



STANDARDS COMMITTEE

DATE:	Wednesday, 26 October 2022
TIME:	10.00 am
VENUE:	Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE

MEMBERSHIP:

Councillor Land (Chairman)
Councillor Steady (Vice-Chairman)
Councillor Casey
Councillor V Guglielmi

Councillor J Henderson
Councillor Placey
Councillor Skeels

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. Agendas are available to view five working days prior to the meeting date and the Council aims to publish Minutes within five working days of the meeting. Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

This meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be filmed, except where there are confidential or exempt items, and the footage will be on the website for up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). The Council will seek to avoid/minimise footage of members of the public in attendance at, or participating in, the meeting. In addition, the Council is obliged by law to allow members of the public to take photographs, film, audio record and report on the proceedings at public meetings. The Council will only seek to prevent this should it be undertaken in a disruptive or otherwise inappropriate manner.

If you have any queries regarding webcasting or the recording of meetings by the public, please contact Ian Ford Email: iford@tendringdc.gov.uk or Telephone on 01255 686584.

DATE OF PUBLICATION: Tuesday, 18 October 2022

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 - 12)

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Wednesday 3 August 2022.

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 Monitoring Officer - A.1 Review of the Monitoring Officer Protocol (Pages 13 - 50)

To enable the Committee to review and discuss the Monitoring Officer's Protocol (the Protocol) and suggest any proposed amendments to that Protocol for consideration by Full Council.

6 Case Review and Guidance Update for the Committee on Decisions and Actions Taken Nationally (Pages 51 - 60)

To give the Committee a presentation and guidance update on decisions and actions taken nationally.

7 Quarterly Complaints Update and Other General Matters (Pages 61 - 62)

The Committee will receive the Monitoring Officer's quarterly update regarding standards complaints together with an update on other pertinent matters.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held in the Committee Room - Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 10.00 am on Wednesday, 1 February 2023.

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.

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON WEDNESDAY, 3RD AUGUST, 2022 AT 10.00 AM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors Land (Chairman), Steady (Vice-Chairman), Casey and Placey
In Attendance:	Lisa Hastings (Deputy Chief Executive & Monitoring Officer), Linda Trembath (Head of Legal Services & Deputy Monitoring Officer), Karen Townshend (Executive Projects Manager (Governance)), Keith Durran (Committee Services Officer) and Debbie Bunce (Legal and Governance Administration Officer)
Also in Attendance:	The following Independent Persons: Clarissa Gosling, David Irvine and Jane Watts

1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillors V E Guglielmi (with no substitute), J Henderson (with no substitute) and Skeels (with no substitute) and Sue Gallone (one of the Council's four Independent Persons).

2. MINUTES OF THE LAST MEETING

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

RESOLVED that the Minutes of the meeting of the Committee held on Wednesday 6 April 2022 be approved as a correct record and be signed by the Chairman.

3. DECLARATIONS OF INTEREST

There were no Declarations of Interest made by Members at this time.

4. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

No Questions on Notice had been submitted by Members pursuant to Council Procedure Rule 38 on this occasion.

5. REPORT OF THE MONITORING OFFICER - A.1 - LOCAL GOVERNMENT ASSOCIATION MODEL MEMBERS' CODE OF CONDUCT - EXPLORATION OF THE DIFFERENCES BETWEEN DECLARING INTERESTS

Further to Minute 30 (6.4.22) the Committee continued its review of the elected Members' Model Code of Conduct ("the Model Code") as authored by the Local Government Association (LGA), in comparison to Tendring District Council's Members' Code of Conduct ("the TDC Code"), for eventual determination as to whether to recommend the Model Code to Full Council for adoption.

The current adopted Members' Code of Conduct, as detailed within Part 6 of the Council's Constitution was attached as Appendix A to the Monitoring Officer's report. The Code set out the standards, values and rules of conduct that elected Members of Tendring District Council were expected to abide by.

The LGA's Model Code was attached at Appendix B to the Monitoring Officer's report. The aim of the Model Code was to provide consistency for Members across Parish, Town, District and County Councils, especially for those Members representing two or more electorates (also known as 'dual or triple hatters'). Guidance issued by the LGA on the Model Code was attached at Appendix C to the Monitoring Officer's report.

The Committee recalled that, at its last meeting held on 6 April 2022 (Minute 30 referred), it had been appraised of the differences between the Rules of Conduct within the TDC Code compared with the Model Code and that the provisions relating to interests would be considered separately at this meeting.

To that end it was reported that the TDC Code had two types of Members' Interests namely Disclosable Pecuniary Interests (DPI) and Personal Interests. The Model Code referred to those as Disclosable Pecuniary Interests, Other Registrable Interests and Non-Registrable Interests. It could appear from first glance that the Model Code either covered interests in more detail or had introduced an additional type; however in essence they were broadly similar as the TDC Code, albeit condensed under its two headings.

Under both the TDC Code and the Model Code, it remained the responsibility of the individual Member to keep their registration of interests complete, up to date and accurate.

The TDC Code stated that Members were required to register details of their Disclosable Pecuniary Interests and their Personal Interests (that a Member was aware of at the time) 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. The Model Code required DPIs and only those personal interests which fell within the categories set out in Table 2, defined as Other Registrable Interests, to be registered.

Within the "Current Position" section of her report, the Monitoring Officer had endeavoured to explain (as summarised below), the differences between the interest provisions within the Codes. Upon review, the main difference to highlight was the impact of Paragraph 9 within the TDC Code being withdrawn from all types of Personal Interests although a test was still applied to those Non-Registrable Interests within the Model Code which 'affected' the interest.

1. DPI provisions within each Code

Whilst the Codes were worded and formatted differently, the requirements therein were based on the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and, therefore, the Monitoring Officer considered that the Model Code did provide additional guidance and if adopted would not change the requirements of the TDC Code.

2. Personal Interests / Other Disclosable Interests

The “Other Registerable Interests” within the Model Code were almost identical to TDC’s definition of Personal Interests however, the TDC Code gave further flexibility to speak on an item subject to the assessment of the Public Interest test, without seeking a dispensation from the Monitoring Officer. The Model Code prohibited a Member possessing an Other Registerable Interest from speaking at the meeting unless the public was permitted to speak at the meeting and if a dispensation had been granted. The Monitoring Officer foresaw that this would have an impact for those Members who were appointed to outside bodies by the Council.

3. Model Code Non-Registerable Interests and TDC Personal Interests

Paragraphs 7-9 of the Model Code were again very similar to Paragraph 5(f) of the TDC Code, but made very slight distinctions between ‘*directly relating to*’ and ‘*affecting*’, and it was important to highlight the impact of Paragraph 9 within the TDC Code compared with the Model Code:

The TDC Code: 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 Members’ 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.”*

Therefore, under the Model Code, if adopted, a Member possessing a Non-Registerable Interest as defined in Paragraph 7, which directly related to their financial interest or well-being or a financial interest or well-being of a relative or close associate, could ONLY speak on the matter IF members of the public were also allowed to speak at the meeting but otherwise that Member must not take part in any discussion or vote on the matter and must not remain in the room unless a dispensation had been granted.

If the Member possessed a Non-Registrable Interest which affected the financial interest or well-being etc. a similar test in TDC Paragraph 9 was applied.

4. Register of Gifts & Hospitality

The value of the gift or hospitality was the same. However, the Model Code did provide further text and guidance which was similar to the TDC Guidance Note, which had been issued separately. Therefore bringing both of those together could be helpful for Members, rather than them having to look at two different documents.

The Committee was made aware that from further conversations between Monitoring Officers across the County, there was still an appetite to adopt the Model Code subject to approval from respective Full Councils. The following Essex local authorities had either recommended the adoption of the Model Code or had adopted the Model Code: Essex County Council, Southend-on-Sea City Council, Basildon Council, Maldon District Council and Castle Point Borough Council.

In addition, Members were advised that, when the current TDC Code had been adopted in 2018, the majority of Town and Parish Councils within the District had adopted the revised Code, to align with TDC. A number of Town and Parish Councils were now adopting or considering adopting the LGA Model Code, and were therefore seeking advice and guidance from this Authority on its position.

The Committee was informed that there was no particular risk to this Authority in terms of the conduct and standards of its Members whether the Committee decided to recommend the adoption of the LGA Model Code or to retain and update the current TDC Code. There was the potential of an element of reputational risk if the LGA Model Code was not adopted i.e. questions would be asked as to why it had not been adopted by TDC when many authorities across the county, along with Town and Parish Councils, had adopted it or were considering doing so. Additionally, the streamlining of authorities would not be in place with differing codes being applicable to individual authorities, which could lead to some confusion, however those risks were minimal and would not affect the day-to-day practice of this Authority.

Should the Model Code be adopted then training would be required for all Members which could be delivered by Officers through dedicated sessions.

The Committee then duly considered and discussed this matter. That discussion included the following:-

- (i) Which local District Councils and Parish/Town Councils had considered adopting the Model Code;
- (ii) The Monitoring Officer's professional opinion on whether to adopt the Model Code or remain with the Tending Code;
- (iii) The flexibility within the TDC Code of speaking at a Committee meeting if a Member had a personal interest whereas this flexibility to speak was removed within the Model Code;
- (iv) The benefits of adopting the Model Code;
- (v) The frequency of applications from Members for dispensations under the current code with regards to speaking at meetings where they had a personal interest;
- (vi) Gifts & Hospitality – the guidance given to Members;

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

RESOLVED that the Standards Committee:

- (a) notes the contents of the Monitoring Officer's report and its Appendices;

- (b) confirms its satisfaction of the comparison of the Tendring District Council's Members' Code of Conduct and the LGA's Model Code of Conduct; and
- (c) recommends to Full Council that the LGA Model Code be approved and adopted.

6. REPORT OF THE DEPUTY CHIEF EXECUTIVE & MONITORING OFFICER - A.2 - INDEPENDENT REMUNERATION PANEL AND INDEPENDENT PERSONS RECRUITMENT

The Committee considered the Independent Remuneration Panel's and Independent Persons' terms of office, with the aim of exploring alternative options as to future recruitment, with a view to making recommendations to full Council on this matter.

Members were reminded that, at its meeting held on 27 November 2018, full Council had agreed the appointment of Mr David Irvine, Mrs Clarissa Gosling, Mrs Jane Watts and Mrs Sue Gallone as the Council's Independent Remuneration Panel for the purposes of making recommendations to Council on Members' allowances. Those four persons had been also confirmed as the Council's Independent Persons for the purposes of standards arrangements. Those appointments were in place until the Annual Meeting of the Council in May 2023.

The Committee was advised that Full Council had last considered the Members' Allowances Scheme in September 2020 together with the related recommendations from the Independent Remuneration Panel (IRP). It had been highlighted that, if the Council approved a Scheme of Allowances for the following two financial years (being 2021/22 and 2022/23) the next scheduled time for the IRP to review the Allowances Scheme for this Council would be prior to the start of 2023/24 and that therefore this would concern the Scheme of Allowances to be paid following the scheduled elections to this Council in May 2023.

Therefore, without alternative arrangements in place, there would be a need to recruit a new Independent Remuneration Panel and new Independent Persons in time to make new formal appointments at Annual Council in May 2023, whilst simultaneously undertaking a review on the Members' Allowance Scheme, with the support of officers in the late Autumn/early Winter 2022.

Recruitment and alternative options

It was reported that with regard to the roles of Independent Persons for the Ethical Standards arrangements, a pool of Independent Persons was available through the Public Law Partnership (which covered Essex, Hertfordshire and Suffolk) that could be called on by any authority, subject to the necessary approvals through formal appointments. Those arrangements were considered to be appropriate to use where capacity or conflicts of interest were an issue. Whilst this Council (TDC) had approved and adopted this flexibility, using the pool had not yet been required due to TDC having four Independent Persons. Therefore, it was still considered prudent for TDC to continue appointing its own Independent Persons whilst retaining the flexibility of a wider pool to call upon if necessary.

It was noted that the Independent Persons and the Independent Remuneration Panel could continue as joint appointments or be separated.

It was suggested that this Council could also look to alternative arrangements such as joint Independent Remuneration Panels with other Councils, either on a flexible or a formal basis. Early research had indicated that a small number of Councils might be interested in a joint approach, but no commitments could be made at this time, therefore, any recruitment undertaken by TDC, would have to reflect some flexibility within its recommendations to Full Council.

Since the previous recruitment undertaken in 2018, the Committee on Standards in Public Life (CSPL) had published its report in January 2019, on the role of the Independent Persons and their recommendations had been responded to by the Government in March 2022. Therefore, it was timely for TDC to review its own approach and give consideration to different options.

The CSPL reported the outcome of their national review in a report published in January 2019, which had included a number of recommendations relating to Local Government Ethical Standards. The report had also included a number of Best Practice recommendations. Those which had related to the role and responsibilities of the Independent Person were:

Recommendation 8: The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

Whilst, it had not translated into a formal recommendation or within the list of best practice, the CSPL report had also stated on page 56 that: *"The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory"*.

In a letter dated 18th March 2022, from Kemi Badenoch MP (then Minister of State for Equalities and Levelling Up Communities) to Lord Evans, Chair of the Committee on Standards in Public Life, in response to this recommendation it was stated:-

"The government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities.

In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution "fresh" and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council.

When local authorities have found effective Independent Persons who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment."

CSPL Best Practice 7: *Local authorities should have access to at least two independent Persons.*

CSPL Best Practice 8: *An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious or trivial.*

Statutory and Constitutional Requirements

Members were reminded that Section 28(6) and (7) of the Localism Act 2011 required the Council to appoint at least one Independent Person to work with the Monitoring Officer within the Standards Framework.

Section 20 of The Local Authorities (Members' Allowances) England Regulations 2003 required that an Independent Remuneration Panel be established in respect of each local authority and that the Panel would consist of at least three people.

The Committee was advised that within TDC's Constitution, the advertisement of vacancies of Independent Person(s) and the Independent Remuneration Panel, the review of applications received, the interview of suitable candidates and the making of recommendations to Council as to who should be appointed, were delegated to the Chief Executive or the Monitoring Officer. However, as both of those independent roles did have strong engagement with Councillors it was considered appropriate that a representative from this Committee was involved in the recruitment process. It was recommended by Officers that the existing Independent Persons' term of office be extended for a year in order to allow the joint working opportunities for the Independent Remuneration Panel to be explored further.

The Committee then duly considered and discussed this matter. That discussion included the following:-

- (i) Keeping the role of Independent Persons and the Independent Remuneration Panel separate as different skills were needed for each role;
- (ii) The idea of a pool of Independent Persons;
- (iii) What would happen to the roles in the event of Local Government Reorganisation?;
- (iv) The advantages of joint working with other Local Councils.

It was moved by Councillor Land, seconded by Councillor Placey and unanimously:-

RESOLVED that the Standards Committee:-

- (a) notes the contents of the Deputy Chief Executive's report;
- (b) recommends to Full Council that alternative arrangements for the Independent Remuneration Panel are explored further in order to maximise options available with other Councils within Essex and to give consideration to the outcome prior to any future recruitment; and

- (c) recommends further to Full Council that the term of office for those Independent Persons, who express an interest in doing so, be extended for a further year without an application process, in order to allow the review within resolution (b) above to be undertaken.

7. REPORT OF THE HEAD OF DEMOCRATIC SERVICES & ELECTIONS - A.3 - TOWN & PARISH COUNCILS' STANDARDS SUB-COMMITTEE: APPOINTMENT OF TENDRING DISTRICT COUNCIL MEMBERS

The Committee was reminded that Article 9 (Standards Committee and Town & Parish Councils' Standards Sub-Committee) of the Council's Constitution stated that the Council would have, in place, a Town & Parish Councils' Standards Sub-Committee with the following terms of reference:-

"To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with its Code of Conduct." [Article 9.05]

It was reported that Article 9.05 also required the Sub-Committee to consist of three members of the Standards Committee and three non-voting co-opted Town & Parish Council members nominated by the Tendring District Association of Local Councils (TDALC). In addition, the nominated Town & Parish Council members would be of an independent standing and they would not have served as a District Councillor or as a County Councillor for a period of four years prior to their nomination.

Members recalled that the Standards Committee, at its meeting held on 9 July 2019 (Minute 9 referred), had appointed Councillors Nicola Overton, Graham Steady and Ann Wiggins to serve on the Town and Parish Councils' Standards Sub-Committee.

However, since that time, Nicola Overton had ceased to be a member of Tendring District Council and Ann Wiggins had not been re-appointed as a member of the Standards Committee at the Annual Meeting of the Council held on 26 April 2022.

Members were informed that the Committee Services Manager (Ian Ford) had contacted TDALC with a view to them confirming their nominations for the Sub-Committee. Dr Benjamin Newman Wright, Lawford Parish Councillor and the Secretary of TDALC, had responded by email on 16 June 2022 as follows:-

"Two Representatives were unanimously approved by TDALC Representatives at our Annual General Meeting on Wednesday 25th May 2022, namely:

Councillor Linda Belgrove (Chair, TDALC) (Representative: Alresford Parish Council); and

Councillor Frank Belgrove (Vice Chair, TDALC) (Representative: Alresford Parish Council.

The only Representative on your [previous] list serving with the Tendring District Association of Local Councils is Councillor Robert Taylor. He was unable to participate

in our AGM. I understand that we will consider formally adding a Third Representative at our next TDALC Meeting.”

In the light of the above, the Committee was requested to now appoint Tendring District Council's members to serve on the Town and Parish Councils' Standards Sub-Committee for the 2022/2023 Municipal Year.

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

RESOLVED that the Standards Committee:-

- (a) appoints Councillors Casey, Placey and Steady to serve on the Town and Parish Councils' Standards Sub-Committee for the 2022/2023 Municipal Year;
- (b) notes, welcomes and endorses that the Tendring District Association of Local Councils (TDALC) has appointed Parish Councillors Frank Belgrove and Linda Belgrove as two of their three non-voting, co-opted members of that Sub-Committee; and
- (c) further notes that TDALC will notify the Council of its third non-voting, co-opted member of that Sub-Committee in due course.

8. **QUARTERLY COMPLAINTS UPDATE AND OTHER GENERAL MATTERS**

The Committee had before it the Monitoring Officer's quarterly schedule, which updated it on existing and new conduct complaint cases, along with other matters.

TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE JULY 2022				
Council	Complainant	Current status	Final outcome	Comments
Existing Cases from last update:				
TOWN	PUBLIC 2 x TOWN COUNCILLORS	ONGOING	Informal resolution	Matter related to claims of bullying. Informal resolution and governance review with an external company conducted. All Members within Town Council engaged to positive working arrangements going forward. One action outstanding to conclude the matter.
PARISH	PUBLIC	CLOSED	Informal resolution	Complaint related to conduct in a public

			was recommended by the Monitoring Officer; however the complainant withdrew their complaint	meeting. As it was a second complaint of this nature, the complaint was reviewed by Independent Person.
TOWN	PUBLIC	CLOSED	No further action	Matter related to various areas which needed to be identified more clearly. The substance of the complaint did not relate to the Councillor's actions. Independent Person consulted.
New Cases since last update:				
Council	Complainant	Current status	Final outcome	Comments
DISTRICT	PUBLIC	PENDING	PENDING	Further information has been sought from the Complainant. Matters raised may not relate to acting in official capacity and within the remit of the Code.
DISTRICT	PUBLIC	CLOSED	No further action	Matter related to conduct within the Council's Committee Room. Reflective assurances provided to MO. Independent Person was consulted.
<u>General Notes – 2022/23 Summary:</u>				
2 new cases had been received in 2022/23.				
1 Town Council matter was still on-going from March 2021 but only one action was outstanding and was anticipated to be concluded shortly.				
Requests for dispensations:				
2 sought which related to a personal interest on the same subject matter impacting a				

large area outside of the personal interest and the wider interests of the community and residents who were also impacted upon. The matter was a non-statutory consultation and the role of a District Councillor was to voice the views of persons living in the area.

The Committee noted the foregoing.

The meeting was declared closed at 10.49 am

Chairman

This page is intentionally left blank

STANDARDS COMMITTEE

27 OCTOBER 2022

REPORT OF THE MONITORING OFFICER

A.1 REVIEW OF THE MONITORING OFFICER'S PROTOCOL

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Standards Committee to review and discuss the Monitoring Officer's Protocol (the Protocol) and suggest any proposed amendments to that Protocol for consideration by Full Council.

EXECUTIVE SUMMARY

In March 2017 the Standards Committee reviewed the Monitoring Officer's Protocol, attached as Appendix A, and having considered the contents, resolved that it was satisfied with the contents and therefore did not wish to make any amendments.

As part of its work programme for 2022-23, the Standards Committee agreed to review the Monitoring Officer's Protocol and if any changes are required, to recommend these to Full Council for approval and adoption..

The Protocol only relates to dealing with matters arising from the Standards Framework relating to Members' interests and complaints, and does not cover the wider responsibilities of the Monitoring Officer for the Council as detailed within the Constitution.

As highlighted in the overarching principles of the Protocol, the Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends to these councils in relation to the promotion and maintenance of high standards of conduct. If a complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer is under an obligation to notify and/or refer to the Police or other regulatory agencies.

This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure, attached as Appendix B, and Independent Person's Protocol. The Complaints Procedure provides an in depth process in which alleged breach of Members' Code of Conduct complaints must be dealt with a number of actions to be carried out by the Monitoring Officer.

This Complaint Procedure is a staged process and the initial stage of determination when a complaint is received is delegated to the Monitoring Officer from the Standards Committee. The Monitoring Officer will then take various factors into consideration, as detailed within the Complaints Procedure, including 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?.

Following consideration of a complaint, the Monitoring Officer issues a Decision Notice setting out the matters taken into account and the reasons for such decision. The Monitoring Officer provides anonymised updates regarding complaints to the Standards Committee at each of its scheduled meetings.

Although, the Protocol refers to the Complaints Procedure and has its own overarching principles, it is considered that the Protocol could be strengthened, thus further reflecting and supporting the Complaints Procedure, by expanding some of the actions in some instances.

Section 1(j) of the Protocol states *“The Monitoring Officer will consult with one of the Independent Persons on complaints received and throughout the process in accordance with the Complaints Procedure”*, this could be enhanced with the following inclusion from the Complaints Procedure:

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

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation

The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of the complaint and will be considered in accordance with the Assessment Criteria included at Annex D of the Complaints Procedure. There is no right of appeal for a complainant or Member against a decision of the Monitoring Officer or of the Standards Committee, but a complaint may be made to the Local Government Ombudsman. This paragraph from the Complaints Procedure could be included within the Protocol but reference to the Ombudsman, should be amended to the Local Government and Social Care Ombudsman, in addition it is suggested that the Protocol should make reference to a Decision Notice being issued to record the outcome.

The Overarching Principles of the Protocol at

1 (m) refers to in providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.

The legislation has changed and the above should be amended to read:

(m) In providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR), and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.

Paragraph 4(d) of the Protocol refers to the Deputy Chief Executive, in this instance this would now also be undertaken by the Deputy Monitoring Officer, in the Monitoring Officer's absence (Schedule 4 of Part 3 of the Constitution).

RECOMMENDATION(S)

It is recommended that the Committee review the Monitoring Officer's Protocol and determine whether they agree with the suggested proposed amendments to that Protocol, as set out in the Report and/or any additional changes through their debate for consideration by Full Council.

REASON(S) FOR THE RECOMMENDATION(S)

Any amendment to the Monitoring Officer's Protocol must be considered by Full Council for approval and adoption because it is a key document within Part 6 of the Constitution. Although the Monitoring Officer has delegated powers to make changes within the Constitution following restructures and changes in legislation, because the Protocol relates to the Monitoring Officer, it is good governance for the Standards Committee to approve these changes.

ALTERNATIVE OPTIONS CONSIDERED

Alternatives have not been considered in this instance as it is part of the Standards Committee's work programme and falls within the remit of the Committee, to review the Monitoring Officer's Protocol and determine as to whether they deem to make recommendations for amendments to Full Council.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Monitoring Officer's Protocol is within the Corporate Plan 2020/24 Priority Themes of delivering high quality services and strong finances and governance.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

The Monitoring Officer is a statutory appointment under s.5 Local Government and Housing Act 1989.

This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.

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.

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are no implications of the proposal that impact on current resources.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Nothing to add in the context of this report
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The content of this report demonstrates the Council's approach to good governance and decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Nothing to add in the context of this report.

MILESTONES AND DELIVERY

If the Standards Committee recommend amendments to the Monitoring Officer's Protocol, it is recommended that these be included within the agenda for the Full Council meeting to be held on 24 January 2023.

ASSOCIATED RISKS AND MITIGATION

There are no particular risks associated with the Committee's review of the Protocol as the Protocol is fit for purpose as it currently stands. However, there is an opportunity within this work programme cycle to review and strengthen the Protocol.

OUTCOME OF CONSULTATION AND ENGAGEMENT

It is requested that Members and Independent Persons review and discuss the Monitoring Officer's Protocol as key stakeholders and determine whether they wish to recommend any amendments to Full Council. Full Council will then determine as to whether it wishes to adopt any amendments, and should that be so these will be amended within the Protocol and subsequently published.

EQUALITIES

In line with the Public Sector Equality Duty, public bodies such as the Council must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.

The proposed amendments to the Protocol do not impact on the protected characteristics because how the Protocol is applied will be undertaken with due regard to the Public Sector Equality Duty.

SOCIAL VALUE CONSIDERATIONS

There is an element of social value relating to the Monitoring Officer's Protocol in that the public must have confidence that complaints raised against Members that relate to the Members' Code of Conduct will be looked at in a fair manner. The Protocol and associated procedures are considered robust to ensure this confidence.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

Not applicable.

OTHER RELEVANT IMPLICATIONS

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

Crime and Disorder	Not applicable
Health Inequalities	Not applicable
Area or Ward affected	Not applicable

ANY OTHER RELEVANT INFORMATION

Not applicable.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The work programme for the Standards Committee was determined at its meeting of 06 April 2022. It is therefore requested that the Committee review the Monitoring Officer's Protocol and make recommendations for any amendments they consider necessary for consideration by Full Council.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

The Standards Committee last reviewed the Monitoring Officer's Protocol on 27 March 2017 and determined that it was satisfied with the current Monitoring Officer's Protocol and therefore had no amendments that it wished to make at that time. Minute 21 of that meeting applies.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

Tendring District Council Independent Person's Protocol
Minutes of the meeting of the Standards Committee 27 March 2017

APPENDICES

Appendix A – Tendring District Council Monitoring Officer's Protocol
Appendix B – Tendring District Council Complaints Procedure

REPORT CONTACT OFFICER(S)

Name	Lisa Hastings
Job Title	Deputy Chief Executive and Council's Monitoring Officer
Email/Telephone	lhastings@tendringdc.gov.uk 01255 686561
Name	Karen Townshend
Job Title	Executive Projects Manager - Governance
Email/Telephone	ktownshend@tendringdc.gov.uk 01255 686614

**TENDRING DISTRICT COUNCIL
MONITORING OFFICER PROTOCOL**

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

1. Overarching Principles:

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

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

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

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

2. Receipt of Allegations:

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints Procedure. The Monitoring Officer will treat this as a general complaint and forward it to be dealt with under the Council's general formal complaints process, as appropriate.
- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

3. Consultation with the Independent Persons:

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

4. Standards Committee and Sub-Committee:

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

This page is intentionally left blank

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, subject to the necessary Legal Jurisdiction Criteria Test being applied.

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.

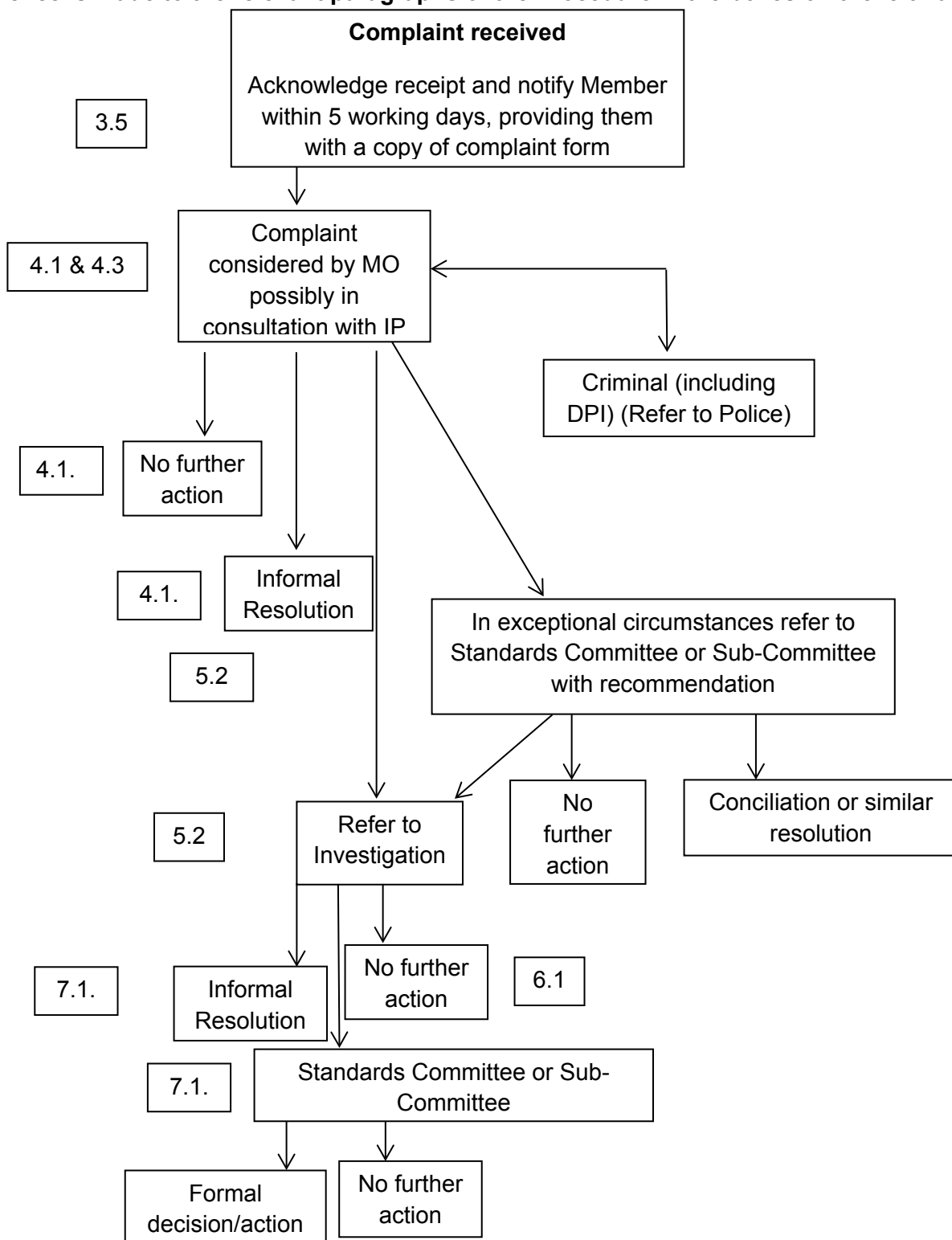
13. Appeals

- 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; 8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints; 	<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 consideration for further investigation. 3. Determine the format of the Complaints

	<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>	Form, Decision Notices and Procedure Flowchart and review where necessary.
--	--	--

	<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 Tendring 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> <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, 	<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

	<p>and following the principles of natural justice and innocent until proven otherwise;</p> <p>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</p> <p>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>	<p>accordance with the Complaints Procedure.</p> <p>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether</p>
	<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</p>

		<p>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 advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>
--	--	--

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.
- Tending 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.

TENDRING DISTRICT COUNCIL INDEPENDENT PERSON PROTOCOL

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

Principles

1. The role of the IP is set down in legislation (section 28 of the Localism Act 2011). *Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate.*
2. The purpose of the IP role is to enable the public to have confidence in how the District Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for members, ensuring they are adequately trained and understand the Code of Conduct.
3. This Protocol applies to all IPs equally and complements the Monitoring Officer Protocol. If the Council is in a position where less than two IPs are appointed due to a vacancy, this Protocol still applies in its entirety, so long as one IP is in place (as required by the legislation)
4. The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
5. In carrying out the role, the IP will ensure that they:
 - (a) Act in accordance with –
 - (i) any relevant legislation or guidance and the respective Council's Members' Code of Conduct in force at that time; and
 - (ii) the agreed processes/procedures approved by the District Council's Standards Committee and Constitution;
 - (b) Act impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice;
 - (c) Maintain confidentiality at all times; and
 - (d) Conduct themselves in accordance with the principles of high standards of conduct expected when acting in public life.
6. The IP role is consultative at various stages of the process, in accordance with the Complaints Procedure and the Monitoring Officer's (MO) role is to give advice to the Standards Committee or Sub-Committee.

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

20. The IP should be prepared to give the Standards Committee or Sub-Committee, through the written report, an independent view on the complaint and the merit of the evidence put forward as required to assist the Committee in coming to a decision on the matter.
21. When discussing the complaint with the complainant or the Member subject of the complaint, the IPs role is not to give views on the merits of the complaint or the evidence in support but to give advice and reassurance on the process.
22. In each complaint, when necessary;
 - (a) one IP will be selected by the MO for initial consultation and if required, available to the Standards Committee or Sub-Committee for consultation as part of the Complaints Procedure and in accordance with the Localism Act 2011; and
 - (b) if requested by a party, the other IP will be made available to the Complainant or to the Member subject of the complaint – see paragraph 20 above.
23. The MO will allocate the roles between the IPs on a case by case basis. Should less than 2 IPs be appointed at any time, so long as 1 IP is in place the IP will be expected to be available for the respective parties set out in 22 (a & b).
24. The MO will ensure that the IPs are kept up to date with changes in legislation, national guidance or good practice.
25. The MO will update the IPs on progress of the cases on a bi-monthly basis.

This page is intentionally left blank

**MINUTES OF THE STANDARDS COMMITTEE
HELD ON MONDAY 27 MARCH 2017 AT 10.00 A.M.
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present: Councillors Heaney (Chairman), Cawthron, Nicholls, Steady and Whitmore

In Attendance: Monitoring Officer (Lisa Hastings) and Committee Services Manager (Ian Ford)

Also in Attendance: John Wolton (Independent Person)

18. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor J A Brown (with no substitute) and Councillor Honeywood (with no substitute).

19. MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE HELD ON 26 SEPTEMBER 2016

The minutes of the meeting of the Standards Committee, held on 26 September 2016, were approved as a correct record and signed by the Chairman.

20. DECLARATIONS OF INTEREST

There were no declarations of interest received.

21. COMPLAINTS PROCEDURE – REFERENCE BACK FROM COUNCIL

There was submitted a report (A.1) by the Monitoring Officer which, at the request of full Council, asked the Committee to reconsider its previous recommendation to amend the Complaints Procedure.

The Committee was aware that the Standards Framework included the Complaints Procedure (contained within the Members' Constitution Booklet) and that Section 5 of the Complaints Procedure set out how an investigation was to be conducted and under Section 5.6, that the investigation report must contain a conclusion as to whether the evidence supported a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure set out the Investigation Procedure.

Members were also aware that, if an investigation concluded that there was no evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 6.1 provided the Monitoring Officer with the authority, in consultation with the Independent Person, to decide no further action was required. In such circumstances, the Monitoring Officer would notify the Standards Committee.

At the meeting of the Committee held on 26 September 2016 (minute no. 14 referred) Members had been made aware that the current procedure, which had been adopted by full Council in November 2013, did not provide the Monitoring Officer with any discretion to refer a matter to the Standards Committee, if they considered an investigation was finely balanced. In most cases, an investigator would have a clear conclusion as to whether any evidence existed of a failure to comply with the Code of Conduct but, in rare circumstances, this might not be the case. The Monitoring Officer, in consulting colleagues in other authorities, had found that their Councils had provided them with a discretion to refer to the Standards Committee, if they personally felt it was necessary to do so.

Therefore, at that meeting and following discussion, the Standards Committee had decided, inter alia, to:

“(f) Recommend to Council to amend the Complaints Procedure, as set out in the Constitution to allow the Monitoring Officer, at their own discretion and, in exceptional cases, following consultation with the Chief Executive and the Chairman of the Standards Committee, to 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.”

The Committee was reminded that, at the meeting of Council held on 22 November 2016, when that recommendation was being considered (minute 83 referred) Councillor Calver had moved an amendment, which was seconded by Councillor Bray, that to have the ongoing confidence of the entire Council it required the possibility of any political interference to be removed and that the recommendation would be safer and stronger if any consultation was between the Chief Executive and the Monitoring Officer with no involvement of the Chairman of the Standards Committee.

Following those concerns raised by Members with respect to the original recommendation of the Standards Committee and pursuant to Council Procedure Rule 16.6 (Alteration of Motion), Councillor Stock, with the consent of both the meeting and his seconder, (Councillor Heaney), indicated that he was prepared to alter his motion so that it read as follows:

- (a) that the minutes of the meeting of the Standards Committee held on 26 September 2016, as circulated, be received and noted; and*
- (b) that consideration of the recommendation to Council, as contained in Minute No.14 (resolution (f)) of the Standards Committee of 26 September 2016 be deferred and that the matter be referred back to the Standards Committee for reconsideration.*

Councillor Calver and Councillor Bray had both then agreed to withdraw their amendment and Councillor Stock's altered motion was then approved.

The Standards Committee were therefore requested to reconsider their proposed amendment to the Complaints Procedure taking into account the concerns raised at the meeting of full Council on 22 November 2016.

Having discussed the matter, it was moved by Councillor Heaney, seconded by Councillor Nicholls and:

RECOMMENDED TO COUNCIL that the Complaints Procedure, as set out in the Constitution, be amended to allow the Monitoring Officer, at their own discretion and, in exceptional cases, following consultation with the Chief Executive, to 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.

22. REVIEW OF MONITORING OFFICER PROTOCOL

The Committee was requested to review the Monitoring Officer Protocol and suggest any proposed amendments to that Protocol for consideration by full Council.

Having considered the contents of the current Monitoring Officer Protocol it was moved by Councillor Whitmore, seconded by Councillor Steady and:

RESOLVED that the Committee is satisfied with the current Monitoring Officer Protocol and therefore has no amendments that it wishes at the present time.

23. DISCLOSURE OF INFORMATION – NON-PAYMENT OF COUNCIL TAX BY COUNCILLORS

There was submitted a report (A.3) by the Monitoring Officer which requested the Committee to discuss whether it agreed to add the matter of processes and procedures involving Councillors and the payment of Council Tax to its work programme, or that a guidance note be issued for Members following on from case-law, concerning the public interest and fairness in disclosing information of non-payment of council tax by councillors.

The Committee was reminded that, at the meeting of full Council held on 22 November 2016, Councillor Everett had asked a supplementary question to the former Portfolio Holder for Finance (minute no. 81 referred) concerning the general matter of processes and procedures involving councillors and the payment of council tax. As this matter fell within the remit of the Standards Committee, the Monitoring Officer had agreed to take this matter to the next meeting for a discussion as to whether the Committee wanted to include it within their work programme.

Members were informed that in March 2016 an Upper Tier Tribunal (Administrative Appeals Chamber) had decided that it was fair and reasonable to identify a councillor who had defaulted in the payment of council tax, due to being a serious matter of public concern, both as to the ability of the councillor to perform their key functions and in terms of public confidence and accountability.

The Monitoring Officer explained in detail the view of the Tribunal in *Haslam v Information Commissioner and Bolton Council [2016]* and drew Members' attention to several sections of the judgement handed down by Judge Markus QC. This included how the Tribunal had taken into account the legal aspects of Section 106 of the Local Government and Finance Act 1992, Sections 1(1) and 40(2) of the Freedom of Information Act 2000 and Section 1 of the Data Protection Act 1998.

The Monitoring Officer also reported that it was alleged that Leeds City Council were to challenge the Information Commissioner's decision (Reference: FS50635609 Dated: 3 November 2016) that it must release the names of four councillors who were in arrears, to a newspaper. The Information Commissioner had told the Council to release the names of Members who had been sent court summons over unpaid council tax to the Yorkshire Post. It was understood that Leeds Council believed that there were mitigating circumstances and in all of the cases, one instalment had been accidentally missed and reasonable explanations had been given as to why and all outstanding debts had not immediately been paid.

Having considered the detail of the Upper Tribunal's ruling together with the legal advice provided by the Monitoring Officer it was moved by Councillor Whitmore, seconded by Councillor Nicholls and:

RESOLVED that a Guidance Note be issued by the Monitoring Officer to all Councillors informing them of the outcome of the Upper Tribunal case and that, in response to any Freedom of Information request concerning non-payment of Council Tax, information may be disclosed.

24. ANNUAL REPORT DECLARATIONS OF INTEREST AND ASSOCIATED MATTERS

There was submitted a report (A.4) by the Monitoring Officer which provided the Committee with an overview on the register of, and declarations of interests by, Members.

The Committee recalled that, at its meeting held on 29 June 2016 (Minute 8 referred), it had agreed that, as part of its annual work programme, the Committee would receive an

annual report on declarations of interest and associated matters. The report before Members covered the period from 1 August 2016 to 10 March 2017.

Having considered the information submitted it was moved by Councillor Steady, seconded by Councillor Whitmore and:

RESOLVED that:

- (a) the contents of the report be noted; and
- (b) the Monitoring Officer be requested to ensure that any declarations of offers/receipt of gifts and hospitality made by District Councillors be published on the Council's website.

25. STANDARDS COMMITTEE – ANNUAL WORK PROGRAMME

There was submitted a report (A.5) by the Monitoring Officer which sought to agree the Committee's work plan for the 2017/2018 Municipal Year.

The Monitoring Officer reminded Members that the elements of the Standards Framework were:

- The Members' Code of Conduct (contained within the Members' Constitution Booklet);
- The Monitoring Officer Protocol (contained within the Members' Constitution Booklet);
- The Independent Persons' Protocol (contained within the Members' Constitution Booklet);
- Member and Officer Relations Protocol (contained within the Members' Constitution Booklet); and
- The Complaints Procedure (contained within the Members' Constitution Booklet).

The overall approach of the arrangements was to seek:

- Information and training for Members and Officers to increase awareness and support good standards of behaviour;
- Proportionality – responses to complaints which were proportionate to their seriousness;
- Timeliness – with clear timescales for the various stages of complaints to be progressed;
- Checks, balances, reporting requirements and delegation to the Monitoring Officer of key elements of the process to maximise independence from the political process; and
- Early and informal intervention to resolve complaints wherever possible (including an expectation that Group Leaders would play a key role).

The Monitoring Officer further reminded Members that the arrangements had been adopted by full Council in November 2013, and that elements had been reviewed in 2014, 2015, 2016 and 2017 in order to ensure that the procedures and protocols were robust, up to date and fit for purpose. The Members' Code of Conduct was currently being reviewed.

To enable the Committee to focus on promoting high standards of conduct as well as reacting to complaints it was considered appropriate to discuss and agree a work plan for the Committee for 2017/18. Members referred to Appendix 1 of the Monitoring Officer's report.

It was moved by Councillor Nicholls, seconded by Councillor Steady and **RESOLVED** that:

- (a) the contents of the report be noted; and
- (b) the Annual Work Plan for 2017/2018, as set out in Appendix 1 to the Monitoring Officer's report, be approved.

26. DISCUSSION TOPICS AND/OR UPDATES FROM THE MONITORING OFFICER

Quarterly Complaints Update

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

Advice sought by Clerks to Parish/Town Councils

There had been an increase in the number of occasions when Clerk to Parish/Town Councils had sought advice on matters which did fall within the remit of the Monitoring Office, such as on constitutional matters or on-going complaints or actions taken by the Council. In each instance, the Clerk had been advised that this Council's legal department was not the legal adviser to the parish/town council.

There had also been an increase in the number of requests for advice with regard to declarations of interest at Parish/Town Council level and queries being raised as to whether declarations should have been made.

Politically Motivated Queries

The Monitoring Officer reported that queries were being raised by members of the public and councillors concerning the actions of others and, in most instances, it was clear that those were politically motivated, especially with the County Council Elections pending.

'No Further Action' Cases

The Monitoring Officer reiterated that even in cases where 'no further action' was decided, detailed reasons were provided to both the complainant and the respondent to explain that decision.

Training Session for new Councillors

The Monitoring Officer informed the Committee that a training session would shortly be arranged for both the newly elected Councillor Bush and also for the Councillor who would be elected following the by-election in the St James Ward on 6 April 2017.

Requests for Dispensations

No requests for dispensations had been submitted since the last meeting of the Committee.

27. EXCLUSION OF PRESS AND PUBLIC

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

RESOLVED that under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the item detailed below on the grounds that it involves the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 12A, as amended, of the Act.

28. EXEMPT MINUTE OF THE MEETING OF THE STANDARDS COMMITTEE HELD ON 26 SEPTEMBER 2016

The exempt minute of the meeting of the Standards Committee, held on 26 September 2016, was approved as a correct record and signed by the Chairman.

The meeting closed at 11.01 a.m.

Chairman

Standards Committee External Governance & Case Review

October 2022

(previous update April 2022)

‘Clear frustration’ within Councils on limited powers remaining

- The Committee on Standards in Public Life (CSPL) has called upon the government to reconsider its position on the powers of local authorities to sanction councillors for poor behaviour.

Page 52

The Chair of the CSPL, Lord Evans wrote to the Levelling Up Secretary, Simon Clarke, stating very disappointed many of its careful recommendations have not been accepted.

- The sector had backed the call to strengthen the arrangements in place to support high ethical standards

Common factor in recent auditor interventions nationally

- Grant Thornton in its update report September “*Lessons from Public Interest Reports*” found weaknesses in council cultures (for e.g. poor behaviours, lack of transparency); and
- weaknesses in governance (for e.g. a circumvention of governance procedures, poor quality review and decision making).

- *Failure to address and resolve relationships difficulties between senior officers and members*
- *Intimidating cultures, culture of secrecy and in some cases, an overuse of confidential or delegated action reports, which reduced openness and trust in leadership and corporate culture.*
- *Limited understanding of declarations of interest and of gifts and hospitality registers, not being monitored*

- Page 55
- *Lack of appreciation of the Nolan principles and the requirements of the Members Code of conduct*
 - *Lack of understanding in how complaints against Members should be handled.*
 - *Failure to adequately support whistle-blowers also suggests a council that is not open to challenge, Grant Thornton argued*
 - *Number of recommendations suggested in relation to culture and governance.*

Civility and Respect Pledge launched for Local Councils

- *“There were growing concerns about the impact of bullying, harassment and intimidation on local councils, councillors, clerks and council staff and the effectiveness of local councils,*
- *By signing the pledge the relevant Council “agrees that the council will treat councillors, clerks, employees, members of the public, and representatives of partner organisations and volunteers with civility and respect in their roles” ... with a package of actions.*

Council meetings & the passing of HM Queen

- National Mourning Guidance
- Did local government legislation prevent councils holding meetings or affect the ability to give notice of meetings?

Page 57

The period of public mourning was made by the Earl Marshall, duke of Norfolk

- A day is declared as a bank holiday, by the King by proclamation, only the day of the funeral
- NALC took a different view

Pre-action protocol letter contesting breach finding

- A Councillor is alleging that a District Council's Code of Conduct assessments regarding comments he made online amount to a "clear serious breaching" of his human rights.
- Eden Council found that Cllr had breached the Code of Conduct over posts on Twitter & his blog.
- However, the Councillor said that the content of the Twitter post was "not aligned to my role as a councillor and was a personal expression of a view and opinion".

Welsh Councillor disqualified from holding office for 3 years

- Found to have breached the code of conduct, 5 separate incidents concerning false accusations and posting misinformation online
- A tribunal, convened by the adjudication for Wales, found no basis for the statements and that they wilfully misinformed people and discredited colleagues in a harmful way.
- Wales has a different sanctions model to England.

Welsh Councillor disqualified for 2 years

- Town Councillor barred from holding office for two years after declaring he was eligible to stand for election even though he had a criminal record, disqualifying him from running under the Local Government Act 1972

Page 60

The Ombudsman's report alleged that the former Councillor (he resigned once a national newspaper published a news story referencing the conviction) had misled the council as to his eligibility to be a councillor and that his dishonesty, both when signing the declaration of acceptance of office and during the time he acted as councillor, was a serious abuse of office.

TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE OCTOBER 2022				
Council	Complainant	Current status	Final outcome	Comments
Existing Cases from last update:				
TOWN	PUBLIC 2 x TOWN COUNCILLORS	CLOSED	Informal resolution	Matter related to claims of bullying. Informal resolution and governance review with an external company conducted. All Members within Town Council engaged to positive working arrangements going forward. Final action outstanding as at last meeting now actioned to conclude the matter.
DISTRICT	PUBLIC	CLOSED	No further action	Matter related to conduct within the Council's Committee Room. Reflective assurances provided to MO. Independent Person was consulted.
DISTRICT	PUBLIC	PENDING	PENDING	Further information has been sought from the Complainant, matters raised may not relate of acting in official capacity and within the remit of the Code. No response received since the last meeting. Will be closed as no further action to be taken.
New Cases since last update:				
Council	Complainant	Current status	Final outcome	Comments
DISTRICT	PUBLIC	CLOSED	No further action	Matters raised do not relate to acting in official capacity and within the remit of the code.

General Notes – 2022/23 Summary:

Overall 3 cases have been received in 2022/23.

Monitoring Officer attended the All Member Briefing in September and gave an introduction to the Report to Full Council regarding the Standards Committee recommendation to adopt the LGA Model Code.

Requests for dispensations:

There have not been any requests for dispensation.