



## STANDARDS COMMITTEE

<b>DATE:</b>	<b>Wednesday, 5 February 2025</b>
<b>TIME:</b>	<b>10.00 am</b>
<b>VENUE:</b>	<b>Committee Room, Town Hall, Station Road, Clacton-on-Sea, CO15 1SE</b>

**MEMBERSHIP:**

<b>Councillor Wiggins (Chairman)</b>	<b>Councillor Land</b>
<b>Councillor Oxley (Vice-Chairman)</b>	<b>Councillor Newton</b>
<b>Councillor Alexander</b>	<b>Councillor Talbot</b>
<b>Councillor J Henderson</b>	

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DATE OF PUBLICATION: Tuesday, 28 January 2025

## 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 5 - 14)**

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Thursday, 24 October 2024.

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests, Other Registerable Interests of Non-Registerable Interests, 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 - Planning Probity Protocol - Results of Consultation and Revised Planning Probity Protocol (Pages 15 - 28)**

This report is submitted to the Committee to enable it to consider the Planning Probity Protocol following consultation with the members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons. The report also sets out the outcome of the consultation and a revised Planning Probity Protocol for approval and recommendation to Full Council for its adoption.

### **6 Report of the Monitoring Officer - A.2 - Government Consultation on Strengthening the Standards and Conduct Framework (Pages 29 - 48)**

For the Standards Committee to determine whether to respond to the Ministry of Housing, Communities & Local Government ("the government's") consultation on the Standards and Conduct framework, on behalf of Tendring District Council.

### **7 Report of the Monitoring Officer - A.3 - Standards Committee - Review of Standards Hearing Procedure (Pages 49 - 60)**

To present the Standards Committee with a report on the opportunity to reflect on the internal consultation recently undertaken on the Standards Hearing Procedure and to endorse further work from Officers on reviewing the associated Complaints Procedure and production of a flow chart to assist once a matter is referred for hearing.

### **8 Complaints Update (Pages 61 - 62)**

The Committee will receive the Monitoring Officer's update regarding standards complaints.

**Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Standards Committee is to be held in the Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 10.00 am on Wednesday, 9 April 2025.*

**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.

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Your calmness and assistance is greatly appreciated.

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,  
HELD ON THURSDAY, 24TH OCTOBER, 2024 AT 10.00 AM  
IN THE COMMITTEE ROOM, IN THE TOWN HALL, STATION ROAD, CLACTON-ON-SEA, CO15 1SE**

<b>Present:</b>	Councillors Wiggins (Chairman), Oxley (Vice-Chairman), Alexander, Newton and Talbot
<b>In Attendance:</b>	Lisa Hastings (Director (Governance) & Monitoring Officer), Linda Trembath (Head of Legal Services & Deputy Monitoring Officer), Ian Ford (Committee Services Manager), Karen Hayes (Executive Projects Manager (Governance)), Bethany Jones (Committee Services Officer), Emma Haward (Leadership Support Assistant) and Christopher Bailey (Elections and Leadership Support Officer)
<b>Also in Attendance:</b>	Sue Gallone, Clarissa Gosling, David Irvine and Jane Watts (the Council's four appointed Independent Persons)

**21. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

An apology for absence was submitted on behalf of Councillor J Henderson (with no substitute).

**22. MINUTES OF THE LAST MEETING**

It was moved by Councillor Alexander, seconded by Councillor Talbot and:-

**RESOLVED** that the Minutes of the meeting of the Committee held on Thursday 16 May 2024 be approved as a correct record and be signed by the Chairman.

**23. DECLARATIONS OF INTEREST**

In relation to report A.2 (Review of Tendring District Council's Members' Planning Code and Protocol), Councillors Alexander and Wiggins both declared as a point of information for the public record that they were current serving members of the Council's Planning Committee.

Sue Gallone, one of the Council's Independent Persons, declared that she could potentially have an interest in report A.1 (Independent Persons Recruitment).

**24. 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.

**25. REPORT OF THE MONITORING OFFICER - A.1 - INDEPENDENT PERSONS RECRUITMENT**

It was reported 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 Persons for the purposes of standards arrangements.

Those appointments as Independent Persons (IPs) had subsequently been extended for a year from May 2023, at the Full Council meeting held on 22 November 2022 (Minute 52 referred).

More recently, at the Annual Meeting of the Council held on 30 April 2024, Members had approved (Minute 14 referred) that –

- 1. The previous local arrangements for joint appointments to both roles, being the Independent Remuneration Panel and Independent Persons ceases;**
- 2. Future arrangements continue to be explored for a joint Independent Remuneration Panel with other Councils, and the delegation for recruitment be extended to the Chief Executive and Monitoring Officer for recommendations to be made to a future meeting of Full Council;*
- 3. For the purposes of (b) above the term of office of future Independent Remuneration Panel members be for a period of up to 7 years, being staggered if appropriate, to cover the Review of the Members' Allowances Scheme for 2026/27 and into the net term of office for District Councillors; and*
- 4. 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 a separate recruitment exercise to be undertaken for the sole role of Independent Person.**

#### Recruitment and Alternative Options

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

Members were made aware that since the recruitment last undertaken in 2018, the Committee on Standards in Public Life (CSPL) had published its report in January 2019, which had included recommendations with regards to the role of the Independent Persons. The then Government had then responded to them in March 2022. Therefore, it was timely for Tendring District Council to review its own approach and give consideration to different options and to determine the best one for its own governance arrangements. The Government supported such choices to be determined at a local level.

#### Term of Office

It was highlighted that whilst the term of office would be determined by Full Council upon appointment, the practice which had been adopted since 2018 had been to appoint Independent Persons for a term of 4 years, which aligned with the term for elected Members. However, it was also felt essential to provide continuity, as developing the relationship between the Independent Persons and the Monitoring Officer was important

to ensure the robustness in the delivery of, and confidence in, the arrangements and building upon the expectations of the Nolan Principles.

#### Eligibility

The Committee was informed that the CSPL had recommended in its review in 2019 that the role of the Independent Person should be fixed to a term of office for 2 years and renewed once. Whilst it was understood how this approach could demonstrate a perception of independence, the competencies required for the Independent Persons to demonstrate confidence in the arrangements and the training necessary required dedicated resources being committed by the Council, to ensure the role was sufficiently performed. In addition, experience obtained depended upon the number of Member Code of Conduct complaints received and this could not be predicted in advance; a longer term of office and renewals being permitted, would allow previous experienced Independent Persons to reapply and would assist with the opportunity for experience to be gained. However, previous local appointments should not detract other members of the public interested in the role from applying and the Council would always encourage individuals to express an interest in the role.

In relation to the “Independent Persons Information and Application Pack”, it was moved by Councillor Talbot, seconded by Councillor Alexander and:-

**RESOLVED** that the “Independent Persons Information and Application Pack” include a message from the Chairman of the Standards Committee in addition to the usual message from the Chief Executive.

It was further moved by Councillor Alexander, seconded by Councillor Oxley and:-

**RESOLVED** that -

- a) the contents of the Monitoring Officer’s report (A.1) be noted;
- b) the proposal to recruit four Independent Persons, for a term of office for four years at the suggested allowance of £600 per annum plus expenses be supported (subject to Full Council approval on appointment);
- c) the Committee endorses previously appointed Independent Persons being permitted to reapply for this role;
- d) the recruitment pack for the role of the Independent Persons, as amended by the Committee’s earlier resolution detailed above, be supported; and
- e) the Chairman of the Committee, the Vice-Chairman of the Committee and Councillor Alexander (with Councillor Newton as the designated substitute Member) be authorised to form part of the Interview Panel for Independent Persons.

**26. REPORT OF THE MONITORING OFFICER - A.2 - REVIEW OF TENDRING DISTRICT COUNCIL'S MEMBERS' PLANNING CODE & PROTOCOL**

The Committee considered a report of the Monitoring Officer (A.2) that set out the results of the review of the Planning Protocol carried out by the Monitoring Officer and her team. That report also sought the Committee’s approval that members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons be consulted on the draft revised Planning Probity Protocol.

It was reported that in December 2019, the Local Government Association (LGA) had issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions. The Standards Committee had subsequently agreed through its work programme to review the Council's Planning Code & Protocol.

Following a review carried out in 2020/21 no changes had been suggested as a result of the LGA's Guidance though additional wording had been recommended to cover situations when it was not possible to undertake Site Visits and to clarify this did not impact upon the Planning Committee's ability to determine planning applications.

Members were reminded that, at its meeting held on 19 July 2023, the Committee had decided, amongst other things, that a further review of the Council's Planning Code and Protocol be carried out in order to ensure it still adhered to best practice and was easy to follow. That review conducted had researched the various examples suggested by Planning Advisory Service (PAS) as best practice and the outcome had resulted in a revised approach with the first step being to refer to the document as the 'Planning Probity Protocol'. This also aligned with the Planning Probity Protocol adopted for the Tendring Colchester Borders Garden Community Joint Committee.

This report therefore set out initial proposals following the review by the Monitoring Officer and her team and following consideration by the Committee, sought its approval to consult with relevant parties.

The following alterations were put forward at the meeting:-

- (1) to highlight the vital necessity of the Committee membership staying together as one group whilst attending a site visit and not to allow itself to be split up into smaller groups thereby leaving Members vulnerable to acts of lobbying, physical or verbal intimidation et cetera;
- (2) to highlight that Planning Committee members should refrain from expressing their personal views, opinions, emotions at meetings but should instead restrict themselves to matters of planning policy (whether national or local);
- (3) to acknowledge that being a member of the Planning Committee can be a difficult role to carry out; and
- (4) to reflect within paragraph 9.21 that if Members are in doubt as to whether they have an Interest in a particular matter then they should discuss it with Officers and to also cross-reference that paragraph to the information provided by the Monitoring Officer to Members in respect of the Declaration of Interests.

It was thereupon moved by Councillor Talbot, seconded by Councillor Alexander and:-

**RESOLVED** that –

- (a) the outcome of the review of the Planning Protocol carried out by the Monitoring Officer and her team be noted;
- (b) approves that consultation be undertaken on the draft revised Planning Probity Protocol, as amended at the meeting; and
- (c) the outcome of the consultation be submitted to the Standards Committee for its consideration prior to recommendation on to Full Council for adoption.



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

Members were 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]*

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.

It was reported that the Standards Committee, at its meeting held on 19 July 2023 (Minute 7 referred), had appointed Councillors Ann Oxley, Michael Talbot and Ann Wiggins to serve on the Town and Parish Councils' Standards Sub-Committee. The Committee had also been informed at that meeting of TDALC's nominated members.

The Committee was informed that Frank Belgrove, Alresford Parish Councillor and the Chairman of TDALC, had emailed the Committee Services Manager on 23 September 2024 and had confirmed that TDALC's three appointments to the Town & Parish Councils' Standards Sub-Committee remained as listed below:-

1. Cllr Frank Belgrove (Chairman TDALC) Alresford PC;
2. Cllr Danny Botterell (Vice Chairman TDALC) Little Clacton PC; and
3. Cllr Linda Belgrove (Member TDALC) - Alresford PC.

Following the discussion of this matter, it was moved by Councillor Talbot, seconded by Councillor Oxley and:-

**RESOLVED** that –

- (a) Councillors Oxley, Talbot and Wiggins plus Councillor Newton as the designated substitute Member be appointed to serve on the Town & Parish Councils' Standards Sub-Committee for the remainder of the 2024/2025 Municipal Year;
- (b) notes that the Tendring District Association of Local Councils (TDALC) has previously appointed Parish Councillors Frank Belgrove, Linda Belgrove and Danny Botterell as their three non-voting, co-opted members of that Sub-Committee; and
- (c) the Committee recommends to full Council that Article 9.05(2) of the Council's Constitution be amended to state that Tendring District Council would prefer that TDALC's three nominated members on the Town & Parish Councils' Standards Sub-Committee represent different parish/town councils.

**28. REVISED WORK PLAN 2024/25**

The Committee gave further consideration to its Work Plan for the 2024/25 Municipal Year. The work plan had been revised to reflect the impact of the cancellation (due to the Parliamentary General Election) of the meeting of the Committee that should have taken place in July 2024.

The revised Work Plan for 2024/2025 was as follows:-

**24<sup>th</sup> October 2024**

- Review of the Independent Person recruitment preparations for 2025
- Review of the Planning Probity Protocol – Initial Draft for Consultation Purposes
- Regular Complaints update by Monitoring Officer (including Town and Parish Councils Code of Conduct and Interests matters)
- Appointment of the TDC Members of the Town & Parish Councils' Standards Sub-Committee for 2024/25

**5<sup>th</sup> February 2025**

- Case review and guidance update for the Committee on decisions and actions taken nationally
- Licensing and Registration Committee Probity Protocol – Initial Draft for Consultation Purposes
- Review of the Planning Probity Protocol – Final Draft for Submission to Full Council
- Review of the Hearings Procedure
- Regular Complaints update by Monitoring Officer

**9<sup>th</sup> April 2025**

- Annual Update on Mandatory Training for Members
- Annual Report on declarations of interest (meetings, gifts and hospitality)
- Review of the Monitoring Officer Protocol
- Regular Complaints update by Monitoring Officer
- Annual Work Programme for 2025/26

Members were made aware that individual matters might be referred to those meetings by the Monitoring Officer, in accordance with the Committee's Terms of Reference as necessary, for example, an appeal against a dispensation decision or a Code of Conduct hearing.

Having duly considered and discussed the contents of the revised work plan:-

It was moved by Councillor Talbot, seconded by Councillor Alexander and:-

**RESOLVED** that the revised Work Plan for the Standards Committee for the remainder of the 2024/2025 Municipal Year be approved and adopted.

## 29. **COMPLAINTS UPDATE**

The Committee had before it the Monitoring Officer's update on existing and new conduct complaint cases.

<b>TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE OCTOBER 2024</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
<b>Existing Cases from last update:</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
DISTRICT	METROPOLITAN BOROUGH COUNCILLOR	CLOSED	Standards Hearing – determined breach of Code of Conduct – Committee sanctions published on Council's website	Matter related to behaviour whilst acting in an official capacity.
DISTRICT	PUBLIC	CLOSED	Investigation – no further action	Matter related to behaviour whilst acting in an official capacity and misuse of Council resources.
PARISH	PARISH COUNCILLOR	ONGOING – INFORMAL RESOLUTION AND TRAINING		Matter related to behaviours within the Parish Council between multiple Councillors. Informal resolution and Code of Conduct training arranged.

TOWN	PUBLIC	ONGOING - INVESTIGATION	Investigation – externally appointed Investigator	Matter related to behaviour whilst acting in an official capacity.
DISTRICT	PUBLIC	CLOSED	No further action	Matter related to behaviour whilst acting in an official capacity.
PARISH	PUBLIC	ONGOING		Matter related to behaviour whilst acting in an official capacity.
DISTRICT	PUBLIC	ONGOING		Matter related to behaviour whilst acting in an official capacity and behaviours between District Councillors.
DISTRICT	PUBLIC	ONGOING		Matter related to behaviour whilst acting in an official capacity.
<b>New Cases since last update – Seven.</b>				
<b><u>General Notes – 2023/24 and 2024/25 Summary:</u></b>				
<p>Overall eight cases had been received in 2023/24 and seven so far in 2024/25. Since the last update, one case had been heard at a Standards Hearing, one had been referred for investigation resulting in no further action as there had not been a breach of the Code of Conduct and another had been closed with no further action, again with there not being a breach of the Code of Conduct.</p> <p>The other cases remained ongoing, with one being referred for investigation with an externally appointed investigator and one being referred for informal resolution and Code of Conduct training.</p> <p>Since the last update, two Code of Conduct sessions had been conducted at Harwich Town Council and at St. Osyth Parish Council, which had been open to all Town and Parish Councillors across the District. Those sessions had been well attended with good engagement which had led to useful discussions. A dedicated session had also been held at Brightlingsea Town Council.</p>				
<b>Requests for dispensations:</b>				

There had been five requests for dispensations during this period.

In response to a question previously raised by Councillor Oxley, and following the Standards Hearing in May 2024 at which Councillor Turner had been found to have breached the Members' Code of Conduct and sanctions had been imposed upon Councillor Turner, the Monitoring Officer informed the Committee that she had written on two occasions to Councillor Turner to follow up on those sanctions i.e. to arrange a reflective 1.1 session around learning from the complaint and also that Councillor Turner was required to issue an apology both to this Council and the Coastal SIG.

The Monitoring Officer further reported that, to date, no response had been forthcoming from Councillor Turner. Whilst Councillor Turner had not yet been re-appointed either to membership of a Committee (by Full Council) or to an Outside Body (by the Leader of the Council), it was the case that, by not complying with the sanction(s) imposed on him following the Committee's finding that he had breached the Code of Conduct, Councillor Turner was now in breach of paragraph 8.4 of the Members' Code of Conduct.

In discussing the above members of the Committee felt that:-

- (i) this was a test of the effectiveness of the Council's Code of Conduct and its ability to sanction breaches;
- (ii) it was defying and undermining the Committee's role to:-
  - Promote and maintain high standards of conduct;
  - Develop culture of openness, transparency, trust and confidence;
  - Embed a culture of strong ethical and corporate governance;
- (iii) this was a further breach of the Code of Conduct; and that
- (iv) the Committee's original sanctions imposed on Councillor Turner had been reasonable and proportionate.

It was thereupon moved by Councillor Talbot, seconded by Councillor Oxley and:-

**RESOLVED** that –

- (a) the contents of the Monitoring Officer's Complaints Update be noted; and
- (b) the Chairman of the Committee writes to Councillor Turner to inform him that his non-compliance with the two sanctions imposed upon him by Members has been discussed by the Committee who find this position to be unacceptable. That letter will further inform Councillor Turner that Officers have been requested to take steps to fix firm a date/deadline for Councillor Turner to now comply and that if he fails to do so, the Council would find itself considering a further complaint as to Councillor Turner's non-compliance which is in itself a continuing breach of paragraph 8.4 of the Council's adopted Members' Code of Conduct.

The meeting was declared closed at 11.34 am

**Chairman**

## STANDARDS COMMITTEE

5 FEBRUARY 2025

### REPORT OF THE MONITORING OFFICER

#### A.1 PLANNING PROBITY PROTOCOL – RESULTS OF CONSULTATION AND REVISED PLANNING PROBITY PROTOCOL

##### PART 1 – KEY INFORMATION

###### PURPOSE OF THE REPORT

This report is submitted to the Committee to enable it to consider the Planning Probity Protocol following consultation with the members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons. This report also sets out the outcome of the consultation and a revised Planning Probity Protocol for approval and recommendation to Full Council for its adoption.

###### EXECUTIVE SUMMARY

This report presents the updated revised version of the Planning Probity Protocol, as set out in Appendix A, following a consultation with the members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons.

Some themes from the consultation were:

- The concept of Bias needs to be stronger.
- stronger links to the Members' Code of Conduct, declarations of interest and the impact of participation at meetings.
- importance of seeking advice earlier.
- a determination should be made as to which Planning Applications submitted by Officers of the Council in their personal capacity should be submitted to the Planning Committee for determination i.e. Senior Officers above a certain grade and all Officers employed within Planning Services and Legal Services.
- the importance of Member Training needed to be stressed within the Planning Probity Protocol.
- stronger details needed around Planning Committee Members attending public meetings with applicants, developers and objectors, and
- site Visits section needed to be stronger relating to the exceptional circumstances.

The outcome of the consultation is set out in detail in Appendix B. In addition, it was considered necessary to include some text around the Protocol on Member and Officer Relations, as this had been omitted in the first review and is relevant.

## RECOMMENDATION(S)

It is recommended that the Standards Committee:

- (a) notes the outcome of the consultation with members of Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons;
- (b) endorses the revised Planning Probity Protocol (subject to tracked changes being accepted) and recommends to Full Council that it be adopted and incorporated into the Council's Constitution;
- (c) subject to (b) includes an additional recommendation to Full Council that the Planning Committee's Terms of Reference be amended to reflect the proposed seniority of officers and all officers within Planning and Legal Services applications to be referred to the Planning Committee; and
- (d) subject to Full Council's approval of the Planning Probity Protocol, that training on the Protocol, forms part of the Mandatory Training as required by Council Procedure Rule 33.3 for Members of the Planning Committee.

## REASON(S) FOR THE RECOMMENDATION(S)

In order to enable the Planning Probity Protocol to be adopted by Full Council.

## ALTERNATIVE OPTIONS CONSIDERED

Not to proceed further with the review. However, this would equate to a missed opportunity to refresh the Protocol and to produce a more user-friendly document following recognised best practice.

The outcome of any request for Devolution or Local Government Reorganisation should not have an impact on this review, so as to ensure the Council is continuing to demonstrate good governance.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The Members' Planning Code and Protocol forms part of the Council's Constitution in Part 6 and demonstrates effective and positive Governance arrangements and promotes the maintenance of integrity, both real and perceived within the Planning Committee's decision making as well as high standards of conduct.

The Council has approved and adopted a Local Code of Corporate Governance, which is consistent with the principles of the **CIPFA / SOLACE *Delivering Good Governance in Local Government Framework (2016 Edition)***. The principles and standards set out in the 2016 Framework are aimed at helping local authorities to develop and maintain their own codes of governance and discharge their accountability for the proper conduct of business.



The first principle of the CIPFA/Solace Framework – Principle A expects local government to give on-going assurance (through its Annual Governance Statement) that it is “*Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law*”.

The Role of the Standards Committee within the governance environment is to:

- Promote and maintain high standards of conduct
- Develop culture of openness, transparency, trust and confidence
- Embed a culture of strong ethical and corporate governance

Corporate governance is about how we ensure that we are doing the **right** things, in the **right** way, for the **right** people in a timely, inclusive, honest and accountable manner.

Keeping under review and updating its protocols demonstrates the Council’s commitment to ensuring good governance sits at the core of its arrangements and culture.

#### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

- The determination of a planning application is a formal administrative process involving:
  - the application of national and local planning policies
  - reference to legislation, case law and rules of procedure
  - rights of appeal and an expectation that local planning authority will act transparently, reasonably and fairly
- In making any determination under the Planning legal framework, Members of the Council sitting on the Planning Committee should ensure decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see [section 70\(2\) of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#) – these provisions also apply to appeals). Members must do so by balancing the needs and interests of the whole community and of individual constituents, alongside the need to maintain an ethic of impartial decision making on what may be highly controversial proposals.
- Planning Probity Protocols aim to ensure that in the planning process there are no grounds for suggesting that a decision is biased, is not impartial or not well founded in any way.
- Planning legislation and guidance can be complex. The Local Government Association, the Committee for Standards on Public Life and the Royal Town Planning Institute all recommend Members who have to make planning decisions should be specifically trained and provided with general guidance for Planning in Probity.
- The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at [paragraph 14 of the Framework](#). If decision takers choose not to

follow the National Planning Policy Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.

Challenges to Local Planning Authority decisions is via a Judicial Review which is defined in Part 54 of the Civil Procedure Rules as the process by which the court will review the lawfulness of an enactment, decision, action or failure to act in relation to the exercise of a public function. This often relates to planning decisions and actions by local planning authorities (LPAs) and the Secretary of State, which can be challenged in the courts by way of judicial review if the decision made was unlawful.

The focus of the judicial review is to consider the legality of how a decision was made or action was taken by a public body in the exercise of a public function. Judicial review cannot be used to review the merits of a decision.

In principle, judicial review can be used to challenge any act or omission by a public body, whereby the decision made is in the “public interest”. A judicial review claim will seek to demonstrate that the public body’s action falls within one or several of the below heads of claim:

- **Illegality** – where the decision-maker has failed to understand correctly the law that regulates its decision-making power and/or has failed to give effect to it.
- **Irrationality** – where a decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person giving due consideration to the matter in question could have arrived at such a result.
- **Procedural Impropriety** – (also referred to as a breach of natural justice), where, in making a decision, basic rules of natural justice were ignored, or where there was a failure to act with procedural fairness towards a person or to observe procedural rules that are expressly laid down by legislative instrument.

Common grounds for judicial review planning claims:

- Misinterpretation or misapplication of policy – A failure to correctly interpret and/or apply planning policy. This is usually formulated as an irrationality or illegality challenge. A decision-maker will open themselves up to challenge if they have failed to regard a policy in the development plan which is relevant to the application or have failed to properly interpret it.
- Material considerations – Failure by a decision-maker to have regard to a material planning consideration or the taking into account of a consideration which is not a material planning consideration. Such a ground is usually formulated as an illegality challenge, on the basis that it constitutes an error of law. A variant of this is the allegation that a decision-maker was misled by the planning officer about material considerations, often due to an unclear report or advice to the council which fails to understand the important issues that bear on the decision.
- Failure to give reasons/inadequate reasons – A failure to give reasons for a planning decision where required by statute or by the common law, and/or the inadequacy of reasons given for a decision. This is usually formulated as a procedural impropriety or illegality challenge.
- Failure to comply with EIA Regulations, SEA Regulations and/or Habitats Regulations – Where a decision has an environmental impact, it may be that the decision-maker failed

to comply with a particular aspect of the legislative regime requiring environmental impact assessment, strategic environmental assessment and/or habitats regulations assessment. A challenge of this nature usually falls under the irrationality standard.

Consequently, a Planning Probity Protocol is intended as guidance and a statement of good practice for all councillors and officers involved in the administration or operation of the planning process (including planning enforcement).

The Council's Constitution requires Members of the Planning Committee to have undertaken mandatory training with regards to the determination of the planning applications (Council Procedure Rule 33.3 – Part 4.29) and it is considered by the Monitoring Officer, that training on the Planning Probity Protocol would form part of this mandatory training.

### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

None associated with the content of this report.

### **USE OF RESOURCES AND VALUE FOR MONEY**

*External Audit expect the following matters to be demonstrated in the Council's decision making:*

- A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;*
- B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and*
- 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.*

*As such, set out in this section the relevant facts for the proposal set out in this report.*

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;	N/A
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Key messages from local government failures include the absence of the right culture and understanding of the Nolan Principles and the need for greater transparency in decision making. The proposed Planning Probity Protocol builds on the Council's existing culture of embedding the Nolan Principles within the way services are delivered, and decisions are made.
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.	N/A

## **MILESTONES AND DELIVERY**

Standards Committee 19 July 2023 – Agreed to undertake review.

Standards Committee 24 October 2024 – Considered the outcome of the review and make recommendations to Full Council.

Planning Probity Protocol discussion 22 January 2025 – Undertook consultation with Members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and Independent Persons.

Standards Committee 5 February 2025 – Report outcome of consultation for consideration of recommendation onto Full Council.

Full Council 25 March 2025 – Council considers and adopts the proposed new Planning Probity Protocol.

## **ASSOCIATED RISKS AND MITIGATION**

The Council must ensure that any Codes and Protocols which provide guidance for Councillor are up to date with current policy, legislation, case law, good practice and national guidance. The current Members' Planning Protocol was last reviewed in 2023, prior to this review, following the LGA's publication to minimise any risk that the Council's practices were not up to date. Up to date guidance and easy to follow, prevents confusion and legal challenges by way of judicial review to planning decisions based on failure to declare interests, predetermination or bias.

## **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The draft Planning Probity Protocol submitted to the Committee at its meeting of 24 October 2024 was subject to consultation with the Members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and Independent Persons.

The outcome of the consultation is set out in Appendix B.

## **EQUALITIES**

Part of the review of the Planning Probity Protocol has been to ensure that it meets the requirements of the Public Sector Equality Duty in that the Council must, in the exercise of its 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, sex orientation.

## **SOCIAL VALUE CONSIDERATIONS**

Not applicable to this report.

<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030</b>	
Not applicable to this report.	
<b>OTHER RELEVANT IMPLICATIONS</b>	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
<b>Crime and Disorder</b>	None.
<b>Health Inequalities</b>	None.
<b>Area or Ward affected</b>	All.
<b>ANY OTHER RELEVANT INFORMATION</b>	
<p>In undertaking the review, the LGA's Planning Advisory Service (PAS) guidance on Planning Committee Protocols has been considered, which outlines some of the best practice across the country. The LGA's Probity in Planning guidance suggests individual Planning Codes and Protocols are produced. Tendring District Council's current Members' Planning Code and Protocol followed the format of the Lawyers in Local Government (LLG) Members Planning Code of Good Practice, which has recently been reviewed but with little amendments. Looking to undertake thorough research over the suggested best practice of other Councils, a new document for Tendring District Council was produced and consulted on.</p>	

### **PART 3 – SUPPORTING INFORMATION**

<b>BACKGROUND</b>
<p>In December 2019, the Local Government Association (LGA) issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions. The Standards Committee agreed through its work programme to review the Council's Planning Code &amp; Protocol following the LGA publication.</p> <p>Following the 2020/21 review no further changes were suggested as a result of the LGA's guidance however, additional wording was recommended to cover situations when it is not possible to undertake Site Visits and to clarify this does not impact upon the Planning Committee's ability to determine planning applications.</p> <p>At its meeting held on 19 July 2023, the Committee decided amongst other things that a review of the Council's Planning Code and Protocol be carried out to ensure it was adhering to best practice and easy to follow. The review conducted has researched the various examples suggested by Planning Advisory Service (PAS) as best practice and the outcome has resulted in a revised approach with the first step being to refer the document as the 'Planning Probity Protocol'. This also aligns with the Planning Probity Protocol adopted for the Tendring Borders Garden Community Joint Committee.</p> <p>A report to the Standards Committee in October 2024 set out initial proposals following a</p>

review by the Monitoring Officer and following consideration by the Committee it was agreed to consult with members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons on the draft revised Planning Probity Protocol.

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

Standards Committee 19 July 2023 – Minute 6

**“RESOLVED** that –

*(a) the contents of the Monitoring Officer’s Report and the fact that the Site Visit procedure was included within the recent mandatory training to Planning Committee Members, their substitutes and that this was available to all Members of the Council, be noted;*

*(b) the different approach adopted for the Planning Probity Protocol for the Tendring Colchester Borders Garden Community Joint Committee, and that the Planning Advisory Service suggests some best practice for Planning Committee Protocols following the LGA’s Probity in Planning Guidance, be also noted; and*

***(c) a review of the Council’s Planning Protocol be carried out to ensure that it is adhering to best practice and easy to follow.”***

Standards Committee 24 October 2024 – Minute 26

**“RESOLVED** that –

*(a) the outcome of the review of the Planning Protocol carried out by the Monitoring Officer and her team be noted;*

***(b) approves that consultation be undertaken on the draft revised Planning Probity Protocol, as amended at the meeting; and***

***(c) the outcome of the consultation be submitted to the Standards Committee for its consideration prior to recommendation on to Full Council for adoption.”***

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

[Report Template Part A](#)

[Minutes Template](#)

[Part 6 Codes and Protocols - Codes and Protocols](#) – Part 6.49 – 6.58

[A2 Appendix A - LGA Probity in Planning December 2019.pdf](#)

[Planning Committee Protocols | Local Government Association](#)

[LLG background paper.pdf](#)

[Standards Committee Report - 24 October 2024](#)

**APPENDICES**

Appendix A: New revised TDC Planning Probity Protocol – following consultation.

Appendix B: Consultation responses.

**REPORT CONTACT OFFICER(S)**

*Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.*

<b>Name</b>	Lisa Hastings Joanne Fisher Bethany Jones
<b>Job Title</b>	Director (Governance & Legal) Planning Solicitor Committee Services Officer
<b>Email/Telephone</b>	<a href="mailto:lhastings@tendringdc.gov.uk">lhastings@tendringdc.gov.uk</a> / 01255 68 6561 <a href="mailto:jfisher@tendringdc.gov.uk">jfisher@tendringdc.gov.uk</a> / 01255 68 6578 <a href="mailto:bjones@tendringdc.gov.uk">bjones@tendringdc.gov.uk</a> / 01255 68 6587

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# APPENDIX B

## CONSULTATION RESPONSES:

### PORTFOLIO HOLDER OF HOUSING AND PLANNING RESPONSE:

- 1) Paragraph 5 – Member Training: All training concerning planning should be mandatory for all members, and substitutes, the planning committee.
- 2) 5.2: Training should be more frequent than minimum of once a year, to take into account any appeal decisions etc
- 3) 5.4: take out ‘Do endeavour’ and insert ‘You must’ attend any other .....
- 4) 6.11: Agree with the highlighting of sub para 4.
- 5) 6.12: Take out the words ‘are advised to’ in the last sentence and insert the words ‘MUST’
- 6) 6.13: Should some wording be put in last sentence about leaving the room if necessary?
- 7) 7.1: Replace word ‘should’ with ‘must’.
- 8) 7.2.: Suggest putting something in here that going against this could be considered a breach of Code of Conduct (if it is).
- 9) 7.4: 1<sup>st</sup> sentence, is there a link to this, if so put it in here.
- 10) 7.8: Suggestion there is something added that a declaration at Committee about such attendance, and declare predetermined or not.
- 11) 8.5: Suggestion that the last bullet point be made clearer in wording
- 12) 8.6: Remove word ‘should’ and insert ‘must’.
- 13) 8.7: Make second sentence a separate paragraph.
- 14) 8.9: Expand on what might be/is considered excessive.
- 15) 8.10: Remove word ‘should’ and insert ‘must’.
- 16) 9.3: Insert wording around ‘Chairman will explain to all present purpose of site visit, how it will be conducted, warn others attending (public) of their limitations (speeches/questions) etc, and consequences if they do (site visit will be terminated)
- 17) 9.7: Second sentence remove word ‘should’ and insert word ‘must’.
- 18) 9.9: remove word ‘will’ and insert word ‘must’.
- 19) 9.10: after last sentence, and in reference to last sentence, insert wording similar to ‘if they do, then they could be seen to be pre-determined, and would therefore be unable to participate in any debate on that particular application’.
- 20) 9.14: after last sentence put in wording similar to ‘if continually spoken to/approached they should politely decline, bring it to the attention of Chair/Vice Chair and officer, before leaving the site, as well as declaring they did so at the subsequent Committee meeting.
- 21) 9.21: after last sentence, insert wording similar to ‘ and must not mention or discuss the application prior to, of after, the site visit, with other members of the Committee.....’
- 22) 12.1: third bullet point, should the words ‘and public speakers’ be removed completely, as it implies committee members can do so.
- 23) 12.1 final bullet point, extra emphasis on the words already underlined. Put them in BOLD. Maybe put something in that Chairman will not accept a proposal made with no relevant reasons give, after taking advice of legal/planning officers.
- 24) 12.5: First sentence remove word ‘should’ and insert ‘must’. Second sentence should read that they cannot propose/vote etc: Personal view is that if committee members have not heard all the ‘evidence and debate’ they must not be allowed to, similar to not being on site visit.
- 25) 12.7: Second sentence remove word ‘ should’ and insert word ‘must’.
- 26) 12.9: Second sentence remove word ‘should’ and insert word ‘must’.
- 27) 14.5: First sentence, remove word ‘is’ insert word ‘are’.
- 28) 14.6: Check that NPPF paragraph number has not changed due to recent changes within NPPF 2024 version.

## **APPENDIX B**

Wording similar to “Members of the Committee MUST adhere to the Risk Assessment document, and its guidance, during all site visits. Failure to do so will mean that you will not be able to sit on any planning application listed”.

### **STANDARDS COMMITTEE RESPONSE:**

- (1) to highlight the vital necessity of the Committee membership staying together as one group whilst attending a site visit and not to allow itself to be split up into smaller groups thereby leaving Members vulnerable to acts of lobbying, physical or verbal intimidation et cetera;
- (2) to highlight that Planning Committee members should refrain from expressing their personal views, opinions, emotions at meetings but should instead restrict themselves to matters of planning policy (whether national or local);
- (3) to acknowledge that being a member of the Planning Committee can be a difficult role to carry out; and
- (4) to reflect within paragraph 9.21 that if Members are in doubt as to whether they have an Interest in a particular matter then they should discuss it with Officers and to also cross-reference that paragraph to the information provided by the Monitoring Officer to Members in respect of the Declaration of Interests.

### **PLANNING COMMITTEE MEMBERS, PLANNING OFFICERS AND INDEPENDENT PERSONS RESPONSES:**

#### 3. Relationship to Members’ Code of Conduct:

- Emphasis that Committee members understand their declarations of interests ideally not just before the committee meeting starts – MO or DMO may not be able to answer immediately before the meeting has started.

#### 4. Applications submitted by the Council, Members or Officers:

- “Officers” – over a certain level, all Members of Planning Service and Legal Services to go to Planning Committee if application sent in.

#### 5. Member Training:

- STRESS how important the training is for Members both for exercising committee functions and complying with the Probity Protocol.

#### 6. Predisposition, predetermination and bias:

- Bias needs to be emphasised more.

#### 7. Contact with Applicants, Developers and Objectors/8. Lobbying of and by Councillors:

## APPENDIX B

- 7.2 – There is no problem for Members of the Planning Committee to attend public meetings, but to be careful with behaviours and not to place themselves in a situation which could be perceived as giving a view on the application, advice would be not to say anything to anyone in case of getting lobbied.
- Should say Planning Officer throughout the Protocol – not ‘Officer’.

### 9. Site Visits:

- 9.13 – make stronger.
- Exceptional circumstances – make stronger
- Developers/applicants, Objectors and Parish/Town Councillors should be made aware that they should be pally with Planning Committee members.  
(Guidance around not shaking hands etc from Councillors to developers/applicants, Objectors and/or Parish/Town Councillors – at the meeting. This also includes Planning Officers.
- Public and speakers should not approach members of the Committee. Reference Public Speakers Scheme.

### 10. Post-Submission Discussions:

- Gary Guiver & John Pateman-Gee to have input.

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## STANDARDS COMMITTEE

5 FEBRUARY 2025

### REPORT OF THE MONITORING OFFICER

#### **A.2 GOVERNMENT CONSULTATION ON STRENGTHENING THE STANDARDS AND CONDUCT FRAMEWORK**

##### **PART 1 – KEY INFORMATION**

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

For the Standards Committee to determine whether to respond to the Ministry of Housing, Communities & Local Government (“the government’s”) consultation on the Standards and Conduct framework, on behalf of Tendring District Council.

###### **EXECUTIVE SUMMARY**

The Government has launched a consultation regarding the application of standards and conduct in local authorities. The consultation opened on 18 December 2024 and runs for 10 weeks, closing on 26 February 2025. It states: *“This consultation seeks views on introducing a mandatory minimum code of conduct for local authorities in England, and measures to strengthen the standards and conduct regime in England to ensure consistency of approach amongst councils investigating serious breaches of their member codes of conduct, including the introduction of the power of suspension.”*

Appendix A to this report is a set of proposed answers to the specific questions which are posed, together with supporting text where appropriate.

This consultation seeks views on introducing measures to strengthen the standards and conduct regime in England and ensure consistency of approach amongst councils investigating serious breaches of their member codes of conduct, including the introduction of the power of suspension.

Specific proposals being consulted upon for legislative change include:

- the introduction of a mandatory minimum code of conduct for local authorities in England
- a requirement that all principal authorities convene formal standards committees to make decisions on code of conduct breaches, and publish the outcomes of all formal investigations
- the introduction of the power for all local authorities (including combined authorities) to suspend councillors or mayors found in serious breach of their code of conduct and, as appropriate, interim suspension for the most serious and complex cases that may involve police investigations
- a new category of disqualification for gross misconduct and those subject to a sanction of suspension more than once in a 5-year period
- a role for a national body to deal with appeals.

In addition, the consultation seeks views on how to empower victims affected by councillor misconduct to come forward and what additional support would be appropriate to consider.

The Consultation suggests that the government are in favour of introducing these sanctions but

the consultation is seeking input from the sector and any other interested parties. This report asks the Standards Committee to consider whether a formal Council response should be provided to the consultation exercise and if so, it wishes to endorse those suggested in Appendix A or as amended through its debate.

#### RECOMMENDATION(S)

It is recommended that the Standards Committee:

- (a) Considers the contents of the report and determines whether a formal response should be provided on behalf of Tendring District Council to the government's consultation exercise; and
- (b) Subject to (a) determines whether to submit the proposed response, as set out in Appendix A or as amended through its debate at the meeting.

#### REASON(S) FOR THE RECOMMENDATION(S)

The Standards Committee has responsibility for the Standards Framework at the Council, as set out in Article 9 of the Council's Constitution, therefore it is the appropriate body to consider this matter.

#### ALTERNATIVE OPTIONS CONSIDERED

The Committee could determine that the Council should not provide a response to the consultation, but it be left to political groups or interested individuals to submit their own responses.

## PART 2 – IMPLICATIONS OF THE DECISION

#### DELIVERING PRIORITIES

The Council operates a Members' Code of Conduct, which is included in the Constitution. This is underpinned by the standards of conduct in public life (the "Nolan principles") and all Members agree to adhere to the Code of Conduct.

The Council has approved and adopted a Local Code of Corporate Governance, which is consistent with the principles of the **CIPFA / SOLACE *Delivering Good Governance in Local Government Framework (2016 Edition)***. The principles and standards set out in the 2016 Framework are aimed at helping local authorities to develop and maintain their own codes of governance and discharge their accountability for the proper conduct of business.

The first principle of the CIPFA/Solace Framework – Principle A expects local government to give on-going assurance (through its Annual Governance Statement) that it is "*Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law*".

The Role of the Standards Committee within the governance environment is to:

- Promote and maintain high standards of conduct
- Develop culture of openness, transparency, trust and confidence
- Embed a culture of strong ethical and corporate governance

Corporate governance is about how we ensure that we are doing the **right** things, in the **right** way, for the **right** people in a timely, inclusive, honest and accountable manner.

#### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

Under section 27(1) of the Localism Act 2011 (“the Act”) the Council is placed under a statutory duty to “*promote and maintain high standards of conduct by members and co-opted members of the authority*”.

Under section 27(2) of the Act a relevant authority “*must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity*”.

Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with the prescribed Principles of Standards in Public Life, known as the “Nolan principles”.

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which endangers public confidence in democracy.

Under section 28(6) of the Act, the Council must have in place

- (a) arrangements under which allegations can be investigated and
- (b) arrangements under which decisions on allegations can be made.

Section 28(11) of the Act provides that if a member or co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take (known as ‘sanctions’).

Consequently, where breaches of the Code are alleged to have been made, the Monitoring Officer has the responsibility to administer a system of Councillor Code of Conduct complaints in accordance with the procedures adopted by Full Council in November 2013, as amended. The Council’s Complaints Procedure is contained within Part 6 of the Council’s Constitution and the sanctions currently available are set out within Section 8 (Part 6.25).

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct. Sanctions for member code of conduct breaches are currently limited to less robust measures than suspension, such as barring members from Cabinet, Committee, or representative roles, a requirement to issue an apology or undergo code of conduct training, or public criticism. Local authorities are also unable to withhold allowances from members who commit serious breaches of their code of conduct, and there is no explicit provision in legislation for councils to impose premises bans or facilities withdrawals where they consider that it might be beneficial to do so.

Changes which arise from the consultation and supporting legislation may affect the Council’s Complaints Procedure and the sanctions available and once these are known, proposed amendments will be submitted for consideration, approval and adoption.

#### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

There are no financial implications from responding to the Government Consultation on the Standards and Conduct Framework, as any response will be undertaken within existing

capacity.

## **USE OF RESOURCES AND VALUE FOR MONEY**

*External Audit expect the following matters to be demonstrated in the Council's decision making:*

- (A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;*
- (B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and*
- (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.*

*As such, set out in this section the relevant facts for the proposal set out in this report.*

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;	N/A
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Key messages from local government failures include the absence of the right culture and understanding of the Nolan Principles and the need for greater transparency in 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.	N/A

## **MILESTONES AND DELIVERY**

The consultation opened on 18 December 2024 and runs for 10 weeks, closing on 26 February 2025. The Standards Committee at its meeting is to consider whether to submit a response to the consultation within this timeframe.

## **ASSOCIATED RISKS AND MITIGATION**

There are no known risks for submitting a response to feed into the government's consultation exercise however, should the Council decided not to do so, there will be lost opportunity, especially as the Standards Committee has voiced its concerns on the current sanctions regime.

## **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The purpose of this report is for the Standards Committee to determine whether to respond to the national consultation exercise.

## **EQUALITIES**



The consultation itself has conducted its own equality and inclusion assessment as this will need to be considered by Government when introducing any new proposals.

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

#### **SOCIAL VALUE CONSIDERATIONS**

Not applicable to this report.

#### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050**

Not applicable to this report.

#### **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.**

<b>Crime and Disorder</b>	None
<b>Health Inequalities</b>	None
<b>Area or Ward affected</b>	All

#### **ANY OTHER RELEVANT INFORMATION**

None

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND**

In 2019 the Committee on Standards in Public Life proposed a number of improvements to the administration of councillor complaints. These included strengthening the sanctions available to local authorities in relation to Members who had been found to have breached the Code of Conduct. It also recommended a national standard code of conduct, and a consistent approach to convening a committee with responsibility for standards. The proposals made by the Committee in 2019 are largely contained within the consultation paper.

The consultation seeks views on introducing measures to strengthen the standards and conduct regime in England and ensure consistency of approach amongst councils investigating serious breaches of their member codes of conduct, including the introduction of the power of suspension.

Specific proposals being consulted upon for legislative change include:

- (a) the introduction of a mandatory minimum code of conduct for local authorities in England
- (b) a requirement that all principal authorities convene formal standards committees to make decisions on code of conduct breaches, and publish the outcomes of all formal

investigations

- (c) the introduction of the power for all local authorities (including combined authorities) to suspend councillors or mayors found in serious breach of their code of conduct and, as appropriate, interim suspension for the most serious and complex cases that may involve police investigations
- (d) a new category of disqualification for gross misconduct and those subject to a sanction of suspension more than once in a 5-y

In Appendix A to this report is a set of proposed answers to the specific questions which are posed, together with supporting text where appropriate. These are largely self-explanatory, but the following paragraphs set out some additional considerations in relation to the proposals.

It is proposed that the response is submitted as the Council's view on the consultation, but individual Councillors are able to send in their own responses and these could be organised within political groups as appropriate.

The introduction of a mandatory minimum code of conduct for local authorities in England would be welcome. It will provide certainty for officers and members that they are following a national scheme. This could lead to a shared understanding amongst local government officers and a uniformity of approach across the country.

The consultation refers to a requirement that all principal authorities convene formal Standards Committees to make decisions on Code of Conduct breaches and publish the outcomes of all formal investigations. In practice, as it is a statutory requirement for Monitoring Officers to administer a councillor complaints system and also that Councils establish a means by which the Monitoring Officer can do this, therefore delegation of powers are required to be able to administer the procedure. Local authorities will have either a Standards Committee or responsibilities of a standards committee dealt with by one of its Council Committees, at which it will receive the outcome of formal investigations, if there is evidence of a breach of the Code of Conduct. At Tendring these responsibilities sit within the Standards Committee, and it is proposed that this does not need to change.

The consultation seeks views on the publication of outcomes of all formal investigations, which would be consistent with wider Council aspirations of conducting business with openness and transparency. However, there is an element of natural justice that should be considered in relation to alleged code of conduct breaches, and it is suggested that the duty to publish material relating to complaints should not include all details of all allegations in case spurious material leads to unfair inferences against the subject Member. The preferred approach is for material to be published where there has been a process leading to formal investigation, which has led to a formal outcome, which is the current position at Tendring.

The introduction of the power for all local authorities to suspend councillors or mayors found in serious breach of their code of conduct and, as appropriate, interim suspension for the most serious and complex cases that may involve police investigations could be considered to be necessary, however should be used in exceptional circumstances.

One of the main drawbacks of the current system is the lack of sanctions that reflect the seriousness of some breaches of a code of conduct. A new category of disqualification for gross misconduct and those subject to a sanction of suspension more than once in a 5-year period are also considered to be necessary additions to the system which will reflect the most

serious cases.

A role for a national body to deal with appeals is also proposed.

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

None

**BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None

**APPENDICES**

**Appendix A: Government Consultation**

**REPORT CONTACT OFFICER(S)**

<b>Name</b>	<b>Lisa Hastings</b>
<b>Job Title</b>	<b>Director – Governance and Monitoring Officer</b>
<b>Email/Telephone</b>	<a href="mailto:lhastings@tendringdc.gov.uk">lhastings@tendringdc.gov.uk</a>

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## UK Government Standards Consultation questions and proposed answers with supporting text

Please note that proposed answers to consultation questions are shown  
highlighted in yellow

### Question 1

Please tick all that apply - are you responding to this consultation as:

- a) an elected member – if so, please indicate which local authority type(s) you serve on:
- Town or Parish Council
  - District or Borough Council
  - Unitary Authority
  - County Council
  - Combined Authority / Combined County Authority
  - Fire and Rescue Authority
  - Police and Crime Panel
  - Other local authority type - please state
- b) a council officer – if so, please indicate which local authority type
- Town or Parish Council
  - District or Borough Council
  - Unitary Authority
  - County Council
  - Combined Authority / Combined County Authority
  - Fire and Rescue Authority
  - Police and Crime Panel
  - Other local authority type - please state
- c) council body – if so, please indicate which local authority type
- Town or Parish Council
  - **District or Borough Council**
  - Unitary Authority
  - County Council
  - Combined Authority / Combined County Authority
  - Fire and Rescue Authority
  - Police and Crime Panel
  - Other local authority type - please state
- d) a member of the public
- e) a local government sector body – please state

## Question 2

Do you think the government should prescribe a mandatory minimum code of conduct for local authorities in England?

- Yes
- No
- If no, why not? [Free text box]

## Question 3

If yes, do you agree there should be scope for local authorities to add to a mandatory minimum code of conduct to reflect specific local challenges?

- Yes – it is important that local authorities have flexibility to add to a prescribed code
- No – a prescribed code should be uniform across the country
- Unsure

## Question 4

Do you think the government should set out a code of conduct requirement for members to cooperate with investigations into code breaches?

- Yes
- No
- Unsure

## Question 5

Does your local authority currently maintain a standards committee?

- Yes
- No
- Any further comments [free text box]

## Question 6

Should all principal authorities be required to form a standards committee?

- Yes
- No
- Any further comments [free text box] *How exactly the Standards Committee should be formed should be left as a matter for the local authority itself. For example, it may make sense for councils to combine responsibilities with*

*matters relating to Governance, or Audit, in the interests of expediency and efficiency.*

### Question 7

In most principal authorities, code of conduct complaints are typically submitted in the first instance to the local authority Monitoring Officer to triage, before referring a case for full investigation. Should all alleged code of conduct breaches which are referred for investigation be heard by the relevant principal authority's standards committee?

- Yes, decisions should only be heard by standards committees
- No, local authorities should have discretion to allow decisions to be taken by full council
- Unsure

### Question 8

Do you agree that the Independent Person and co-opted members should be given voting rights?

- Yes – this is important for ensuring objectivity
- No – only elected members of the council in question should have voting rights
- Unsure

### Question 9

Should standards committees be chaired by the Independent Person?

- Yes
- No
- Unsure

### Question 10

If you have further views on ensuring fairness and objectivity and reducing incidences of vexatious complaints, please use the free text box below

[Free text box] *To ensure fairness and reduce vexatious complaints there should be an ability to decline to take low level complaints through to a formal investigation following a triage/filtering out process. No further action and attempts to resolve matters informally must remain options, as often the latter achieves the desired result in any dispute.*

### Question 11

Should local authorities be required to publish annually a list of allegations of code of conduct breaches, and any investigation outcomes?

- Yes - the public should have full access to all allegations and investigation outcomes
- No - only cases in which a member is found guilty of wrongdoing should be published
- Other views – text box

### Question 12

Should investigations into the conduct of members who stand down before a decision continue to their conclusion, and the findings be published?

- Yes
- No
- Unsure

### Question 13

If responding as a local authority, what is the average number of complaints against elected members that you receive over a 12-month period? *8 (over a 4 year period)*

### Question 13a

For the above, where possible, please provide a breakdown for complaints made by officers, other elected members, the public, or any other source: *Complaints received fairly evenly from Elected Members and Co-Opted Members and by the public.*

- Complaints made by officers [x]
- Complaints made by other elected members [x]
- Complaints made by the public [x]
- Complaints made by any other source [x]

### Question 14

If you currently work, or have worked, within a local authority, have you ever been the victim of (or witnessed) an instance of misconduct by an elected member and felt that you could not come forward? Please give reasons if you feel comfortable doing so.

- Yes
- No



- [Free text box] *We are answering as a local authority so cannot provide a direct answer to this specific question. However, we work hard with elected members to ensure that there is a culture whereby anyone witnessing or subject to an instance of misconduct should feel able to make a complaint.*

### Question 15

If you are an elected member, have you ever been subject to a code of conduct complaint? If so, did you feel you received appropriate support to engage with the investigation?

- Yes
- No
- [Free text box] *We are answering as a local authority so cannot provide an answer to this specific question.*

### Question 16

If you did come forward as a victim or witness, what support did you receive, and from whom? Is there additional support you would have liked to receive?

[Free text box] *We are answering as a local authority so cannot provide an answer to this specific question.*

### Question 17

In your view, what measures would help to ensure that people who are victims of, or witness, serious councillor misconduct feel comfortable coming forward and raising a complaint?

[Free text box] *This could be through leadership (political and through the officer management team) and managerial support within the relevant council for members and officers, and for it to be a breach of the Code of Conduct to intimidate victims or witnesses. More problems at experienced at a Parish or Town Council level, where there is little officer support and oversight on Code of Conduct matters, with strong personalities within councillors causing uncomfortable situations.*

### Question 18

Do you think local authorities should be given the power to suspend elected members for serious code of conduct breaches?

- Yes – authorities should be given the power to suspend members
- No – authorities should not be given the power to suspend members
- Unsure

### Question 19

Do you think that it is appropriate for a standards committee to have the power to suspend members, or should this be the role of an independent body?

- Yes - the decision to suspend for serious code of conduct breaches should be for the standards committee
- No - a decision to suspend should be referred to an independent body
- Unsure
- [Free text box] *In the event that the outcome of the national consultation supports suspension could be referred to an independent body, it is unclear how referral to an independent body would work in practice, could create a delay and increase Council resources to manage the process?*

### Question 20

Where it is deemed that suspension is an appropriate response to a code of conduct breach, should local authorities be required to nominate an alternative point of contact for constituents during their absence?

- Yes – councils should be required to ensure that constituents have an alternative point of contact during a councillor’s suspension
- No – it should be for individual councils to determine their own arrangements for managing constituents’ representation during a period of councillor suspension
- Unsure

### Question 21

If the government reintroduced the power of suspension, do you think there should be a maximum length of suspension?

- Yes – the government should set a maximum length of suspension of 6 months
- Yes – however the government should set a different maximum length (in months) [Number box]
- No – I do not think the government should set a maximum length of suspension
- Unsure

### Question 22

If yes, how frequently do you consider councils would be likely to make use of the maximum length of suspension?

- Infrequently – likely to be applied only to the most egregious code of conduct breaches
- Frequently – likely to be applied in most cases, with some exceptions for less serious breaches
- Almost always – likely to be the default length of suspension for code of conduct breaches
- Unsure

### Question 23

Should local authorities have the power to withhold allowances from suspended councillors in cases where they deem it appropriate?

- Yes – councils should have the option to withhold allowances from suspended councillors
- No – suspended councillors should continue to receive allowances
- Unsure

### Question 24

Do you think it should be put beyond doubt that local authorities have the power to ban suspended councillors from council premises and to withdraw the use of council facilities in cases where they deem it appropriate?

- Yes – premises and facilities bans are an important tool in tackling serious conduct issues
- No – suspended councillors should still be able to use council premises and facilities
- Unsure

### Question 25

Do you agree that the power to withhold members' allowances and to implement premises and facilities bans should also be standalone sanctions in their own right?

- Yes
- No
- Unsure

### Question 26

Do you think the power to suspend councillors on an interim basis pending the outcome of an investigation would be an appropriate measure?

- Yes, powers to suspend on an interim basis would be necessary

- No, interim suspension would not be necessary
- Any further comments [free text box]

### Question 27

Do you agree that local authorities should have the power to impose premises and facilities bans on councillors who are suspended on an interim basis?

- Yes - the option to institute premises and facilities bans whilst serious misconduct cases are investigated is important
- No - members whose investigations are ongoing should retain access to council premises and facilities
- Unsure

### Question 28

Do you think councils should be able to impose an interim suspension for any period of time they deem fit?

- Yes
- No
- Any further comments [free text box]

### Question 29

Do you agree that an interim suspension should initially be for up to a maximum of 3 months, and then subject to review?

- Yes
- No
- Any further comments [free text box] If interim suspension powers were given to local authorities, these decisions should be for a reduced period and subject to review and used only in exceptional cases.

### Question 30

If following a 3-month review of an interim suspension, a standards committee decided to extend, do you think there should be safeguards to ensure a period of interim extension is not allowed to run on unchecked?

- Yes – there should be safeguards
- No – councils will know the details of individual cases and should be trusted to act responsibly

### Question 30a

If you answered yes to above question, what safeguards do you think might be needed to ensure that unlimited suspension is not misused?

[Free text box] *Suggest further review after six months and that interim suspension could only continue after six months if there was an ongoing police investigation involving the Councillor.*

### Question 31

Do you think councillors should be disqualified if subject to suspension more than once?

- Yes – twice within a 5-year period should result in disqualification for 5 years
- Yes – but for a different length of time and/or within a different timeframe (in years) [Number boxes]
- No - the power to suspend members whenever they breach codes of conduct is sufficient
- Any other comments [free text box] *It should be made clear that this would only apply where a Councillor has been found guilty of a breach of the code of conduct on two occasions where the appropriate sanction determined by the Standards Committee is suspension for more than 3 months on each occasion. However, the introduction of disqualification is likely to make the process more legalised.*

### Question 32

Is there a case for immediate disqualification for gross misconduct, for example in instances of theft or physical violence impacting the safety of other members and/or officers, provided there has been an investigation of the incident and the member has had a chance to respond before a decision is made?

- Yes
- No
- Unsure
- [Free text box] There may be some difficulty in how this works in practice. For instance, gross misconduct applies in an employment setting, what standard of evidence will be required? This will affect the application of this sanction and if imposed, is likely to be subject to a legal challenge.

### Question 33

Should members have the right to appeal a decision to suspend them?

- Yes - it is right that any member issued with a sanction of suspension can appeal the decision
- No – a council's decision following consideration of an investigation should be final
- Unsure

#### Question 34

Should suspended members have to make their appeal within a set timeframe?

- Yes – within 5 days of the decision is appropriate to ensure an efficient process
- Yes – but within a different length of time (in days) [15 working days]
- No – there should be no time limit for appealing a decision

#### Question 35

Do you consider that a complainant should have a right of appeal when a decision is taken not to investigate their complaint?

- Yes
- No
- Unsure

#### Question 36

Do you consider that a complainant should have a right of appeal when an allegation of misconduct is not upheld?

- Yes
- No
- Unsure

#### Question 37

If you answered yes to either of the previous two questions, please use the free text box below to share views on what you think is the most suitable route of appeal for either or both situations. [Free text box]

#### Question 38

Do you think there is a need for an external national body to hear appeals?

- Yes – an external appeals body would help to uphold impartiality

- No – appeals cases should be heard by an internal panel
- Any further comments [free text box] *It may be appropriate to use the First Tier Tribunal*

### Question 39

If you think there is a need for an external national appeals body, do you think it should:

- **Be limited to hearing elected member appeals**
- Be limited to hearing claimant appeals
- Both of the above should be in scope
- Please explain your answer [free text box] *It would be proportionate for an elected member to be able to appeal a suspension. We have not supported the concept of claimant appeals in our previous answers.*

### Question 40

In your view, would the proposed reforms to the local government standards and conduct framework particularly benefit or disadvantage individuals with protected characteristics, for example those with disabilities or caring responsibilities? Please tick an option below:

- it would benefit individuals with protected characteristics
- it would disadvantage individuals with protected characteristics
- neither Please use the text box below to make any further comment on this question. [Free text box] *The system needs to be designed so that there is adequate support for Councillors with protected characteristics such as Councillors who are neurodiverse otherwise it may prevent Councillors with protected characteristics from standing for election in the first place.*

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## STANDARDS COMMITTEE

05 February 2025

### REPORT OF THE MONITORING OFFICER

#### A.3 STANDARDS COMMITTEE – REVIEW OF STANDARDS HEARING PROCEDURE

(Report prepared by Lisa Hastings and Karen Hayes)

#### PART 1 – KEY INFORMATION

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

To present the Standards Committee with a report on the opportunity to reflect on the internal consultation recently undertaken on the Standards Hearing Procedure and to endorse further work from Officers on reviewing the associated Complaints Procedure and production of a flow chart to assist once a matter is referred for hearing.

##### **EXECUTIVE SUMMARY**

The Standards Committee framework is responsible for the function of Standards Hearing, be it whether held by the Standards Committee for District Councillor complaints or a Sub-Committee for Town and Parish Councillor complaints.

Matters reaching the Standards Hearing Procedure arise from complaints received under the Council's Members' Code of Conduct complaints procedure and follow a finding of a breach of the Members' Code of Conduct.

In April 2024 the Committee considered a proposed updated Hearing Procedure that reflected best practice and case law, and which would supplement the Council's Complaints Procedure for dealing with allegations that a Member had breached the Code of Conduct. Full Council had previously approved the Standards Framework with effect from November 2013, which included a Complaints Procedure. The Complaints Procedure made reference to the hearing in paragraph 7.1.2 and that it would follow the relevant procedures setting out how the hearing would be conducted. The purpose of the document was to ensure that all parties understood the process which would be followed at the hearing and to assist the Chairman to conduct a fair and proper hearing. When a hearing was convened, a copy of the procedures would be set out with the Report.

At its April 2024 meeting the Committee was also informed that the current Hearing Procedure had been approved by the Standards Committee in March 2014 and in consideration of the length of time since its adoption and with a Hearing that was due to be held in May 2024, it was felt important by the Monitoring Officer to ensure that the Council's procedures reflected best practice and were up to date. The Standards Committee subsequently approved the amended Hearing Procedure for immediate adoption for both the Standards Committee and the Town and Parish Councils' Sub-Committee.

The opportunity for further review of the Standards Hearing Procedure comes after a Standards Hearing was conducted in May 2024 where the procedure was utilised and put through a 'stress test', having been infrequently used as the necessity had not arisen. The Hearing Procedure did not fail and was robust in its application, however there were some

operation matters prior to the Hearing which could be addressed in the process, once a matter is referred for a hearing by the Monitoring Officer. Subsequently, informal discussion sessions have taken place with Members of the Standards Committee and Independent Persons, with their views and subsequent amendments reflected within this report and within the Standards Hearing Procedure as appropriate; whilst still reflecting the Standards Framework and Terms of Reference of the Standards Committee.

Once these proposals are considered by the Standards Committee through a formal decision, further work can be undertaken on the documentation for approval.

#### **RECOMMENDATION(S)**

**It is recommended that the Standards Committee:**

- a) notes the contents of this report and endorses the proposals as set out;
- b) requests that Officers further review the Council's Complaints Procedure, proposes amendments as necessary and produces a flowchart detailing the process following an investigation being concluded to referral for a hearing, where evidence of a breach has been found; and
- c) requests that Officers then present a revised Council's Complaints Procedure, Standards Hearing Procedure and flowchart to a future meeting of the Committee.

#### **REASON(S) FOR THE RECOMMENDATION(S)**

To present to the Standards Committee the draft amendments from the review of the Standards Hearing Procedure to ensure the Council's procedures follow best practice and case law.

#### **ALTERNATIVE OPTIONS CONSIDERED**

Not to review the Standards Hearing Procedure and retain it in its current format. This is discounted, as it is considered that operational matters to assist the process are required to ensure what is expected is clear for all parties.

### **PART 2 – IMPLICATIONS OF THE DECISION**

#### **DELIVERING PRIORITIES**

The Hearing Procedure supplements Section 7.1.2 of the Council's Complaints Procedure for Members' Code of Conduct matters.

All Hearings will be held in Public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applies, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing will be held in private.

The Members' Code of Conduct and hearings held by the Standards Committee to determine whether there has been a breach of the Code of Conduct supports the Financial Sustainability and Openness theme within the Corporate Plan for 2024-2028 adopted by Full Council at its meeting in November 2023 (minute. No.76).

Members' conduct comes within Principle A of the Council's Annual Governance Statement – behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law.

#### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

The Council has formally adopted a Complaints Procedure which sets out the Council's 'arrangements' under **Section 28(6) and (7) of the Localism Act 2011 (as contained with Part 6 of the Council's Constitution)**. 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 and 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.

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 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.

Within the Complaints Procedure, Section 7 sets out what happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct.

#### **7.1.2 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 Investigator's 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 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.

Full Council has delegated the non-executive responsibility to approve procedures for the conduct of hearings into complaints against Members to the Standards Committee (Constitutional Reference Part 3.25).

**FINANCE AND OTHER RESOURCE IMPLICATIONS**

There are no finance or resource implications associated with this report.

**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;	The Localism Act 2011 sets out the District Council's statutory duties for dealing with Members' Code of Conduct complaints.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Full Council has delegated the non-executive responsibility to approve procedures for the conduct of hearings into complaints against Members to the Standards Committee (Constitutional Reference Part 3.25).
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.	The Standards Hearing Procedure should follow best practice, natural justice and case law ensuring that the Council's resources are used in an effective and efficient manner.

**MILESTONES AND DELIVERY**

If the Committee is minded to agree with the recommendations set out in this report, Officers will present the required actions to a future meeting of the Standards Committee.

**ASSOCIATED RISKS AND MITIGATION**

Not presenting this information or keeping procedures under review, could have a detrimental impact of the Council's reputation.

**OUTCOME OF CONSULTATION AND ENGAGEMENT**

The content of this report is as a result of internal consultation conducted with Members of the Standards Committee and the Council's Independent Persons. Discussions were in depth and extremely constructive, and the high level common themes are detailed as follows:

- A pre-hearing stage be included within the procedure in order to allow sufficient time to consider the report, pose any necessary clarification questions to witnesses and if required call witnesses to the hearing, whether in person or remotely if there are geographical challenges. However, it would not be for Committee Members to challenge or further question witnesses as their accounts had been previously given to the Investigator and included within the report.
- That hearings held by the Standards Committee should remain in the current format of being heard by the whole Committee and not a Sub-Committee.
- As part of the investigation report, the opportunity should be given to the Subject Member at that time whether they wish to agree/challenge any element of the report, rather than just the opportunity to comment on the draft report as is currently the process.
- The Investigator should provide comment within the report as to whether they consider Article 10 of the Human Rights Act 1988 has been invoked and to what extent.
- Consideration was given as to whether the Subject Member should answer for themselves during the hearing, or as to whether their case be delivered entirely by their representative/third party. Additionally, if a Subject Member would/could not attend a hearing (after reasonable steps had been taken to ensure availability), as to whether the hearing should go ahead in the Subject Member's absence. If a hearing were to go ahead in the Subject Member's absence, this should not disadvantage the Subject Member.
- A sanctions report should go to Full Council at the conclusion of a hearing as standard practice, rather than this just being an option to the Standards Committee.
- That Hearing Procedure training should form part of the mandatory training required from Members to sit on the Standards Committee, rather than just a requirement of sitting on a hearing.
- If a Subject Member is intending on providing written responses/representation to the Standards Committee, that a firm time frame be imposed and that the Subject Member must advise the Committee as to any representatives (along with their details). Additionally, that any request for an extension of time is given in writing to the Chairman of the Standards Committee for their consideration.
- That an adjournment be included within the procedure to allow the Independent Person to consider their view in respect of any sanction prior to delivering this to the hearing.
- That a de-brief session should be conducted as soon as practicable at the conclusion of the hearing.
- That an opening point in the procedure for the hearing should allow for the parties to raise any preliminary issues ahead of the remainder of the procedure. This would allow those points to be addressed, considered and determined by the Committee. Legal and jurisdictional questions could be raised then and ensure appropriate advice was received by the Committee. Likewise, if any apology is offered where it had previously not been forthcoming, the hearing could proceed with that knowledge. The arrangement at the hearing of the Monitoring Officer introducing the investigation report (and its subsequent steps in the procedure) and the Committee being supported by the Deputy Monitoring Officer and Executive Projects Officer should continue.
- The allocation of three of the Independent Persons to separately support the Subject Member, the Monitoring Officer and the Committee also should be continued at future hearings.

#### **EQUALITIES**

Equality considerations are taken into account for each decision made.

<b>SOCIAL VALUE CONSIDERATIONS</b>	
Social value considerations are taken into account for each decision made.	
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050</b>	
This is taken into account for each decision made.	
<b>OTHER RELEVANT IMPLICATIONS</b>	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
<b>Crime and Disorder</b>	Not applicable
<b>Health Inequalities</b>	Not applicable
<b>Area or Ward affected</b>	No Wards would be directly impacted by this decision.
<b>ANY OTHER RELEVANT INFORMATION</b>	
None	

### **PART 3 – SUPPORTING INFORMATION**

<b>BACKGROUND</b>
<p>After the Standards Hearing held in May 2024, Members of the Standards Committee and the Council's Independent Persons have had the opportunity to review and discuss the Hearing Procedure. The feedback from the consultation was that the Hearing Procedure was 'fit for purpose', however certain elements could be amended/included to create further robustness of the procedure picking up operational matters following referral to a hearing once the investigation has concluded there is evidence of breach.</p>
<b>PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.</b>
<p>Minute no.11 Standards Committee 18 March 2014 – RESOLVED that Hearing Procedures, as set out in Appendix 1 to the report, for both the Standards Committee and the Town and Parish Councils' Standards Sub-Committee, be approved, subject to the following additional wording:</p> <p>That where District Councillors were required to make a decision in respect of a hearing, they have due regard to and take into account any views expressed by Town and Parish Councillors in reaching their decision.</p> <p>Council had approved the Standards Framework with effect from November 2013, which had included a Complaints Procedure. The Complaints Procedure made reference to the hearing in paragraph 7.1.2 and that it would follow the relevant procedures setting out how the hearing would be conducted. The purpose of the document was to ensure that all parties understood the process which would be followed at the hearing and to assist the Chairman to conduct a fair and proper hearing. When a hearing was convened, a copy of the procedures would be set out with the Report.</p> <p>At its meeting on 24 April 2024, the Standards Committee resolved to approve the amended</p>

Hearing Procedure for immediate adoption for both the Standards Committee and the Town and Parish Councils' Standards Sub-Committee.

**BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None

**APPENDICES**

**Appendix A – Hearing Procedure (revised and approved April 2024)**

**REPORT CONTACT OFFICER(S)**

<b>Name</b>	<b>Lisa Hastings</b>
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<b>Name</b>	<b>Karen Hayes</b>
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**HEARING PROCEDURE**  
**(revised and approved April 2024)**

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

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

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

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

<b><u>Item No.</u></b>	<b><u>Procedure</u></b>
<b>1</b>	<p style="text-align: center;"><b><u>Quorum</u></b></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Town or Parish Councillor a non-voting Town and Parish representative of the Town and Parish Councils' Standards Sub-Committee must be present.</p> <p>1.3. The Committee or Sub-Committee shall nominate the Chairman for the meeting in accordance with the terms of reference of the relevant Committee.</p>
<b>2</b>	<p style="text-align: center;"><b><u>Opening</u></b></p> <p>2.1 The Chairman explains that:</p> <ul style="list-style-type: none"><li>(i) The hearing has been convened in accordance with the Council's Complaints Procedure and that an investigation has been conducted, the outcome of which is that it is considered there is evidence of a failure to comply with the Members' Code of Conduct.</li><li>(ii) The Parties have been aware of the content of the Investigator's Report and this has been circulated to all Members of the</li></ul>

	<p>Committee.</p> <p>(iii) The Monitoring Officer has referred the matter for a hearing either because upon conclusion of the investigation, informal resolution has not been successful or it is not appropriate to do so, for the reasons given within the Committee Report.</p> <p>(iv) Purpose of the Hearing is to consider the Investigators Report, the evidence in support and representations from the Parties. The process of the hearing is inquisitorial, and not adversarial. Any witnesses in attendance should not be made to feel uncomfortable or that their integrity is being questioned. The purpose of the hearing is to establish the facts. Cross-examination of the Investigating Officer, the Councillor and witnesses is not permitted, all questions should be made through the Chair.</p> <p>(v) Evidence before the Committee may be given orally or by written statement. At any stage during the proceedings the Committee can request the attendance, in person or joining remotely, of any person making a written statement or any other person they consider will be able to assist them, but the Committee has no power to require the attendance of any person.</p> <p>(vi) The Standards Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.</p> <p>(vii) If the Committee or Sub-Committee depart from the recommendation from either the Investigating Officer and/or Monitoring Officer detailed reasons are required and published in the Decision Notice.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p>
<p><b>3</b></p>	<p style="text-align: center;"><b><u>The Complaint</u></b></p> <p>3.1 The Investigating Officer or Monitoring Officer shall be invited to present their report including:</p> <ul style="list-style-type: none"> <li>(i) any documentary evidence or other material;</li> <li>(ii) call such witnesses as considered necessary; and</li> <li>(iii) make representations to substantiate the conclusion that the Councillor has failed to comply with the Code of Conduct</li> </ul> <p>This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>It is only under 3.1 (ii) that the Complainant will take part in the hearing.</p> <p>3.2 The Councillor (or their representative) may question:</p>

	<p>(i) the Investigating Officer upon the content of their report and/or;  (ii) any witnesses called by the Investigating Officer.</p> <p>This is the Councillor's opportunity to ask questions rising from the Investigators report and not to make a statement.</p> <p>3.3 Members of the Committee or Sub-Committee may question:</p> <p>(i) the Investigating Officer upon the content of their report and/or  (ii) any witnesses called by the Investigating Officer.</p> <p>This is the Committee or Sub-Committees' opportunity to ask questions rising from the Investigators report and not to make statements.</p>
<p><b>4</b></p>	<p style="text-align: center;"><b><u>The Councillor's case</u></b></p> <p>4.1 The Councillor (or their representative) may:</p> <p>(i) present their case;  (ii) call any witnesses as required by the Councillor or their representative and  (iii) make representations as why they consider that they did not fail to comply with the Code of Conduct.</p> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Committee or Sub-Committee may question the Member and/or any witnesses.</p> <p>In all instances, only questions will be permitted relating to the allegation and the Councillor's case and no statements should be made.</p>
<p><b>5</b></p>	<p style="text-align: center;"><b><u>Summing Up</u></b></p> <p>5.1 The Investigating Officer may sum up the Complaint.</p> <p>5.2 The Councillor (or their representative) may sum up their case.</p>
<p><b>6</b></p>	<p style="text-align: center;"><b><u>Decision</u></b></p> <p>6.1 Members of the Committee or Sub-Committee will deliberate in private to consider the complaint (if required, in consultation (*) with the Independent Person) prior to reaching a decision.</p> <p>(*) Note any consultation with the Independent Person must be undertaken in</p>

the open session so all parties can hear their views.

6.2 Upon the Committee or Sub-Committee's return the Chairman will announce the Committee or Sub-Committee's decision in the following terms:-

- (i) The Councillor has failed to comply with the Code of Conduct; or
- (ii) The Councillor has not failed to comply with the Code of Conduct

The Committee or Sub-Committee will give detailed reasons for their decision, which will be included within the published Decision Notice.

6.3 If the Committee or Sub-Committee decides that the Councillor has failed to comply with the Code of Conduct they will then consider any representations from the Investigator and/or the Councillor as to:

- (i) The appropriate sanction, as set out in Section 8 of the Complaints Procedure.
- (ii) Based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.

6.4 The Committee or Sub-Committee is required by law to do so in consultation (\*) with the Independent Person. (\*) Note any consultation with the Independent Person must be undertaken in the open session so all parties can hear their views.

6.5 The Committee or Sub-Committee will then deliberate in private to consider what action, if any, should be taken.

6.6 On the Committee or Sub-Committee's return the Chairman will announce the Committee or Sub-Committee's decision as to what actions they resolve to take (in relation to a Town or Parish Councillor a recommendation to their Council).

6.7 The Committee or Sub-Committee will consider whether it should make any specific recommendations to the Council or in relation to a Town or Parish Councillor to their Council with a view to promoting and maintaining high standards of conduct among Members.

6.8 The Chairman will confirm that a full written Decision Notice shall be issued within 7 working days following the hearing and that the Committee or Sub-Committee's findings will be published on the Council's website and reported to the next full Council.

# Agenda Item 8

<b>TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE FEBRUARY 2025</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
<b>Existing Cases from last update:</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
DISTRICT	METROPOLITAN BOROUGH COUNCILLOR – received 18 August 2023	Hearing held on 16 May 2024  Sanctions not fully complied with	Standards Hearing – determined breach of Code of Conduct – Committee sanctions published on Council’s website	Matter relates to behaviour whilst acting in an official capacity.  Following the meeting of the Standards Committee in October 2024, the Chairman as requested by the Committee wrote to the Subject Member to which no response has been received.  In presenting this item, options available will be covered by the Monitoring Officer during the meeting.
PARISH	PARISH COUNCILLOR – received 08 May 2024	CLOSED – 18 Oct 2024	Informal resolution	Matter relates to behaviours within the Parish Council between multiple Councillors. Code of Conduct training conducted, however there may be a need to provide further support.
TOWN	PUBLIC - received 05 Jun 2024	ONGOING - INVESTIGATION	Investigation – externally appointed Investigator	Matter relates to behaviour whilst acting in an official capacity.  A draft report has been received and submitted to parties for comment.
PARISH	PUBLIC – received 23 Sep 2024	CLOSED – 21 Oct 2024	No further action	Matter relates to behaviour whilst acting in a non-official capacity, therefore the Code of Conduct was not engaged.
DISTRICT	PUBLIC – received 30 Sep 2024	CLOSED – 28 Oct 2024	No further action – decision by former Deputy	Matter related to behaviour whilst acting in an official capacity and behaviours between District Councillors. It was

			Monitoring Officer	considered there was a lack of evidence to support the complaint proceeding.
DISTRICT	PUBLIC – received 02 Oct 2024	CLOSED – 29 Nov 2024	No further action	Matter related to acting within a Ward Member's responsibility and in accordance with the Council's Procedures.
PARISH	PARISH COUNCILLOR – received 21 Oct 2024	CLOSED – 18 Dec 2024	Informal resolution was offered to both parties, but only accepted by one	Matter relates to behaviour whilst acting in an official capacity and behaviours between Parish Councillors.  The Subject Member attended a reflective session with the Monitoring Officer.  The Complainant did not wish to proceed any further.
TOWN	PUBLIC – received 05 Dec 2024	ONGOING	Investigation to be commenced	Matter relates to use of social media.
TOWN	PUBLIC – received 05 Dec 2024	ONGOING	Pending	Matter relates to public statements on the Town Council's website.
PARISH	PARISH COUNCILLOR – received 18 Dec 2024	CLOSED – 07 Jan 2025	No further action	Subject Member resigned from Parish Council.

**New Cases since last update - four**

**General Notes – 2024/25 Summary:**

Overall nine cases have been received so far in 2024/25. Since the last update, one case resulted in Code of Conduct training being conducted, one remains being investigated by an externally appointed investigator, one has been appointed to an internal investigator, five were closed with no further action as there had not been a breach of the Code of Conduct and one remains ongoing.

**Requests for dispensations:**

There have been eight requests for dispensations during this period.