



STANDARDS COMMITTEE

DATE: Wednesday, 27 October 2021
TIME: 2.15 pm
VENUE: Council Chamber - Council Offices,
Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor Land (Chairman)
Councillor Steady (Vice - Chairman)
Councillor Amos
Councillor Fowler

Councillor J Henderson
Councillor Turner
Councillor Wiggins

Most Council meetings are open to the public and press. The space for the public and press will be made available on a first come first served basis. The meeting will normally be live streamed and the link to this is available at www.tendringdc.gov.uk/livemeetings. Those attending the meeting may therefore be filmed. After the meeting the recording of the live stream will normally be available using the same link.

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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 Debbie Bunce Email: democraticservices@tendringdc.gov.uk or Telephone on 01255 686573

DATE OF PUBLICATION: Tuesday, 19 October 2021

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 - 6)

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Wednesday 21 April 2021.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

4 Questions on Notice pursuant to Council Procedure Rule 38

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

5 Report of the Deputy Monitoring Officer - A.1 - OUTCOME OF INVESTIGATION - FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT (Pages 7 - 58)

In accordance with the District Council's Complaints Procedure, the Deputy Monitoring Officer is required to refer the outcome of an investigation to the Standards Committee, where an informal resolution is not appropriate, and the Councillor has failed to engage and to give an apology.

6 Work Programme for 2021/22 (Pages 59 - 60)

The Committee is invited to give consideration to its Work Programme for the 2021/22 Municipal Year.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held at a time and date to be determined by the Chairman.

Information for Visitors

FIRE EVACUATION PROCEDURE

There is no alarm test scheduled for this meeting. In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point.

Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

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**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON WEDNESDAY, 21ST APRIL, 2021 AT 10.00 AM
IN THE MEETING TO BE HELD PURSUANT TO STATUTORY INSTRUMENT
2020/392. LINK TO LIVE STREAM WILL BE FOUND AT
[HTTPS://WWW.TENDRINGDC.GOV.UK/LIVEMEETINGS](https://www.tendringdc.gov.uk/livemeetings)**

Present:	Councillors Land (Chairman), Steady (Vice-Chairman), Fowler, J Henderson, Turner and Wiggins
Also Present:	Sue Gallone (Independent Person), Clarissa Gosling (Independent Person), David Irvine (Independent Person) and Jane Watts (Independent Person)
In Attendance:	Lisa Hastings (Assistant Director (Governance) & Monitoring Officer), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer) and Debbie Bunce (Legal and Governance Administration Officer)

1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillor Sue Honeywood, with no substitute on this occasion.

2. MINUTES OF THE LAST MEETING

It was moved by Councillor Land, seconded by Councillor Turner and:-

RESOLVED that the minutes of the last meeting of the Committee, held on Wednesday 3 February 2021 be approved as a correct record.

3. DECLARATIONS OF INTEREST

There were none on this occasion.

4. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were none on this occasion.

5. REPORT OF THE MONITORING OFFICER - A.1 - MANDATORY TRAINING FOR MEMBERS - ANNUAL UPDATE

There was submitted a report (A.1) by the Monitoring Officer which sought to update the Committee, as part of its agreed work programme, on the current position of mandatory training for Members and named substitute Members of the Council's Audit, Licensing & Registration, Planning and Standards Committees.

The report reiterated the Council's decision and constitutional requirement to make relevant training mandatory for Members, and their named substitutes, in respect of their membership on those committees which provided regulatory type functions. The report also detailed training undertaken and attendance to date.

Appendix A to the report provided details of those Members who had attended Licensing Refresher Training in October 2020

Members were made aware that members of the Planning Committee had been invited to a session on Section 1 of the Local Plan following receipt of the Planning Inspector's letter confirming soundness.

It was reported that one Member also received training for the Planning Committee during 2020.

It was also reported that a Member Training Session on Planning Appeals had been held on 20 April 2021, where with the exception of one member, the Planning Committee members all attended together with a number of other interested members.

It was noted that due to the current COVID-19 Pandemic Members had received training to enable them to continue conducting Committee meetings remotely using Skype for Business and Microsoft Teams and there had also been regular All Member Briefings throughout the year.

The mandatory training referenced in this report also formed part of the overall training provision for all Councillors within the framework established by the Council's "Councillor Development Statement" as reported to this Committee on 2 October 2019 (Minute 14 referred). It was clear that the development of that overall training provision as envisaged in the Statement had been adversely impacted by the Covid-19 pandemic. However, other training had been enhanced to address, for instance, use of IT for remote meetings and undertaking scrutiny in a remote meeting setting.

In relation to the general position on training for Councillors, Council on 16 March 2021 had endorsed the following as part of its consideration of the report of the Monitoring Officer on the outcome of the latest review of the Constitution:

"that the views and wishes expressed by the Review of the Constitution Portfolio Holder Working Party in relation to Members' training and development be endorsed and that the Head of Democratic Services & Elections be requested to take all necessary action to implement those wishes as soon as possible."

The specific views expressed by the Review of the Constitution Portfolio Holder Working Party, included:

"There was support from Members for E-learning and a webinar based approach especially an E-learning modular approach whereby participants had to answer Questions to a high enough success rate in order to be deemed to have sufficient knowledge of that topic and be Passed;

Essex County Council be put forward as an approach to emulate; and

Officers investigate a suitable mechanism for regular Member input going forward such as a cross-party Member Working Group."

It was intended to take the above forward following the elections on 6 May 2021 in view of restricted capacity among Officers and Councillors prior to that.

Members asked questions of the Monitoring Officer specifically in relation to the continuation of remote meetings and the Monitoring Officer confirmed that the legislation that allowed remote meetings to take place during the COVID-19 Pandemic was due to end on 7th May 2021 and that the Government had not renewed the legislation. This would mean that after that date meetings would have to be held in person.

The suggestion of the Constitution Review Working Party to have regular Member input in the form of a cross-party Member Working Group in relation to E-Learning was discussed and Councillor Turner expressed a willingness to be the Committee's representative on such Working Group. All the Members of the Committee agreed with the suggestion.

It was moved by Councillor Land, seconded by Councillor Steady and:-

RESOLVED that the Committee -

- (a) notes the contents of the report and its Appendix;
- (b) continues to encourage Members of the Planning, Licensing and Registration and Audit Committees to attend organised mandatory training events in order to comply with the requirements of the Council's Constitution and;
- (c) To appoint a member of the Standards Committee on the Cross-Party Member Working Party and at the current time the representative would be Councillor Turner.

6. REPORT OF THE MONITORING OFFICER - A.2 - ANNUAL REPORT ON DECLARATIONS OF INTEREST AND ASSOCIATED MATTERS

There was submitted a report (A.2) by the Monitoring Officer which provided the Committee with an overview on the register of, and declarations of, interests made by Members in the period 20 February 2019 to 31 March 2021. The report provided statistics and related information on –

- 1) the Register of Members' Disclosable Pecuniary Interests;
- 2) the number of declarations of interest made at meetings;
- 3) the use of blank dispensations; and
- 4) the number of offers of gifts and hospitality that had been registered by Members during this period.

Having considered the information submitted the Committee noted the contents of the report.

7. WORK PROGRAMME FOR 2021/22

The Committee gave consideration to its work programme for the 2021/2022 Municipal Year.

Members had before them a suggested work programme which had been submitted by the Monitoring Officer.

It was moved by Councillor Henderson and seconded by Councillor Turner and:–

RESOLVED that the Annual Work Programme for 2021/2022 be approved.

8. **QUARTERLY COMPLAINTS UPDATE**

The Monitoring Officer circulated to the Committee the quarterly schedule, which gave an update on existing cases together with general details of new cases, without providing any names, and went through them with the Committee. There had been no requests for dispensations from Members.

DISTRICT	TDC CLLR	Closed	No further action	IP consulted – related to behaviour in a remote meeting	
PARISH (X3)	PUBLIC	Closed	No further action	Related to alleged failure to declare interests at a very difficult meeting. All Councillors apologised for the oversight and MO has offered to provide training to the Parish Council.	
DISTRICT	MO	With investigator	Pending	Deputy MO is dealing with the case due to conflict. Case has been referred for investigation.	
New Cases since last update:					
Council	Complain ant	Current status		Final outcome	Comments
DISTRICT	MEMBER OF THE PUBLIC	CLOSED		No further action	Complaint was historical (over a year old) and refers to matters relating to a council decision and separate legal proceedings .

TOWN	TOWN COUNCIL LORS (x3)	With MO to go to Cllr subject member of the complaint to respond to.	Pending	Behaviour complained of refers to bullying.
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The Committee noted the foregoing.

The meeting was declared closed at 10.34 am

Chairman

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STANDARDS COMMITTEE

27 OCTOBER 2021

REPORT OF THE DEPUTY MONITORING OFFICER

A.1 OUTCOME OF INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT

(Report prepared by Linda Trembath)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

In accordance with the District Council's Complaints Procedure, the Deputy Monitoring Officer is required to refer the outcome of an investigation to the Standards Committee, where an informal resolution is not appropriate, and the Councillor has failed to engage and to give an apology.

EXECUTIVE SUMMARY

A complaint was received in January 2021 from the Council's Monitoring Officer, Lisa Hastings regarding the conduct of District Councillor Peter Cawthron under the Members' Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

The complaint related to Cllr P Cawthron's behaviour at Full Council in November 2020, a formal, recorded and publicly available meeting, when Cllr Cawthron used a word that is both unacceptable and an obscenity, and in so doing had conducted himself in such a way as to bring his office or the Authority into disrepute, contrary to paragraph 3.4 (a) and (c) of the Member Code of Conduct.

It is also alleged that Cllr P Cawthron did not have regard for one of the Seven Principles of Public Life:

- **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.

As will have been noted, this complaint was made by the Council's Monitoring Officer. Following that complaint, and in accordance with the Monitoring Officer Protocol, specifically paragraph 1(k), and to ensure that no conflict of interest might arise, then in these circumstances the Deputy Monitoring Officer is authorised to receive and investigate the matter, taking action as appropriate.

On the 9th March 2021, the Deputy Monitoring Officer, having read the papers provided to her and noted the response from Cllr Cawthron, decided that it was reasonable and appropriate that the complaint merited further investigation. The parties were informed of this decision and that an external investigator would be appointed. Section 5 of the Complaints Procedure (Appendix 1) 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 an investigation concluded that there was sufficient evidence to show that Councillor Cawthron breached Paragraph 3.4(a) of the Council's Code of Conduct, by conducting himself in a manner that could reasonably be regarded as bringing his office or the Authority into disrepute.

Further, the investigator also found that Councillor Cawthron failed to co-operate with the Monitoring Officer in her attempts to resolve the matter informally, and has since failed to co-operate with the Investigator at any stage during the investigation. As part of Members compliance with the Code of Conduct they are required to co-operate with the investigation process.

As a result of Councillor Cawthron's failure to contact or respond to the Investigator, the Investigator has found that Councillor Cawthron has failed to comply with the Nolan Principle of Accountability by avoiding and ignoring communications with the Council's Statutory Officer, i.e. the Monitoring Officer, and has also failed to engage with the Investigator instructed by, and acting on behalf of the Deputy Monitoring Officer.

Paragraph 3.4(c) of the Council's Code of Conduct requires a Councillor to comply with any request of the Monitoring Officer in connection with an investigation conducted in accordance with their respective powers, and Councillor Cawthron's failure to engage has led to the Investigator finding the Councillor is in breach of Paragraph 3.4(c) of the Code of Conduct.

All parties have had the opportunity to comment on the investigation report (Appendix 2) and the findings contained therein. The investigation report was finalised on 30 September 2021.

In this case no consultation has been undertaken with any Independent Person as part of the investigation process but their subsequent comments are included within this report to the Committee.

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. However, 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 which will be conducting 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.

The Deputy Monitoring Officer, has considered the Investigator's report following which she has also spoken with one of the Council's Independent Persons, who is in agreement that this matter should be referred to the Standards Committee for that Committee to decide on the appropriate and proportionate response to the breach.

RECOMMENDATION

That the Standards Committee:

- (a) Notes the outcome of the investigation undertaken by Mr Austin on behalf of the Deputy Monitoring Officer in respect of Councillor Cawthron;**
- (b) Decides whether Councillor Cawthron has failed to comply with the Code of Conduct, and if they find there was no failure, then to dismiss the Complaint; or**
- (c) if the Committee concludes that Councillor Cawthron has failed to comply with the Code of Conduct then to consider what action, if any, the Committee should take as a result of that failure which might be.**

BACKGROUND & SUMMARY OF THE INVESTIGATOR'S CONCLUSIONS:

Paragraph 3.4 of the Member's Code of Conduct states:

"Members must:

- (a) not conduct them self in a manner which could reasonably be regarded as bringing their 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.*

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

- By his actions during and after the Council meeting, I find sufficient evidence to show that Councillor Cawthron conducted himself in a manner that could reasonably be regarding as bringing his office or the Authority into disrepute. He is therefore in my opinion in breach of paragraph 3.4(a) of the Council's Code of Conduct.
- Councillor Cawthron failed to co-operate with the Monitoring Officer in her attempts to resolve the matter informally. He also failed to engage with me during my investigation. In doing so, Councillor Cawthron has failed in my opinion to comply with the Nolan Principle of Accountability. I find that he is in breach of paragraph 3.4(c) of the Council's Code of Conduct, which requires a councillor to comply with any request of the Monitoring Officer in connection with an investigation conducted in accordance with her respective powers. In doing so, he has caused the Council to expend valuable resources both in officer time and the cost of my investigation.

Principles of Public Life:

In addition to Paragraphs 3.4 of the Code of Conduct it is necessary to highlight that the Code also applies, at paragraph 2.2, "*whenever a Member conducts the business, or are present at a meeting, of the Authority;*". and "*at all times and in any capacity, in respect of conduct identified in paragraphs 3.4(a) and 3.5;*" and the Nolan Principle of 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.*".

INFORMAL RESOLUTION AND SANCTION

Informal Resolution:

Councillor Cawthron, initially acknowledged the matter in his discussion with the Monitoring Officer on 15 December 2020, and confirmed that, depending upon the format of an apology, he was prepared to apologise. Having asked the Monitoring Officer to advise him on appropriate wording, and her sending him some suggested wording by email of 18 December 2020, he then failed to further respond and has failed to respond again since that time.

Section 7.1.1 of the Council's Complaints Procedure, authorises the Monitoring Officer in consultation with one of the Independent Persons to seek an informal resolution. Consideration was given to an informal resolution, whether that was appropriate and proportionate, with the investigation outcome and the resolution being reported to the Standards Committee but that route is not considered appropriate in this case.

In reaching that decision, consideration has also been given to the sanctions which are afforded to the Committee at Section 8 of the Complaints Procedure and which for ease of reference are set out below. However, not all sanctions listed are available as Councillor Cawthron does not belong to any political party and is not in any group of Members.

Sanctions:

- (i) Publish its findings in respect of Councillor Cawthron's conduct on the Council's website;**
- (ii) Report its findings to Full Council for information;**
- (iii) Recommends that Councillor Cawthron should undergo refresher Code of Conduct training; and/or**
- (iv) Recommend to Full Council the exclusion of 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.**

Other sanctions are available, see paragraph 8 of the Complaints Procedure, but are not thought appropriate or proportionate in this matter.

HEARING AND SANCTIONS

Hearing

The Investigator's findings in this matter, taken with the lack of contact or response from Councillor Cawthron, means that this matter is not suitable for resolution by informal resolution. As a result, and following a conversation with one of the Independent Persons this matter is suitable for referral to the Standards Committee for a hearing following which that Committee can make a decision, and then, if appropriate, decide upon the sanction or sanctions.

At the hearing, and following the Council's procedures, the report can be formally presented to the Committee; Councillor Cawthron can attend; and both sides may call such witnesses as are considered necessary. In this case it is proposed to call the Investigator, John Austin, to answer any questions concerning his investigation that the Committee may have.

Should the Committee need to consider sanctions in this matter then some of those are set out above, and are also to be found at paragraph 8 of the Complaints Procedure, in Appendix 1.

The Committee is held in public, the Members can provide comments and observations and the minutes of the meeting are reported to full Council.

Sanctions:

These are set out in the paragraph above, under "Informal Resolution and Sanctions", and are also to be found at paragraph 8 of the Complaints Procedure.

CONSULTATION WITH THE INDEPENDENT PERSON

Jane Watts commented in response to the consultation with her on the investigation findings that there "seemed nothing more we can reasonably do" to engage Councillor Cawthron, and that a referral to the Standards Committee for a hearing in this matter was reasonable.

A member who is the subject of a complaint, also has the right to speak to an Independent Person as part of the process but as Councillor Cawthron has not engaged, then the Deputy Monitoring Officer has not provided any contact details for any of the Independent Persons.

MISCELLANEOUS MATTERS

None.

APPENDICES

- Appendix 1 – Code of Conduct and Complaints Procedure
- Appendix 2 - Report of investigator, John Austin.

TENDRING DISTRICT COUNCIL



MEMBERS' CODE OF CONDUCT

(Adopted by the Council on 23 January 2018)

(Code as regards the conduct which is expected of all elected Councillors, voting co-opted members and appointed members)

TENDRING DISTRICT COUNCIL
MEMBERS' CODE OF CONDUCT

1. INTRODUCTION TO THE CODE OF CONDUCT

- 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 for elected Members (also referred to as “Councillors”) to promote and maintain high standards of conduct in public life. It is each Member’s responsibility to comply with the provisions of this Code.
- 1.2 The Code of Conduct applies to all elected Members, voting co-opted Members and appointed Members.
- 1.3 The Code covers three main areas:
- **Part 1** sets out some general obligations regarding the behaviour of elected and co-opted Members (“**Rules of Conduct**”)
 - **Part 2** explains how Members should behave if they have a personal/code interest in an item of Council business (“**Members’ Interests**”)
 - **Part 3** sets out rules requiring registration of interests for public inspection (“**Register of Members’ Interests**”)

The Principles of Public Life are set out in the Appendix.

2. Interpretation of when the Code of Conduct applies?

- 2.1 In this Code “meeting” means any meeting of
- (a) Tendring District Council (“the Authority”);
 - (b) the Cabinet (also known as the Executive) of the Authority
 - (c) any of the Authority’s or Cabinet’s committees, sub committees joint committees, joint sub-committees, or area committees (including working parties and panels); 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 a Member conducts the business, or are present at a meeting, of the Authority; or
 - (b) whenever a Member acts, claims to act or gives the impression they are acting in the role of Member to which they were elected or appointed; or

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- (c) whenever a Member acts, claims to act or give the impression they 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 they have been convicted during their term of office.

- 2.3 Where a Member is elected, appointed or nominated by the Authority to serve on any other authority or body they must, when acting for that other authority or body, comply with the code of conduct of that other authority or body.
- 2.4 Where a Member is 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, they 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. Principles of Public Life

- 3.1 The Localism Act 2011 requires the Authority to have a code of conduct which is consistent with the 'Nolan Principles' determined by the Committee on Standards in Public Life. These Principles are set out in the Appendix A to this Code. The Code is consistent with the Nolan Principles but any breach of the principles is not by itself a breach of the Code.

Members of Tendring District Council shall have regard to the Seven Principles of Public Life as it is these principles which underpin the Rules of Conduct set out below.

PART 1

RULES OF CONDUCT

3.2 In fulfilling Duties and Responsibilities

Members must not:

- (a) breach their 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

Members 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

Members must:

- (a) not conduct them self in a manner which could reasonably be regarded as bringing their 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 the Position

Members must not:

- (a) in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for them self, or any other person, an advantage or create or avoid for them self, 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 they have been elected or appointed;
 - (v) improperly for political purposes; or
 - (vi) improperly for private purposes.

3.6 Registration of Interests

In accordance with and subject to Part 2 of the Code, Members are required to register details of their Disclosable Pecuniary Interests and their Personal Interests within 28 days of

becoming a Member (or being re-elected or reappointed) or a change in those details, in the Authority's Register of Interests.

3.7 **Decision Making**

Members 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.

3.8 **Compliance with the Law and the Authority's Rules and Policies**

Members must:

- (a) observe the law and the Authority's rules governing the claiming of expenses and allowances in connection with their duties as a Member;
- (b) comply with the Local Authority Code of Publicity made under the Local Government Act 1986 and any relevant guidance issued;
- (c) comply with the provisions of the Bribery Act 2010 or similar;
- (d) comply with the Authority's Gifts and Hospitality Policy;
- (e) 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**

Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.

4. Disclosable Pecuniary Interests

- 4.1 Disclosable Pecuniary Interests (DPIs) are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are set out in Appendix B to this Code. It is important that Members understand what amounts to a DPI, that they identify carefully all DPIs relevant to them and that they take the necessary action required by law. Breach of the requirements related to DPIs is a criminal offence and are referred to the Police.
- 4.2 A Member will have a Disclosable Pecuniary Interest in any business of their Authority if it is of a description set out in Appendix B and is either:
- (a) their own interest, or that of a Relevant Person being:
 - (b) an interest of their spouse,
 - (c) an interest of their civil partner, or
 - (d) an interest of a person with whom they are living with as a spouse or civil partner,

and in the case of paragraphs 4.2(b) – (d) the Member is aware that the Relevant Person has the interest.

5. Personal Interests

- 5.1 A Member will have a Personal Interest in any item of business of the Authority where it relates to or is likely to affect –
- (a) any person or body who employs or has appointed them;
 - (b) any existing contract for goods, services or works, which has not been fully discharged or has expired within the last 2 years, and made between the Authority and
 - (i) the Member,
 - (ii) a Related Person;
 - (iii) a body in which the Member has a Disclosable Pecuniary Interest; or
 - (iv) a person or body of the description specified in paragraphs 5.1 (c)-(d) below;

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- (c) any body of which the Councillor is a member or in which they hold a position of general control or management and to which they are appointed or nominated by the Authority;
- (d) any other body of which the Councillor is a member and in which they hold a position of general control or management –
- (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);
- (e) the interests of any person from whom the Member has received a gift or hospitality with an estimated value of at least £50;
- (f) a decision in relation to that business which might reasonably be regarded as affecting the financial position or wellbeing of:
- (i) the Member or
 - (ii) a Related Person (if the Member is aware of its existence)
- to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, affected by the decision;

5.2 Related Person is defined as:

- a member of the Councillor's family; or
- any person with whom the Councillor has a close business or personal association.

In the case of a Related Person, a Councillor is only required to declare those interests which they are aware or ought reasonably to be aware of the existence.

6. Declaration of Members' Interests

6.1 Subject to sub-paragraphs 6.2 to 6.3, where a Member has a Disclosable

Pecuniary or Personal Interest in any business of the Authority and they are present at a meeting of the Authority at which the business is considered, they must declare to that meeting the existence and nature of that interest whether or not such interest is registered on their Register of Interests or for which they have made a pending notification.

6.2 Sub-paragraph 6.1 only applies where a Member is aware or ought reasonably to be aware of the existence of the Relevant Person's (as defined in 4.2 above) Interest or the Related Person's (as defined in 5.2 above) Interest.

- 6.3 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 but by virtue of paragraph 11 (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 or Personal Interest they do not need to declare the nature of the interest to the meeting.
- 6.4 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 and they are acting as a Cabinet Member, making an executive decision in relation to that business they 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.

7. Declaration of Personal Interests generally

- 7.1 Subject to sub-paragraphs 7.2 & 7.3 below, a Member has a duty to declare any Personal Interest, as set out in paragraph 5 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 their judgement of the public interest.
- 7.2 Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.
- 7.3 A Member does not have a declarable interest in any business of the Authority where that business relates to the functions of the Authority in respect of:
- i. housing, where the Member is a tenant of the Authority provided that those functions do not relate particularly to their tenancy or lease;
 - ii. school meals or school transport and travelling expenses, where the Member is 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 the Member is 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

8. Effect of Disclosable Pecuniary Interests on participation

- (a) If a Member is present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and they have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and they are aware of that Interest:
- (i) the Member 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) the Member must withdraw from the room or chamber where the meeting considering the business is being held unless they have received a dispensation from the Authority's Monitoring Officer.
- (b) If a Member has a Disclosable Pecuniary Interest in any business of the Authority they 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 they have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function they 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 them self).

9. Effect of Personal Interests on participation

- 9.1 If a Member has a Personal interest (not a Disclosable Pecuniary Interest) in any business of the 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 the Member's judgement of the public interest and they are present at a meeting of the Authority at which such business is to be considered or is being considered the Member must:-
- (a) Declare 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 representations or in any other case when the business is under consideration, unless they have obtained a dispensation from the Authority's Monitoring Officer.

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

- 10.1 Subject to paragraph 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
 - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of Disclosable Pecuniary Interests as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner in so far as they are aware of their interests at that time.
- 10.2 Subject to paragraph 11, Members must, within 28 days of becoming aware of any new or amended Disclosable Pecuniary Interest as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner or change to any interest registered under paragraph 4 above by providing written notification to the Authority's Monitoring Officer.
- 10.3 Subject to paragraphs 10.5 and 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
 - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Personal Interests details of Personal Interests as referred to in paragraph 5, that the Member is aware of at that time.
- 10.4 Subject to paragraphs 10.5 and 11, Members must, within 28 days of becoming aware of any new or amended Personal Interest as referred to in paragraph 5 or change to any interest registered under paragraph 5 above by providing written notification to the Authority's Monitoring Officer.
- 10.5 The provisions of paragraphs 10.3 and 10.4 above, do not apply to any Personal Interest which concerns a Related Person, as these interests are not required to be registered in advance and only declared at a meeting of the Authority at which the business is considered and the Member is present.
-

11. Sensitive Information

- 11.1 Where a Member has an interest referred to in paragraphs 4 or 5, and the nature of the interest is such that the Member and the Authority's Monitoring Officer consider that disclosure of details of the interest could lead to the Member or a person connected with them 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 the Member has an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 11.2 Members must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's Monitoring Officer.
- 11.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that the Member or a person who lives with them may be subject to violence or intimidation.

APPENDIX A

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

The Nolan Principles

<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

APPENDIX B

“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.

**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 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 a 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 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;
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint; and
- (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 making 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, may be 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 or 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 be 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 made 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 the 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 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 Person 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 Standard Committee or Sub-Committee?**
- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Tendring District Association of Local Councils);
- 10.3 At least one of the two 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 a 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 two 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.

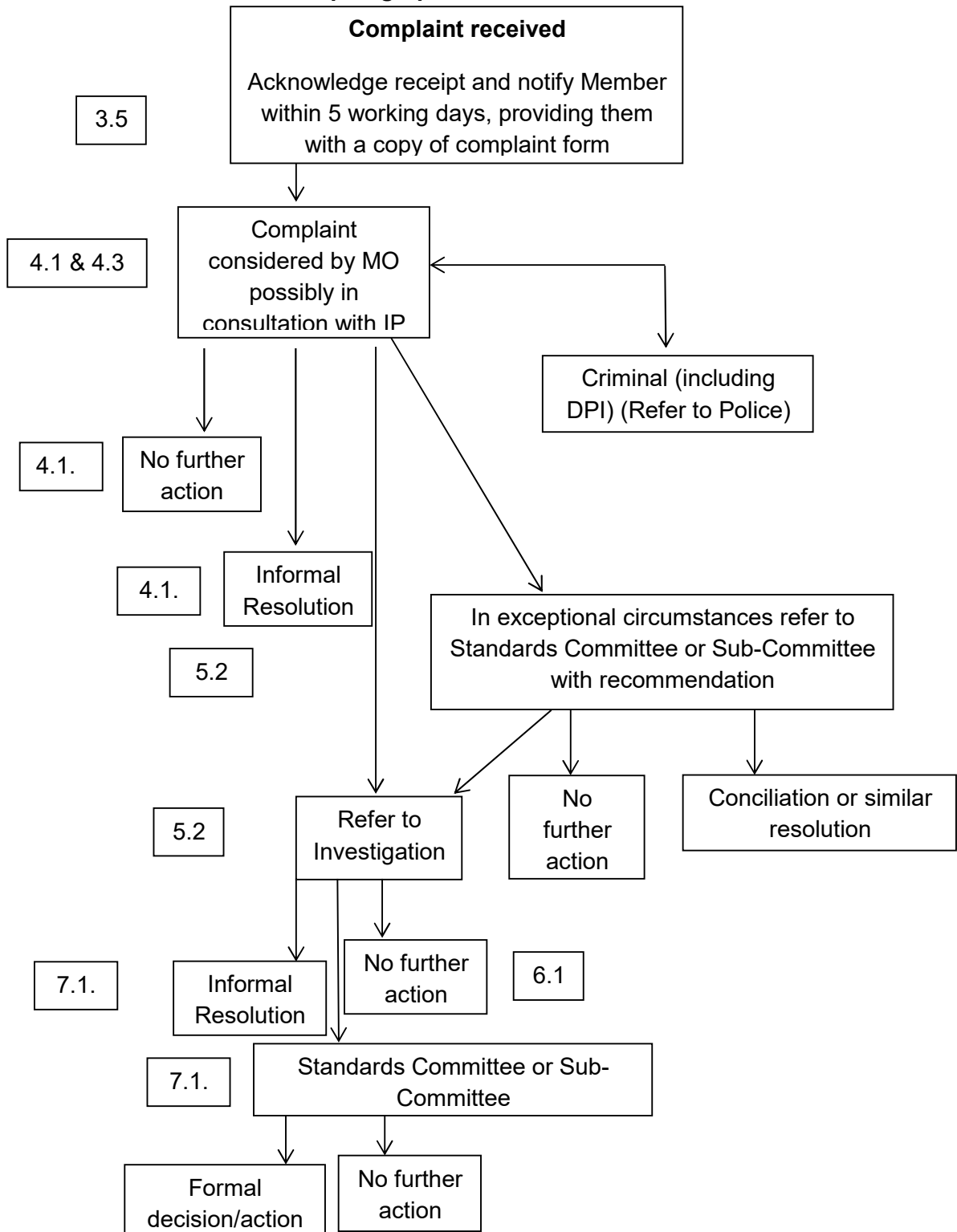
13. Appeals

- 13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or 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 and Social Care 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 C – STANDARDS COMMITTEE AND TOWN AND PARISH COUNCILS' SUB-COMMITTEE
TERMS OF REFERENCE**

Committee	Functions and Terms of Reference	Delegated Functions
Standards Committee	<ol style="list-style-type: none"> 1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority; 2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels of the Council; 3. To advise the Council on the adoption or revision of the Members' Code of Conduct; 4. To advise, train or arrange training on matters relating to and assisting Members, Co-opted Members and Town and Parish Councillors on observing the Members' Code of Conduct; 5. To approve procedures for the conduct of hearings into complaints against Members; 6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council; 7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework; 	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure. 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation • Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for

(Grey)

(July 2016) Part 6.25

	<p>8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;</p> <p>9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and</p> <p>10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.</p>	<p>consideration for further investigation.</p> <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p>
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	<p>Proceedings:</p> <ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Tending District Council Members and Co-opted Members referred to it by the Monitoring Officer; and 4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council. 	<ol style="list-style-type: none"> 4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct. 5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011. 6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.
Committee	Functions and Terms of Reference	Delegated Functions
Town and Parish Councils' Standards Sub-Committee	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p>Proceedings:</p>	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tending District alleging a breach of the Members' Code of

(Grey)

(July 2016) Part 6.26

	<ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer’s advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and; 	<p>Conduct of the Council/Town or Parish Council (“Code”) in accordance with the Complaints Procedure.</p> <ol style="list-style-type: none"> 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether
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	<p>4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.</p>	<p>the complaint:</p> <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation • Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation. <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p> <p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide</p>
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		advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.
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**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.

Complaint which may be referred for investigation and/or to the Standards Committee or Sub-Committee

1. It is serious enough, if proven, to justify 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 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’ time 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 Members' 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 complainant 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 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;
 - An assessment on all of the alleged breaches of the Code of Conduct forming the complaint and those identified by the Monitoring Officer or Investigator;
 - 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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John Austin Associates

Tendring District Council

Investigation Report

Complaint from Lisa Hastings (Council Monitoring Officer)
against Councillor Peter Cawthron

September 2021

Investigation Report

Tendring District Council

Complaint from Lisa Hastings (Council Monitoring Officer) against
Councillor Peter Cawthron

1. Introduction

1.1 I was commissioned by the Deputy Monitoring Officer at Tendring District Council to investigate a complaint by Lisa Hastings (the Authority's Monitoring Officer) against Councillor Peter Cawthron (a District Councillor).

1.2 The complaint is as follows:

“Councillor Cawthron has admitted to using an obscenity during a formal and recorded Council meeting on 24 November 2020. The complainant feels that Councillor Cawthron has not had regard to the Principles of Public Life, namely accountability, and has failed to comply with the Council's Members' Code of Conduct, specifically in relation to Conduct and paragraphs 3.4(a) and 3.4(c).”

2. Summary of Findings

2.1 Below is a summary of my findings. These are set out in more detail in section 8 of this report.

2.2 By his actions during and after the Council meeting, I find sufficient evidence to show that Councillor Cawthron conducted himself in a manner that could reasonably be regarded as bringing his office or the Authority into disrepute. He is therefore in my opinion in breach of paragraph 3.4(a) of the Council's Code of Conduct (see paragraph 8.18 of this report).

2.3 Councillor Cawthron failed to co-operate with the Monitoring Officer in her attempts to resolve the matter informally. He also failed to engage with me during my investigation. In doing

so, Councillor Cawthron has failed in my opinion to comply with the Nolan Principle of Accountability. I find that he is in breach of paragraph 3.4(c) of the Council's Code of Conduct, which requires a councillor to comply with any request of the Monitoring Officer in connection with an investigation conducted in accordance with her respective powers. In doing so, he has caused the Council to expend valuable resources both in officer time and the cost of my investigation. (Paragraph 8.19 refers)

3. Terms of Reference

- 3.1 I conducted my investigation in accordance with the District Council's Members' Code of Conduct and the associated complaints procedure. The Council's Code is dated April 2018.
- 3.2 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. This is one of the principles on which the Council's Code of Conduct is based (The Nolan Principles - Appendix A to the Code).

The relevant parts of the Code of Conduct are paragraphs 3.4(a) and 3.4(c) as follows:

Members must:

3.4(a) - not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute, and

3.4(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 powers."

4. Documents Reviewed

In the course of my investigation, I reviewed the following:

- (a) The complaint from Ms Hastings

- (b) The decision notice from the Deputy Monitoring Officer dated 9 March 2021
- (c) The Council's Members' Code of Conduct dated April 2018
- (d) The Council's Complaints Procedure
- (e) E mails between Ms Hastings and Councillor Cawthron between 25 November 2020 and 13 January 2021.
- (f) The recording of the relevant part of the Council meeting on 24 November 2020.

5. Evidence Gathering and Comments on the Report

- 5.1 I interviewed Ms Hastings on 22 April 2021. Councillor Cawthron did not respond to my two e mail requests for an interview sent to him on 15 and 24 April 2021.
- 5.2 I also had email correspondence with District Councillor James Codling (see paragraph 7).
- 5.3 Both Ms Hastings and Councillor Cawthron were sent a copy of this report for comments on accuracy and fact. Ms Hastings replied, accepting the report, and adding that its content accords with the complaint and the unfortunate situation Tendring District Council found itself in. I allowed Councillor Cawston longer than normal to respond over the summer holiday period. He failed to do so.

6. Interview between myself and Ms Hastings on 22 April 2021

- 6.1 I reminded Ms Hastings that I had been appointed by her Deputy Monitoring Officer (Linda Trembath) to investigate her complaint against Councillor Cawthron. The complaint was as follows:

“Councillor Cawthron used an obscenity during a formal and recorded Council meeting on 24 November 2020. As the complainant, she feels that he has not had regard to the Principles of Public Life, namely accountability, and has failed to comply with the Council's Members' Code of Conduct, specifically in relation to Conduct and paragraphs 3.4(a) and 3.4(c).

- 6.2 I asked if my understanding was correct. She replied yes but it wasn't just about the fact that Councillor Cawthron swore. It was also about his response that it was an acceptable word to use in today's society.
- 6.3 I asked Ms Hastings to outline the reasons for making the complaint. She replied that for her to make this complaint was an option of last resort. Her role and relationships with members meant that she would try to resolve such issues informally. She said she gave Councillor Cawthron ample opportunity to engage with her to seek an informal resolution. She suggested he made an apology to members and the public. The disappointing thing for her was that Councillor Cawthron initially agreed to consider such an apology and she prepared a draft, but she then didn't hear anything from him. She said she considered the complaint to be an inappropriate use of Council resources. It is not something she has done lightly but it cannot be the case that Tendring District Council accepts that swearing in the Council Chamber is acceptable. In her opinion, it is damaging to its reputation.
- 6.4 I said that I understood that Councillor Cawthron apologised at the time it happened at the Council meeting. Ms Hastings said no - that was not the case. Councillor Calver heard the comment and raised it at the meeting. Councillor Cawthron admitted it was him immediately but added that it was an acceptable word to use. Ms Hastings said that she didn't hear it during the meeting but did so when listening to the recording the following day.
- 6.5 I reminded Ms Hastings that in her complaint she stated that Councillor Codling said he would try to speak to Councillor Cawthron. I asked if this conversation had taken place. She replied that she didn't know. She advised me that Councillor Codling was at the time in the UKIP Group along with Councillor Cawthron (who was the Group Leader). Councillor Codling has since moved to the Conservative Group. The Council's complaints procedure says that if the complaint involves the Leader of a Group, the Monitoring Officer may speak to the relevant Group's Deputy Leader to try to resolve the matter – in this case Councillor Codling. She added that

the Council does not have Councillor Cawthron's telephone number.

6.6 I said that I understood that the recording of the Council meeting was available but I couldn't locate it on the Council's website. Ms Hastings agreed to send me the recording and to indicate where in the meeting the offending word was said.

6.7 I advised that Councillor Cawthron had not yet responded to my request to meet with him. I asked if he had been in contact with her recently. Ms Hastings replied no, adding that he doesn't tend to respond to correspondence. He does however access the Council's system and attend meetings.

7. Evidence from elsewhere

Following my interview with Ms Hastings (see paragraph 6.5 above) I e mailed Councillor Codling and asked him if he had spoken to Councillor Cawthron about the incident. He replied:

"No I did not subsequently contact Peter Cawthron.

The reason for this was that, on reflection, I felt that Councillor Cawthron as an experienced councillor and Group Leader should be fully aware of his obligation to make an apology informal or otherwise.

It seems also from his feelings on the use of the offending word being acceptable in today's society that he is trying to make a point which has no justification under the circumstances."

8. Evaluation of Evidence and Findings

8.1 As mentioned in paragraph 5.1 above, I e mailed Councillor Cawthron on 15 and 24 April 2021. He did not respond to both requests for an interview. In my view therefore he has failed to comply with my investigation.

8.2 I viewed the recording of the relevant part of the Council meeting on 24 November 2020.

- 8.3 After a vote was taken on item 15 of the agenda (minute no. 47) a member was heard to utter the word “f**k”. This was timed at 1.44.52 on the meeting timeclock. The meeting carried on and then at 1.45.53 on the clock, Councillor Calver spoke up and said that he had heard an obscenity uttered. If the meeting was being recorded, he asked for the matter to be investigated so the member could be identified. Councillor Cawthron then intervened (1.46.27 on the clock) and admitted that he had uttered what would have been an obscenity in the 1950, 60s and 70s but it was no longer perceived to be one by the majority of the British people. The meeting then continued.
- 8.4 There is no doubt therefore that the offending word was said, and Councillor Cawthron has admitted to having said it.
- 8.5 In the detail that accompanied her complaint, Ms Hastings said that neither the Chairman, Chief Executive, or the Leader of the Council or herself heard the offending word. However, she listened to the recording on the following Wednesday morning, and it was clear what was said.
- 8.6 Ms Hastings added that she wrote to Councillor Cawthron on 25 and 26 November asking him to contact her to discuss the incident. No response was received. She e mailed him again on 27 November with a more formal request stating that it may have been his view that it was an acceptable word but that is not the case when acting as a councillor, on Council business and in formal Council meetings, during which a higher standard of conduct is expected. She added that despite the wideness and proliferation of its use in many sections of society, the word remains a swear word and an expression of profanity within the English language and is still regarded as highly offensive within many settings.
- 8.7 Ms Hastings said that she genuinely believed that Councillor Cawthron may have said the word in the meeting unintentionally whilst being unmuted and had not aimed it at anyone in particular. However, it was said immediately following a motion the Council had just decided upon. It may also be the case that not everyone watching would have been offended. However, it is not in her view acceptable to use

such language while carrying out Council business and therefore, she considered as the Council's Monitoring Officer that the most appropriate form of action would have been to resolve the matter informally and for Councillor Cawthron to issue an apology to the Chairman, Tendring District Council Members and the public. This would in her opinion have enabled everyone to move on.

- 8.8 Ms Hastings asked Councillor Cawthron to reflect on his position, adding that she felt sure that he would not wish to be perceived as acting in a manner which could reasonably be regarded as bringing his role as a Councillor, or Tendring District Council into disrepute and have a negative impact on the Council's reputation. She asked him for confirmation as to whether he was prepared to issue an apology and if so, when this would be. She offered to discuss the matter further early the following week and to assist with the wording of the apology.
- 8.9 No response was received to the email sent on 27th November, therefore a further email was sent on 2nd December copying Councillor Codling into the email. This correspondence highlighted the Council's Complaints Procedure which contains provisions for when a complaint relates to a Group Leader and authorising the Monitoring Officer to try and resolve matters informally, involving the Deputy Group Leader. Reference was made to the formal complaints procedure and potential reference to the Standards Committee.
- 8.10 On 15th December, Councillor Cawthron contacted Ms Hastings via email and explained he had been working away, at very short notice, for the last two weeks and away from his email. He confirmed he had no problem with an apology depending upon the format. He asked Ms Hastings to advise on the options. In response, Ms Hastings offered to draft some words for him to consider, which was accepted. The suggested apology was sent to him via email on 18th December 2020. No response was received and reminders were sent on 6th January and 13th January 2021. On the latter date, Ms Hastings also sent the email during the All Member Briefing in which Councillor Cawthron joined and was on-line.

Councillor Cawthron also joined the Planning Committee on 19th January 2021, in which she also attended. Even though he was 'active' as a member at that time, Councillor Cawthron failed to acknowledge or respond to Ms Hastings' attempts to resolve the matter informally.

- 8.11 Ms Hastings told me that she was extremely disappointed in having to make this complaint and invoke the formal procedures. But she felt she had no other option. She added that the Council and its Monitoring Officer cannot condone Councillor Cawthron's behaviour. The reputation of the Council is at stake.
- 8.12 Ms Hastings also said that both she and members of Tendring Council have a duty to maintain and promote high standards of conduct in accordance with the Localism Act 2011. Councillor Cawthron is bound by the Council's Members' Code of Conduct. By saying in full Council that he considered the use of a swear word to be acceptable when conducting Council business and failing to apologise upon reflection, he has in Ms Hastings' view brought his office and the Council into disrepute.
- 8.13 Paragraphs 8.5 to 8.10 above show the efforts Ms Hastings made to reach out to Councillor Cawthron, to facilitate an apology and hopefully draw a line under the matter. He failed to engage with the Monitoring Officer in a constructive manner to resolve the matter informally and thereby prevent a formal investigation taking place.
- 8.14 I am advised that it is not possible to contact Councillor Cawthron by telephone, as he has not provided additional contact details and relies on the Council's email system.
- 8.15 There is no doubt that Councillor Cawthron used the word "f*ck" during the Council meeting. It is clear from the recording and he admitted it when Councillor Calver raised the matter shortly afterwards. My view is that Councillor Cawthron probably uttered the offending word out of frustration at the outcome of the vote. I do not think he directed it at any individual or group. He may also have thought his microphone

was muted. It is a relatively common mistake during remote meetings.

- 8.16 I do not however accept Councillor Cawthron's explanation that the word is more acceptable today's than it was decades ago. It might arguably be more commonly used in everyday life but it is not acceptable in his position as a councillor in a formal Council meeting. I concur with the Monitoring Officer in paragraph 8.6 when she told Councillor Cawthron that the word remains a swear word and an expression of profanity within the English language and is still regarded as highly offensive within many settings.
- 8.17 The correct course of action would have been for Councillor Cawthron to apologise immediately. He failed to do that. He also failed subsequently to agree a suitable apology with the Monitoring Officer after initially indicating his willingness to do so. Had he had done so, it would probably have been the end of the matter.
- 8.18 By his actions during and after the Council meeting, I therefore find sufficient evidence to show that Councillor Cawthron conducted himself in a manner that could reasonably be regarded as bringing his office or the Authority into disrepute. He is therefore in my opinion in breach of paragraph 3.4(a) of the Council's Code of Conduct.
- 8.19 Councillor Cawthron also failed to co-operate with the Monitoring Officer in her attempts to resolve the matter informally. He also failed to engage with me during my investigation. In my opinion, Councillor Cawthron has failed to comply with the Nolan Principle of Accountability by avoiding and ignoring communication with the Council's statutory officer employed to deal with Member Complaints (plus myself acting on behalf of the Deputy Monitoring Officer). I find therefore that he is in breach of paragraph 3.4(c) of the Council's Code of Conduct, which requires a councillor to comply with any request of the Monitoring Officer in connection with an investigation conducted in accordance with their respective powers. In doing so, he has

caused the Council to expend valuable resources both in officer time and the cost of my investigation.

8.20 I fully understand the difficulties faced by the Monitoring Officer in making this complaint. As she said in paragraph 6.3, it was an option of last resort. In my view she adopted the correct course of action in trying to resolve the matter informally. When that failed, she had no option but to make the formal complaint to preserve the integrity of and standards within the Council. I commend Ms Hastings for her actions.

30 September 2021

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DRAFT COMMITTEE WORK PLAN – STANDARDS COMMITTEE

28th JULY 2021 (CANCELLED MEETING)

- Review of Tendring District Council's Code of Conduct; **(To be rescheduled)**

27th OCTOBER 2021

- Case review and guidance update for the Committee on decisions and actions taken nationally; **(To be rescheduled)**
- Review of Social Media Guidance; and **(To be rescheduled)**

2nd FEBRUARY 2022 (provisional date)

- Update on Mandatory Training;
- Annual Report on declarations of interest (meetings, gifts and hospitality); and
- Regular Complaints update by Monitoring Officer

6th APRIL 2022 (provisional date)

- Work Programme 2022/2023; and
- Regular Complaints update by Monitoring Officer

Individual matters may be referred to these meetings by the Monitoring Officer in accordance with the Committee's Terms of Reference as necessary, for example, an appeal against dispensation decision or a Code of Conduct hearing.

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