



STANDARDS COMMITTEE

DATE:	Monday, 22 January 2018
TIME:	10.00 am
VENUE:	Council Chamber, Council Offices, Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor Heaney (Chairman)	Councillor Bucke
Councillor Honeywood (Vice-Chairman)	Councillor Nicholls
Councillor Bray	Councillor Steady
Councillor J Brown	

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Katie Sullivan on 01255 686 585.

DATE OF PUBLICATION: Monday, 15 January 2018

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 1 - 10)

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on 27 September 2017.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or other interest, and the nature of it, in relation to any item on the Agenda.

4 Report of the Monitoring Officer - A.1 - Failure to Comply with the Members' Code of Conduct - District Councillor (Pages 11 - 40)

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.

5 Case Review

The Monitoring Officer will give a presentation to the Committee on this matter.

6 Discussion Topics and/or Updates from the Monitoring Officer

(1) The Monitoring Officer will give a quarterly update on Complaints.

(2) Lack of Sanctions

Two Local Authorities have recently agreed to lobby the Government on the lack of sanctions which Councils have been left with since the introduction of the Localism Act. Tendring District Council recently referred to the lack of sanctions in the consultation document from the DCLG on criminal orders and the eligibility to stand or remain as a Councillor. However, the Committee requested that this item be brought back to this meeting for further consideration.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held in the Council Chamber, Council Offices, Thorpe Road, Weeley, CO16 9AJ at 10.00 am on Monday, 19 March 2018.

Information for Visitors

FIRE EVACUATION PROCEDURE

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**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON WEDNESDAY 27 SEPTEMBER 2017 AT 10.00 AM
IN THE ESSEX HALL, TOWN HALL, CLACTON-ON-SEA, CO15 1SE**

Present:	Councillors Heaney (Chairman), Honeywood (Vice-Chairman), Bucke, Davis, Nicholls, Steady and Whitmore
Also Present:	John Wolton and Clarissa Gosling (Independent Persons)
In Attendance:	Lisa Hastings (Head of Governance and Legal Services), Linda Trembath (Senior Solicitor (Litigation and Governance)) and Debbie Bunce (Legal Administration & Information Officer)

8. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

9. MINUTES OF THE LAST MEETING

The minutes of the meeting of the Standards Committee, held on 28 June 2017, were approved as a correct record and signed by the Chairman.

10. DECLARATIONS OF INTEREST

Councillor Heaney declared a non-pecuniary interest in that she was on the Planning Committee with Councillor Bennison.

Councillor Whitmore declared a non-pecuniary interest in that he was in the same political group as Councillor Bennison and also a friend.

Councillor Davis declared a non-pecuniary interest in that she had attended the Court Hearing in respect of Councillor Bennison but that she was present at the Standards Committee with an open mind.

11. REPORT OF THE MONITORING OFFICER - A.1 - FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT - DISTRICT COUNCILLOR

There was submitted a report (A.1) by the Council's Monitoring Officer (Lisa Hastings) in respect of a failure to comply with the Members' Code of Conduct.

It was reported that on 1 August 2017, District Councillor Jack Parsons had enquired with the Council's Monitoring Officer whether he could refer himself to the Standards Committee following his criminal conviction on 27 July 2017, which he acknowledged had brought the Council into disrepute. The Monitoring Officer had advised him that due to the seriousness of the conviction, the matter would be reported to the next meeting of the Committee in any event.

Members were informed that one complaint had been received by the Monitoring Officer under the Members' Code of Conduct and Complaints Procedure following the actions of Councillor Parsons as reported in the media. The complaint had been submitted by Mr William Hones, a member of the public. Mr Hones' complaint had made reference to the fact that it had been reported on the on-line version of the Clacton Gazette that Councillor Parsons had pleaded guilty to a charge of possession of a bladed article and

was handed a twelve month Community Order and to carry out seventy hours of unpaid work. The second part to Mr Hones' complaint had made reference to Councillor Parsons had allegedly failed to represent his residents by not belonging to a political group, in particular one of the non-aligned groups on the Council and was consequently not allocated any Committee seats. The complaint was attached to the report as Appendix 2.

Members recalled that at the Council meeting in March 2017, it had been considered whether it wished to allocate Committee seats to Councillors who were not part of a group and decided it would not do so.

Members were informed that the complaint had alleged that Councillor Parsons had breached the Tendring District Council Members' Code of Conduct. The alleged breaches had related to paragraphs 3.1 and 3.4(a) of the Code.

The Monitoring Officer confirmed that the second part of Mr Hones' complaint did not fall within the remit of the Standards Committee.

It was reported that Councillor Parsons had acknowledged that his conviction had brought the Council into disrepute and therefore, in breach of the Members' Code of Conduct and a written apology had been received and was contained within the body of the Monitoring Officer's report. Due to Councillor Parson's acceptance, an investigation into the matter had not been required. Under the Complaints Procedure once there was a finding that evidence existed of a failure to comply with the Code of Conduct, there were two options available, namely:

The first option was to consider an informal resolution (paragraph 7.1.1 of the Complaints Procedure). In this matter the Monitoring Officer did not consider that informal resolution was appropriate. It was noted that a formal apology had been given by Councillor Parsons, however, it was considered necessary and in the public interest for a referral to the Committee due to the seriousness of the conviction and upon the specific request.

The second option available (paragraph 7.1.2) was for the Monitoring Officer to report the outcome of any investigation to the Standards Committee to enable it to conduct a hearing before deciding whether the Member had failed to comply with the Code of Conduct and if so, whether to take any action in respect of the Member. In this case, Councillor Parsons had already admitted that he had failed to comply with the Code of Conduct and therefore the Standards Committee had 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 could consider the sanctions set out in paragraph 8 of the Complaints Procedure.

The Committee was made aware that all parties had had the opportunity to comment on the Monitoring Officer's decision to refer the matter to the Standards Committee to determine the sanction in respect of Councillor Parsons.

In addition, the Council's Independent Persons, Clarissa Gosling and John Wolton had both been consulted.

Clarissa Gosling's comments were as follows:

“On the complaint that Councillor Parsons is not a member of any committees. I understand that it is the council’s decision that only members of a group may serve on committees, and I cannot comment on that. I do not believe that a councillor should be forced to join a group which he feels does not reflect his values or the values of those who elected him.

All things being equal, I imagine a councillor would prefer to be on a committee, which comes with influence and a financial allowance, though does have a time commitment. I believe a councillor should be allowed to follow his conscience in whether or not to join a group, and that this part of the complaint is not justified.

Councillor Parsons has admitted that his actions, resulting in a conviction, have brought the council into disrepute and I do not believe that there is any doubt about this.

However, having made this appalling mistake it appears that he is making every possible effort to address the situation. His apology acknowledges the offence very openly and shows he has understood and deeply regrets his actions – it does not appear to be not just formal words. It takes courage to do that. He has received a sentence and will have to serve his punishment. He has taken steps to address his medical problems and is undertaking ongoing therapy.

If he carries out these actions fully, and is able to rehabilitate himself, then I think that that would be an example to others that it is possible, and the council would no longer be in disrepute.

I do not read the newspaper reports, not living locally, nor do I know the personalities of councillors. I came to these views having read the papers provided.”

John Wolton’s comments were as follows:

“it is unfortunate that Councillor Parsons created the situation he finds himself in, however it is acknowledged that in his response he is fairly remorseful for his actions and receiving professional advice and treatment. The residents choose Councillor Parsons to be the elected member for their ward and assume would stand by their selection.

We have to accept the Magistrates’ Court decision and the sentence he has received, but Councillor Parsons should also be reminded of his obligations to Tendring District Council and the Code of Conduct. I trust that Councillor Parsons will stick to his treatment and prove himself to be a good councillor. I am aware that the Committee is unable to remove Councillor Parsons from any committees, as he does not sit on any and he must not be prevented from undertaking ward work as an elected member.”

In summary the Monitoring Officer’s conclusions were as follows:

“Councillor Parsons is not just an individual, he has been elected to represent the residents of St. Paul’s Ward and sit on Tendring District Council. This is not the standard of behaviour an elected member should be exhibiting to the general public, and knife crime is very serious and under no circumstances, was this acceptable. It is abundantly clear that Councillor Parsons’ actions have breached the Code of Conduct which Councillors sign up to upon their election as members of Tendring District Council. The

Code exists to ensure Councillors fulfil the statutory duty to promote and maintain high standards of conduct in public life.

The Leadership Principle of Public Life requires holders of public office to exhibit the other principles in their own behaviour and actively promote and robustly support the principles.

Although not referred to in the complaint, Councillor Parsons has also failed to comply with the law and consequently, has contravened paragraph 3.7(a) of the Code of Conduct.

It is necessary for the Standards Committee to determine the breach as against the Principles of Public Life and Code of Conduct and their power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct.”

The Committee, then retired to deliberate and reach its decision. The Monitoring Officer also accompanied them to advise on any legal points raised and to record the decision. The Independent Persons also accompanied the Committee during its retirement to comment upon any sanctions being considered by the Committee.

Following such deliberations the meeting resumed.

It was moved by Councillor Davis, seconded by Councillor Nicholls and:

RESOLVED that the Committee:

- (a) notes that Councillor Parsons has received a criminal conviction for possession of a bladed article, namely a Carving knife, contrary to section 139(1) and (6) of the Criminal Justice Act 1988;
- (b) notes in addition to the Monitoring Officer reporting this matter to the Standards Committee, a formal complaint concerning the conduct of Councillor Parsons has also been received;
- (c) welcomes the acknowledgement by Councillor Parsons that he has breached the Code of Conduct;
- (d) notes Councillor Parsons written apology sent to the Monitoring Officer;
- (e) notes the comments of both Independent Persons;
- (f) endorses the referral to the Committee to consider the sanctions; and
- (g) (i) acknowledges that Councillor Parsons is suffering from personal health problems;
- (ii) encourages Councillor Parsons to review his position as an elected Member due to the circumstances surrounding his conviction and whether he is able to effectively represent his Ward and residents;

- (iii) strongly encourages Councillor Parsons to continue with the professional advice and medical treatment he now has access to and that;
- (iv) requests the Monitoring Officer to publish the findings in respect of the Councillor Parsons conduct be published on the Council's website and the Committee's findings be reported to Council for information.

12. REPORT OF THE MONITORING OFFICER - A.2 - OUTCOME OF CODE OF CONDUCT INVESTIGATION - COMPLAINT AGAINST A DISTRICT COUNCILLOR

Councillor Heaney had earlier declared a non-pecuniary interest in that she was on the Planning Committee with Councillor Bennison.

Councillor Whitmore had earlier declared a non-pecuniary interest in that he was in the same political group as Councillor Bennison and also a friend.

Councillor Davis had earlier declared a non-pecuniary interest in that she had attended the Court hearing in respect of Councillor Bennison but that she was present at the Standards Committee with an open mind.

There was submitted a report (A.2) by the Council's Monitoring Officer that, in accordance with the District Council's Complaints Procedure, the outcome of an investigation was being reported to the Committee following on from a Members' Code of Conduct investigation.

The Monitoring Officer reported that two separate complaints had been received from Mr Anthony Chandler and Mr William Hones, who were members of the public. Their complaints had been received by the Monitoring Officer under the Members' Code of Conduct and Complaints Procedure alleging that the behaviour of District Councillor Lis Bennison had breached the Members' Code of Conduct.

The alleged breaches related to:

- (i) Paragraph 3.1: The Leadership Principle of Public Life;
- (ii) Paragraphs 3.2: In fulfilling the Duties and Responsibilities, a Councillor must not:
 - (b) disrespect others; and
 - (c) bully or harass any person.
- (iii) Paragraph 3.4(a): A Councillor must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute; and
- (iv) Paragraph 3.7(a): A Councillor must comply and observe the law.

Members were informed that the Complaint Form that had been completed by Mr Chandler had referred to initial contact that had been made with the Monitoring Officer in 2016, regarding the alleged assault by Councillor Bennison, however, no further action could be taken at that time, under the Members' Code of Conduct, whilst criminal proceedings against Councillor Bennison were being considered by Essex Police. The incident had occurred at the Clacton Airshow in August 2016, whereby Councillor Bennison whilst acting as a steward on behalf of the District Council had assaulted Mr Chandler, a member of the public.

Members were further informed that Mr Chandler had contacted the Council's Monitoring Officer and had confirmed that Councillor Bennison had been convicted of assault at Southend Magistrates Court on 13 July 2017. Subsequently, a Complaint Form was completed and received on 19 July 2017. A second Complaint Form concerning the same incident was received from Mr William Hones on 25 July 2017.

The Monitoring Officer confirmed that on 23 August 2017, all parties were notified of her decision, that due to the criminal conviction it was not appropriate to take 'no further action' or seek informal resolution or mediation. However, it was not considered that a detailed investigation would be required as the conviction was the outcome of criminal proceedings before the Magistrates Court. Therefore, a light touch investigation had been undertaken and referred to the Standards Committee. To carry out a detailed investigation would have been an unnecessary use of resources, in both cost and time and prolong determination of this matter.

Members were informed that through the light touch investigation, a written apology had been received from Councillor Bennison, which is contained within the report, the apology did not accept that the Code of Conduct had been breached.

It was reported that in accordance with paragraph 5.5 of the Council's Complaints Procedure, at the end of the investigation, the Investigating Officer (in this case the Monitoring Officer) would produce a draft report ("the Investigation Report") and would, in all cases, send copies of that draft report, in confidence, to the Complainants and to the Member concerned, to give all parties an opportunity to identify any matters in that draft report which they may disagree with or which they considered required more consideration.

It was further reported that having received and taken account of any comments on the draft Investigation Report, the report would be finalised. The Investigation Report was attached as Appendix 2 and included the comments received back from both Councillor Bennison and Mr Chandler, nothing further had been received from Mr Hones.

Members were informed that Section 9 of the Report had contained the conclusions on each allegation of the complaints received. This included a recommendation that evidence existed of Paragraphs 3.4(a) and 3.7(a) and the Leadership principle being compromised and in breach of the Code of Conduct. Therefore, the matter was referred to the Standards Committee to decide upon the sanctions.

One of the Council's Independent Persons, Clarissa Gosling, had been consulted and her comments were as follows:

"Thank you for sending the details about this case which you had told me earlier might arise. I would like to make the point that living near Bury St Edmunds I had not seen any newspaper reports in your local paper that are referred to.

There is a great deal of detail involved and justifications given for actions by both sides, but I have tried to boil it down to the actual action complained of: that Councillor Bennison slapped Mr Chandler in the face when he swore at her.

She describes this as 'my hand accidentally touched his face' and her statement blurs over whether he hit her first. He states that 'she slapped me over the right side of my

face'. The Magistrate's summing-up said that she slapped him and this was seen by two of the staff. Because of this she received the conviction.

It is my view, acting as an Independent Person, that initiating any violent action is not justified unless it is to prevent imminent harm to another. It appears from the papers I read that Councillor Bennison's action in slapping Mr Chandler was not the only way to prevent driving that endangered the public, but happened because she was angered by being sworn at.

Councillor Bennison requested that the judge's comments be included, but I have not commented on Mr Chandler's actions in general. I do not believe my sympathies on either side on the driving and general behaviour issues are relevant, as in every circumstance adults should have the self-control to keep dispute verbal not resort to the physical. This should be demonstrated particularly by leaders in the public eye setting an example of dignity and restraint.

Councillor Bennison was clearly acting in her official capacity, wearing a badge and t-shirt, there seems to be no dispute about this, this would have been plain to Mr Chandler and members of the public who witnessed these events. It does not appear however that Mr Chandler was intimidated by her official position. Thus though she did initiate a violent action by slapping him, 'bully or harass' would imply an attack on a weaker from the stronger, and this does not seem to be the case either physically or emotionally.

When acting in an official capacity, Councillor Bennison used physical aggressive action in response to verbal abuse, this is not edifying and in my view does bring her and the Council she represents into disrepute. The force of the action is not important it is a precedent no one would wish followed privately or publically.

The fact that this led to a criminal conviction has drawn more public attention to the unfortunate event, confirming the facts. I am not sure that a criminal conviction per se brings a councillor into disrepute: though 'a councillor must comply and observe the law' seems to imply that. There are many laws on the statute book and motives for breaking them and the public might consider some more reputable than others.

From the papers I have read, I do not believe it was necessary to use physical violent action in response to the bad language and 'dangerous driving behaviour' Councillor Bennison reported. I am sorry that her apology did not acknowledge this crucial point, even in retrospect, and in my view this lack regret about her actions reflects badly upon her."

The Committee, then retired to deliberate and reach its decision. As the Monitoring Officer had undertaken the investigation in this matter, she did not accompany the Committee until they had reached their verdict, initially the Senior Solicitor was in support to advise on any legal points. The Monitoring Officer was requested to join the Committee to advise on the wording of the decision. Then Clarissa Gosling the Independent Person who had been consulted in this case, also accompanied the Committee during its retirement to comment upon any sanctions being considered by the Committee.

Following such deliberations the meeting resumed.

It was moved by Councillor Heaney, seconded by Councillor Nicholls and:

RESOLVED that the Committee:

- (a) Notes the outcome of the investigation undertaken by the Monitoring Officer in respect of Councillor Lis Bennison;
- (b) Agrees with the findings of the Monitoring Officer that evidence exists that there has been a breach of the Members' Code of Conduct;
- (c) Notes the written apology contained within the body of the Report;
- (d) Notes the comments of both Independent Persons;
- (e) Endorses the referral to the Committee to consider the sanctions; and
- (f) Upon finding that Councillor Bennison had breached the Code of Conduct resolves that:-
 - (i) its findings are published on the Council's website;
 - (ii) its findings are reported to Council for information;
 - (iii) the Group Leader acknowledges that Councillor Bennison has breached the Code of Conduct and in response it is suggested that Councillor Bennison is removed from any Committees and Sub-Committees of the Council for one month;
 - (iv) it is disappointed that Councillor Bennison failed to acknowledge that the Code of Conduct was breached and would request that training with the Monitoring Officer is organised for Councillor Bennison on the Code of Conduct.

13. REPORT OF THE MONITORING OFFICER - A.3 - REVIEW OF THE MEMBERS' CODE OF CONDUCT (TO REPORT TO FULL COUNCIL)

There was submitted a report (A.3) by the Council's Monitoring Officer which had requested the Committee to complete the review of the Members' Code of Conduct and consider the proposed changes made following the suggested revisions made at its meeting in June 2017 for recommendation to Council for adoption.

As part of its annual work programme, the Committee had commenced a review of the Members' Code of Conduct and had paid particular attention to the definitions of interests.

The Committee recalled that, at its meeting on 29 June 2016, the Monitoring Officer had informed Members that there would be some merit in undertaking a light touch review of the Code of Conduct and to consider removing the distinction between "Other and Non Pecuniary Interests" by joining them together and reviewing the definitions. The Monitoring Officer had also informed Members that the three different types of interest had caused confusion with Members and the public and could be made simpler. In addition, it had been raised whether the provisions on declarations of interests had gone far enough and questions had been asked whether the Council should be retaining a register of interests. Matters such as membership of various groups or organisations had caused concerns with elected Members and the public that those were not

registered, and whilst this was not required on a statutory basis, provisions could be included within the local Code. Members had discussed the advantages of a register of interests, beyond the statutory minimum which was required by the legislation and had welcomed further exploration in this area.

At that meeting the Monitoring Officer had informed Members that, nationally, a number of Councils had reviewed their codes since adoption, some in response to feedback on definitions or areas which were missing, or due to the lack of sanctions available if the obligations were compromised. New ideas such as a voluntary acceptance of suspension and a recall scheme were emerging and information on those could be presented to the Committee for information through the review of the Code.

The Committee recalled that, at its meeting in September 2016, potential changes and additions to the Code had been discussed in order to provide clarity in relation to:

- Separating the Rules of Conduct and General Obligations from the introduction and interpretation part of the Code;
- Merge Other Pecuniary Interests with Non-Pecuniary Interests; and
- Effect of Other or Non-Pecuniary Interests on participation.

At that meeting it had been agreed that the Monitoring Officer would produce a revised draft Code of Conduct for further discussion to take place at the next meeting so that the Committee could work towards recommending minor changes to the Members' Code of Conduct to full Council.

The Committee recalled that, at its meeting in June 2017 the Monitoring Officer had produced a revised draft Code of Conduct showing tracked changes and went through it stage by stage. A clean copy had also been provided for further consideration by the Committee.

At that meeting the Monitoring Officer had confirmed that she would action the amendments suggested by the Committee and provide a further amended version of the Members' Code of Conduct at its next meeting before going to full Council.

Members now had before them a revised draft Members' Code of Conduct showing changes in Appendix A for their consideration.

Members raised questions which were responded to by the Monitoring Officer.

The Independent Persons (John Wolton and Clarissa Gosling) were given the opportunity to make comments and ask questions.

Having discussed the revised draft Code of Conduct, it was moved by Councillor Heaney, seconded by Councillor Nicholls and **RESOLVED:-**

that the revised draft Members' Code of Conduct be recommended for adoption to Council with a commencement date of April 2018, to allow training to be undertaken by all Councillors between adoption and implementation.

14. DISCUSSION TOPICS AND/OR UPDATES FROM THE MONITORING OFFICERQuarterly Complaints Update

The Monitoring Officer circulated to the Committee the quarterly schedule, which gave general details of a complaint received, without providing any names, and went through it with the Committee. The Monitoring Officer also highlighted a number of other matters which included:

Two Local Authorities have considered motions to lobby the Government on the lack of sanctions which Councils have been left with since the introduction of the Localism Act 2011. A consultation has also been launched on extending the list of criminal convictions which would restrict an individual standing as a Councillor.

The Monitoring Officer at the Committee's request agreed to bring this item back to the next meeting of the Committee for further consideration.

The meeting was declared closed at 1.23 pm

Chairman

STANDARDS COMMITTEE

22 JANUARY 2017

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

Two complaints were received in October 2017 one from a member of the public, Mr William Hones and the other from District Councillor Baker regarding the actions of District Councillor Anne Davis under the Members' Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

It is alleged that Cllr A. Davis did not have regard for four of the Seven Principles of Public Life:

- **Selflessness** - Holders of public office should act solely in terms of the public interest.
- **Integrity** - Holders of Public Office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships
- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Honesty** - Holders of public office should be truthful.

Although not expressly referring to the Rule, it is alleged that Cllr Davis actions contravened Paragraph 10 of the Code of Conduct (*Effect of Other Pecuniary Interests on participation*) by remaining on the Committee after declaring that she attended court with Councillor Bennison, who was the subject of an agenda item before the Standards Committee on 27th September 2017.

On the 1st November 2017, the Monitoring Officer decided that it was reasonable and appropriate that the complaints merited further investigation. The parties were informed of this decision and that an external investigator would be appointed. 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.

Mr John Austin was appointed as external investigator and following a thorough investigation concluded that there was sufficient evidence to show that Councillor Davis breached Paragraph 10 of the Council's Code of Conduct, in remaining in the meeting and participating the way she did. The investigator did not however consider this was a deliberate or conscious act. Councillor Davis had nothing to gain personally, took advice beforehand and felt that it had been followed. The investigator accepted that her actions were borne firstly out of a genuine wish to support a Council colleague who she felt needed help and secondly a misunderstanding of how her court attendance would be viewed by others given her role on the Standards Committee.

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 11th January 2017.

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.

Upon receipt of the external Investigator's draft report Councillor Davis provided a written apology accepting that paragraph 10 of the Code of Conduct had been breach and upon further communication with the Monitoring Officer agreed to undergo refresher training on the provisions of the Code of Conduct, especially in relation to declarations of interest and the effects on participation. The Monitoring Officer considers that these actions are both appropriate and proportionate responses to the investigators findings and in the circumstances, has resolved the matter informally without the need for a hearing.

One Complainant and the Council's Independent Person are in agreement with this outcome as appropriate and proportionate responses to the breach.

RECOMMENDATION

That the Standards Committee:

- (a) Notes the outcome of the investigation undertaken by Mr Austin on behalf of the Monitoring Officer in respect of Councillor Davis;**
- (b) welcomes acknowledgement by Councillor Davis that the Code of Conduct has been breached;**
- (c) notes and endorses the Informal Resolution reached in respect of:-**
 - (i) Councillor Davis's written apology contained within the body of the Report;**
 - (ii) Agrees that Councillor Davis should undergo refresher Code of Conduct training; and**
- (d) requests that all elected Members should ensure that their declarations of interest are clear and concise at the meeting and that the Monitoring Officer ensures particular care is taken in recording what Members say under the declarations of interest item on the agenda for the purposes of the minutes.**

BACKGROUND & SUMMARY OF THE INVESTIGATOR'S CONCLUSIONS:

Paragraph 10.1 of the Member's Code of Conduct 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.*

In response to the allegations the external Investigator has provided a Summary of Findings in conclusion to the investigation:

- Given her attendance in court to support Councillor Bennison, Councillor Davis was correct in declaring a non-pecuniary interest at the Standards Committee on 27 September 2017.
- There is no conclusive evidence that she said she was a friend when declaring the interest.
- Councillor Davis stated that she would consider the matter with an open mind.
- She also stated that she applied the public interest test when deciding to stay in the meeting.
- On the evidence in front of me, I am of the view that Councillor Davis made an error of judgement when applying the public interest test and under-estimated the strength of public perception in such matters. The fact that she attended court would in my view cause people to think that she had an allegiance to Councillor Bennison over and above being a fellow councillor.
- I therefore find that there is sufficient evidence to show that Councillor Davis breached Paragraph 10 of the Council's Code of Conduct in remaining in the meeting and participating the way she did.
- I do not however think this was a deliberate or conscious act. She had nothing to gain personally. She took advice beforehand and felt that she followed it. I accept that her actions were borne firstly out of a genuine wish to support a council colleague who she felt needed help and secondly a misunderstanding of how her court attendance would be viewed by others given her role on the Standards Committee for the issue in question.
- Given the passage of time since Councillor Davis' had relevant training, and my view that she made an error of judgement partly based on a misunderstanding, I recommend that she be asked to undertake further training on the Council's Code of Conduct.

- 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.*

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.

INFORMAL RESOLUTION AND SANCTION

Informal Resolution and Sanction:

Councillor Davis has acknowledged the breach and her written apology is 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 Davis undertook Code of Conduct training on two occasions in 2015, one as a member of the Planning Committee, both sessions include sections on declarations of interest and the effect on participation. Through this investigation, Councillor Davis has gained practical experience and application of the Code of Conduct however, given the passage of time since the training, and the acceptance that she made an error of judgement, it was recommend that further training on the Code be provided, to which Councillor Davis has agreed.

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 the remaining ones would be more appropriate. Due to the circumstances of this case it is not considered that further sanctions could have been reasonably recommended following a hearing of the Standards Committee.

WRITTEN APOLOGY

- (a) From Councillor Davis:

Dear Mr Austin,

As you are aware, I have read the content of all the papers concerning the complaint against me, and responded to the best of my ability.

Having objectively considered that evidence, I believe and accept that I may have inadvertently and unintentionally breached article 10 of the councillor's code of conduct, and certainly, that I could be perceived to have done so. For that, and the expense caused to the council by that mistake, I am very sorry.

Would you please accept and pass on my apology for so doing, and pass it on to all concerned? Thank you so much.

Yours sincerely,

Anne

CONSULTATION WITH THE INDEPENDENT PERSON

John Wolton has provided the following comments in response to the consultation with him on the investigation findings and the proposed informal resolution:

“Cllr Davis duly phoned (on 13th December) and advised me of her concern and the circumstances that she now faced. A lengthy phone call ensued.

Towards the end of our discussion I felt that an apology would be appropriate and Cllr Anne Davis agreed.

My thoughts on the situation are that Cllr. Anne Davis was by naivety incorrect in taking further steps to be present at the confidential meeting of the Standards Committee as rightly noted by the complainants.

It is also noted that the Standards Committee as a whole knew of her previous declaration of interest and could have advised her of the inappropriate attendance at that confidential meeting”.

A member who is the subject of a complaint, as the right to speak to an Independent Person as part of the process.

MISCELLANEOUS MATTERS

The Standard's Committee minutes are draft subject to confirmation at the next meeting and those draft minutes for 27th September state “Councillor Davis declared a non-pecuniary interest in that she had attended the Court Hearing in respect of Councillor Bennison but that she was present at the Standards Committee with an open mind.”

Witness testimony from those present at the meeting however varied on whether Councillor Davis actually said she had an open mind.

There was also dispute as to whether Councillor Davis said in her declaration of interest that she was a ‘friend’ of Councillor Bennison. Some witnesses think she did, some couldn't recall and one remembered her saying that she wasn't a particular friend. Reference to the word ‘friend’ was included in the original draft of the minutes but was

deleted after representations made by Councillor Davis, who denies using the word. These representations were received very shortly after the draft minutes were published and prior to any complaints being received. Reference to the word 'friend' was however also referred to in the Decision Notice dated October 2017. The Monitoring Officer clarified that the inclusion of the word 'friend' in the Decision Notice, was just prior to the draft minutes being amended. The update was not reflected in the Council agenda for its meeting on 21st November 2017, and this was an error.

During the investigation, Councillor Davis has made representations for the meetings to be recorded so that there is an audio recording of what was said by members under declarations of interest. It is not considered a proportionate response to the outcome of this investigation to record all meetings of the Standards Committee, although the Monitoring Officer does agree to ensure that particular care is taken in recording what members actually say under the declarations of interest item on the agenda for the purpose of the minutes. In addition, elected members are reminded that it is their responsibility to provide clear and concise declarations of interest with reasons if necessary.

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.

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

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

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

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

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

Honesty Holders of public office should be truthful.

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

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

3.2 In fulfilling your **Duties and Responsibilities**

You must not:

- (a) breach your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) disrespect others;
- (c) 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

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.

3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaints procedure. The Monitoring Officer

will also adhere to this confidentiality and only inform/contact any such individuals which are identified in the procedure or by the parties. If the details of the complaint are made public, it may be necessary for a statement to be issued by the Monitoring Officer for clarification only.

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 and obligation to notify or refer to 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, subject to 6.3 below, 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.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct. Exceptional cases may include but not limited to matters where the evidence is so finely balanced or is in the public interest to do so.

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 compromise 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

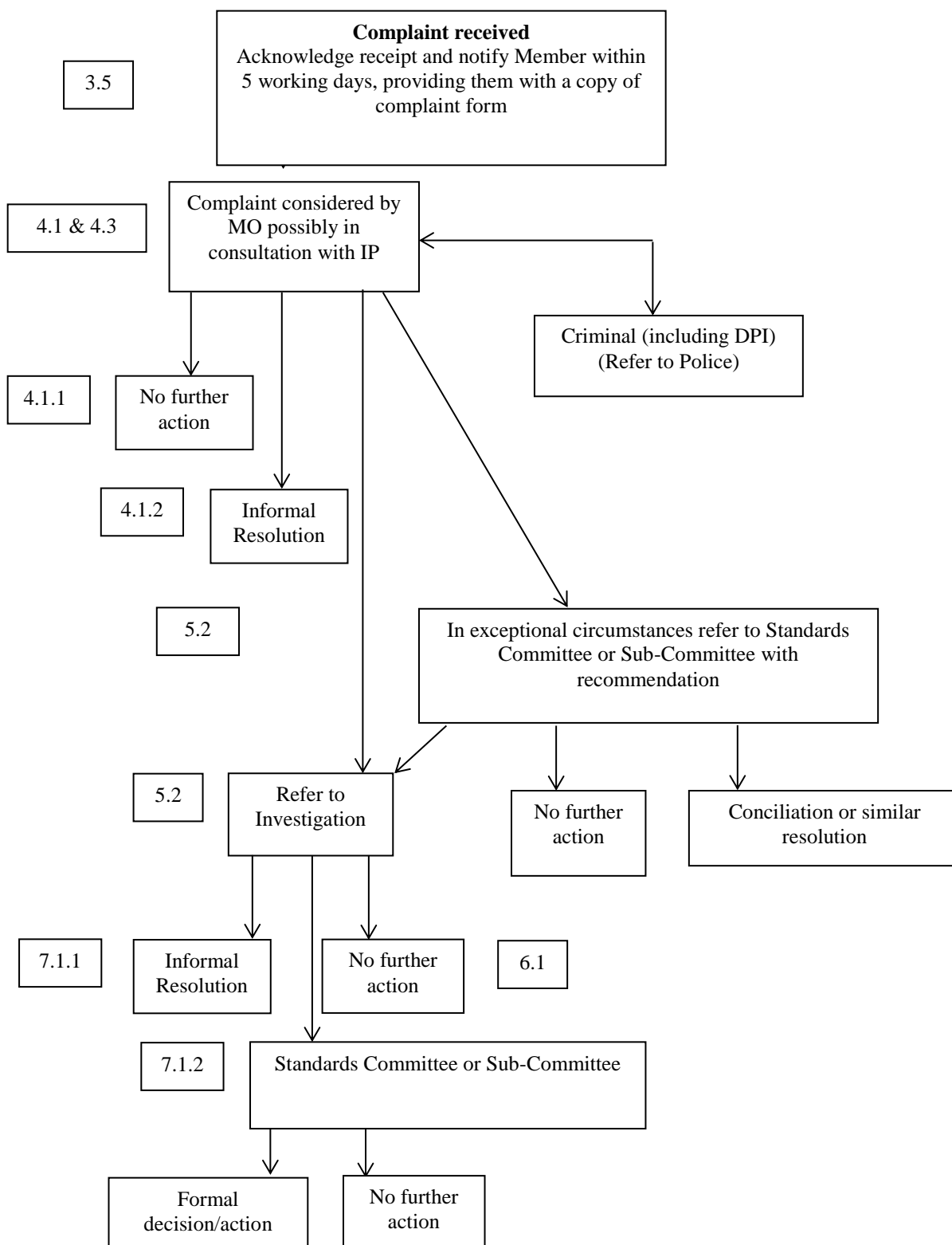
The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

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 Standards 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

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