

## STANDARDS COMMITTEE

14 OCTOBER 2015

### REPORT OF THE MONITORING OFFICER

#### A.1 OUTCOME OF 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 is required to report the outcome of an investigation to the Standards Committee, where an informal resolution has been reached, in consultation with the Council's Independent Person without the need for a hearing.

##### EXECUTIVE SUMMARY

A Complaint was received in May 2015 from a member of the public, Mrs Carol Bannister regarding the actions of District Councillors, Giancarlo Guglielmi and Alan Coley under the Members' Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

The complaint alleged that Councillors G. Guglielmi and A. Coley had breached the Tendring District Council Members' Code of Conduct. The alleged breaches related to:

- (i) Paragraph 7.1: Disclosure of Interests at meetings of the Council;
- (ii) Paragraphs 11.1 & 11.2: Registration of Members' Interests -Disclosable Pecuniary Interests;
- (iii) Paragraph 8.1: Disclosure of interests generally; and
- (iv) Paragraphs 9(a) & (b): Effect of Disclosable Pecuniary Interests on Participation.

Following the Planning Committee meeting on 31<sup>st</sup> March 2015 and in particular, consideration of a planning application submitted by Rose Builders Limited, the Complainant established that a Private Limited Company, Lawford Housing Enterprise Trust (Company No. 9154399) had been incorporated on 30<sup>th</sup> July 2014. The Directors of this company are registered as Mr Steven William Rose, Mr Andrew Bowles, and four other individuals who are also Councillors, these being Alan David Coley, David Alan Ashley, Giancarlo Guglielmi and Valerie Guglielmi.

The allegation of failure to register a Disclosable Pecuniary Interest has been investigated by the Police, who have confirmed their decision to take no further action. The definition of the '*employment, office, trade, profession or vacation*' category as prescribed by **The Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012** ("the Regulations") requires 'profit or gain'. Consequently, as there was 'no case to answer', the complaint alleging that the failure to register and declare Disclosable Pecuniary Interests, are breaches of the Members' Code of Conduct has not been the subject of these investigations and no further action will be taken in this regard. This relates to (ii) and (iv) above.

The Complainant also included within her initial complaint that Councillors Guglielmi and

Coley took part at the Planning Committee meeting on 11<sup>th</sup> November 2014, when Planning Application – 14/01050/DETAIL – Land at Dale Hall, Coxs Hill, Lawford (“the Planning Application”) was considered, but no declaration of interests was made. No action was taken regarding this matter while being investigated by the Police however, they also revealed this and highlighted the same. It appeared that Councillors Guglielmi and Coley had not disclosed the existence of an interest with regards to their directorships on the Company at a meeting, and this may have been a breach of the Members’ Code of Conduct.

On the 7<sup>th</sup> August 2015, the Monitoring Officer decided that it was reasonable and appropriate that this merited further investigation. The parties were informed of this decision and that the Monitoring Officer would undertake the investigation. Section 5 of the Complaints Procedure sets out how an investigation is conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

During the investigation enquires were made to the Lawford Parish Clerk concerning decision making and declarations of interest, which became ancillary to this complaint but nevertheless were important. These remain outstanding and should be progressed further.

All parties have had the opportunity to comment on the investigation report and the findings contained therein. Consultation has been undertaken with the Independent Person. The report was finalised on 5<sup>th</sup> October 2015, which concludes that there is evidence to support the finding that the Members’ Code of Conduct has been breached by both Councillors.

If an investigation concludes that there is evidence of a failure to comply with the Code of Conduct, the Council’s Complaints Procedure at Section 7.1 provides the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, without the need for a hearing by the Standards Committee. Consultation has also been undertaken with the Leader of the Council and Group Leader on suitable sanctions, as these are within their discretion (as per Section 8 of the Complaints Procedure).

Through the investigation, written apologies have been received from both Councillors accepting that breaches of the Code of Conduct have occurred. In addition, the Leader of the Council is exercising his power in respect of determining portfolio holder responsibilities has decided that Councillor Guglielmi will not resume the Planning Portfolio for at least one year from the date of his initial removal. The Council’s Independent Person is in agreement with this outcome as appropriate and proportionate responses to the breaches.

## **RECOMMENDATION**

**That the Standards Committee:**

- (a) Notes the outcome of the investigations undertaken by the Monitoring Officer in respect of both Councillors G. Guglielmi and Coley;**
- (b) Welcomes acknowledgement by both Councillors G. Guglielmi and Coley that they have breached the Code of Conduct;**

- (c) Notes and endorses the Informal Resolution reached in respect of:-
- (i) Councillor Guglielmi's written apology contained within the body of the Report;
  - (ii) The Leader of the Council's decision that Councillor G. Guglielmi will not resume the Planning Portfolio for at least one year from the date of his initial removal;
  - (iii) Councillor Coley's written apology contained within the body of the Report.
- (d) Agrees that the Monitoring Officer continue to work with Lawford Parish Council and its Clerk, undertaking training regarding declarations of interest and decisions in connection with Lawford Housing Enterprise Trust; and
- (e) Agrees that the Monitoring Officer seek a review of the Protocol with the Essex Police to maintain confidence in the referral process to them and to ensure that information is properly communicated.

#### **BACKGROUND - SUMMARY OF THE MONITORING OFFICER'S CONCLUSIONS:**

In response to the two remaining allegations contained within the initial Complaint, the Monitoring Officer has concluded:

##### **Complaint: Alleged breach of Disclosure of Interests at meetings of the Council (Paragraph 7.1 of the Code of Conduct)**

- That a "Non-Pecuniary Interest" as defined in Paragraph 6 exists and consequently, finds evidence supporting that there has been a breach of Paragraph 7.1 by failure of both Councillors to disclose the existence and nature of that interest at the Planning Committee meeting in November 2014.

##### **Complaint: Disclosure of interests generally (Paragraph 8.1):**

- Paragraph 8.1 of the Members' Code of Conduct states:
 

*... 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.*
- Planning decisions are an emotive subject for all involved, whether it is the public objecting to an application, a developer promoting their scheme, or a councillor seeking to influence a decision by speaking in favour or against. The importance of public perception cannot be underestimated and every Councillor is under an obligation to ensure that each decision is made in an open and transparent manner.
- Councillor Guglielmi had been elected as a District Councillor for 9 years and a Parish Councillor for over 25 years. Councillor Coley had been elected as a District Councillor fairly recently (July 2014) before the Planning Committee in November 2014, albeit speaking in favour of an application in his capacity as a Parish Councillor (a position which he held for over 10 years). Whilst attending

meetings of either the District or Parish Council, they were under a duty to disclose the existence and nature of any interests in the business of that meeting. Holding a directorship of a company directed to charitable purposes, which would benefit from the planning permission being granted is significant in my opinion. In addition, the role of the Planning Portfolio Holder sitting with the Planning Committee gives a strong perception of a position of influence in the decision making.

- I can conclude that it is reasonable to believe that a member of the public with knowledge of the facts could reasonably regard the interest as so significant that it is likely to affect both Councillors' judgement. Therefore they were under a duty to disclose the Non-Pecuniary Interest in accordance with Paragraph 8.1 and in failing to do so contravened the Code of Conduct.

**In addition, to the allegations contained within the Complaint, the Monitoring Officer also referred to the following obligations and responsibilities, within the investigation report:**

#### **Effect of Other Pecuniary or Non-Pecuniary Interests on participation**

- Paragraph 10.1 states, *"If you have ... 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.*
- Both Councillors should have disclosed the existence and nature of the Non-Pecuniary Interest in accordance with Paragraph 7.1 of the Code of Conduct and after giving representations and speaking on the planning application, should have removed themselves from the Council Chamber, unless a dispensation had been obtained.
- As both Councillors were directors of the Lawford Housing Enterprise Trust, it could be perceived that by remaining in the room after speaking on an item, they could have influenced the outcome of the decision. I do not however find any evidence that their presence did influence the decision, as the Planning Committee Members all spoke highly in favour of the application for various reasons including that it would deliver a new and forward thinking Affordable Housing Scheme. It would have been possible to seek a dispensation on the criteria, as set out in Section 33 of the Localism Act 2011, but I will not comment as to whether one would have been granted, as it is the responsibility of the Member seeking the dispensation to provide reasons why one should be. It is important to recognise the difference between a decision maker, sitting with the Committee and a councillor giving representations 'from the floor'. Councillor Coley was speaking from the floor and was doing so to persuade the Committee to grant the application, whereas even though Councillor G. Guglielmi is not entitled

to vote at the Planning Committee, he is seen to be in a strong position of influence. The position of the Portfolio Holder for Planning should only address the Committee on strategic planning matters.

### **Principles of Public Life:**

In addition to Paragraphs 7.1 and 8.1 of the Code of Conduct it is necessary to highlight that these obligations are required to ensure that *“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 reasons in so doing”*. Therefore, by failing to disclose the existence and nature of a Non-Pecuniary Interest, both Councillors contravened the Openness Principle of Public Life.

It is important to recognise that a press article within the Clacton Gazette in August 2014 reported that a new village housing scheme hailed as *“alms-houses for the modern age”* had been launched to help struggling Lawford residents get on the property ladder. The article states *“as part of the new Lawford Park development on land off Cox’s Hill, eight homes will be rented to local people. Money from their monthly payments will then be set aside and when their set tenancy ends it will be returned in a lump sum to use as a deposit to buy their own homes. Alan Coley, Lawford Parish Council Chairman and Tendring Councillor for the village, said “this is an extremely innovative scheme – a scheme to be proud of”. “As they will never be owned by a local authority or a housing association they will never be lost through the Right-to-Buy scheme”. The Lawford Housing Enterprise Trust will involve parish and district councillors, as well as developer Rose Builders”*.

Even though the existence of the directorship on the company should have been disclosed at the meeting as a Non-Pecuniary Interest and, consequently both Councillors should thereafter have withdrawn from the meeting due to their connection, I do not find that there is evidence to support the information was deliberately withheld. Councillor Guglielmi has often spoken openly about the Trust and the innovative scheme, which has also been reported in the press before the Planning Application was considered by the Committee. Councillor Coley attended the meeting late and was asked to speak on the item during the meeting; he was not expecting this and had not prepared anything.

## **INFORMAL RESOLUTION AND SANCTION**

### **Informal Resolution and Sanction:**

Both Councillors have acknowledged these breaches and their written apologies are contained within this report. In accordance with Section 7.1.1 of the Council’s Complaints Procedure, the Monitoring Officer is authorised in consultation with one of the Independent Persons to seek an informal resolution.

Councillor Guglielmi has undertaken Code of Conduct training in December 2013 and 2014 (after the Planning Committee meeting in November) and again in June 2015 after his re-election. The Monitoring Officer has experience of Councillor Guglielmi declaring his positions as Parish, Ward and County Councillor at various meetings on a range of agenda items. Through this investigation, Councillor Guglielmi has however gained practical experience and application of the Code of Conduct definitions to a new type of Non-Pecuniary Interest and the Monitoring Officer was satisfied that he now has an even greater understanding of the obligations. Councillor Guglielmi has also confirmed this is

the case.

It was accepted that Councillor Coley arrived after the declarations of interest part of the agenda. He may not have been aware at the time that a Councillor could still declare an interest at any point in a meeting. Councillor Coley undertook Code of Conduct training in December 2014 (after the Planning Committee meeting in November) and again in June 2015 after his re-election. Through this investigation, Councillor Coley has gained practical experience and application of the Code of Conduct definitions and the Monitoring Officer, I am satisfied that he now has a greater understanding of the obligations. Councillor Coley has also confirmed this is the case.

I am satisfied that the acceptance by Councillor Coley that he did breach the Code of Conduct and his personal apology would be an appropriate and proportionate resolution, so long as the outcome and apology are reported to the Standards Committee. The Complainant believes that this sanction is not severe enough however; the Independent Person does agree that this is appropriate and proportionate.

There has also been acceptance by Councillor Guglielmi that he breached the Code of Conduct, consideration was given to any resolution being appropriate and proportionate, with the investigation outcome and the resolution being reported to the Standards Committee. The Committee is held in public, the Members can provide comments and observations and the minutes of the meeting are reported to full Council.

Consideration was given to the sanctions which are afforded to the Committee at Section 8 of the Complaints Procedure and whether any of these would be appropriate. The fact that Councillor Guglielmi was the Portfolio Holder for Planning and this position has been removed by the Leader, for an interim period during the investigation, was taken into account. Details of the investigation had unfortunately already been placed into the public domain before its conclusion and therefore subject to media interest. Some of the more serious sanctions contained within Section 8 of the Complaints Procedure involve the Group Leader and Leader of the Council's discretion and therefore, consultation was carried out, with the parties knowledge.

#### Consultation with the Leader of the Council and Group Leader:

The Leader of the Council, Councillor Neil Stock and the Group Leader for Councillor Guglielmi has confirmed that *"Now that I have had the opportunity to read your draft report and have considered all the circumstances I feel it would be appropriate for me as a group leader, as a former Chairman of the Standards Committee and as Leader of the Council to re-state my commitment to ensuring the very highest standards amongst members and to that end I feel it would be appropriate to state that I shall tell Councillor Guglielmi that he will not be resuming the planning portfolio for a period of at least one year from the date of his initial removal"*.

#### **WRITTEN APOLOGIES**

(a) From Councillor Guglielmi:

*"You have conducted a very thorough examination of all the facts surrounding this matter and I wholeheartedly agree with your findings. During the interview on 4<sup>th</sup> September 2015 I highlighted to you my reasons for not having declared a Non-Pecuniary Interest, but after having reflected on your judgment and analysis of the*

*facts I agree that I should have declared a Non-Pecuniary Interest on the Planning meeting of 11<sup>th</sup> November 2014 and left the room.*

*I agree with you that by not having disclosed my directorship of the Lawford Housing Enterprise Trust it constituted a breach of the Code of Conduct, however charitable the Trust's purposes and aims might be.*

*I would like to give my unreserved apologies for not having disclosed these interests, I fully accept your findings and please rest assured that I now, on reflection, have a better understanding of what constitutes a breach of our Code of Conduct.*

*Lastly I welcome the comments in your last paragraph with regards to the Media coverage when details of the Police investigation became public knowledge before any investigation took place”.*

(b) From Councillor Coley:

*“I would like to add a personal note for the benefit of Mrs Bannister and the Scrutiny Committee:*

*I have been actively committed to my community for over 30 years in one role or another. My only motive in suggesting this particular trust arrangement was to provide young local people with affordable housing, which would not be lost to ‘Right to Buy’.*

*I consider that our young people are the new, “Local Poor” they cannot gather the now required 20% purchase deposit for housing. They find it extremely difficult to find the contract fees, deposit and advanced rent demanded by private landlords. If they do manage to move into the private rented sector they cannot afford to also save for their own property.*

*The Lawford Housing Enterprise Trust will hopefully provide genuine Local Housing for Local People.*

*However at this time the trust is nothing more than a hope. It is a dormant company, the directors of which have never met since formation. The Articles have never been ratified. The officers have never been appointed. It has no assets, no property, and no funds whatsoever. It does not even have a bank account.*

*The Section 106 agreement to transfer the housing is still yet to be signed by TDC. There is no absolute certainty that the LHET will acquire this housing.*

*At this time it is anticipated that if all goes well the Trust Housing will be built and hopefully transferred in around two to three years' time.*

*I realise now that my directorship should have been declared and this was an error on my part, for this error I apologise. However I have never been in a position of having to make a declaration of Pecuniary Interest, because I have none.*

*In my view this is a minor and technical breach of the code. For all that I was subjected to a totally unjustified criminal investigation for many months, which given my employment, caused me considerable stress. In addition the complainant*

*decided to broadcast this matter into the wider community of Tendring District.*

*This is an early experience of the vindictiveness of public life and I am seriously considering if I wish to continue with my efforts, the motives for which are so maliciously used for ulterior purposes”.*

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

Clarissa Gosling, one of the Council’s Independent Persons has responded “*It seems to me that these investigations have been very detailed and thorough (including the matters having been investigated by a specialist police team). The outcome, agreed with the councillors, including consultation with the Leader, seems to me to be proportionate and appropriate; both Councillors have accepted that a breach occurred, made a full apology, accepted appropriate sanction and learned from the experience.*

*I appreciate the importance of being meticulous in following the regulations, and being seen to be doing so, for the reputation of those undertaking work in public life, and this fully demonstrates that Tendring District Council is aware of this. I cannot see that anything could be gained with further action.*

*I think it would generally be best if complaints and enquiries are kept confidential until the conclusion is reached - unless the contrary is indicated as in the public interest in an unusual case? Gossip could hinder investigations and half-truths or misconceptions can become public and unfairly blacken reputations. I do not know if there is a regulation about this, or if parties to the complaint could be required to refrain from letting others know until the resolution?*

#### **MISCELLANEOUS MATTERS**

Unfortunately, during the period of the investigation, information sought from the Lawford Parish Clerk has not been received but due to the on-going involvement of the Housing Trust and future developments in Lawford, it is essential that these enquiries are completed and that specific training is delivered to the Parish Council with regards to declarations of interest and decision making. It is recommended that the Standards Committee endorse this approach together with, in the interests of transparency and openness, a recommendation to the Parish Council to make a public statement, the contents of which should be agreed by the Council, confirming their involvement with the Lawford Housing Enterprise Trust.

During the early consideration of the complaint, existence of Police investigation was placed in the public domain by the Complainant. Not only have the Councillors concerned referred to this but the Independent Person has also picked up on aspects of confidentiality. The Complainant circulated emails to third parties before the Police had made a finding of no evidence in support and therefore, case to answer, and consequently this caused unnecessary distress to all concerned. For this reason, it is recommended that the Monitoring Officer request a review of the Protocol with Essex Police to go further and include detail on how these referrals should be communicated in future, ensuring confidence in the process for all parties.

#### **APPENDICES**

- Appendix 1 – Code of Conduct and Complaints Procedure



**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 10 working days of receiving it;
  - (b) notify, within 10 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. Any information supplied to the Monitoring

Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, maybe shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards Committee is convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.

- 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.

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

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to



why he/she considers that he/she did not fail to comply with the Code of Conduct.

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

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

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

**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**

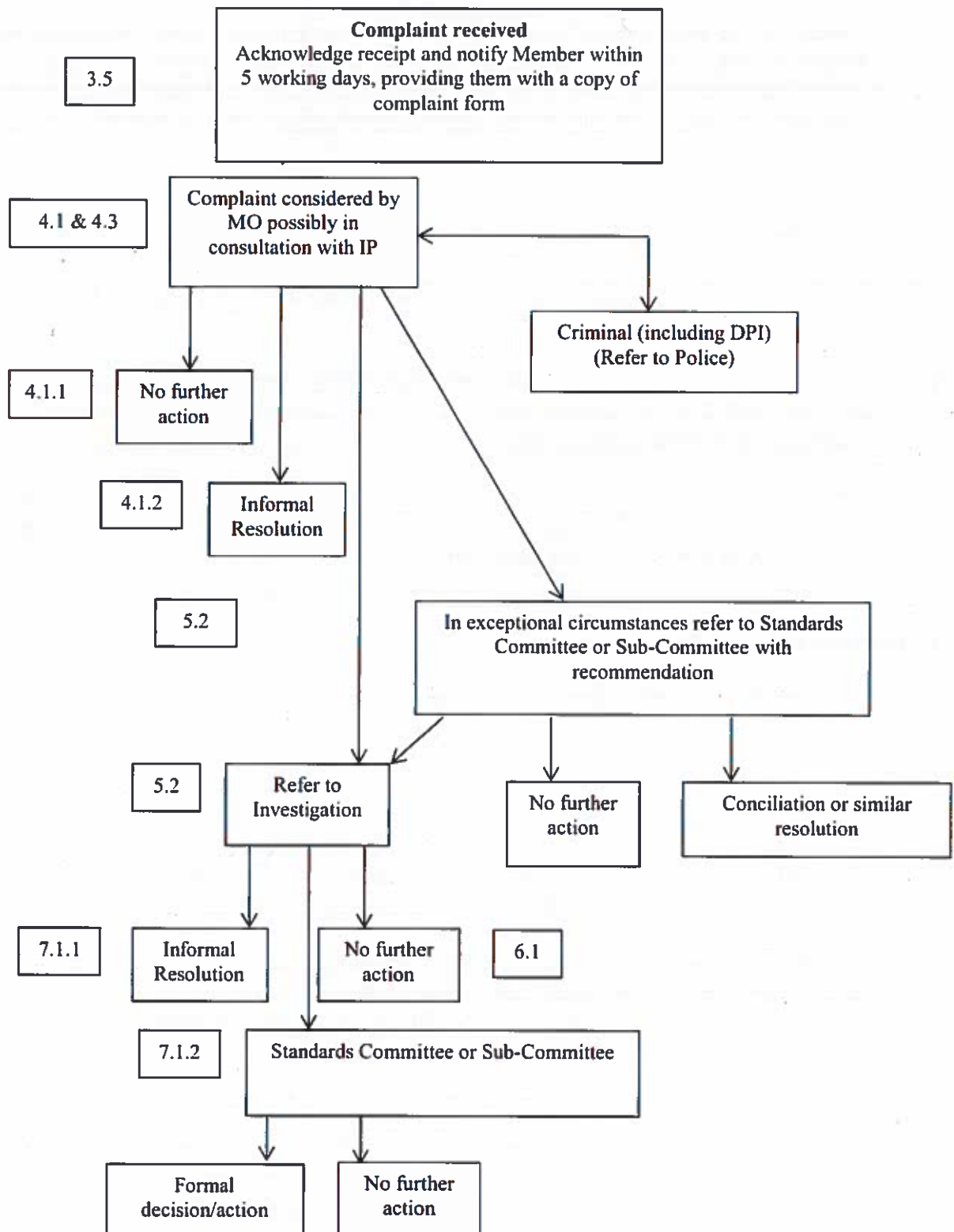
The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

## **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 for investigation and/or 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**

**Members are reminded that they are required to co-operate with the investigation process as part of their compliance with the Code of conduct and to ensure that the procedure is undertaken in an efficient and resourceful manner.**

#### **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.
- Tendring District Council has imposed a 3 month deadline for an investigation to be completed; this may be reduced by the Monitoring Officer in each individual case. The Investigating Officer must confirm that the deadline is achievable and regularly update the Monitoring Officer, subject member of the complainant and the complaint as to progress.

#### **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.
- If new evidence is obtained through the investigation that the subject member has not been made aware of, this should be provided to the Councillor to respond to either orally or in writing.

#### **3. Interview Stage:**

- Identify witnesses.
- Arrange interview dates.
- Conduct interviews (preferably in the order of: the complainant, witnesses and subject member and any of their witnesses).
- The investigating Officer when interviewing the subject member; must ask them to respond to each point of the complaint and alleged breach of the Code of Conduct.
- The Investigating Officer should make every effort to gather evidence from the Complainant and subject member by way of a face to face interview.

#### **4. Report Stage:**

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain:-
  - Details of who was interviewed, who supplied information and whether through written documentation or verbally;
  - 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 addition to the Monitoring Officer.

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