

# STANDARDS COMMITTEE

2 FEBRUARY 2015

## REPORT OF THE MONITORING OFFICER

### **A.1 HEARING TO DETERMINE OUTCOME OF EXTERNAL INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS’ CODE OF CONDUCT**

(Report prepared by Lisa Hastings)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

In accordance with the District Council’s Complaints Procedure, the Monitoring Officer has considered that it is appropriate to report the outcome of the external Investigation to the Standards Committee to 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.

##### **EXECUTIVE SUMMARY**

A Complaint was received in September 2014 from a member of the public, Mrs Elizabeth Lubin regarding the actions of District Councillor, Joy Broderick under the Members’ Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013. A copy of the Complaint was provided to the District Councillor (**Appendix 2**).

The complaint alleged that the behaviour of Councillor Joy Broderick, in dealing with a noise complaint regarding a cockerel owned by Mrs Lubin, had breached the Tendring District Council Members’ Code of Conduct. The alleged breaches related to three aspects of behaviour:

- i. Bullying and harassment;
- ii. The disclosure of confidential information;
- iii. Conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.

The behaviour was alleged to have occurred over the period spanning the 6<sup>th</sup> to the 9<sup>th</sup> August 2014, on, or around, the property of the complainant.

On the 24<sup>th</sup> September 2014, the Monitoring Officer, issued a Decision Notice (**Appendix 3**) including a summary of the response received from Councillor Broderick, who had confirmed that she did not wish to proceed down the informal resolution route. The Monitoring Officer decided therefore, “there is a potential breach of the Code of Conduct and it is reasonable and appropriate that this merits further investigation”. The parties were informed of this decision on the same date.

The Monitoring Officer subsequently instructed Tim Earl within Legal Services at Suffolk County Council to undertake the investigation on the District Council’s behalf. The final report was received on 16<sup>th</sup> January 2015, which concludes that there is evidence that the Members’ Code of Conduct has been breached (**Appendix 4**).

In accordance with the Council’s procedures, paragraph 7.1.2, the Monitoring Officer has

decided that this matter should be reported to the Standards Committee to 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.

In March 2014, the Council's Standards Committee approved the Hearing Procedures, which are to be followed by the Committee when holding a hearing (**Appendix 5**). Both parties have been provided with a copy of the Report and the Procedures.

#### **Consultation with the District Council's Independent Person:**

The Independent Person (IP) supports the result of the investigation by the Lawyer at Suffolk County Council. The IP would recommend that Councillor Broderick could have made herself aware of the complaints procedure after receiving neighbour concerns.

The IP would suggest after the first visit to Mrs Lubin, Councillor Broderick did cause unnecessary confrontation with Mrs Lubin, bearing in mind the complaints procedure was already operating. Also it was noted that due to the on-going visits by Councillor Broderick, notes could have been taken to assist in clarifying the date of further events.

The IP felt that it was unnecessary in his view and with hindsight, that had the position been checked by Councillor Broderick, the visits were counterproductive to the complaints procedure and could be regarded as a breach of the Code of Conduct, which was unanimously agreed by Tendring District Council in November 2013.

The letter from Mrs Lubin to Tendring District Council confirmed the cockerel had been removed, and if this had been checked by Councillor Broderick beforehand, the visit on 9<sup>th</sup> August 2014 would not have been necessary and it is reasonable that this could be construed as harassment by Mrs Lubin.

#### **Monitoring Officer Recommendation:**

The investigator presents a clear summary of his investigation which provides conclusions and observations at paragraph 11 of the report. Members of the Standards Committee are encouraged to ensure that they have read the entire investigation report. The investigators conclusions are as follows:

- Paragraph 11.3 – Councillor Broderick should not have disclosed the reason for her visit to the neighbour and if the Standards Committee were to determine that this was a breach of the Code, such disclosure should not attract any significant sanction. This is also reflected in 8.10 and 8.11 of the Investigators Report.
- Paragraph 11.4 – there was no persistent or intentional course of harassment or bullying by Councillor Broderick, but it was felt that the behaviour was more akin to conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.
- Paragraphs 11.5 to 11.10 – there was evidence that Councillor Broderick behaved in what any reasonable person might regard as a confrontational manner, even if this was in response to comments attributed to her by the complainant, Councillors have a Code of Conduct to abide by whereas, in this regard, members of the public do not.

*Paragraph 3.4(a) of the Members' Code of Conduct states "you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute".*

The Monitoring Officer agrees with the conclusions as presented by the Investigator that District Councillor Joy Broderick has failed to comply with the Members' Code of Conduct with respect to paragraph 3.4(a). The Monitoring Officer also agrees with the view of the investigator that the disclosure of confidential information related more to the fact of complaints being made about the complainant rather than the existence of the cockerel.

Members are reminded that the burden of proof for civil matters, which includes standards investigations is 'on a balance of probabilities' and through the investigation, the Investigator has considered the evidence submitted to him and on the balance of probabilities has found 2 of the 3 elements of the complaint proved.

The Committee must reach their decision after following the Hearing Procedure, which allows the Investigator and the Councillor to present their cases in a structured manner, with the opportunity for the individuals and Members to ask questions.

The Committee must in accordance with the Localism Act 2011, consider the comments from the Independent Person and if the decision is contrary to the recommendation from both the External Investigator and the Monitoring Officer, the detailed decisions must be recorded and published within the Decision Notice.

If the Committee agree with the recommendation it must consider what action to take where a Member has failed to comply with the Code of Conduct and the available sanctions are referred to in paragraph 8 of the Council's Complaints Procedure.

## **RECOMMENDATION**

**That the Standards Committee determines whether Councillor Joy Broderick has failed to comply with the Members' Code of Conduct and considers what action, if any, the Committee should take as a result of the failure, after considering all representations.**

## **APPENDICES**

- Appendix 1 – Code of Conduct and Complaints Procedure
- Appendix 2 - Complaint Form
- Appendix 3 – Monitoring Officer's Decision 24<sup>th</sup> September 2014
- Appendix 4 - Investigation Report dated 16<sup>th</sup> January 2015
- Appendix 5 – Hearing Procedures

# **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.

<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	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.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	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.
<i>Openness</i>	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.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	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) bully 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.

## **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.

### **2. The Member Code of Conduct**

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the website 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

[standards@tendringdc.gov.uk](mailto:standards@tendringdc.gov.uk)

The Complaints Form can be downloaded from the website.

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.

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 is available on request from the reception at the Council Offices or via the website. 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 set out at the end of this procedure for reference.

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, 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.

## **12. Revision of these arrangements**

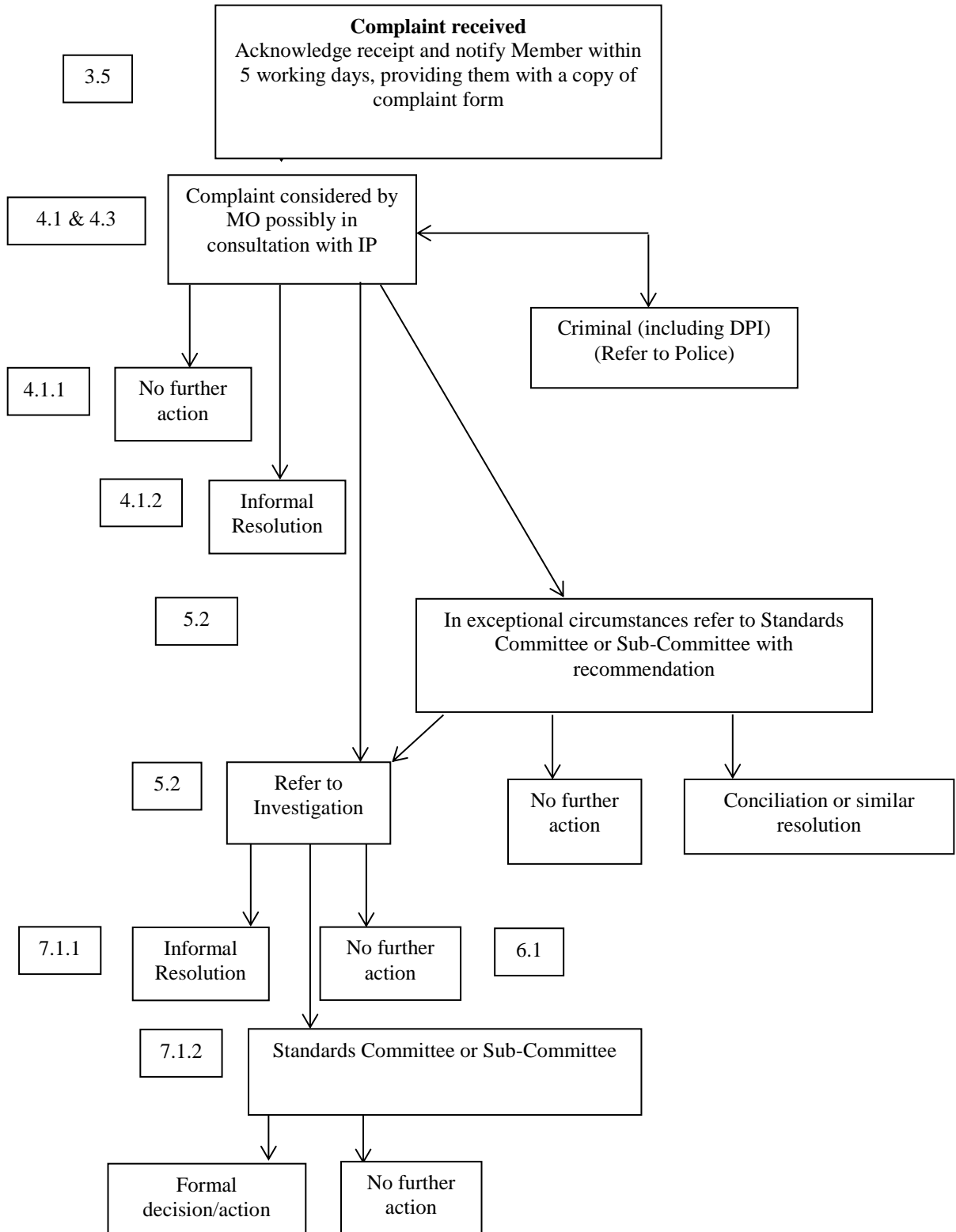
The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

## **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 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)**



## **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



**Complaint alleging a breach of the Members' Code of Conduct  
by a Tendring District Councillor or Town/Parish Council**

**COMPLAINTS FORM**

**YOUR DETAILS**

Name:

MRS E. A. LUBIN

Address:

[Redacted address]

Post Code:

[Redacted post code]

Telephone (day):

[Redacted telephone number]

Telephone (eve):

[Redacted telephone number]

E-mail address:

[Redacted email address]

**Please identify which complainant type best describes you:**

- A member of the public
- An elected or co-opted member of an authority
- A Standards Committee Independent Person
- Member of Parliament
- Local Authority Monitoring Officer
- Other council officer or authority employee
- Other (please specify): .....

**Confidentiality**

**A copy of your complaint (as set out in this form), together with your name and address will be provided to the Member that is the subject of your 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 below along with the reasons why you feel it is necessary for the 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.

Please note that the Monitoring Officer is unlikely to withhold your identity or the details of your complaint unless you have a good reason to believe that not to do so would impede the Council's ability to deal with your complaint or would have personal safety or other serious implications for you or your family.

If you make a request for your name and address to be withheld, the Monitoring Officer will advise you of the decision on this before disclosing your details to the Member that is the subject of your complaint.

**Please insert your reasons requesting your name and address to remain confidential in the box below:**

The Council will not normally accept an anonymous complaint, 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.

As with all personal data provided to the Council, your personal data will be held in accordance with the Data Protection Act 1998.



**Mrs Elizabeth A Lubin**



**Complaint Regarding: -**

Councillor Joy Broderick

Tendring District Council

**Breach of Code of Conduct: -**

3.2 c. must not bully or harass any person

3.3 a. must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature

3.4 a. must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute

**Complaint: -**

On Wednesday 6 August 2014 Councillor Broderick called at my house to talk to me about a complaint of a noisy cockerel. I was not at home that day as my car was being serviced in Ipswich. I am told she called at the house 3 times that day. She did not leave her name or a note through the letter box to inform me of her visits. However, she spoke to my neighbour at 55 Fleetwood Ave (who I have no contact with normally) and informed her of why she was calling and told her to tell me to contact her. I returned home that evening to be confronted by this neighbour yelling at me through her window that "the council have been round 3 times about your cockerel and you have got to call them". There were several expletives in this sentence which I have left out.

On Thursday 7 August 2014 my daughters took the cockerel away.

On Thursday 7th August at 3.30pm. I received a letter from TDC (unsigned) regarding the complaint. I replied on 7th August posted on 8th to say that the cockerel had been removed.

On Saturday 9 August 2014 at 8am there was a knock at my front door. Councillor Broderick waved her badge in front of my face and said "You know who I am don't you!". I did from a previous meeting regarding a previous cockerel that had been destroyed in June 2014. A subsequent chick had turned out to be a cockerel too but had only just started to crow at 12 weeks old on about the 2nd of August. ( I was on holiday from 27th July to the 3rd August) She said she was here about my cockerel. I asked her if it was her that had spoken to my neighbour at 55 Fleetwood Ave earlier in the week about my business as she had no idea what problems she had caused. She said "I can do what I like" and came towards me in a very aggressive manner. I tried to explain to her that she had caused the neighbour to be abusive to me by giving her ammunition to call out "cocker doodle doo" and swear at me every time I walk in and out of my front door. She said again "I can do what I like". I said that I no longer had a cockerel and Councillor Broderick again lent forwards and pointed in my face and said "Yes you have!" in a very aggressive way I had to step backwards. I was stunned as she was saying I was lying and again tried to explain that I had written to the council to say the cockerel had been removed. She replied again that it had not and that "it is now out of my hands" and as she walked away shouted over her shoulder "I'll make sure you get fined £20,000!". I called out as she walked away from me that she had not read her own leaflet as this is a domestic property and the maximum fine is £5,000 and in any event it is not up to her, it is a matter for the court and as I no longer had a cockerel they would be unlikely to fine me anything. She again said "I can do what I like, you have no idea what I can do to you". She got in her car and drove away. I have heard nothing further from her since. That morning's post yet another unsigned letter from TDC arrived, the third one, along with crowing from neighbours and name calling from Fleetwood Close.

Having lived in Holland On Sea for almost 50 years and having known previous councillors personally for all the years up to their sad passing, I was amazed that Councillor Broderick was unaware that I back on to farmland, therefore having all the great sounds of wildlife there.

**Summary: -**

Councillor Broderick behaved in a rude, aggressive and bullying manner towards me on 9 August 2014.

She disclosed confidential information to my neighbour at 55 Fleetwood Ave on 6 August 2014. (This neighbour was not previously involved in the complaint about the cockerel and was not even aware that I had a cockerel prior to this).

Councillor Broderick tried to say that she could fine me which is in excess of her powers as a Councillor and is behaviour that brings the post of Councillor into disrepute.

I am bringing this complaint as I would like to make sure that she does not behave this way to other people who may be more vulnerable than me.

Signed:



Mrs Elizabeth A Lubin

8 August 2014



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Please continue on a separate sheet if there is not enough space on the form.

Signed: ..*EA Rubin*..... Dated : ...*08.1.09.1.14*....  
(To be signed by the person making the complaint)

**Additional Information**

Further details can be found in the Code of Conduct Complaints Procedure, which is available on the Council's website or by emailing or telephoning the Council's Monitoring Officer (details below).

- If you wish to make a complaint, please complete the official complaints form and send or email it to:

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

[standards@tendringdc.gov.uk](mailto:standards@tendringdc.gov.uk)

- Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.





## Monitoring Officer (Tendring District Council)

### Decision Notice

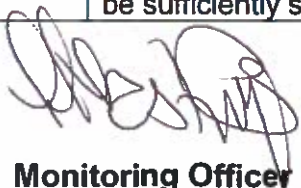
This Decision records the outcome of the Decision taken by the district Council's Monitoring Officer on 24<sup>th</sup> September 2014 in accordance with the Tendring District Council's arrangements for dealing with an allegation that an elected member has failed to comply with the Members' Code of Conduct.

These arrangements were approved by full Council on 26<sup>th</sup> November 2013.

<b>Councillor:</b>	Joy Broderick - Tendring District Council
<b>Complainant:</b>	Mrs E A Lubin
<b>Relevant Paragraph(s) of the Members' Code of Conduct:</b>	<p>Paragraph 3 of the Code of Conduct is alleged to have been breached, with:</p> <p>3.2 (c) must not bully or harass any person;</p> <p>3.3 (a) must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature;</p> <p>3.4(a) must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute; being compromised.</p>
<b>Summary of Complaint:</b>	<p>Councillor Broderick behaved in a rude, aggressive and bullying manner towards me on 9<sup>th</sup> August 2014 (the complaint form gives more details on how this is alleged to have occurred).</p> <p>Councillor Broderick disclosed confidential information to my neighbour on 6<sup>th</sup> August 2014 (this neighbour was not previously involved in the complaint about the cockerel and was not even aware that I had a cockerel prior to this).</p> <p>Councillor Broderick tried to say that she would fine me, which is in excess of her powers as a Councillor and is behaviour that brings the post of a Councillor into disrepute.</p> <p>I am bringing this complaint as I would like to make sure that she does not behave this way to other people who may be more vulnerable than me.</p>
<b>Councillors Response:</b>	<p>This accusation, in my opinion has been made out of spite towards anyone who challenges the individual. The neighbours are at the end of their tether and all I have tried to do is calm the situation.</p> <p>I visited the house on several occasions regarding the second cockerel but, after the first occasion, the front door was never opened. To save myself unnecessary further trips, I asked the next door neighbour (shared drive) if she was aware of when the complainant may be home. The neighbour had no knowledge of her whereabouts.</p> <p>The complainant regularly calls the Police with accusations of bullying and swearing by her neighbours towards her. I am sure the Police will have records of numerous call outs. The accusation she has made towards me</p>

	<p>is a replica of what I could accuse her of. I informed Mrs Lubin of the complaint about the cockerel and gave her the Council's standard suggestion sheet on the care of cockerels in a built up environment. I made several attempts to leave at which time she would block my path and start all over again. I think the problem has built up over the years.</p> <p>When I visited her on the first occasion about the adult cockerel she eventually answered the door but didn't acknowledge me instead continued to speak on the phone.</p> <p>I attempted to introduce myself and as we are advised to show your identification. I stood there for 20 minutes and decided to just leave the sheet on the floor. At that point she started hurling aggressive accusations about all her neighbours. I said what I had to say and she wouldn't take the advice sheet so I put it on the floor and left.</p>
<p><b>Monitoring Officer Recommendation</b></p>	<p>Councillor Broderick has confirmed that she does not wish to proceed down the informal resolution route, which is an option available to the Monitoring Officer to offer.</p> <p>In circumstances, there is a potential breach of the Code of Conduct and it is reasonable and appropriate that this matter merits further investigation.</p> <p>An investigation will reveal whether the statements made by the complainant are correct or not, and therefore, whether the Code has been breached.</p>
<p><b>Relevant Paragraph of Complaints Procedure and assessment criteria:</b></p>	<p>4.1 and 4.2</p>
<p><b>Reasons for Decision:</b></p>	<p>There is clearly a dispute on the facts in this matter and if either one of the parties does not wish to enter into early informal resolution or mediation, the Monitoring Officer must consider whether the complaint merits further investigation.</p> <p>There appears to be a potential breach of the Code and it is considered to be sufficiently serious to warrant investigation.</p>

Signed:



**Monitoring Officer**

Dated:

24<sup>th</sup> September 2014

**CONFIDENTIAL**

**NOT FOR PUBLICATION**

**Tendring District Council  
Standards Committee**

**Report date: 6<sup>th</sup> January 2015**

## **1. Introduction & Background**

- 1.1 I am Tim Earl, the Investigating Officer in this matter. I am the Head of Legal Services and the Deputy Monitoring Officer at Suffolk County Council. I have no personal relationship with anyone employed by Tendring District Council or any of the individuals interviewed or contacted as a part of this investigation. I was assisted in this investigation by my colleague, Martin Ricks, Trainee Solicitor.
- 1.2 On the 8<sup>th</sup> September 2014 Mrs Elizabeth Lubin submitted a complaint alleging that the behaviour of Councillor Joy Broderick, in dealing with a complaint regarding a cockerel owned by Mrs Lubin, had breached the Tendring District Council Members' Code of Conduct .
- 1.3 The alleged breaches related to three aspects of behaviour:
- i. Bullying and harassment;
  - ii. The disclosure of confidential information;
  - iii. Conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.
- 1.4. The behaviour was alleged to have occurred over the period spanning the 6<sup>th</sup> to the 9<sup>th</sup> August 2014, on, or around, the property of the complainant.
- 1.5. On the 24<sup>th</sup> September 2014, the Monitoring Officer for Tendring District Council, Lisa Hastings, issued a decision notice, stating that Councillor Broderick had confirmed that she did not wish to proceed down the informal resolution route and that, "there is a potential breach of the Code of Conduct and it is reasonable and appropriate that this merits further investigation". The parties were informed of this decision on the same date.

## **2. Scope of the Investigation**

- 2.1 On the 28th October 2014 I was commissioned by the Monitoring Officer at Tendring District Council. I was instructed to investigate whether Councillor Broderick's conduct amounted to a breach of the TDC's Members' Code of Conduct.
- 2.2 Whilst I am asked to provide my view following investigation, even if I find that there has been a breach of the Code, the final decision on whether there has been such a breach rests with the Committee.
- 2.3 Further, it is not within my remit to determine which sanctions might be appropriate, if a breach is found by the Committee.

## **3. Interviews**

- 3.1 As a part of this investigation the following individuals have been spoken with.
  - a. Mrs Elizabeth Lubin, who was supported by her daughter, Mrs. Trudy Gibbs (in person).
  - b. Councillor Joy Broderick (by telephone conference).
  - c. Mr. Andrew Rutson-Edwards – TDC Environmental Protection Officer
  - d. PC 2652 Langford.

## **4. Documentation**

- 4.1 I have requested and/or been supplied with the following key documents. This is not an exhaustive list of all the documents that I have considered:
  - a. Complaint dated the 8<sup>th</sup> September 2014.

- b. Written response from Cllr Broderick.
- c. Decision Notice and accompanying correspondence.
- d. The Council's Members' Code of Conduct
- e. The Council's Complaints procedure
- f. 'Noise from Cockerel Crowing' information leaflet.
- g. Correspondence between Mrs. Lubin and TDC Pollution and Environmental Control.
- h. Letters from neighbours, provided by both parties.
- i. Witness statement given to the police by Cllr Broderick on the 16<sup>th</sup> September 2014.
- j. Letter from PC Langford with blank community resolution form, dated 24<sup>th</sup> November 2014, provided by Cllr Broderick.
- k. Photographs showing the exterior layout of Mrs. Lubin's property.

4.2 In addition to the above, I have exchanged correspondence with the Monitoring Officer.

## **5. Procedural matters**

### Was Councillor Broderick acting in an official capacity?

5.1 This is clearly the case and was accepted by Cllr Broderick.

### The need for the investigation

5.2 I asked Cllr Broderick why she has decided not to take up the option of the informal resolution route. She told me that, "I felt it needed exposing and sorting out properly".

### The Standard of proof

5.3 The civil standard of proof is applicable to this matter.

## The Code of Conduct

- 5.4 The Code of Conduct applicable to this investigation is the version that was adopted by TDC in November 2013.

## **6. Chronology**

- 6.1 It is helpful at this stage to set out a brief chronology of events that are not, or cannot reasonably be, in dispute.

### **First Cockerel**

- 1<sup>st</sup> June 2014 A neighbour of Mrs. Lubin attends her property at 4am to complain about the noise from her cockerel.
- 3<sup>rd</sup> June A neighbour makes a complaint about the cockerel to TDC Pollution & Environmental Control.
- Councillor Broderick attends at Mrs. Lubin's home regarding a complaint from a neighbour about a cockerel crowing. Mrs. Lubin is handed a copy of the 'Noise from Cockerel Crowing' information leaflet and Cllr Broderick's card.
- Mr. Lubin arranges for her daughter to dispose of the cockerel.
- 5<sup>th</sup> June Mrs. Lubin's daughter brings her two new chicks (one of which becomes the Second Cockerel – see below).
- 6<sup>th</sup> June A second neighbour makes a complaint about the cockerel to TDC Pollution & Environmental Control.



Mrs. Lubin receives a letter from TDC Pollution & Environmental Control (dated 3<sup>rd</sup> June). It suggests steps are taken if Mrs. Lubin feels there is substance to the complaint and gives warning of possible action if the problem persists.

On the same day, Mrs. Lubin contacts the police regarding the incident on the 1<sup>st</sup> June.

Cllr Broderick telephones TDC Pollution & Environmental Control. This is registered as a complaint about the cockerel.

7<sup>th</sup> June                      The Police visit the neighbour regarding the incident on the 1<sup>st</sup> June. No further action is taken.

11<sup>th</sup> June                     Cllr Broderick telephones TDC Pollution & Environmental Control to confirm that the cockerel has been removed.

### **Second Cockerel**

2<sup>nd</sup> August                    Mrs. Lubin returns from holiday.

3<sup>rd</sup> August                    Two PCOs attend at Mrs. Lubin's property regarding a new complaint. Mrs. Lubin is handed a copy of the 'Noise from Cockerel Crowing' information leaflet.

4<sup>th</sup> August                    A neighbour makes a complaint about the cockerel to TDC Pollution & Environmental Control.

6<sup>th</sup> August                    Cllr Broderick attends at Mrs. Lubin's property regarding the new complaint. Mrs. Lubin is not in. Cllr Broderick

speaks to a neighbour and puts a copy of the 'Noise from Cockerel Crowing' information leaflet through the door.

7<sup>th</sup> August

A second neighbour makes a complaint about the cockerel to TDC Pollution & Environmental Control.

Mrs. Lubin receives a letter from TDC Pollution & Environmental Control (dated 4<sup>th</sup> August). It warns of possible monitoring and gives warning of possible action if the problem persists. It also encloses a copy of the 'Noise from Cockerel Crowing' information leaflet.

Mrs. Lubin's daughter disposes of the chicks.

Mrs Lubin sends a letter to TDC Pollution & Environmental Control confirming the 'cockerel' has been removed.

9<sup>th</sup> August

Cllr Broderick attends at Mrs. Lubin's property. The 'Noise from Cockerel Crowing' information leaflet is left.

Mrs. Lubin receives a letter from TDC Pollution & Environmental Control (dated 7<sup>th</sup> August). It warns of possible monitoring and gives warning of possible action if the problem persists. It also encloses a copy of the 'Noise from Cockerel Crowing' information leaflet.

13<sup>th</sup> August

Mrs Lubin is sent the complaint form and procedure by TDC.

8<sup>th</sup> September

Mrs Lubin submits her complaint to TDC.

9<sup>th</sup> September

The Monitoring officer writes to Cllr Broderick to provide her with a copy of the complaint.

11<sup>th</sup> September Cllr Broderick receives the complaint.  
Cllr Broderick contacts the police to allege an assault by Mrs Lubin on the 9<sup>th</sup> August.  
Cllr Broderick responds to the Monitoring officer.

## **7. Discussion**

7.1 Mrs. Lubin attended our interview with her daughter, Mrs. Trudy Gibbs. She was well prepared, having brought with her a bundle of relevant documents and her diary. She was clear and structured in her presentation.

7.2 Cllr Broderick expressed a preference to conduct our meeting by telephone. She confirmed that she was happy to proceed. Unfortunately, Cllr Broderick was poorly prepared for our meeting. She had not read through her paperwork beforehand. She quickly became confused over which events had occurred on certain dates, stating that the events had happened, "*a long time ago*" and that she, "*could not remember*" when she had spoken to Mrs. Lubin.

7.3 I adjourned the meeting, asking Cllr Broderick to take some time to read through her statement and refresh her memory of events. I then called Cllr Broderick back and we recommenced our interview.

7.4 Mrs. Lubin related a history of neighbourhood disputes, in which she had been offered offence and abused by a small number of neighbours over matters such as access, garden rubbish and tree cutting. She also explained the circumstances of the purchase of the large plot of land at the rear of her property and how this meant she had a considerable number of neighbours, only a few of whom had been of any concern.

- 7.5 Cllr Broderick also referred to a history of neighbourhood disputes. However, she was firmly of the view that the cause of these was Mrs. Lubin whom she felt was a difficult individual who “*enjoy[s] conflict with her neighbours*”. She based this not just upon the information she had received from neighbours, but also from her personal observations.
- 7.6 As a part of this investigation, Councillor Broderick asked that I speak to certain neighbours. I have not done so and advised Cllr Broderick accordingly. I do not believe that it would have been helpful to do so, for a number of reasons, including, but not limited to, the following. Firstly, I already have letters from neighbours (on behalf of both parties). To speak to them would add little. Secondly, these witnesses did not observe the incident on the 9<sup>th</sup> August and their evidence could only be of limited relevance. Thirdly, to ensure fair process, it would not be reasonable just to speak to those neighbours who made complaints to Cllr Broderick and whom have already taken a stance. This would only serve to cause more distrust and disharmony in the local community. It would also vastly increase the cost and time of this investigation, to no purposeful end.
- 7.7 I did propose to Cllr Broderick (indeed to both parties) that if she wished to provide me with any further written material in support of her case, she could do so.
- 7.8 My colleague Martin Ricks spoke to PC Langford, who provided documentation, and to Mr. Rutson-Edwards, who was able to provide factual and procedural information.
- 7.9 Whilst not the subject of the complaint, it is worth making reference to the incident on the first meeting of the two parties on the 3<sup>rd</sup> June.
- 7.10 This related to the first cockerel. There was only brief mention of this in the complaint submitted to TDC.

- 7.11 However, in the response emailed to the Monitoring Officer, Cllr Broderick raises the first occasion on which she visited Mrs. Lubin, regarding the first cockerel. She says,

*“[Mrs Lubin] eventually answered the door didn’t acknowledge me instead continued to speak on the phone. She continued to completely ignore me and carried on her conversation on the phone. I attempted to introduce myself and as we are advised, show your identification. Her words were to the phone “can you hear this it’s someone from the council about the cockerel”. I stood there for 20 minutes and decided to just leave the sheet on the floor. At that point she started hurling aggressive accusations about all her neighbours. I said what I had to say she wouldn’t take the advice sheet so I put it on the floor and left.”*

- 7.12 Cllr Broderick is clearly describing a fraught first encounter, referring subsequently to Mrs. Lubin “*ranting*”. Mrs. Lubin’s version of events differs a little, in that the time taken to hang up the phone was brief, there were no aggressive accusations and the leaflet was handed to her.

- 7.13 As this is not the subject of the complaint I am not required to consider it in any detail. However, it is of relevance in respect to both the conduct subsequently alleged and the context for the next meeting of the parties.

## **8. Complaint: Confidential Information**

- 8.1. Dealing firstly with the allegation of disclosure of confidential information, Mrs. Lubin told me that upon her return to her home on the 6<sup>th</sup> August she was met by a neighbour. The neighbour told her that, “*The Council had been round three times today*” and that it was “*Something to do with her cockerel*” and that Mrs. Lubin should “*Phone her* [meaning Cllr Broderick]”.

8.2 When Cllr Broderick attended Mrs. Lubin's property on the 9<sup>th</sup> August, Mrs. Lubin reproached her, saying, "*How dare you talk to my neighbour about my business*".

8.3 Mrs Lubin told me that she did not think that this neighbour knew she had (another) cockerel and so Cllr Broderick should not have told her about the reason for her visit. Mrs Lubin told me that she has said to Cllr Broderick, "*I will report you for being indiscreet*". Mrs Lubin also said that it had led to mocking cockerel crowing from this particular neighbour. Cllr Broderick accepted in her interview with me that she had told the neighbour that the reason she was there was that she had received a complaint regarding a cockerel.

8.4 However, in her response to my draft report Cllr Broderick provided me with a letter from the neighbour in question. In her covering note to me Cllr Broderick stated,

*"I did not breach [Mrs Lubin's] right to privacy any more than a postman who is unable to deliver a parcel seeks advice from a neighbour as to the occupier's situation"*.

8.5 Cllr Broderick now appears to dispute that she mentioned the cockerel to the neighbour. The letter supports such a position,

*"...my neighbour is accusing Mrs Broderick of discussing details of the nature of why she was visiting her at home. This is completely untrue. Mrs Broderick did knock at my home but only to enquire if I knew when my neighbour was likely to be at home as she had tried on several occasions to speak to her. I told her as far as I'm aware she was at home as both her cars were parked on the driveway. At no point did Mrs Broderick disclose the nature of her visit or anything else regarding my neighbour"*.

8.6 This poses a problem. It conflicts with what I understood I had been told by Cllr Broderick. I have therefore listened back to the tape to make sure that my recollection was correct. The relevant part of the interview is as follows:

*TE: What exactly [did you say], because she says that you spoke to the neighbour and that was inappropriate?*

*JB: Well I've never set eyes on this lady before. She came to the door, seemed a very pleasant lady ..... and I just said can you tell me if Mrs Lubin is on holiday or if you know when she might be home to save me any more visits and I said that the reason I am visiting is because I've had complaints about the cockerel crowing next door, you know, keeping people awake and she agreed, but, erm, do you know I'm not sure if she agreed or not, she said she knew she had one but I can't remember if she said it kept her awake or not.*

8.7 When we spoke, Cllr Broderick's evidence to me on this point did not conflict with that of Mrs Lubin. The evidence in the letter that Cllr Broderick has provided mirrors neither. It is not clear to me why Cllr Broderick seeks to rely upon evidence that directly conflicts with what she told me. The only apparent explanation is that Cllr Broderick too considers that there was no conversation with the neighbour about the reasons for her presence. This would fit with Cllr Broderick's postman analogy.

8.8 If, as it appears, Cllr Broderick is now suggesting that she did not mention the cockerel to the neighbour, then either her initial evidence to me was inaccurate or her position now is incorrect.

8.9 I take that view that what Cllr Broderick originally told me is correct. There was a conversation with the neighbour in which the cockerel was mentioned.

8.10 It is fair to say that revealing that someone has made a complaint regarding a cockerel is hardly the weightiest breach of confidentiality. It is certainly not the same as revealing deeply personal and private matters.

8.11 However, not least as a matter of simple courtesy and common sense, Cllr Broderick should not have told the neighbour of the reason for her visit. It was fine to ask if the neighbour knew where Mrs. Lubin was, but it was not appropriate to reveal anything about the purpose of her visit.

## **9. Complaint: Harassment & Bullying**

9.1. This branch of the complaint crosses over the final complaint regarding general disreputable conduct.

9.2 Mrs. Lubin alleges that the behaviour of Cllr Broderick on the 9<sup>th</sup> August was “*very aggressive*”. This incident relates to the second occasion on which the parties met. This was on the 9<sup>th</sup> August. It is worth looking back at the chronology above at this point.

9.3 It can be seen that by the time of Cllr Broderick’s visit at, or close to, 8am on a Saturday morning, Mrs. Lubin had, within the space of a few days, received a visit from the police, a visit from Cllr Broderick (missed), a letter from TDC and three copies of the ‘Noise from Cockerel Crowing’ information leaflet. Later that day she was to receive a further letter and copy of the leaflet from TDC.

9.4 It is perhaps understandable why Mrs. Lubin felt harassed, especially as she had already disposed of the second cockerel. However, it would be unfair to blame that harassment on Cllr Broderick, if she was only a small contribution to the perceived problem.

9.5 When asked whether she had known of what else had been going on and whether she had any communication with anyone at the TDC, Cllr



Broderick told me she had not, I asked whether it would be usual procedure to contact the council before going round. Cllr Broderick's evidence on this point was confusing and contradictory.

9.6 She stated, *"If I had a copy of [the letters from TDC] I wouldn't have had to bother"*, but subsequently stated that she would have gone round anyway as *"clearly it wasn't working"*.

9.7 Later in the conversation she said,

*"I just thought it was my job to go round. I wouldn't have thought to ask anyone what they had done previously"*.

9.8 And then, in correspondence, she stated,

*"It has occurred to me that as the reason for my visit was because the police and council had not been able to solve the dispute ..."*

9.9 And,

*"I am the ward member and I would have thought I should have had copies sent to me at the time. I went into the situation blind and thinking that this was just a misunderstanding that had boiled over"*.

9.10 I do not accept that Cllr Broderick properly informed herself of what stage TDC had reached in their efforts and that she was therefore the 'last resort'. She may have been told by neighbours that problems were continuing, but that was not enough to reach the conclusion above.

9.11 Even if it is accepted that the PCOs had not managed to resolve the matter on the 3rd, TDC had only just sent letters and Mrs Lubin had not been given sufficient time to deal with the concerns raised.

- 9.12 I am satisfied that Cllr Broderick did not consider it necessary to contact TDC and so she did not contact them to confirm the position, but was determined to resolve matters herself.
- 9.13 Of course, by the 9<sup>th</sup> August the matter had been resolved, in that the cockerel had been removed, which meant that Cllr Broderick's visit was unnecessary and served only, whatever the rights and wrongs, to potentially complicate matters.
- 9.14 I do not think that the behaviour complained of was harassment or bullying, at least in the sense that it was not persistent. A few visits, even coupled with the events of June, do not constitute a concerted course of action. Her failure to check the position of others was unfortunate, but can be learned from.
- 9.15 As to the specifics of the alleged behaviour on the day in question, was it capable of amounting to harassment (in the non-persistent sense) and/or bullying or is it better categorised as conduct that might bring a councillor or the Council into disrepute?

**10. Complaint: Conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.**

- 10.1 Mrs Lubin's account is that from the outset Cllr Broderick was very aggressive, including waving her badge towards Mrs. Lubin, saying, "*You know who I am don't you*" and stepping into the porch. However, on Mrs Lubin's own account, her first words were, if not also aggressive, then hardly likely to engender a calm and considered discussion. Mrs. Lubin told me that she said, "*How dare you talk to my neighbour about my business*". I can imagine that the tone of this enquiry was hardly friendly.
- 10.2 Of course, Mrs Lubin is not governed by a Code of Conduct and so even if both parties behaved in the same way, Cllr Broderick might be

open to findings against her, whereas Mrs Lubin is not, at least in the context of this investigation.

10.3 The two versions of events differ wildly.

10.4 To summarise:

#### **Mrs Lubin's evidence**

10.5 Mrs Lubin says that Cllr Broderick was rude and arrogant and that in response to her question about the neighbour said, "*I can do what I like*" and then "*You have no idea what I can do to you*".

10.6 Mrs Lubin then told Cllr Broderick that she would report her for being indiscreet.

10.7 Mrs Lubin then told Cllr Broderick that, "*There is no cockerel on this property*", to which Cllr Broderick responded, "*Yes you have*" whilst pointing in Mrs Lubin's face in a very aggressive way causing Mrs Lubin to step backwards.

10.8 Mrs Lubin then told her that she had written to TDC to which Cllr Broderick responded, "*It is out of my hands now*".

10.9 Cllr Broderick then walked away and over her shoulder shouted, "*I'll make sure you are fined £20,000*".

10.10 Mrs Lubin then called out that Cllr Broderick had not read her own leaflet as this was a domestic property and "*the maximum fine is £5,000*".

10.11 Cllr Broderick again said, "*I can do what I like*" and then "*You have no idea what I can do to you*", before she got into her car and drove off.

### **Cllr Broderick's evidence**

- 10.12 Cllr Broderick attends at Mrs Lubin's property having intended to meet first with a neighbour, who was not home.
- 10.13 Cllr Broderick introduces herself to Mrs. Lubin who, "*goes berserk*". Mrs. Lubin refuses to talk about the cockerel at all, just talking about her neighbours and how bad they are and how she is made to suffer.
- 10.14 Cllr Broderick offers the 'Noise from Cockerel Crowing' information leaflet to Mrs Lubin who refuses it, so Cllr Broderick places it on one side.
- 10.15 Mrs Lubin raises the issue of her neighbour banging on her door at 4am. Cllr Broderick agrees that this would be unacceptable.
- 10.16 Mrs. Lubin continues to "*rant and rave*". Cllr Broderick decides to leave. Mrs Lubin follows her and pokes her on the left shoulder several times, saying, "*You are useless*". Cllr Broderick says, "*You know where I am and I can help you*". Mrs Lubin continues to "*stalk*" around Cllr Broderick as she tries to walk up the driveway, "*acting like an animal*" and trying to stop her leaving.
- 10.17 Eventually Cllr Broderick gets into her car and leaves.
- 10.18 From the two outlines, it can be seen that:
- i. Both allege that the other party was rude and aggressive.
  - ii. Neither accepts that they were rude or aggressive, though on Mrs. Lubin's account, both were critical of the other.
  - iii. Cllr Broderick states that she made none of the comments attributed to her by Mrs. Lubin.
  - iv. Mrs. Lubin states that she did not leave the house and as such, could not have pursued or prodded Cllr Broderick.

- 10.19 It is not the case that one of these versions must be entirely correct. However, for my part, having had the benefit of speaking to both parties and considering the evidence as a whole, I am inclined to prefer the version of events put forward by Mrs. Lubin. She does not shy away from the fact that she criticised Cllr Broderick, threatened to report her and called after her down the driveway. If her version were a complete invention, she would have no reason to include these details.
- 10.20 Moreover, Mrs. Lubin was by far the more cogent witness of the two. Her story, as related to me, followed a clear and consistent pattern, with specific detail and explanation. I am satisfied that it meets the applicable standard of proof.
- 10.21 Cllr Broderick's narrative was fragmented and vague. Where their accounts differ, particularly over the specific examples given regarding what Cllr Broderick allegedly said to her, I prefer the evidence of Mrs. Lubin. It is stretching credibility to suggest that Mrs. Lubin was able to invent the various detailed parts of her story. Conversely, I found the suggestion that Mrs Lubin pursued Cllr Broderick in the manner described to be imprecise and improbable
- 10.22 I was left dissatisfied by Cllr Broderick's evidence. It lacked reflection. I found that her beliefs regarding Mrs. Lubin's difficult nature and her enjoying conflict were unsupported by anything other than gossip and reliance upon the (partisan) opinions of others. Instead of focussing upon the facts, this was the main thrust of her evidence and, as it was ultimately unconvincing, it leaves her exposed.
- 10.23 Having regard to the events of the 3<sup>rd</sup> June, I feel that both parties were clearly entrenched by the 9<sup>th</sup> August. I remind myself that on the 6<sup>th</sup> June Cllr Broderick herself had made a complaint to TDC about the cockerel, though no doubt on behalf of the neighbours. I have no doubt that there was irritation on both sides. I consider that Cllr Broderick

approached that meeting with the mindset she subsequently evidenced in her meeting with me and her correspondence, that Mrs Lubin was firmly in the wrong and that she would sort the matter out.

## **11. Conclusion & Observations**

### Agreed facts

11.1 The agreed facts are as set out in the chronology at 6.1.

### Facts in dispute

11.2 The facts in dispute are summarised at 10.4 et seq.

### Conclusions

#### **Complaint: Confidential Information**

11.3 I have already found that Cllr Broderick should not have disclosed the reason for her visit to the neighbour. However, if the Committee were to determine that this was a breach of the Code, it would be of the least serious kind. Embarrassment may have been caused to Mrs Lubin, but, even if it is accepted that this led to harassment from the neighbour, this is not a disclosure that should attract any significant sanction.

#### **Complaint: Harassment & Bullying**

11.4 For the reasons set out above, there was no persistent or intentional course of harassment or bullying by Cllr Broderick. What behaviour she did exhibit is best dealt with under the final head of the complaint.

#### **Complaint: Conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.**

- 11.5 Cllr Broderick is not the type of person to be easily cowed.
- 11.6 I believe Cllr Broderick approached the meeting on the 9<sup>th</sup> August with a sense of determination to, as she saw it, put matters right. From her account of the meeting on the 3<sup>rd</sup> June she must already have been wary of Mrs. Lubin's response, and it is more likely than not that such wariness, together with her perception of where fault lay, manifested itself in an overly-forceful approach.
- 11.7 The recent history of the matter, coupled with the approach of Cllr Broderick, led directly to a heated discussion between the parties. I am satisfied that it is more likely than not that voices were raised on both sides, though each does not accept this in respect of herself.
- 11.8 I am satisfied that Cllr Broderick behaved in what any reasonable person might regard as a confrontational manner. It is easy to understand why a member of the public might view that as rude, aggressive or bullying.
- 11.9 On this occasion, in a situation of perceived and actual conflict, Cllr Broderick failed to remain calm and deal with the situation in an entirely professional and courteous manner. I am satisfied that she did make the comments attributed to her by Mrs Lubin and set out at 10.5 to 10.11 above, possibly as a riposte to the criticism levelled at her by Mrs. Lubin. These comments worried Mrs Lubin and gave the impression that Cllr Broderick would make things difficult for her.
- 11.10 Such behaviour represents a breach of the Code.

## Observations

- 11.11 This was clearly a matter that could have been dealt with by the informal route, as offered by the Monitoring Officer.
- 11.12 In response to my draft report I received a note from Cllr Broderick entitled, "Reply decision by Councillor Joy Broderick". I have decided to set this out in full as it raises a number of issues.

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**Reply decision by Councillor Joy Broderick  
To the report  
from Suffolk council solicitor Mr Tim Earl on behalf of Tendering District  
Council.**

It has really come to something when the person committing a nuisance to her neighbours is exonerated whilst her victims are ignored and the person who has tried to help is pilloried for doing her best for her constituents."

In my opinion the outcome of this complaint was pre-determined. I now feel discriminated against and the subject of continued persecution.

**The indisputable facts are:-**

1. She does keep one or more roosters at her premises
2. They do make a noise in the early hours of the morning
3. They have been the subject of numerous complaints by her neighbours
4. She did at one time remove the rooster(s) only to replace it later
5. She did respond negatively and aggressively to my attempt to mediate in the matter
6. I did not breach her right to privacy any more than a postman who is unable to deliver a parcel seeks advice from a neighbour as to the occupier's situation.

**Please find details below of new information for your records.**

**Cllr J Broderick**

**15.1.15**



**New attached enclosures/ evidence :**

**New Witness** letter from the neighbour at number 55 Fleetwood - Mrs Chris Mc Mullen. That I will send to you by post.

**Copy of relevant section email** from Martyn Knappett regarding the procedure that TDC have regarding information given to Councillors about resident disputes.

**Confirmation herewith** that Councillors are not permitted to receive any copies or information on such disputes due to the Data Protection Act. Although I note that you (and an officer from a different authority have been allowed to receive a letter from Mr A Rusten-Edwards).

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11.13 I will not dwell on the stated facts save to say that I assume that the present tense has been used in error at points 1 and 2. If that is not the case, I have been presented with no evidence on this point and in any event it is not within my remit to consider whether a cockerel is again present.

11.14 I have carefully read the enclosures referred to. I have dealt with the neighbour's letter above. I have no observation on the other enclosures as they do not fall within my remit.

11.15 Cllr Broderick has stated that the outcome of this complaint was pre-determined. If by this she means that my investigation was pre-determined then this is a very serious allegation in respect of my own professional conduct and possibly also that of others. If Cllr Broderick wishes to pursue a complaint in this regard or has any evidence to substantiate this claim she should immediately make it known to the Monitoring Officer.

11.16 Cllr Broderick has also stated that she feels discriminated against and the subject of continued persecution. Again, if Cllr Broderick wishes to pursue a complaint or has any evidence to substantiate these claims she should immediately make it known to the Monitoring Officer.

11.17 Whilst Cllr Broderick is entitled to claim that I have got matters wrong, it is an entirely different matter to allege improper conduct and I reserve my rights in this respect.

11.18 It should be noted that my conclusions have not changed (save for minor amendments) from my draft report. Thus I have not been influenced by these parts of Cllr Broderick's reply in reaching my conclusions on the complaint.

11.19 In this report I have not specifically addressed the issue of the alleged assault upon Cllr Broderick by Mrs. Lubin. Indeed I do not need to do so as it is not part of the complaint. However, I have given this and the surrounding events due regard in reaching my conclusions on other matters. I comment only that the more serious the allegation the more cogent the evidence must be to support it and that the evidence provided to me by Cllr Broderick, on the matters I was tasked to investigate, was not strong.

11.19 I have also noted that the referral to the police was submitted on the day Cllr Broderick received notice of the complaint. This was not coincidence. Cllr Broderick told me that the referral was made, "*In retaliation*" for the complaint. That does not of itself determine the merit of the referral, but it is an illuminating footnote to the wider investigation.

Tim Earl  
Investigating Officer  
16<sup>th</sup> January 2015

**HEARING PROCEDURE (approved March 2014)**

**STANDARDS COMMITTEE &  
TOWN & PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

This procedure supplements Section 7.1.2 of the Council's Complaints Procedure and a copy will be provided to the both the Complainant and the Member the subject of the Complaint ("Councillor").

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

Where District Councillors were required to make a decision in respect of a hearing, they have due regard to, and take into account any views expressed by Town and Parish Councillors in reaching their decision.

<b><u>Item No.</u></b>	<b><u>Procedure</u></b>
<b>1</b>	<p style="text-align: center;"><b><u>Quorum</u></b></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Town or Parish Councillor a non-voting Town and Parish representative of the Town and Parish Councils' Standards Sub-Committee must be present.</p> <p>1.3. The Committee or Sub-Committee shall nominate the Chairman for the meeting in accordance with the terms of reference of the relevant Committee.</p>
<b>2</b>	<p style="text-align: center;"><b><u>Opening</u></b></p> <p>2.1 The Chairman explains that:</p> <p>(i) The hearing has been convened in accordance with the Council's Complaints Procedure and that an investigation has been conducted, the outcome of which is that it is considered there is evidence of a failure to comply with the Members' Code of Conduct.</p> <p>(ii) The Parties have been aware of the content of the Investigator's Report and this has been circulated to all Members of the Committee.</p>

	<p>(iii) The Monitoring Officer has referred the matter for a hearing either because upon conclusion of the investigation, informal resolution has not been successful or it is not appropriate to do so, for the reasons given within the Committee Report.</p> <p>(iv) Purpose of the Hearing is to consider the Investigators Report, the evidence in support and representations from the Parties. If the Committee or Sub-Committee depart from the recommendation from either the Investigating Officer and/or Monitoring Officer detailed reasons are required and published in the Decision Notice.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p>
<p><b>3</b></p>	<p style="text-align: center;"><b><u>The Complaint</u></b></p> <p>3.1 The Investigating Officer or Monitoring Officer shall be invited to present their report including:</p> <ul style="list-style-type: none"> <li>(i) any documentary evidence or other material;</li> <li>(ii) call such witnesses as considered necessary; and</li> <li>(iii) make representations to substantiate the conclusion that the Councillor has failed to comply with the Code of Conduct</li> </ul> <p>This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>It is only under 3.1 (ii) that the Complainant will take part in the hearing.</p> <p>3.2 The Councillor (or their representative) may question:</p> <ul style="list-style-type: none"> <li>(i) the Investigating Officer upon the content of their report and/or;</li> <li>(ii) any witnesses called by the Investigating Officer.</li> </ul> <p>This is the Councillor’s opportunity to ask questions rising from the Investigators report and not to make a statement.</p> <p>3.3 Members of the Committee or Sub-Committee may question:</p> <ul style="list-style-type: none"> <li>(i) the Investigating Officer upon the content of their report and/or</li> <li>(ii) any witnesses called by the Investigating Officer.</li> </ul> <p>This is the Committee or Sub-Committees’ opportunity to ask questions rising from the Investigators report and not to make statements.</p>
<p><b>4</b></p>	<p style="text-align: center;"><b><u>The Councillor’s case</u></b></p> <p>4.1 The Councillor (or their representative) may:</p>

	<ul style="list-style-type: none"> <li>(i) present their case;</li> <li>(ii) call any witnesses as required by the Councillor or their representative and</li> <li>(iii) make representations as why they consider that they did not fail to comply with the Code of Conduct.</li> </ul> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Committee or Sub-Committee may question the Member and/or any witnesses.</p> <p>In all instances, only questions will be permitted relating to the allegation and the Councillor’s case and no statements should be made.</p>
5	<p style="text-align: center;"><b><u>Summing Up</u></b></p> <p>5.1 The Investigating Officer may sum up the Complaint.</p> <p>5.2 The Councillor (or their representative) may sum up their case.</p>
6	<p style="text-align: center;"><b><u>Decision</u></b></p> <p>6.1 Members of the Committee or Sub-Committee will deliberate in private to consider the complaint (if required, in consultation with the Independent Person) prior to reaching a decision.</p> <p>6.2 Upon the Committee or Sub-Committee’s return the Chairman will announce the Committee or Sub-Committee’s decision in the following terms:-</p> <ul style="list-style-type: none"> <li>(i) The Councillor has failed to comply with the Code of Conduct; or</li> <li>(ii) The Councillor has not failed to comply with the Code of Conduct</li> </ul> <p>The Committee or Sub-Committee will give detailed reasons for their decision, which will be included within the published Decision Notice.</p> <p>6.3 If the Committee or Sub-Committee decides that the Councillor has failed to comply with the Code of Conduct they will then consider any representations from the Investigator and/or the Councillor as to:</p> <ul style="list-style-type: none"> <li>(i) The appropriate sanction, as set out in Section 8 of the Complaints Procedure.</li> <li>(ii) Based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.</li> </ul>

	<p>6.4 The Committee or Sub-Committee will then deliberate in private to consider what action, if any, should be taken. The Committee or Sub-Committee is required by law to do so in consultation with the Independent Person</p> <p>6.5 On the Committee or Sub-Committee's return the Chairman will announce the Committee or Sub-Committee's decision as to what actions they resolve to take (in relation to a Town or Parish Councillor a recommendation to their Council).</p> <p>6.6 The Committee or Sub-Committee will consider whether it should make any specific recommendations to the Council or in relation to a Town or Parish Councillor to their Council with a view to promoting and maintaining high standards of conduct among Members.</p> <p>6.7 The Chairman will confirm that a full written Decision Notice shall be issued within 7 working days following the hearing and that the Committee or Sub-Committee's findings will be published on the Council's website and reported to the next full Council.</p>
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