legal Officer;
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

3.7 Compliance with the Law and the Authority's Rules and Policies

You must:

- (a) observe the law and the Authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
- (b) comply with the provisions of the Bribery Act 2010 or similar;
- (c) comply with the Authority's Gifts and Hospitality Policy;
- (d) comply with any other policy (or part of policy) which sets out required conduct from Members, for example the Member/Officer Working Protocol and Planning Code for Members, or similar.

PART 2 MEMBERS' INTERESTS

4. Disclosable Pecuniary Interests

- 4.1 You have a Disclosable Pecuniary Interest in any business of your authority if it is of a description set out in 4.2 below and is either:
- (a) an interest of yours,
or that of a Relevant Person being:
 - (b) an interest of your spouse,
 - (c) an interest of your civil partner, or
 - (d) an interest of a person you are living with as a spouse or civil partner,

and in the case of paragraphs 4.1(b) – (d) you are aware that the Relevant Person has the interest.

- 4.2 “Disclosable Pecuniary Interests” are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are:-

Employment, office, trade, profession or vacation

Any employment, office, trade, profession or vocation carried on for profit or gain.

Sponsorship

Any payment or provision of any other financial benefit (other than from the relevant Authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a Member, or towards the election expenses of the Member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Contracts

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant Authority—

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

Land

Any beneficial interest in land which is within the area of the relevant Authority.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant Authority for a month or longer.

Corporate tenancies

Any tenancy where (to the Member's knowledge)—

- (a) the landlord is the relevant Authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—

- (a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant Authority; and
- (b) either—
 - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

5. Other Pecuniary Interests

- 5.1 You have a Pecuniary Interest in any business of the Authority where it relates to or is likely to affect:
- (a) any person or body who employs or has appointed you;
 - (b) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraphs 6.1 (a)-(b) which has been fully discharged within the last 12 months;

6. Non-Pecuniary Interests

- 6.1 You have a Non-Pecuniary Interest in any business of the Authority where it relates to or is likely to affect –
- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
 - (b) any body –
 - (i) exercising functions of a public nature;
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); of which you are a member or in a position of general control or management;
 - (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;

- (d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of their family or friends to a greater extent than the majority of:-
 - (i) (in the case of Authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority's area.

7. Disclosure of Interests (Disclosable Pecuniary Interests, Other Pecuniary Interests and Non-Pecuniary Interests)

- 7.1 Subject to sub-paragraphs 7.2 to 7.3, where you have a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.
- 7.2 Sub-paragraph 7.1 only applies where you are aware or ought reasonably to be aware of the existence of the Relevant Person's Interest.
- 7.3 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 7.1 but by virtue of paragraph 12 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary Interest you need not disclose the nature of the interest to the meeting.
- 7.4 Where you have a Pecuniary Interest in any business of the Authority and a function of the Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's Monitoring Officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.
- 7.5 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 7.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

8. Disclosure of Interests generally

- 8.1 Subject to sub-paragraph 8.2 below, you have a duty to disclose any interest, as set out in paragraphs 5 and 6 above, in considering any business of the Authority, where that interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- 8.2 You do not have a disclosable interest in any business of your Authority where that business relates to the functions of your Authority in respect of:
- i. housing, where you are a tenant of your Authority provided that those functions do not relate particularly to your tenancy or lease;
 - ii. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - iv. an allowance, payment or indemnity given to Members;
 - v. any ceremonial honour given to Members; and
 - vi. setting Council Tax or a Precept under the Local Government Finance Act 1992

9. Effect of Disclosable Pecuniary Interests on participation

- (a) If you are present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and you are aware of that Interest:
- (i) You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
 - (ii) You must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Authority's Monitoring Officer.
- (b) If you have a Disclosable Pecuniary Interest in any business of the Authority you must not:
- (i) exercise executive functions in relation to that business; and
 - (ii) seek improperly to influence a decision about that business
- (c) If a function of the Authority may be discharged by a Member acting alone and you have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that

function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

10. Effect of Other Pecuniary or Non-Pecuniary Interests on participation

- 10.1 If you have a pecuniary interest (other than a disclosable pecuniary interest) or a non-pecuniary interest in any business of your Authority which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-
- (a) Disclose the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)
 - (b) Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making your representations or in any other case when the business is under consideration, unless you have obtained a dispensation from your authority's Monitoring Officer

PART 3 REGISTER OF MEMBERS' INTERESTS Registration of Members' Interests

11.1 Subject to paragraph 12, you must, within 28 days of—

- a. this Code being adopted by or applied to your authority; or
- b. your election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the authority,

register in your authority's register of members' interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- (i) disclosable pecuniary interests as referred to in paragraph 4 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time.
- 11.2 Subject to paragraph 12, you must, within 28 days of becoming aware of any new Disclosable Pecuniary Interest as referred to in paragraph 4 that you, your spouses, civil partner or person with whom you live as if they were your spouse or civil partner or change to any interest registered under paragraph 4 above by providing written notification to your authority's Monitoring Officer.

12. Sensitive Information

- 12.1 Where you have a Disclosable Pecuniary Interest referred to in paragraph 4 or other Pecuniary Interest referred to in paragraph 5, and the nature of the interest is such that you and your authority's Monitoring Officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 12.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 18.1 is no longer sensitive information, notify your authority's Monitoring Officer.
- 12.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

**Standards Committee
Delegation to Committee**

TERMS OF REFERENCE AND DELEGATED POWERS

Composition:

- The Committee shall consist of seven Members of Tendring District Council;
- No more than one Member shall be a Member of its Cabinet
- No Leaders of Political Groups will be members of the Committee.
- The only Members permitted to be substitutes on the Committee will be those named at the beginning of the Municipal Year by the party Group Leaders.
- No Member will be permitted to participate in meetings of the Standards Committee or Sub-committee unless they have undertaken specific Standards Committee training
- No substitute Members will be permitted, unless they have undertaken specific Standards Committee training.
- The Committee is politically balanced in accordance with Section 15 of the Housing and Local Government Act 1989.
- The Committee will have a standing Chairman and Vice Chairman appointed by the Full Council. However when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Committee who is not from the same political Group as the Member who is the subject of the Complaint (nor of the same Group as the complainant if a Member of the Council).
- A member the Standards Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

Quorum: At least 3 voting Members of the Committee

Meetings: At least quarterly

Terms of Reference

The Standards Committee will have the following roles and functions:

1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;
2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels in the Council.
3. To advise the Council on the adoption or revision of the Members' Code of Conduct;
4. To advise, train or arrange training on matters relating to and assisting Members, Co-Opted Members and Town and Parish Councillors on observing the Members' Code of Conduct;
5. To approve procedures for the conduct of hearings into complaints against Members;
6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;
7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework;
8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;
9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and
10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.

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;
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.

TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE

Composition

Three Members of the Standards Committee and three non-voting co-opted Town and Parish Council members to be nominated by the Tendring District Association of Local Councils.

The nominated Town and Parish Council members will be of independent standing and will not have served as District or County Councillors for a period of four years prior to their nomination.

A member (or non-voting co-opted member) of the Town and Parish Standards Sub-Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

Meetings

The Sub-Committee will meet as and when required

Quorum

The Quorum for meetings of the Standards Sub-Committee is three voting Members. All three Tendring Council Members have to be present at the Sub-Committee.

Voting

Only the three District Council Members on the Sub Committee can vote.

The views and recommendations of the three Town and Parish Council representatives will be recorded in the minutes of the meeting.

Chairmanship

The Sub-Committee will appoint a Chairman from the District Councillor membership.

However when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Committee who is not from the same political Group as the Member who is the subject of the Complaint (nor of the same Group as the complainant if a Member of the Council).

Terms of Reference

To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with its Code of Conduct.

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 Town and Parish Council Members and Co-Opted Members referred to it by the Monitoring Officer; and
4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.

DELEGATION TO OFFICERS

1	Deal with complaints against Members and co-opted Members of the Council and / or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council / Town or Parish Council ("Code") in accordance with the Complaints Procedure.	Monitoring Officer
2	Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation 	Monitoring Officer

	<ul style="list-style-type: none"> Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation 	
3	Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.	Monitoring Officer
4	Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.	Monitoring Officer
5	Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011.	Monitoring Officer
6	Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.	Monitoring Officer

TENDRING DISTRICT COUNCIL MONITORING OFFICER PROTOCOL

This Protocol relates to the discharge of the Monitoring Officer functions in relation to the assessment of an allegation that a Member of the District, Town or Parish Council has failed to comply with the Council's Members' Code of Conduct.

1. Overarching Principles:

- a. The Monitoring Officer is a statutory appointment under s.5 Local Government and Housing Act 1989.
- b. This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
- c. The Monitoring Officer will discharge their statutory responsibilities with a positive determination contributing to promotion and maintenance of high standards of conduct, in a manner that enhances the overall reputation of the Council, in particular:
 - (i) Complying with the law (including any relevant Codes of Conduct);
 - (ii) Complying with any general Guidance issued including consideration of Best Practice;
 - (iii) Complying with the procedures adopted by the Standards Committee following such guidance;
 - (iv) Complying with the Council's Constitution and standing orders; and
 - (v) Acting impartially in the interests of fair and natural justice.
- d. The Monitoring Officer must establish and maintain a Register of Interests of members and co-opted members of the authority.
- e. The Monitoring Officer is employed by Tendring District Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members. Accordingly, when they are of the opinion that providing advice to a Member or group of Members on a matter is incompatible with their role as adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority.
- f. Where the advice or recommendation of the Monitoring Officer is departed from by the Standards Committee or Sub-Committee, in accordance with administrative law, full reasons will be provided by the relevant Committee in making its decision.
- g. This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure and Independent Person's Protocol.

- h. The Monitoring Officer is the principal adviser to the Standards Committee and Sub-Committee. Additional advice and support is provided by the Corporate Director (Corporate Services) and Officers within the Legal and Democratic Services teams.
- i. The Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends in relation to the promotion and maintenance of high standards of conduct at these Authorities.
- j. The Monitoring Officer will consult with one of Independent Persons on complaints received and throughout the process in accordance with the Complaints Procedure.
- k. In circumstances where either the Monitoring Officer or one of the Officers has made a complaint, witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not exist. These procedures will consist of maintaining an information barrier and restricted access to the matter in consideration; this is referred to as 'conflicted out'.

In practical terms, in these circumstances, the Monitoring Officer or Officer will take no part in the process unless called upon either as the complainant or as a witness.

- l. In instances (exceptional circumstances) where the Monitoring Officer decides to refer a complaint to the Standards Committee or Sub-Committee for initial assessment or further investigation, in accordance with the Complaints Procedure (see flowchart), any approved information as is readily available, which would assist the Standards Committee or Sub-Committee in its function of considering the allegation will be attached to their Report.
- m. In providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 have been considered, as reflected in the Council's Constitution.
- n. It is recognised that, where a complaint is referred for investigation, this may not be personally conducted by the Monitoring Officer. The investigator instructed will be suitably qualified with the requisite experience and may include another senior officer of the Council, a senior officer of another Authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained. Wherever possible and if appropriate to do so, the Monitoring Officer will seek external resources from outside of the County of Essex.

2. Receipt of Allegations:

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints

Procedure. The Monitoring Officer will treat this as a general complaint and forward it to be dealt with under the Council's general formal complaints process, as appropriate.

- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

3. Consultation with the Independent Persons:

- (a) The Monitoring Officer and supporting Officers will facilitate the contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the parties.
- (b) The Monitoring Officer will allocate roles for the Independent Persons in accordance with their Protocol and each party will be notified who the relevant Independent Person is and they will be in contact shortly.
- (c) The Monitoring Officer does not have to agree with the Independent Person but if a different view is taken the Monitoring Officer will consult with another Independent Person in the first instance, before making a final decision.

4. Standards Committee and Sub-Committee:

- (a) The Monitoring Officer, in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, will decide on the type of attendance permitted for an Independent Person when considering complaints.
- (b) All meetings of the Standards Committee or Sub-Committee are considered to be open to the public and press unless (c) and (d) below apply.
- (c) The Monitoring Officer will advise the Standards Committee or Sub-Committee when to go into private session and exclude public access to the meeting in accordance with the Access to Information Procedure Rules, as set out in the Council's Constitution.
- (d) In accordance with Access to Information Procedure Rules, if the Monitoring Officer or Corporate Director (Corporate Services) considers it appropriate, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with the meeting at which those reports are to be discussed is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.
- (e) Any decision departing from the Monitoring Officer's recommendation or advice will be supported with full reasons and recorded within the public part of the minutes for the meeting.

TENDRING DISTRICT COUNCIL INDEPENDENT PERSON PROTOCOL

This Protocol sets out the expected conduct of Tendring District Council's Independent Persons (IP) when carrying out their consultation functions in relation to an allegation that a Member, or co-opted Member, of the District Council, or a Member, or co-opted Member, of a Town or Parish Council within the District, has failed to comply with the relevant Council's Code of Conduct.

Principles

1. The role of the IP is set down in legislation (section 28 of the Localism Act 2011). *Arrangements put in place by the Council 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.*
2. The purpose of the IP role is to enable the public to have confidence in how the District Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for members, ensuring they are adequately trained and understand the Code of Conduct.
3. This Protocol applies to all IPs equally and complements the Monitoring Officer Protocol. If the Council is in a position where less than three IPs are appointed due to vacancies, this Protocol still applies in its entirety, so long as one IP is in place (as required by the legislation).
4. The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
5. In carrying out the role, the IP will ensure that he/ she -
 - a. Acts in accordance with -
 - (i) any relevant legislation or guidance and the respective Council's Code of Conduct in force at the time; and
 - (ii) the agreed processes/ procedures approved by the District Council's Standards Committee and the Council's Constitution; and
 - b. Acts impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice; and
 - c. Maintains confidentiality at all times.
6. The IP role is consultative at various stages of the process, in accordance with the Complaints procedure and Monitoring Officer's (MO) role is to give advice to the Standards Committee or Sub-Committee.

7. The IP is not a member of the Council's Standards Committee or Sub-Committee but is able to attend meetings of the Committee, as a member of the public.
8. The outcome of any prior consultation with the IP undertaken by the MO will be included within any written report presented to the Standards Committee or Sub-Committee for their consideration. The IP 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 it may be appropriate for the Committee or Sub-Committee to do this directly in exceptional circumstances.
9. If the Standards Committee or Sub-Committee invites the IP to attend any meeting, the IP does not have any voting rights when doing so.
10. The MO will consult the IP on complaints received in accordance with the Council's procedure and requests for dispensations received in accordance with the Localism Act 2011.
11. While the MO will have regard to the views expressed by the IP, he/she is not bound to accept his/her views on the matter.
12. When deciding on how to progress with a complaint, the MO/IP should consider the conduct complaints assessment criteria.
13. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved in the matter.
14. If all of the IPs are conflicted out from dealing with the issue, the MO will consider making a request to use the services of an IP from another principal authority.
15. All contact with the IP should be made through the MO and should the IP be contacted directly by a complainant or Member, he/she should inform the MO immediately.
16. In terms of confidentiality, the IP must not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken.
17. The IP must provide the MO with appropriate methods of contact e.g. email and telephone numbers, and must make themselves available at all reasonable times.
18. On those occasions when the IP knows that they will not be contactable, he/she must inform the MO with as much reasonable notice as possible so that the reserve IP can be advised that he/she would be required to stand-in as necessary during this period.

19. The IP should be prepared to give the Standards Committee or Sub-Committee, through the written report, an independent view on the complaint and the merit of the evidence put forward as required to assist the Committee in coming to a decision on the matter.
20. When discussing the complaint with the complainant or the Member subject of the complaint, the IP's role is not to give views on the merit of the complaint or the evidence in support but to give advice and reassurance on the process.
21. In each complaint, one IP will be allocated a role by the MO, which will be one of the following:
 - a. Available to the Complainant – see paragraph 20 above; or
 - b. Available to the Member subject of the Complaint - see paragraph 20 above; or
 - c. Available to the Standards Committee or Sub-Committee for consultation as part of the complaints procedure and in accordance with the Localism Act 2011.
22. The MO will rotate the roles between the IPs on a case by case basis. Should less than 3 IPs be appointed at any time, so long as 1 IP is in place the IP will be expected to be available for the respective parties set out in 21 (a-c).
23. The MO will ensure that the IPs are kept up to date with changes in legislation, national guidance or good practice.

TENDRING DISTRICT COUNCIL COMPLAINTS PROCEDURE

1. Context

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member (with voting rights) of this Authority (‘Tendring District Council’ or of a Town or Parish Council within its area (see 1.3.below)) has failed to comply with the Member Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Member Code of Conduct.
- 1.2 Under **Section 28(6) and (7) of the Localism Act 2011**, Tendring District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Authority (*or of a Town or Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the Authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Town and Parish Councils within the Tendring District are set out on the Council’s website.
- 1.4 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation against a Member, which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles and can be viewed via [\(insert hyperlink\)](#).

2. The Member Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is included as **Annex A** and available for inspection on the authority’s website (www.tendringdc.gov.uk) [\(insert hyperlink\)](#) or on request from reception at the Council offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should visit the website operated by the Town or Parish Council or request the Town or Parish Council Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

3. Making a complaint

- 3.1 If you wish to make a complaint, please write to or email:

The Monitoring Officer, Tendring District Council
Corporate Services, Town Hall, Station Road
Clacton-on-Sea Essex CO15 1SE

lhastings@tendringdc.gov.uk or standards@tendringdc.gov.uk

3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles and can be viewed via [\(insert hyperlink\)](#).

3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the [complaint form](#), which can be downloaded from the authority's website [\(insert hyperlink\)](#), next to the Code of Conduct, and is available on request from the reception at the Council Offices. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The name and address of a complainant will be provided to the member that is the subject of the complaint. In exceptional cases, we may agree to withhold your name and address from the member. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form along with the reasons why you feel it is necessary for your name and address to be withheld. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.

3.5 Following receipt of your complaint, the Monitoring Officer will: -

- (a) acknowledge receipt of your complaint within 5 working days of receiving it;
- (b) notify, within 5 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above; and
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint.
- (d) Your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.

3.6 The Complaints Procedure Flowchart is attached at **Annex B** for your assistance.

3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.

4. Will your complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, may consult with one of the Independent Persons before taking a decision as to whether the complaint:

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation.

4.2 In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.3 The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria included at **Annex D (set out at the end of this procedure for reference)**.

Where the Monitoring Officer has taken a decision, you will be informed of the decision and the reasons for that decision. The Monitoring Officer may require additional information in order to come to a decision, and may come back to you for such information. In the absence of a response from you within 15 working days the Monitoring Officer may close the complaint. Information may be requested from the member against whom your complaint is directed to enable the Monitoring Officer to take the decision. In the absence of the subject Member's response within 15 working days the Monitoring Officer may proceed with the complaint.

Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer *may* also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

Any failure to comply with the time scale by the Monitoring Officer or parties concerned will be notified to the Standards Committee or Sub-Committee together with reasons for the delay and the member subject of the complaint and the complainant will be kept informed of progress and reasons for the delay.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or

agreeing to mediation and/or other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

Where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required for informal resolution or mediation; 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.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5. Referral to the Standards Committee or Sub-Committee and how is the Investigation conducted?

(The Committee and Sub-Committee Terms of Reference are included at **Annex C (set out at the end of this procedure for reference)**).

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints a summary of which is attached as **Annex E (set out at the end of this procedure for reference)**.

The Council has a Town and Parish Councils' Standards Sub-Committee which has responsibility for dealing with complaints regarding the actions of a Town or Parish Councillor, reference to the Sub-Committee throughout this procedure relates to the Town and Parish Council's Standards Sub-Committee.

- 5.2 If the Monitoring Officer decides that a complaint merits further investigation without referral to the Standards Committee or Sub-Committee, he/she will commission the investigation to be undertaken by a suitably qualified investigator with requisite experience and may include another officer of the Council, a senior officer of another authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained.

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed.

- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town and Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

7. 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.

At the hearing, following the Council's procedures, a copy of which will be provided **(insert hyperlink)**, 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.

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.

9. What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chairman will state 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 you 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.
- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.

10. Who forms the Standards Committee or Sub-Committee?

- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Association of Local Councils);

10.3 At least one of the three Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who are the Independent Persons?

11.1 The Council has appointed three Independent Persons to support the Standards Committee and 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 and can be viewed via [\(insert hyperlink\)](#).

12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

13. Appeals

13.1 There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of 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 Ombudsman.

ANNEX A [INSERT NEW REVISED CODE OF CONDUCT](#)

ANNEX B [Insert flowchart](#) – provided separately

ANNEX C [Hyperlink to Terms of Reference for Committee](#)

ANNEX D

CONDUCT COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee

1. The complaint is not considered sufficiently serious to warrant investigation;
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”;
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
5. It is about someone who is no longer a Councillor
6. There is insufficient information available;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances, e.g. an allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Member Development and Conduct Committee;
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

Complaints which may be referred to the Standards Committee or Sub-Committee

1. It is serious enough, if proven, to justifying the range of sanctions available to the Standards Committee or Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to consider; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to consider; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to consider.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers’ and Members’ time. This is an important consideration where the complaint is relatively minor.

ANNEX E

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

1. Planning Stage:

Upon receipt of an instruction to carry out an investigation the Investigator should :-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Member Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.

2. Evidence Gathering Stage:

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.

3. Interview Stage:

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (with complaint, subject member and witnesses).

4. Report Stage:

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain :-
 - Agreed facts
 - Facts not agreed and corresponding conflicting evidence
 - Conclusions as to whether a breach has occurred.
 - Where a draft report is issued this will be supplied to both the complainant and subject member for comment.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion

Annex B

This Flowchart is to be read in conjunction with the Tendring District Council’s Complaints Procedure

(Reference is made to the relevant paragraphs of the Procedure in the boxes on the left hand side)

