



## STANDARDS COMMITTEE

<b>DATE:</b>	<b>Thursday, 24 October 2024</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: Wednesday, 16 October 2024

## 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 7 - 56)**

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Thursday 16 May 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 - Independent Persons Recruitment (Pages 57 - 100)**

To enable the Committee to comment on Independent Persons' recruitment pack prior to advertisement and to determine the representatives of the Standards Committee on the interview panel.

### **6 Report of the Monitoring Officer - A.2 - Review of Tendring District Council's Members' Planning Code & Protocol (Pages 101 - 124)**

To enable the Committee to consider the results of the review of the Planning Protocol carried out by the Monitoring Officer and her Team.

To seek 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.

### **7 Report of the Head of Democratic Services & Elections - A.3 - Town & Parish Councils' Standards Sub-Committee - Appointment of Tendring District Council Members (Pages 125 - 126)**

To enable the Committee to appoint Tendring District Council's members to serve on the Town and Parish Councils' Standards Sub-Committee for the remainder of the 2024/2025 Municipal Year.

**8 Revised Work Plan 2024/25 (Pages 127 - 128)**

To enable the Committee to give further consideration to its Work Plan for the 2024/25 Municipal Year. The work plan has 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.

**9 Complaints Update (Pages 129 - 130)**

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, 5 February 2025.*

## **Information for Visitors**

**FIRE EVACUATION PROCEDURE**

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**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,  
HELD ON THURSDAY, 16TH MAY, 2024 AT 10.06 AM  
IN THE COMMITTEE ROOM, AT THE TOWN HALL, STATION ROAD, CLACTON-  
ON-SEA, CO15 1SE**

<b>Present:</b>	Councillors Wiggins (Chairman), Alexander, Baker, Land, Newton and Talbot
<b>Also Present:</b>	Councillors Harris (except items 15 - 20) and Turner
<b>In Attendance:</b>	Lisa Hastings (Assistant Director (Governance) & Monitoring Officer), Keith Simmons (Head of Democratic Services and Elections & Deputy Monitoring Officer), Ian Ford (Committee Services Manager), Karen Hayes (Executive Projects Manager (Governance)), Keith Durran (Committee Services Officer) and James Dwan (Communications Officer)
<b>Also in Attendance:</b>	Carol Cannon (representing Councillor Turner), Tony Cannon (representing Councillor Turner), Sue Gallone (Independent Person), David Irvine (Independent Person), Ian Taylor (representing Councillor Turner) and Jane Watts (Independent Person)

**1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Councillor Jo Henderson (with no substitute) and Councillor Ann Oxley (with Councillor Andy Baker substituting). In addition, an apology for absence was submitted on behalf of Clarissa Gosling, one of the Council's Independent Persons.

**2. MINUTES OF THE LAST MEETING**

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

**RESOLVED** that the Minutes of the meeting of the Committee held on Wednesday 24 April 2024 be approved as a correct record and be signed by the Chairman.

**3. DECLARATIONS OF INTEREST**

Councillor Baker declared for the public record that he had had, in general terms only, a conversation with Councillor Turner about the Investigation into Councillor Turner's alleged misconduct. This conversation had been several months ago. He confirmed that he did not consider himself pre-determined and that therefore he would remain in the meeting and take part in the Hearing.

Councillor Alexander declared for the public record that he was personally acquainted with Mr and Mrs Cannon (advocates for Councillor Turner) through shared political affiliations solely. He confirmed that he did not consider himself pre-determined and that therefore he would remain in the meeting and take part in the Hearing.

Councillors Alexander, Baker, Land, Talbot and Wiggins were all acquainted with Ian Taylor (an advocate for Councillor Turner) through his previous employment as an Officer with Tendring District Council. None of those Members considered themselves

pre-determined and they therefore remained in the meeting and took part in the Hearing.

**4. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

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

**5. REPORT OF THE MONITORING OFFICER - A.1 - REPORT OUTCOME OF MEMBERS' CODE OF CONDUCT INVESTIGATION**

It was reported that a complaint had been received in August 2023 from Councillor Ernest Gibson (“the Complainant”), an elected Member of South Tyneside Council and the Chairman of the Local Government Association’s Coastal Special Interest Group, regarding the alleged behaviour of District Councillor Nick Turner under this District Council’s Members’ Code of Conduct. That Code of Conduct was attached as Appendix A to the Monitoring Officer’s report (A.1).

Members were aware that the Local Government Association (“LGA”) was the national membership organisation for Principal Councils. In view of the diversity of Councils in membership of the LGA, it had a number of Special Interest Groups (“SIG”). Through those SIGs, all Councils with common characteristics could form groupings to express a sectional interest. The LGA website indicated that it had 21 SIGs at present. The LGA expected SIGs to have at least 10 Councils in membership. SIGs were able to speak for their interests as part of the LGA provided their policies or statements did not conflict with, or undermine, LGA policy as a whole, or damage the interests of other member authorities. SIGs were able to make representations direct to Government and elsewhere on matters arising directly from their special interest, and to obtain LGA assistance in doing so. The LGA Coastal SIG existed to champion the collective interests of coastal communities by increasing awareness and debate on environmental, economic and social issues at all levels in relation to the coast. It had a membership of 57 coastal local authorities. Together it covered 60% of England’s coastline and served 16 million people.

The Committee was informed that the aforementioned Complaint had been submitted on 16th August 2023 and referred to the alleged behaviour of Councillor Turner at two virtual meetings of the SIG held on 5th June and 29th June 2023, in that Councillor Turner had contravened this Council’s Members’ Code of Conduct. Councillor Turner was the sole attendee at those meetings from Tendring District Council.

Members were reminded that complaints received relating to the Code of Conduct must be dealt with in accordance with the Council’s formally adopted Complaints Procedure, as set out in Part 6 of the Council’s Constitution (Part 6.19 to 6.34). The Complaints Procedure was attached as Appendix B to the Monitoring Officer’s report (A.1), which had been adopted by full Council on 26th November 2013.

Pending completion of an Investigation of the complaint, the Committee was informed that the then Leader of the Conservative Group, Councillor G Guglielmi, had suspended Councillor Turner from the Conservative Group and had removed him from Committees whilst the investigation took place. The Leader of the Council had done the same with regard to outside bodies. Since that time, Councillor Turner had left the Conservative



Political Group on the Council and had sat as a non-aligned Councillor (i.e. not within a Political Group).

The Committee was made aware that, on 25th August 2023, the Monitoring Officer had decided that it was reasonable and appropriate that the Complaint merited further investigation. The parties had been informed of this decision and that an external investigator would be appointed. Section 5 of the Council's Complaints Procedure set out how an investigation should be conducted and under Section 5.6 that the Investigation Report must contain a conclusion as to whether the evidence supported a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure set out the Investigation Procedure.

It was reported that, Mr Melvin Kenyon, of Kenyon Brabrook Ltd, had been appointed by the Monitoring Officer as the external investigator for this complaint. Following a thorough investigation, Mr Kenyon had concluded that there was sufficient evidence to show that Councillor Turner, based on a balance of probabilities and the evidence available, had breached Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Council's Code of Conduct. This conclusion was set out in Mr Kenyon's Investigation Report.

Members were advised that all parties had had the opportunity to comment on the Investigation Report and the findings contained therein. The report had been finalised on 10th January 2024.

The Committee was reminded that, if an investigation concluded that there was evidence of a failure to comply with the Code of Conduct, then the Council's Complaints Procedure at Section 7.1 provided the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, where it could reasonably be resolved without the need for a hearing by the Standards Committee.

Although the procedure did not require consultation with an Independent Person if the Monitoring Officer considered that informal resolution was not an appropriate course of action, and that the matter should therefore be referred for a hearing before the Standards Committee, it had been considered that seeking their view on this occasion was beneficial prior to making the decision. The Monitoring Officer had noted that Councillor Turner had offer an apology at the outset, when the complaint had been initially received however, the Monitoring Officer's thoughts had been captured in the Decision Notice dated 25th August 2023, being as follows:-

*"Whilst it is acknowledged that Councillor Turner has resigned from the LGA's Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Cllr Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated."*

Having read the Investigation Report, the Monitoring Officer had noted that Councillor Turner had offered a further apology for offence caused by his actions, which he had described as unintended and unconscious on his part. However, the Monitoring Officer had not consider these as being appropriate or proportionate and she had therefore determined to refer the matter to the Standards Committee for a hearing to be undertaken by Members.

Hearing & Decision:

In summary, the Standards Committee conducted a hearing under the Council's adopted Hearing Procedure before deciding whether the Member had failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

In accordance with paragraph 7.1.2 of the Council's Complaints Procedure the Investigator's Report had been kept confidential, until the day of the hearing in order to protect the parties.

Procedures relating to the hearing were set out within the body of the Monitoring Officer's report (A.1) and attached as Appendix C thereto. All Hearings would be held in public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applied, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing would be held in private.

With regard to the exclusion of the press and public from this Hearing, the Council's Monitoring Officer's advice was as follows:-

*"Acting in accordance with paragraph 7.1.2 of the Council's Complaints Procedure the Investigator's Report will only be kept confidential and remain in Part B, until the day of the Hearing to protect the parties. The Committee is required to decide whether to pass a resolution "under Section 100A(4) of the Local Government Act 1972, for the press and public to be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act". In making the decision, the Committee will give consideration to, whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article (as set out in Part 5 of the Council's Constitution - Access to Information Procedure Rules Part 5.4 to 5.6). Consequently, it is recommended that the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator's Report in Public."*

It was also pointed out that, should the Standards Committee determine that the Member had failed to comply with the Code of Conduct they had the power to take action in respect of that Member as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. The actions available to the Standards Committee were set out in Paragraph 8.1 of the Complaints Procedure.

The Monitoring Officer also presented an update which had been prepared and circulated following publication of the public documentation pack:for this meeting as follows:-

**"AGENDA Item No. 5 – REPORT OF THE MONITORING OFFICER - A.1 – Report Outcome of Members' Code of Conduct Investigation (Pages 17-172)**

**Standards Committee Hearing training – page 24**

**PART 4 - COUNCIL PROCEDURE RULES:**

### **33.3 Training Members of the Audit, Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees**

*In addition to specific training required as and when necessary, training shall be provided to all Members appointed to the ... Standards Committees on an annual basis at an appropriate date and time after each annual meeting of the Council and such training shall be mandatory. The Monitoring Officer ... decides whether the training offered/provided is/was sufficient and "fit for purpose".*

*A Member cannot sit as a member of the Standards Committee unless they have received specific training with regard to the Hearings Procedure and participation in Hearings.*

#### **All District Councillors Attended the Mandatory Code of Conduct Training delivered by the Monitoring Officer in June/July 2023.**

*Specific Standards Committee Hearing training was conducted on 17 January 2024 by Hoey Ainscough Associates Ltd, an external local governance support resource for all tiers of Local Government. The training was conducted for Standards Committee Members, Independent Persons and Officers. A recording of the training session was made, and those Members and Independent Persons who were unable to attend the training session, have viewed the full recording and confirmed this in writing.*

#### **All Members of this Standards Committee, including named Substitute Members and Independent Persons, have completed the training.**

#### **The Monitoring Officer's advice with regards to the Exclusion of the Press and Public – page 30**

*Confirmation that the advice as set out on page 30 of the Agenda pack applies to the additional information and updates which have been circulated to Standards Committee Members and the Subject Member, Councillor Turner on blue pages and currently held in Part B.*

*While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights, as the outcome of any hearing will not impact upon the rights of a councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice. A hearing is like any other committee of the Council. The rules around access to information also apply as they do to other committees – in that the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.*

*The Guidance on Member Model Code of conduct Complaints Handling published by the LGA, states under its hearing section, "the panel (referring to the Committee) should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that Members of the public, and Councillors have confidence in its procedures and findings. Decisions should be seen as open, unprejudiced and unbiased".*

*Councillor Turner was asked whether he wished to request any part of the hearing to be held in private, and wants any part of the investigation report to be withheld. He*

*confirmed he wished the Investigators Report to be retained within Part B and therefore, Councillor Turner should be able to make representations on this point to the Committee before consideration of exclusion of the press and public.”*

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

**RESOLVED** that the Standards Committee:-

- (a) notes the contents of the report (A.1) in readiness for deciding whether to exclude the press and public before a Hearing is undertaken; and
- (b) notes the Monitoring Officer’s advice in respect of the exclusion of the Press and Public, as contained within the aforementioned report.

## **6. EXCLUSION OF PRESS AND PUBLIC**

Members were requested to consider passing the following resolution:-

*“That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act.”*

The Committee, earlier on in the meeting (under Minute 5 above) had duly noted the Monitoring Officer’s Advice (as set out in her A.1 Report) namely: *“That the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator’s Report in Public.”*

Ian Taylor, acting on behalf of Councillor Turner, made the following representation:-

*“Councillor Turner has asked that this Hearing be conducted in Part B on the grounds that he’s already suffered quite considerably as a result of these allegations being made and the subsequent investigation. He’s lost his attendance at Committee, he’s had his Party whip withdrawn from and he’s already had his role as a Councillor severely reduced on the back of this allegations. I think that he would prefer just to trust to this Committee in its open and independent hearing to make a decision before we release any press release or any statements to the public. He thinks that’s fair, we think that’s fair and that’s the way we’d like to proceed.”*

The Head of Democratic Services and Elections (Keith Simmons) referred to paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Local Government Act 1972 and asked Mr. Taylor if he had any specific representations to make as to the applicability of those paragraphs.

Mr. Taylor responded as follows:-

*“The information that we’d like withheld from the public at the moment is the allegation that Councillor Turner is a racist which comes out in many of the statements involved in this. We think that is a matter, which should stay private until it has proven to be true.”*

The Chairman (Councillor Wiggins) adjourned the meeting at this time whilst the Committee retired to deliberate this matter. The Head of Democratic Services and

Elections and the Executive Projects Manager – Governance (Karen Hayes) retired with the Committee to support the Committee Members in those deliberations.

Following the resumption of the meeting, the Chairman read out the following statement:-

*“The Committee has considered the resolution set out in the Agenda at item 6 namely:-*

*‘That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act.’*

*Whether to exempt material and consideration of a matter under the exempt provisions referred to is a discretion for local authorities. It is not a requirement. In considering the resolution in the agenda the Committee has been made aware that paragraph 1 of Schedule 12A concerns information relating to any individual. Here exempt information is in this category if, and so long, as all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. By way of example – names, addresses, telephone numbers can identify individuals. When considering any information relating to an individual the Committee will also consider the Council’s Data Protection Act responsibilities. And paragraph 5 of the same schedule concerns information in respect of which a legal or a claim to legal professional privilege could be maintained in legal proceedings. Here exempt information falls in the category if, and for so long, in the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Privilege lies with the client, which broadly is the Council. The Monitoring Officer’s advice as set out in the A1 report:-*

*‘Acting in accordance with paragraph 7.1.2 of the Council’s Complaints Procedure the Investigator’s Report will only be kept confidential and remain in Part B, until the day of the Hearing to protect the parties. The Committee is required to decide whether to pass a resolution “under Section 100A(4) of the Local Government Act 1972, for the press and public to be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act”. In making the decision, the Committee will give consideration to whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article (as set out in Part 5 of the Council’s Constitution - Access to Information Procedure Rules Part 5.4 to 5.6). Consequently, it is recommended that the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator’s Report in Public.’*

*From the update sheet:-*

*‘Confirmation that the advice as set out on page 30 of the Agenda pack applies to the additional information and updates which have been circulated to Standards Committee Members and the Subject Member, Councillor Turner on blue pages and currently held in Part B.*

*While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights, as the outcome of any hearing will not impact upon the rights of a councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice. A hearing is like any other committee of the Council. The rules around access to information also apply as they do to other committees – in that the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.*

*The decisions should be seen as open, unprejudiced and unbiased.'*

*Councillor Turner was asked whether he wished to request any part of the hearing to be held in private, and wants any part of the investigation report to be withheld. He confirmed he wished the Investigator's Report to be retained within Part B and therefore, the Committee received representations on behalf of the Subject Member (Councillor Turner).*

*Having considered all relevant matters the Committee concluded that the public interest in the disclosure of the information around the individuals referenced in the report at item 7 on the Agenda and the information in which a claim to legal professional privilege in the same report outweighed the public interest in withholding that disclosure. As such, the Committee does not approve the resolution at Agenda item 6. As a consequence of this the report at item 7 shall be placed in the public domain to facilitate the physical placing of the report in the public gallery and the access to the same via the Council's website. The Committee shall adjourn for up to 15 minutes and then continue with consideration of that report and the remaining items on the agenda associated with this hearing."*

It was then moved by Councillor Baker, seconded by Councillor Newton and:-

**RESOLVED** that the exclusion of the press and public resolution be not passed, in order to enable the meeting to now proceed with the Investigator's report and the rest of the Agenda items heard in public.

The Chairman then adjourned the meeting to enable the Investigator's report and other related documents to be placed in the public domain through the physical placing of the report et cetera in the public gallery and the access to the same via the Council's website.

Upon the resumption of the meeting and upon being asked by the Chairman, the Committee Services Manager (Ian Ford) confirmed that the Investigator's report and other related documents had been placed in the public domain through the physical placing of the report et cetera in the public gallery and that it had been made accessible to the same via the Council's website.

## **7. REPORT OF THE MONITORING OFFICER - B.1 - INVESTIGATOR'S REPORT & FINDINGS**

The Committee was aware that Mr. Melvin Kenyon, of Kenyon Brabrook Ltd, had been appointed as the external investigator into the complaint against Councillor Nick Turner. The complaint and the Monitoring Officer's Decision Notice had been used to define the scope of the investigation (as set out in Section 5 of the Investigation Report).

Councillor Turner's initial response to the Complaint was included at section 5.2 of the Investigation Report.

Following a thorough investigation (the approach and formal interview methodology was set out in Section 6 of the Investigation Report) it had been concluded that there was sufficient evidence to show that Councillor Turner, based on a balance of probabilities and the evidence available, had breached Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Council's Code of Conduct.

Both parties had had the opportunity to comment on the draft Investigation Report and the findings contained therein. Through consideration of the draft report, Councillor Turner had not indicated that he disputed the contents, the evidence presented or that he would wish to make further representations to those included within his interview. Councillor Turner's response was set out in Section 6.3 of the Investigation Report. The Investigation Report had been finalised on 10<sup>th</sup> January 2024 and had been formally sent to Councillor Turner on 23<sup>rd</sup> February 2024.

If an investigation concluded that there was evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 7.1 provided the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, where it could reasonably be resolved without the need for a hearing by the Standards Committee.

Although the procedure did not require consultation with an Independent Person if the Monitoring Officer considered that informal resolution was not an appropriate course of action, and that the matter should be referred for a hearing before the Standards Committee, it had been considered, by the Monitoring Officer that, on this occasion, seeking their view would be beneficial, prior to making the decision. That communication and its response had been as follows:-

From Lisa Hastings, Monitoring Officer to Independent Person (Jane Watts) via email on 25<sup>th</sup> January 2024:

*"Dear Jane,*

*Further to Karen's email and to progress to the next stage of the process, in respect of the complaint against Cllr Turner, I am required to decide either to refer the matter for a hearing before the Standards Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation. I have included the relevant extracts from the procedure for ease of reference*

*Although the procedure does not require me to consult an Independent Person if I consider that informal resolution is not an appropriate course of action, and that the matter should be referred for a hearing before the Standards Committee, I feel seeking your views would be beneficial.*

*Councillor Turner offered an apology at the outset, when the complaint was received, however, at the time I considered this to be an apology which did not demonstrate being sorry for the alleged conduct, it appeared more about that others were offended by his actions and a lack of the impact of those behaviours. Throughout the investigation, Councillor Turner has offered further apologies and these are captured within the Investigator's Report however, again, I do not consider these to be sufficient to recognise the seriousness and scale of the complaint, the national platform on which the behaviours were witnessed, the number of agencies involved and the potential damage*

*to Tendring District Council. There is no acceptance of the Code of Conduct, breaches thereof, even having seen the final report and an apology has not been given to TDC. Therefore, in the circumstances, I feel that it is not appropriate to seek a further apology but to refer the matter to the Standards Committee for a hearing to be undertaken by Members.”*

Reply from Independent Person (Jane Watts) to Monitoring Officer via email on 25<sup>th</sup> January 2024.

*“Dear Lisa,*

*Having read the investigator's report, I am in complete agreement with you - I don't think either mediation or an informal resolution is appropriate in this case.*

*I don't think Councillor Turner believes that his conduct needs to change; he seems to think that others are too sensitive if they find him disrespectful, overbearing or are offended by what he says.*

*Kind regards,  
Jane”*

Councillor Turner and the Complainant had been subsequently notified that the Monitoring Officer had exercised her discretion to refer the matter to the Standards Committee so that the Investigation Report could be considered by Members through the hearing process. Upon receipt of the notification that a Hearing was required and of a copy of the Hearing Procedures, Councillor Turner had requested the Investigator to call witnesses in support of his report. This had not been considered necessary, however, witness statements had been provided for the following witnesses and those statements were attached as Annexes 1-9 to the Monitoring Officer's report (B.1) i.e.

- *Annex 1 – witness statement of Cllr Ernest Gibson, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor*
- *Annex 2 – witness statement of Sidonie Kenward, Marine and Terrestrial Planner at the Marine Management Organisation*
- *Annex 3 – witness statement of Beccy MacDonald-Lofts, Lead Officer the LGA Coastal Special Interest Group*
- *Annex 4 – witness statement of Ross MacLeod, Public Affairs Manager (Water Safety), RNLI*
- *Annex 5 – witness statement of Rhys Hobbs, Environmental Resilience and Adaptation Manager, Cornwall Council*
- *Annex 6 – witness statement of Cllr Derek Bastiman, Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor*
- *Annex 7 – witness statement of Alysha Stockman, Partnerships Engagement Support Officer at East Suffolk Council*
- *Annex 8 – witness statement of Cllr Noel Galer, Great Yarmouth Councillor*
- *Annex 9 – witness statement of Nick Hardiman, Expert Adviser – Coast National FCRM at the Environment Agency*

Councillor Turner had then requested that the following witnesses be called, on his behalf, so that his team could question them at the hearing. Requests had been duly sent, however, all of them who had responded had declined to attend, wishing to rely on their written statements only. Beccy Macdonald-Lofts however, had agreed to answer



any written questions from Councillor Turner, the Chairman of the Committee or the Committee itself. Councillor Turner had been provided with that information.

<b>WITNESS</b>	<b>ORGANISATION</b>	<b>RESPONSE</b>
<b>Sidonie Kenward</b>	Senior Marine Planner, Marine Management Organisation	Thank you for the opportunity to attend however I politely decline. My detailed statement covers everything.
<b>Ross MacLeod</b>	Public Affairs Manager (Water Safety), RNLI	Thanks for the email and apologies for the delay. After careful consideration I've decided to politely decline Cllr Turner's request to attend the hearing as I don't have anything further to add to the information already provided.
<b>Beccy MacDonald-Lofts</b>	Lead Officer, Local Government Association Coastal Special Interest Group  Co-Secretariat All Party Parliamentary Group for Coastal Communities	Unfortunately, I will be away attending a conference in Blackpool on that day and so it is looking very unlikely that I will be able to attend. However, if Cllr Turner, the Chair or Committee have any questions for me please do feel free to send them over and I will send you a written response.
<b>Councillor Gibson</b>	South Tyneside Council	No response received
<b>Councillor Bastiman</b>	Conservative member of North Yorkshire Council	No response received
<b>Councillor Noel Galer</b>	Great Yarmouth Councillor	No response received
<b>Nick Hardiman</b>	Expert Adviser – Coast National FCRM at the Environment Agency	No response received
<b>Rhys Hobbs</b>	Environmental Resilience and Adaptation Manager, Cornwall Council	No response received

The Committee was advised that the Investigation report should be treated as an explanation of all the essential elements of the case and a justification for why the Investigation had concluded that there had been a breach of the Code of Conduct or not. The report should cover the agreed facts, any disputed facts, whether those facts amounted to a breach of the Code or not; and the reasons for reaching that conclusion. In many cases, the Committee might not need to consider any evidence other than the Investigation Report and any other supporting documents. However, the Committee might need to hear from witnesses if more evidence was needed, or if people did not agree with certain findings of fact in the report.

The Standards Committee must also determine whether, having considered the report and the evidence presented, Councillor Turner was acting 'in capacity', despite the Council having no formal record of him being appointed to the LGA Coastal SIG as an Outside Body on behalf of Tendring District Council.

Should the Standards Committee, following consultation with the Independent Person determine, on a balance of probabilities that Councillor Turner had failed to comply with the Members' Code of Conduct, they had the power to take action as may be relevant, proportionate, and necessary to promote and maintain high standards of conduct. The actions available to the Standards Committee were set out in Paragraph 8.1 of the Complaints Procedure, which had been included within the A1 Report.

The Monitoring Officer's report (B.1) also provided the Committee with information and advice in relation to the following pertinent matters:-

- Members' Code of Conduct and specifically paragraphs 1.1, 1.2, 2.3 and 5.1;
- the key principles of any investigation: proportionality; fairness; transparency; and impartiality;
- Human Rights Act 1998 (Section 6);
- Article 10(1) of the European Convention on Human Rights including the pertinent judgement of Hickinbottom J in *Heesom v Public Services Ombudsman for Wales*;
- Guidance on the LGA Model Councillor Code of Conduct (2021) especially in relation to respect, discrimination and disrepute; and
- LGA Guidance on Member Model Code Complaints Handling (2021) and specifically the presentation of evidence.

An update sheet had been circulated to all parties prior to the commencement of the meeting, which stated:-

*"AGENDA Item No. 7 – REPORT OF THE MONITORING OFFICER - B.1 – Report Outcome of Members' Code of Conduct Investigation (Pages 5-122)*

*Two packs of additional material has been sent to Members of the Standards Committee, Independent Persons and the Subject Member, Cllr Turner.*

*(i) Additional Private Documentation Pack containing the recorded text of Cllr Turner's interview with the Investigator (Melvin Kenyon) (page 5-11)*

*Cllr Turner's defence submission (page 13-27)*

*(ii) Response of Beccy MacDonald-Lofts to questions posed to her, through the Chair of the Standards Committee, by Cllr Turner*

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The following are verbal updates from the Monitoring Officer, which will be delivered during the above meeting of the Standards Committee:

(iii) The following clarification question was received from Cllr Newton on 12 May 24, which is detailed as follows:

*'I just wanted to point out that on page 26 on the public agenda under the heading Councillor's Response, 4th line down reads "he obviously didn't understand the modern mind" Yet in the Part B page 39 5.2 Subject Member Response 8th line down it reads " I truly do understand the modern mind" which of these statements are correct? Is this an oversight?'*

The Monitoring Officer has supplied the following response:

*'Thank you for your email and being so thorough with your reading. You are correct in that the extract from Cllr Turner's response on 18th August 2023 (page 39 on Blue Pages states "I truly do understand the modern mind". My summary in the Part A report comes from the words he used in the interview with the Investigator, which was as follows:*

*"As I said in my email, "I am shocked at how what I said can be so misconstrued" and "I truly do not understand the modern mind". I stand by what I wrote in that email – I have read it back several times to myself – it was an instant response and I thought that was what was required. I don't comprehend this, I find it appalling, it shuts down conversation."*

*Therefore, the email from Cllr Turner on 18th August did miss out the word 'not' but he used 'not' in his interview, which is confirmed in the statement I have just circulated to the Committee. Thank you for highlighting this and we will make reference to this in the update sheet.'*

(iv) Legal Requirements - Hearing Procedures - page 10 of the Part B report

Councillor Turner was provided (on 7th May 2024) with the revised Hearing Procedures approved by the Standards Committee on 24th April 2024 and he was requested to confirm the following information in writing:

1. Whether he would wish to be represented at the hearing and if so, by whom;

Response: I will have 3 representatives and awaiting confirmation as I type.

Note: No further information has been provided.

2. Whether he disagreed with any of the findings of fact in the investigation report, including reasons for any of these disagreements;

Response: We consider there are few, if any findings of fact within the report. The concerns revolve around omissions in the report and where the witnesses have made statements without any backing evidence.

Note: no matters of dispute were provided at the draft report stage.

3. *Whether he would wish to give evidence to the hearing, either verbally or in writing;*

*Response: Yes, I have attached my written defence submission for circulation to the committee in good time for the meeting.*

*Note: previously circulated to the Members of the Committee on Friday 10th May*

4. *Whether he would wish to call relevant witnesses to give evidence to the Standards Committee;*

*Response: We have requested that witnesses attend so that we can establish the robustness of their evidence, but they have all declined including it would appear the complainant who, as yet, has not responded, making the procedure inherently unfair to myself under 'Natural Justice. I have attached a list of questions for Ms McDonald-Lofts to answer in writing as offered.*

*Note: questions and responses circulated to all parties.*

5. *Whether he would request any part of the hearing to be held in private;*

*Response: Exclusion of Press and Public - in private*

*Note: no reasons provided*

6. *Whether he would request any part of the investigation report or other relevant documents to be withheld from the public.*

*Response: To be withheld*

(v) *The Human Rights Act 1988 - Article 10, Freedom of Expression - page 10 of the Part B report Standards Committee members requested the complete wording for Article 10 to be provided:*

*"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

*The three stage process set out on page 10 of the Part B report, used by Wilkie J in Sanders No. (1) (at [72], and by Beatson J in Calver (at [39]) was also referenced in Robinson, R (On the Application Of) v Buckinghamshire Council, <https://www.bailii.org/ew/cases/EWHC/Admin/2021/2014.html> when considering domestic authorities on the application of Article 10 ECHR to decisions of standards bodies under the previous statutory scheme.*

*The principal basis of the challenge was that the decision was in breach of section 6 of the Human Rights Act 1998, as it violated Cllr Robinson's right to freedom of expression under Article 10 of the European Convention on Human Rights. In the High Court, Mrs Justice Lang concluded that the claim should succeed.*

*Paragraph 74:*

*The Deputy Monitoring Officer [who was the decision maker in this case] failed to refer to the statements made by the Claimant and given the importance that was placed upon his statements, for the purposes of the Code and Article 10, it was considered a significant failing in the assessment and decision-making process. It was not possible to say what a difference it would have made to the outcome if this exercise had been properly undertaken.*

*Paragraph 94:*

*"In conclusion, I find the DMO's interpretation and/or application of Article 10 flawed, and she failed to give effect to the Claimant's enhanced right of political expression. In re-making the decision under Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the PC to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful and offensive".*

*It is therefore important that in reaching its decision the Standards Committee record their findings and undertake the required assessments by following the three stage process as set out in the Wilkie J (where it was concluded, following applying Article 10(2) to the facts of the case, the Appellant's words were no more than expressions of personal anger and abuse and did not constitute political expression, which attracted a higher level of protection under Article 10).*

In proceeding with their Hearing the Committee was requested to bear in mind the following:-

"that the Standards Committee in undertaking a Hearing in accordance with the Council's Hearing Procedures, as set out in Appendix C to report A1:-

- (a) determines, on a balance of probabilities, whether Councillor Nick Turner was acting 'in capacity' at the meetings of the Local Government Association Coastal Special Interest Group on 5<sup>th</sup> and 29<sup>th</sup> June 2024 and if so;
- (b) whether, on a balance of probabilities, he failed to comply with Paragraphs 1.1, 1.2, 2.3 and/or 5.1 of the District Council's Members' Code of Conduct (with detailed reasons to be provided to support that determination);
- (c) subject to (b), determine what action, if any, the Committee should take as a result of any such found failure, following consultation with an Independent Person; and
- (d) considers any further recommendations arising through the Hearing Procedure."

The Committee noted the foregoing.

## **8. OPENING OF THE HEARING**

The Chairman explained that:-

- (1) the hearing had been convened in accordance with the Council's Complaints Procedure and that an investigation had been conducted, the outcome of which was that it was considered there was evidence of a failure to comply with the Members' Code of Conduct;
- (2) the Parties had been made aware of the content of the Investigator's Report and that this had been circulated to Members of the Committee;
- (3) the Monitoring Officer had referred the matter for a hearing because upon conclusion of the investigation, informal resolution had not been considered appropriate, for the reasons given within the Committee Reports; and
- (4) the purpose of the Hearing was to consider the Investigator's Report, the evidence in support and representations from the Parties. If the Committee departed from the recommendation from the Investigating Officer and/or Monitoring Officer detailed reasons would be required and which would be published in the Decision Notice.

The Chairman then asked all persons present to introduce themselves, which they duly did. In the course of these introductions, it was noted that the Independent Persons present had the following roles:

Sue Gallone (Independent Person) – allocated to support the Committee

David Irvine (Independent Person) – allocated to provide support to Councillor Turner

Jane Watts (Independent Person) – allocated to support the Monitoring Officer.

## **9. HEARING THE COMPLAINT - PRESENTATION OF THE INVESTIGATOR'S REPORT**

The Investigating Officer then had the opportunity to present their report, which would include:-

- (i) any documentary evidence or other material;
- (ii) the calling of such witnesses as they considered necessary; and
- (iii) the making of representations to substantiate the conclusion that the Councillor had failed to comply with the Code of Conduct.

That report and documentary evidence had to be based on the complaint made to the Council i.e. no new points were allowed.

The Investigator (Melvin Kenyon) reported that, on 16th August 2023, Cllr Ernest Gibson had submitted a Standards Complaint to Tendring District Council using the Council's Complaint Form. The salient parts of the text read as follows:-

*"I am the Chair of the Local Government Association Coastal Special Interest Group ("the Group"). It is in that capacity that I make this complaint, as it concerns the behaviour of Cllr Turner at the quarterly meeting of the Group which took place on 29th June 2023, and at a joint meeting which the Group had with the Environment Agency concerning the SMP [MK: Shoreline Management Plan] Explorer tool, on 5th June 2023. The meetings took place remotely, via the Zoom and Teams platforms. I am in no doubt that the Members' Code of Conduct adopted by Tendring District Council applied to Cllr Turner at the material times, in view of the fact that he was attending the meetings in his capacity as a Councillor. I have set out the details of Cllr Turner's behaviour at each of the above meetings below*

### 1. LGA Coastal SIG/Environment Agency SMP Explorer Feedback Session

*This session was kindly held by the Environment Agency to afford elected members of the group an opportunity to discuss and provide feedback about the upcoming Shoreline Management Plan Explorer tool which is being developed in consultation with the Secretariat. At the session, Cllr Turner embarked upon a wholly inappropriate and disrespectful verbal attack upon Mr Nick Hardiman of the Environment Agency, in the context of setting out his negative views of Shoreline Management Plans and how he feels that his council will not be adopting the guidance provided (based on climate change modelling) in relation to future planning as it does not fit with the council's plans. Whatever his views of the tool, the personalisation of these views, directed as they were towards Mr Hardiman was not only highly disrespectful, but frankly shocking to those who witnessed it.*

*To compound matters, when Lead Officer Beccy MacDonald-Lofts attempted to politely steer the discussion back to the task at hand - that is - to allow all present to provide their feedback on the tool, Cllr Turner directed his aggression and disrespect towards her stating that he felt the work of the Secretariat was not good enough. Another Councillor attending the session commented in the chat, "I think it was brief comments Cllr Turner and this is a training session." Cllr Turner's behaviour was not only obstructive in terms of delaying the progress of this session, but was also highly damaging to his reputation, the reputation of the Council of which he was acting as a representative, and the Group itself.*

### 2. LGA Coastal SIG June Quarterly Meeting

*Following a presentation to the Group by Mr Ross MacLeod of the RNLI, Cllr Turner proceeded to launch a verbal attack on Mr MacLeod and the RNLI in general, stating that he was not happy with the RNLI for many reasons but mostly due to the loss of an RNLI station, a matter which was highly inappropriate to raise in the manner it was, and at that particular time. Whilst I accept that members' strength of feelings about certain matters can at times make it difficult to maintain the leadership standards as set out in the Nolan Principles, Cllr Turner continued to speak over both Mr MacLeod and myself when we made a number of attempts to speak. Cllr Turner's constant interruptions and overbearing manner was not only highly disrespectful to our colleague from the RNLI, but to me as Chair of the group. The Group is lucky to have senior officers from a variety of service providers in attendance at its meetings, and I have serious concerns that the conduct of Cllr Turner will jeopardise their willingness to attend in the future. Our ability to exert influence in Westminster will consequently be at risk of being prejudiced.*

### 3. LGA Coastal SIG June Quarterly Meeting

*At the above meeting, Cllr Turner also considered it appropriate to make the comment "don't get me started on the Germans." It was not clear to me whether Cllr Turner intended this comment to be a joke, but whatever his intention, it was wholly inappropriate given that it grouped everyone of a particular nationality together in what was undoubtedly a negative remark. The comment was indicative of a discriminatory view held by Cllr Turner which flies in the face of paragraph 2.3 of the Code of Conduct.*

### 4. LGA Coastal SIG June Quarterly Meeting

*During the same meeting, Cllr Turner made comments in response to Mr MacLeod from the RNLI which were as shocking as they were offensive. Cllr Turner asserted that people of Afro-Caribbean descent are unable to float, a misconception which Mr MacLeod attempted to respond to, and respectfully correct. However, before Mr MacLeod was able to finish his response, Cllr Turner spoke over him clarifying what he meant by the comment by pointing out that it is not that people of Afro-Caribbean descent can't float, but that in his experience they won't float. The implication was that members of the community were unable or unwilling to learn how to float. They were as distasteful as they were untrue. The comments were made in the context of his experience of why people had sadly lost their lives within his council district and whilst discussing the work which the RNLI had been doing in promoting World Drowning Prevention Day and engaging with groups which are often hard to reach. The comments made by Cllr Turner were simply unacceptable in that context or indeed in any circumstances.*

*Cllr Turner continued to make deeply racist remarks about people of Afro-Caribbean descent, before making comments about the clothing that people of certain specific faiths wear when in the sea, indicating that in his view the clothing was inappropriate. Cllr Turner's comments, together with the overbearing way in which he made them, speaking over others who were trying to reply to them, left those in attendance in no doubt about his attitudes towards those of different ethnicity or belief. Cllr Turner's comments were highly offensive, and had they been made by an officer of a local authority, I would expect them to face the most serious disciplinary sanctions. I do not believe that by virtue of his status as an elected member, Cllr Turner should be able to avoid being held to account for his actions.*

#### General

*As mentioned above, Cllr Turner's behaviour was witnessed by all present at each of the above meetings. I am aware that three complaints have already been made to me about the behaviour*

*and I attach hereto, copies of the communications I have received from the Marine Management Organisation, the RNLI, and Beccy MacDonald-Lofts. Should I receive further complaints concerning Cllr Turner's behaviour I will pass them on to you. I doubt very much that Cllr Turner will deny making the comments which are the basis of my complaint, he appeared comfortable in making them to the large audiences which he had at the material times. However should you require any corroboration of any of the elements of my complaint I can provide you with the list of attendees at each meeting.*

*I consider that the matters I have seen fit to raise with you are far from trivial, and that is in the public interest for such behaviour to be called out - indeed the Nolan principles contain an expectation that poor behaviour will be challenged. I would respectfully suggest that the behaviour about which I am concerned goes way beyond being simply "poor". Cllr Turner's comments would strongly indicate that his view of your Council's motto is that the Council works "For the Good of All" so long as you are not German, of Afro-Caribbean descent or of a different faith. I am sure that is not what the members and officers of your Council believe ....*

*.... Finally, the Group's AGM is scheduled to take place in Skegness in September 2023. I do not anticipate that this complaint will have been concluded by the time of the AGM. Whilst the complaint remains "live", given that it is submitted by me and supported*



*by a number of those who were in attendance at the quarterly meeting in June and who will be present in September, I do not consider that it is appropriate for Cllr Turner to attend. In the circumstances I would be receptive to Tendring DC appointing a substitute member to attend in Cllr Turner's place."*

On 18th August 2023, Cllr Turner had written to Lisa Hastings, the Council's Monitoring Officer, by email in response to the Complaint as follows:-

*"Good Afternoon Mrs Hastings,*

*I was of the opinion that the complaint against was as I have stated. I was completely unaware of this complaint from the LGA Coastal SiG. I resign from LGA Coastal Communities SiG as of now. I am also shocked at how what I said can be so misconstrued. I truly do understand the modern mind. I have always found the truth to be the best way forward and that sometimes needs pressure to emerge with overview and scrutiny.*

*As to the comments:*

*The SMP:*

*As of 2055 the seawall from Frinton to Holland Haven is hold the line or managed retreat. This means that the EA may allow Frinton Golf and Tennis Club to be flooded. Also the gardens and more than likely the houses 3,5,7,9,15,17 Second Avenue. There was a refresh of the SMP over the last 2 years. I took that to mean that the above position would be reviewed. I first asked this question at a SiG meeting in 2020, I believe in London. I was given information that lead me to believe that would be the case. James Ennos was with me. Locally I got a different view and pursuing it further at County and National Level the differences between local and National became apparent. I was only trying to get to the bottom of this review. It has been raised at the Naze Management Board.*

*Douglas Carswell raised it in Parliment and told me he spoke with the EA. This resulted in the position taken by the EA from no active intervention or managed retreat to hold the line or managed retreat. I have fought this since it was first brought to my attention in 2009. It does matter as I know of at least one property that did not sell becuase of the seawalls designation. I was just trying to get to the knowledge that would allow the Authority to protect itself fully.*

*The meeting refered to was a misunderstanding on my behalf. I should not have attended as I gathered later it was for Officers. This was not pointed out to me before the meeting started. I apologise unreservedly for any offence given. Also as soon as I realised the meeting was not for me. I did apologise and left the meeting.*

*As to the drownings I was told it was because bathing costumes where not being used and the poor unfortunates entered the sea in clothes not suitable to swim or wade in. As we were discussing the issue of beach safety, I thought it best to mention our experience. It was walking on broken glass. Similar to the other Community mentioned. I heard the comments I made from a teacher some years ago. I wanted to know if that was the case and secondly report back to the Seafronts team via the senior Officer. If we are not honest about these issues how can we avoid the tragic cases we have had over the last few years? Tendring has one of the worst records for beach accidents. I apologise unreservedly for any offence given.*

*As to the RNLI, another issue that the Naze Management Board knows all about. Due to the heavy handedness of the RNLI they have lost the Coxswain, 8 crew members the co-ordinator has been sacked and the lifeboat, as far as I am aware, is not longer capable of answering an emergency. On top of the that the RNLI is now advertising for a local crew. This is a National issue. I gather that in parts of Cornwall that some Communities have set up there own life boats. It is a tragic tale and I was trying to get information that will enable the RNLI still to function in Walton. I failed. If offence was taken at my robust defence of the Institution and the Mariners locally then for that I am sorry.*

*As a Yachtmaster, I would be far more upset if I am in an emergency situation at sea and no one responds to my mayday. Something up and till very recently one could completely rely on. On top that the link between the RNLI and local Families has been broken. It has been the tradition of Seaside Towns with an RNLI presence for the young men of local Families to become volunteers in the and for the RNLI. This tradition is being broken. That is something worth fighting for. If I was too robust in my questioning it was only because the issue is of great importance to the Towns of Harwich, Walton, Clacton and B'sea. I am truly sorry that I could not find a meeting of minds and that the complainant felt insulted. He was not. It was just to attempt to winkle out the true reasoning behind the RNLI's new policy. Then for us to figure a way around the problem. Please remember that we have one of the busiest shipping lanes in Europe on our doorstep. A large Marina and a Tourist Strategy that is central to the Authority plus 35 miles of coastline.*

*I only attend these meetings to learn and share any knowledge I have. It is a great shame that meetings now cannot be truly open, honest and straight forward."*

In her 25th August 2023 Decision Notice the Monitoring Officer had: (i) presented the relevant paragraphs of the Members' Code of Conduct; (ii) summarised the Complaint; (iii) summarised the Subject Member's response; (iv) made a recommendation that an external investigation take place "due to the circumstances and the seriousness of the allegations"; and (v) gave the reasons for her decision. Mrs Hastings had written:-

*"Both parties' comments have been sought in accordance with the Members' Code of Conduct Complaints Procedure before considering whether this case merits further investigation.*

*Whilst it is acknowledged that Councillor Turner has resigned from the LGA's Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Cllr Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated.*

*However, there is also the potential for a huge detrimental impact on the working relationship between the Council, and external stakeholders not only within the meetings but far wider. The LGA, agencies, organisations and local authorities across the Country within the SIG are national bodies and the actions of Councillor Turner are likely to be found in breach of the Code of Conduct. The alleged behaviour directed towards individuals needs to be investigated, as does whether Councillor Turner has brought the District Council into disrepute on such a national platform.*

*I would also like the investigation to explore how and in what capacity Councillor Turner was attending the LGA Coastal SIG, this is not an Outside Body appointment made by the Leader. It is however, disclosed as an Other Registerable Interest on Councillor Turner's form. I have been informed Council officers may have attended with him in the past.*

*Whilst acknowledged from the information on the LGA Coastal SIG, Tendring District Council is a member and would appropriate to be so, this is not an outside body we have appointed to or can locate membership details. Although, the officer who may have had the records, has recently left the Council."*

The Investigator had used the Complaint and the Monitoring Officer's Decision Notice to define the scope of the Investigation.

In investigating the Complaint Mr. Kenyon had gathered evidence at formal interview from the following people (listed in the order in which he had interviewed them):-

- (i) Cllr Ernest Gibson – Complainant, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor;
- (ii) Sidonie Kenward - Marine and Terrestrial Planner at the Marine Management Organisation;
- (iii) Beccy MacDonald-Lofts – Lead Officer the LGA Coastal Special Interest Group;
- (iv) Ross MacLeod - Public Affairs Manager (Water Safety), RNLI;
- (v) Rhys Hobbs - Environmental Resilience and Adaptation Manager, Cornwall Council;
- (vi) Cllr Derek Bastiman – Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor;
- (vii) Alysha Stockman - Partnerships Engagement Support Officer at East Suffolk Council;
- (viii) Cllr Noel Galer – Great Yarmouth Councillor;
- (ix) Cllr Nick Turner – Subject Member and Tendring District Councillor; and
- (x) Nick Hardiman – Expert Adviser – Coast |National FCRM at the Environment Agency.

The interviews had been carried out between 20th September and 20th December 2023 using the Zoom video communications platform or similar. The written record of those interviews were set out in Annexes 1-9 of the Monitoring Officer's report (B.1).

In addition, Mr Kenyon had invited a number of others to be interviewed as follows:-

- Clare Nolan Barnes of Blackpool Council had said: "I can't recall anything at that meeting and I may well have not been at the meeting for the whole time .... Maybe I missed this part of the agenda".
- Cllr Jane Hugo of Blackpool Council had said that she was not at the 29th June meeting.
- Graeme Smith of Teignbridge District Council had not responded to Mr. Kenyon's invitation.
- Cllr James Bensly of Great Yarmouth Council had said:- "I'm sorry I don't think it will be of much use".
- Through Beccy Macdonald-Lofts, on several occasions, Mr. Kenyon had invited her colleague Bethany Handson, Project Officer at the SIG, to speak to him but without success.

In the course of establishing whether Councillor Turner had been acting “in capacity”, Mr. Kenyon had taken into account the following matters:-

- (1) Case Law e.g. Livingstone v Adjudication Panel for England [2006]; Bartlett v Milton Keynes Council [2008] APE 0401; First Tier Tribunal Case No. LGS/2011/0537.
- (2) LGA Guidance.
- (3) Tendring District Council records: Outside Bodies; Expenses claims; Subscription Invoices; Cllr Turner’s Register of Interests (July 2023);
- (4) Evidence from Interviews with Cllr Turner; Cllr Gibson and Beccy Macdonald-Lofts.
- (5) LGA Coastal Issues SIG Membership List 2010/11.
- (6) LGA Coastal Issues SIG Minutes and other documents.

Other matters highlighted in Mr. Kenyon’s report included:-

- (a) Official details of the Subject Member (Cllr. Turner);
- (b) Relevant legislation and protocols e.g. Localism Act 2011; TDC’s Code of Conduct; When does the Code of Conduct apply?
- (c) Context – District of Tendring;
- (d) Context – the LGA Coastal Issues SIG;
- (e) Formal Interview Methodology;
- (f) Findings, Evaluations and Conclusions.

On the basis of the evidence available to him and on the balance of probability Mr. Kenyon had concluded, in relation to ‘Capacity’ that Cllr Turner was attending the meetings of the LGA Coastal Special Interest Group on 5th June and 29th June 2023 in his capacity as a Tendring District Councillor.

His attendance at the two meetings of the SIG had borne the hallmarks of “official attendance”. However, it had not officially been recognised as such by TDC for reasons unknown. For at least eight years, the Council had not seen the SIG as an outside body or officially recognised Cllr Turner as serving as its representative on a body, which appeared to be bringing some considerable value to Tendring.

Cllr Turner had behaved, both at those meetings and apparently previously, as if he had been formally appointed to the Group and he would have given the impression to a reasonable member of the public with knowledge of all the facts that he was acting as a Tendring councillor and as a representative of the Authority.

Certainly, the Chair, the Lead Officer and others who had attended those (and earlier) SIG meetings had believed him to be the Tendring District Council representative. So too did Council officers. Mr. Kenyon did not doubt either that Cllr Turner himself believed it though he did not know whether he knew that his attendance was not officially sanctioned by the Council. The two positions were not mutually exclusive and, either way, the available evidence and the balance of probability suggested that Cllr Turner was acting as a Tendring District Councillor and a Council representative.

The Tendring District Council Code of Conduct was therefore engaged.

The Council’s Monitoring Officer, in her report (B.1) had agreed with the above assessment and would have no reason to depart from it.

In relation to the complaint itself, based on the evidence available to him and on the balance of probability, Mr. Kenyon had concluded that at various times during the “virtual” meetings of the Local Government Coastal Special Interest Group on 5th and 29th June 2023, which he had attended as a representative of Tendring District Council:-

1. *Cllr Nick Turner breached paragraph 1.1 of the Tendring District Council Code of Conduct by failing to treat other councillors with respect.*
2. *Cllr Turner breached paragraph 1.2 of the Code by failing to treat local authority employees, employees and representatives of partner organisations with respect and failing to respect the role they play.*
3. *Cllr Turner breached paragraph 2.3 of the Code by failing to promote equalities and behaving in a discriminatory manner.*
4. *Cllr Turner breached paragraph 5.1 of the Code by bringing his own role and Tendring District Council into disrepute.*

On the basis of the above conclusions Mr. Kenyon had made the following recommendations:-

1. **That the Monitoring Officer acts in accordance with paragraph 7.1 of the Tendring District Council Complaints Procedure by reviewing the Report and then either referring the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seeks an informal resolution or mediation; and**
2. **That the Monitoring Officer provides training for councillors and/or provides them with clear, written guidance on how to complete their Registers of Interest in particular in relation to Outside Bodies and other external interests.**

Mr. Kenyon had shared the Draft Report with the Monitoring Officer. The intention was that she could ensure that, on its face, the Report was indicative of a satisfactory investigation and was of the required standard.

In the event, in the absence of the Monitoring Officer, the Draft Report had been reviewed by the Council’s Deputy Monitoring Officers, Linda Trembath (Head of Legal Services) and Keith Simmons (Head of Democratic Services and Elections), who had confirmed that they were: “satisfied that the [I]nvestigation ha[d] been a thorough one and that [that] was reflected in the [R]eport.”

Mr. Kenyon had recommended that the Draft Report be shared with one of the Authority’s Independent Persons and that their comments be sought. He had then shared the Draft Report, with its draft conclusions and recommendations, in confidence, with the Complainant and the Subject Member. They had been invited to comment on it.

Mr. Kenyon had received a response from the Subject Member who had written:

*“Having appraised myself of every opportunity to apologise for any offence caused, which was unintended and to paraphrase the report itself, most definitely “unconscious” on my part, I am not sure what more can be said. Nothing was said to me at the*

*meetings or directly to me afterwards, which if it had been, could hopefully have enabled the apology to be received sooner. In terms of the requirement of a formal complaint and subsequent investigation and report I can only offer a quote from Alexander Pope: "Blessed is the man, who expects nothing, for he shall never be disappointed" Letter to Fortescue 23-09-1725".*

The Complainant had not replied to Mr. Kenyon.

Mr. Kenyon had subsequently submitted the Final Report containing his final conclusions and recommendations to the Monitoring Officer for her consideration in line with the Council's arrangements.

At the Hearing, Mr. Kenyon made the following statement:-

*"Good morning again. I'm going to speak for something less than 20 minutes. There may be some little repetition of what has already been said, for which I apologise. I'll start with a few words about the LGA Coastal Special Interest Group or SIG which is central to the Complaint.*

*The SIG has been around for at least 15 years and brings together representatives of 57 member councils and other significant stakeholders to "champion the collective interests of coastal, estuarine and maritime communities".*

*The SIG represents 16 million people in England and covers 60% of the English coastline. It is a well-established, well-attended, important group with many nationally known stakeholders, ministerial contacts, and considerable influence in central Government. It has a high profile and national reach. The Committee may wish to reflect on that when considering the Complaint.*

*The Complaint is about Cllr Nick Turner's alleged behaviour at two "virtual" meetings of the SIG in June last year. You will have seen the wording of the Complaint in Section 5 of my Report. I have done many standards investigations and written many reports. They all follow the same logical sequence. I set out my findings - the evidence on which I rely. Then, I evaluate that evidence and draw conclusions from it. Finally, based on my conclusions, I make recommendations. I don't reach any conclusions without having the evidence to support them.*

*There are 24 pages of evidence in my Report. Section 7 presents evidence around the key question of whether Cllr Turner was "in capacity" when the events in question took place. Section 8 looks at the specific allegations against him and consists almost entirely of extracts from the summaries of my interviews with the individuals listed in Section 6.2. Those included Cllr Turner and the Complainant, Cllr Ernest Gibson, who is Chair of the SIG and a member of South Tyneside Council, which is currently the Lead Authority for the SIG.*

*The Hearing Procedure permits me to call witnesses, but I have almost never done that in any hearing, and I won't be doing it today either. Instead I will allow the extracts taken from the statements in Sections 7 and 8 to act as my witnesses.*

*So, with that in mind, I will assume that Committee members have read the Report and remind them of my conclusions. I will take questions after I have finished if I may.*

*In presenting my conclusions I'm sure the Committee knows that I am not required to demonstrate that a member has breached their code of conduct "beyond reasonable doubt" which is the standard of proof in a criminal matter. At times, Cllr Turner's "defence submission" appears to present it that way but, in fact, I am required to reach my conclusions "based on the available evidence and the balance of probability" - a much lower standard of proof. And just before discussing my conclusions, I invite the Committee to note three points.*

- *First, Cllr Turner's response to the Complaint in Section 5.2 of the Report where **he apologises unreservedly for any offence given**. In his defence document he describes it as a "**sincere apology**".*
- *Second, when speaking to me he described his own version of events, which you can find in Section 8.2.10. There **he seems to confirm that his behaviour wasn't acceptable though he seems to dispute the effect that behaviour had on other people**.*
- *Then finally, in his defence document he "**acknowledges the unintended offence his comments caused**".*

*That seems pretty unequivocal to me.*

### **CONCLUSIONS – CAPACITY**

*So, my conclusions. I had first to decide whether Cllr Turner was acting in his capacity as a councillor when he attended the two meetings.*

*As Members will of course know, under the Localism Act 2011 unless a councillor is acting "in capacity" they cannot be held to have breached a code of conduct no matter how reprehensible (or even unlawful) their actions might have been.*

*Whilst the Localism Act is silent on what being "in capacity" means, there is some case law that helps us decide whether, in a given set of circumstances, a member can be deemed to be "in capacity". We refer to some of that in our Report and also to the LGA Guidance, which helps us interpret the Council's Code of Conduct.*

*I was asked by the Monitoring Officer to consider the question of capacity particularly carefully in this instance because the situation was less straightforward than might normally be the case.*

*On the one hand, I had to consider the fact that the SIG was not recognised by the Council as an "outside body" and, that for at least eight years, Cllr Turner had not been appointed as a Council representative on the SIG. So, his involvement was not apparently "official" in the eyes of the Council.*

*On the other hand I noted that Cllr Turner had taken an active part in the work of the SIG for at least 13 years; he had given the impression over those 13 years that he was there to represent Tendring District Council; he saw himself as a Council representative and disclosed his membership of the SIG in his Register of Interests; the Council paid the SIG annual subscription fees, and on occasion Council officers accompanied him to meetings; and Cllr Turner claimed and was presumably paid his expenses when he attended certain SIG meetings.*

So, it appeared to us, based on the evidence and the balance of probability, - that a reasonable member of the public with knowledge of all the facts would have concluded that Cllr Turner was acting as a Tendring councillor and a representative of the Authority when he attended SIG meetings. That was certainly the impression formed by the Chair, the Lead Officer and, presumably, Tendring Council officers as well. The Tendring District Council Code of Conduct was therefore engaged.

### **CONCLUSIONS – SIG MEETINGS**

We turn next to our conclusions about the allegations made against Cllr Turner.

The **5th June meeting** was convened to gather feedback on a piece of software called the SMP Explorer Tool in a short session led by Nick Hardiman, of the Environment Agency. There were few invitees to the meeting, and we spoke to only four individuals about what happened, one of whom was Cllr Turner.

Based on that evidence and the balance of probability the meeting does not appear to have progressed as intended. Cllr Turner was to some extent successful in repurposing or hijacking the meeting to instead discuss matters which were important to him. That appears clear (as does her irritation) from the comment made at the time by Hartlepool Councillor Rachel Creevy in the MS Teams “Chat” facility. It appears clear too from the evidence given by Cllr Turner himself.

Even though there are few specifics about his exact words, Cllr Turner’s behaviour at that meeting appears to have been unprofessional, poor, and unacceptable. He had indulged in a “strong, extended rant”. Witnesses chose to describe him, amongst other adjectives, as being “over-zealous, obstructive, even aggressive”. He was overly critical, talked over people, would not be calmed down and would not listen to reason, it was said. He would not allow the meeting to progress as it was intended to.

Speaking somewhat generally, the Complainant said, “Basically, he is disruptive and has been for a long time, but on this occasion he did overstep the mark. He really excelled himself”. The Lead Officer said, “His disruptive behaviour at meetings has become a consistent issue for us”.

Nick Hardiman echoed their observations saying, “I have found him to be someone who wishes to stir and provoke ... his interventions have often been aggressive and have sought to rubbish what a person is doing.” He commented that “he was very unprofessional ... he crossed the line into unprofessional behaviour”.

The evidence also suggests that Cllr Turner made a personal attack on Nick Hardiman, something that Mr Hardiman confirmed to us. Cllr Turner appears too to have followed that by being “personally abusive” towards the Lead Officer. In making such personal attacks he was damaging his own reputation and, potentially, that of the Council and the SIG. He went beyond the protections afforded by Article 10 of the Human Rights Act and we do not in any event consider that the context was political in the accepted sense of the word.

When we spoke to Cllr Turner, he suggested that his behaviour as described in the Complaint was an exaggeration and was not sufficient to breach the Code. At the same time, he seemed to be recognising, as I have said, that his behaviour had not been acceptable. However, he denied making “personal attacks” saying “they are being



*paranoid". In any event he saw fit, as I have also said, to "apologise unreservedly for any offence given".*

*When we spoke to Cllr Turner we did not doubt that he feels strongly and passionately about defending the coastline in Frinton. Nor did we doubt, to use his own words, "his unwavering commitment to his duties and the community he serves". But that isn't the issue. The issue is that it appeared to us, on the evidence available, that he had failed to control his strength of feeling at the 5th June meeting.*

*We therefore concluded that, in behaving as he did, Cllr Turner breached the Code of Conduct by showing a lack of respect by attacking in a personal way two of those who attended the meeting and by failing more generally to respect others who attended. In behaving as he did he brought his own role as a councillor into disrepute and, in acting as he did whilst he was a representative of the Council on an outside body, he brought the Council into disrepute.*

*Turning to the **29<sup>th</sup> June Quarterly Meeting**, which this time had 49 attendees, we spoke to nine interviewees, including Cllr Turner, about what had happened. Based on their evidence and the balance of probability it appears to us that Cllr Turner's behaviour was once again unacceptable and mirrored somewhat his behaviour on 5<sup>th</sup> June. The minutes of the meeting suggest that things did not run smoothly, with Cllr Turner the apparent cause.*

- Interviewees referred to his derogatory comments about an external organisation, this time it was the RNLI.*
- He again made what felt like a personal attack, this time on Ross MacLeod who was at the meeting to represent the RNLI.*
- Witnesses once more referred to Cllr Turner's unwillingness to be diverted away from trying to focus the business of the meeting on issues local only to him.*
- Witnesses again spoke of his behaviour being part of a pattern over the years.*
- Cllr Turner showed a "low level of self-awareness" and was "oblivious to the offence he was causing".*
- Witnesses said he was "not helpful or constructive", he was "very rude", "derogatory", "offhand" and disrespectful towards others.*
- One witness spoke of him being "in transmit mode".*
- In behaving as he did, in the eyes of some, he damaged the reputation of the SIG, this time in front a much larger audience, some of whom had not attended previously.*
- Once again Cllr Turner felt that he had to "apologise unreservedly for any offence given".*

*Based on this evidence we conclude that Cllr Turner again breached the Code of Conduct by showing a lack of respect by attacking a representative of an external organisation in a personal way and by failing more generally to respect others who had attended the meeting. He went beyond the protections afforded by Article 10 of the Human Rights Act and we do not in any event consider that the context was political in the accepted sense of the word. In behaving as he did he brought his own role as a councillor into disrepute and, in acting as he did whilst representing the Council on an outside body, he brought his Council into disrepute.*

*However, on 29<sup>th</sup> June, Cllr Turner went further than he had done on 5th June. His reference to Germans – "intended as a joke", he said - went unnoticed by some of those*

*we spoke to (though not by one attendee who is half-German and who was deeply upset by his “joke”). When we spoke to him, Cllr Turner did not dispute that he had said something like “Don’t get me started on the Germans” but we felt that his references to Operation Sea Lion and pillboxes were very telling. The juxtaposition of those and the comments he made to us about his references to Germans appeared to us to betray an attitude that was rooted squarely in Second World War thinking. This is not in some way an “ageist” observation (as Cllr Turner has suggested) but instead seems to reflect his own comment to me, “It’s a different world and I just don’t comprehend it any longer”. His words, not mine.*

*His derogatory references to swimming, floating, drowning, dress, Afro-Caribbeans and, arguably, Muslims caused very considerable offence and discomfort to some, though not all, of those present.*

*Cllr Turner did not appear to dispute that he had said what he was alleged to have said but he seemed to be completely oblivious as to how and why his behaviour had caused offence. On the one hand, some of our, perhaps more charitable, interviewees felt his views and opinions were old-fashioned and that they were more common, perhaps, a generation or two ago. On the other hand there were those who went so far as to call his behaviour “racist”. He had used “racial stereotyping”, they said. At the same time, when we spoke to him his concern that there were people of all kinds who visited Frinton who were, as he saw it, ill-equipped for, and ignorant of the dangers of, swimming in the sea did appear genuine.*

*So, on the balance of probability we tend to the conclusion that Cllr Turner made the remarks he made out of ignorance rather than malice and that his language was clumsy and patronising rather than being rooted in what might be described as out-and-out racism.*

*Notwithstanding his motives, based on the evidence available to us and the balance of probability, it appears to us that Cllr Turner further breached the Code of Conduct by exhibiting discriminatory behaviour on 29<sup>th</sup> June.*

*We agree with the words of one interviewee who indicated that, even though she did not feel personal offence at what he had said, Cllr Turner’s behaviour had reflected badly on the community he represented as a councillor. In other words, in her opinion, he had brought the Council into disrepute.*

### **BREACH**

*So, in summary, based on the evidence available to us and on the balance of probability, we conclude that at various times during the meetings of the LGA Coastal Special Interest Group on 5<sup>th</sup> and 29<sup>th</sup> June 2023, which he attended in his capacity as a representative of Tendring District Council, Cllr Nick Turner:*

- 1. Breached paragraph 1.1 of the Tendring District Council Code of Conduct by failing to treat other councillors with respect;***
- 2. Breached paragraph 1.2 of the Code by failing to treat local authority employees and representatives of partner organisations with respect and failing to respect the role they play;***
- 3. Breached paragraph 2.3 of the Code by failing to promote equalities and behaving in a discriminatory manner; and***

**4. Breached paragraph 5.1 of the Code by bringing his own role and Tending District Council into disrepute.**

*Thank you for your attention.”*

**10. HEARING THE COMPLAINT - QUESTIONS BY THE RESPONDENT COUNCILLOR**

The Respondent Councillor (or their representative) then had the opportunity to question (but not cross-examine) through the Chairman:-

- (i) the Investigating Officer upon the content of their report; and/or
- (ii) any witnesses called by the Investigating Officer.

This was solely the Councillor’s opportunity to ask questions arising from the Investigator’s report i.e. not to make a statement.

<u>Questions asked by the representatives of Councillor Turner</u>	<u>The Investigator’s Responses thereto</u>
<i>[Mr. Cannon] I would like to raise this question of capacity, which this Committee is being asked to resolve. One would have expected that would have been resolved earlier in the proceedings. There is no argument that Cllr. Turner believed that he was acting in capacity but shouldn’t the Investigator have obtained actual proof of that?</i>	<i>If I understand the question correctly that is what I have done in this Report. If I carry out an Investigation the first thing that I have to assure myself of is that the Member in question is acting in capacity. There are occasions on social media use where there can be an issue over that. But in this instance the question revolved around the fact that the Council had not formally recognised Cllr Turner as being in capacity. So it isn’t my job as it were to decide before an Investigation starts whether someone was acting in capacity, It is my job as part of the investigation to decide whether a Member is in capacity and that is what I have done here.</i>
<i>[Mr. Cannon] So it is accepted that there is no actual evidence or proof that Cllr. Turner was acting on behalf of the Council?</i>	<i>He was in capacity based upon the evidence available to me as the Investigator, Councillor Turner was acting in capacity and I think that you have just said that Cllr. Turner has accepted that he was acting in capacity. The argument for his being in capacity I have put forward in my statement of a few moments ago and I have argued more fully in my Report so Councillor Turner was in capacity in my view based on the evidence available to me and the balance of probabilities and I think that you are saying that Cllr. Turner accepts that for the last however many years that he has represented</i>

	<p><i>Tendring District Council on the SIG he was acting as a representative of the Council so no argument he was in capacity.</i></p>
<p><i>[Mr. Cannon] Could we enquire where Mr. Kenyon set the bar on unacceptable standards of behaviour bearing in mind that it is a very subjective matter and what is acceptable to one person will be unacceptable to another. And why in the final report he did not highlight inconsistencies in the witness statements listed here.</i></p>	<p><i>I'll give the example of "bullying" that is a good yardstick and we are not talking about it here but I'll give it as a good example. There are those people who believe that it is the case that if someone says "boo" to them then they are being bullied. And the view that I take of that when I carry out an investigation is that I think that we need something rather more than "boo" for someone to be bullied. What I have done is set out in the report is set out the Guidance that accompanies the Model Code that was adopted by the District Council which provides, if you like, a yardstick against which to measure Members' behaviour and that is what I have relied upon. I think that that Guidance is very helpful. I can't quote it verbatim but it is there in the report and that helped me decide plus the fact that there were quite a large number of people there who said that his [Cllr Turner's} behaviour was unacceptable. There were one or two who were not quite as offended but the majority of people to whom I spoke were quite clear that there had been personal abuse and that Cllr. Turner had gone further than what was acceptable in that kind of forum in the words he had used towards people and in his behaviour and so the yardstick if you like is set out in the report and is extracted from the Guidance that accompanies the LGA Model Code which is the Code that Tendring District Council adopted. As far as drawing out inconsistencies I think I did draw that out. I may not have explicitly written a sentence that says that but is quite clear from the evidence, which has not been withheld it is there in the report. As far as I am concerned Cllr. Turner went further than he should have done and breached the Code.</i></p>
<p><i>[Mr. Cannon] I would also like to ask Mr. Kenyon the percentage of attendees</i></p>	<p><i>First of all, it's a question of proportionality. There is a cost to the</i></p>

<p>during the 29<sup>th</sup> June meeting that responded. There was a total of nine including Cllr. Turner, one of whom did not “sign off” his statement but it has been included within the report which is a concern. In total, there was 49 attendees at that meeting. Some of the others were contacted, but declined to submit a statement. One, in particular, was at an after meeting discussion between Beccy MacDonald-Lofts and Ross Macleod and she has refused multiple requests to give a statement or attend as a witness. I would like to hear Mr. Kenyon’s views on that please.</p>	<p>Council in carrying out an investigation. If I had interviewed all 49 people or attempted to do that I would probably still be interviewing. So that is point number one. Point number two is that I can’t force anybody to, as it were, submit to an interview by me. I can’t do that. And point three is that whether an individual chooses to take part shouldn’t be taken as an indication of anything other than that they’ve got nothing to say or perhaps that they are uncomfortable with the process. I find people who are uncomfortable with the process all the time and just won’t take part even if they are important to the process. I have no power to force them to do it so nine people out of 49 given that there are complaints that I investigate where there are two or three people interviewed, seems to me to be a reasonable number. I did try to interview more but for various reasons given I wasn’t able to do that but I think nine people interviewed as far as the 29<sup>th</sup> June meeting is concerned is more than enough to form a judgement and that’s what I have done.</p>
<p>[Mr. Cannon] The next question concerns the format of the meeting. These were online meetings (either Zoom or MS Teams) but the facility to manage these type of online meetings is available to the Administrator. It is very difficult when you have a situation like this to be sure how much was caused by the poor management of the online meeting and the poor chairing of the meeting and how much was down to Cllr. Turner’s exuberance. So could Mr. Kenyon please tell us what allowances he made because these meetings were held online?</p>	<p>I made no particular allowances for these being online meetings. What is true is the secretariat or the constitution of the SIG at that time apparently did not allow them to ‘mute’ individuals. My understanding is that after the second of these meetings, I think in September and I think in response to one of the questions being asked, they changed the constitution/ standing orders or whatever they call them, to enable them to mute or to exclude somebody and that was done in direct response to what had happened on the 5<sup>th</sup> and 29<sup>th</sup> of June. So I’m afraid that I can’t be in the mind of the secretariat as to why they did or did not try to manage it but it is certainly the case that they believed that they didn’t have, as it were, the formal ability to exclude Cllr. Turner at that time.</p>
<p>[Mr. Cannon] Could I enquire of Mr. Kenyon whether he actually established what facilities they did have? Who was</p>	<p>They were using Microsoft Teams. I’m not an expert on Microsoft Teams but I do know, as I said a few moments ago</p>

<i>controlling the meeting?</i>	<i>that they did not have or rather they felt that they had not got the right, as it were, to exclude Cllr. Turner. So short of Cllr. Turner switching his own feed off I imagine that they had not got any wherewithal but I'm afraid I'm not a Teams expert.</i>
<i>[Mr. Cannon] I would like to enquire how Mr. Kenyon maintained impartiality in his report and avoided favouring the Officers against Cllr. Turner?</i>	<i>It's what I do. I have no stake in the outcome of these things. It sounds like the wrong words to choose but actually apart from wanting to ensure that the evidence tells the story, I don't care what the outcome is. I have no skin in the game. So what I do is gather the evidence, I write the evidence up and I draw conclusions based on that evidence. When I carry out investigations and I've done a lot of those over the past few years I can confirm that it is not the case that every investigation that I do results in a finding of a breach of the code and so I balance the evidence available to me and as far as I am concerned the clue is in the job title, which is "independent".</i>
<i>[Mr. Cannon] The concern is in drawing his conclusions from what had occurred did Cllr. Turner realise that he was in breach of the Code?</i>	<i>I'm sorry but I did not understand the question.</i>
<i>[Mrs. Cannon] The question to the Investigating Officer is – during the investigation and in obtaining the witness statements and in doing the summary of the evidence from the complainants statements, did he not draw a conclusion in relation to whether or not Councillor Turner was aware of the breaches in this alleged behaviour.</i>	<i>If I have understood correctly, I take you back to what Cllr. Turner said in his response to the complaint which was first of all, I think twice, he apologised wholeheartedly for any offence given, and he didn't really dispute these events had taken place. The question is in his mind I think is whether he had caused offence or not. And the witnesses I spoke to said, most of them, said they had been offended or had seen how offence could have been caused by what he had said. So I think that Cllr. Turner himself has agreed that there is a need to apologise and has used in his defence documents the words "sincere apology" so in answer to your question if he didn't know it at the time he does now.</i>
<i>[Mrs. Cannon] So at the time of this report being written and this investigation being conducted he wasn't aware. Do you concur with that</i>	<i>I think you would have to ask Cllr. Turner that. I don't know what was in Cllr. Turner's mind.</i>

<i>conclusion?</i>	
<i>[Mrs. Cannon} I'm asking the Investigating Officer because he had drawn the conclusion. If you don't know the rule..?</i>	<i>He had signed his Acceptance of Office, he'd had training on the Code of Conduct and in signing his acceptance of office he had signed up to the Code of Conduct.</i>
<i>[Mr. Cannon] The final question I have to Mr. Kenyon is in relation to the allegations in the witness statements that appear in the final report concerning Cllr. Turner having racist views when there is actually no substantial evidence to support that. Why do they still appear in the final report? There is a reference in Becky MacDonald-Lofts' statement to a Police referral, which is now contradicted in her answer to our questions, which were subsequently submitted. I believe there was a referral to the Police from the Monitoring Officer but no action, nothing has occurred. So why is that still in the report and now in the public domain?</i>	<i>It was put into the public domain in the first part of this Hearing today. I'm required to investigate it because that was one of the allegations. I said a few moments ago that, on the balance of probabilities, we tend to the conclusion that Cllr. Turner made the remarks he made 'out of ignorance rather than malice' and that his language was 'clumsy and patronising' rather than being rooted in what may be described as out and out racism. That was the conclusion that I reached in the report. Those who were of the view that Cllr. Turner's remarks were and there are those who were, let's say, less convinced, I think I used the words more charitable, the conclusion that I reached was that he said what he said out of ignorance rather than malice, his language was clumsy and patronising rather than being rooted in what may be described as out and out racism. I'm not sure that I can say much more and that is in the Report on Page 77 of your pack. The Police matter is outside the scope of my Investigation.</i>

#### 11. **HEARING THE COMPLAINT - COMMITTEE MEMBERS' QUESTIONS**

Members of the Committee then had the opportunity to question (but not cross-examine) through the Chairman:-

- (i) the Investigating Officer upon the content of their report; and/or
- (ii) any witnesses called by the Investigating Officer.

This therefore was the Committee's opportunity to ask questions arising from the Investigator's report but not to make statements.

<u>Questions from the members of the Committee to the Investigator (Mr. Kenyon)</u>	<u>Responses made thereto by Mr. Kenyon</u>
<i>[Cllr. Land] Was it clear to the Authority that this was an official outside body that it had a representative on?</i>	<i>It would be fantastic for me as an Investigator if what 'in capacity' means was codified in the Localism Act. It's</i>

	<p>not. There is some Case Law, some of which I have referred to in my report and other Case Law that I haven't referred to in my report, which predates the Localism Act but is still legally relevant as far as interpretation is concerned which we use to help us determine whether someone is 'in capacity'. <i>Prima facie</i>, if someone has attended a Council meeting and is standing up and speaking or is on a Committee such as today then they are acting 'in capacity'. But there are occasions when it is not as clear cut. The ones that I am often called in to make a judgement on are around things such as social media where the boundaries between a Member acting in their private capacity and in their capacity as a Councillor are less clear. In this instance I have weighed the evidence as to whether Cllr. Turner was acting in capacity. Councillor Turner has agreed that he was acting in capacity and without wishing to put words into his mouth he would be somewhat disappointed if the contribution he had made over the years he wasn't actually attending as a representative of the Council and wasn't actually there in the capacity of a Councillor. I put forward the evidence in Section 7.3.1 of my report as to why Cllr. Turner was 'in capacity'. In this instance I am convinced that he was doing the business of the Council and things that the Council did like pay his subscription fees, like pay his expenses are a recognition that, at some level, he was recognised as a representative of the Council in the eyes of the Authority.</p>
<p>[Cllr. Land] Was this a very formally recognised outside panel that this Council had put someone on and was very aware that someone was attending regularly and was contributing at?</p>	<p>I've used the evidence available to me. It's certain to me as I said at the beginning, it's influential, nationally recognised, it's attended by the Environment Agency, the RNLI, the Marine Management Organisation and other bodies, so it is not a "tuppenny, ha'penny" organisation. It's a national organisation, which reaches right into Government.</p>



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**12. THE RESPONDENT COUNCILLOR'S CASE**

The Respondent Councillor (or their representative) then had the opportunity to:-

- (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.

The Investigating Officer then had the opportunity to question (but not cross-examine) through the Chairman, the Respondent Councillor and/or any of their witnesses.

Members of the Committee then had the opportunity to question (but not cross-examine) through the Chairman the Respondent Councillor and/or any of their witnesses.

In all instances, only questions would be permitted relating to the allegation(s) and the Respondent Councillor's case and no statements could be made.

The Committee had had circulated to it in the days leading up to the Hearing the recorded text of Mr. Kenyon's interview with Councillor Turner, together with a copy of Councillor Turner's detailed defence submission.

Mr. Cannon presented the case on behalf of Councillor Turner as follows:-

*"I would like to draw a couple of observations at the start. One is an extract from the Guidance on the Local Government Association Councillor Code of Conduct, which states under Respect – "You will engage in robust debate at times and you are expected to express, challenge and disagree with views, ideas, opinions and policies." I'm sure that you are all aware of that and it is important that we recognise that Councillor Turner has devoted a lot of time and energy to studying his subjects especially in this area which is very close to his heart and he is very able to challenge the experts. The second observation that I would like to make concerns the witnesses having declined to attend especially the Complainant himself. We did request that all the witnesses who gave statements attended but as you have already informed none of them have. This could be seen as depriving Councillor Turner of a fair opportunity of questioning those accusing him.*

*You will all have received a copy of Councillor Turner's defence submission. You will be pleased to know that I am not intending to read that to you. I am just going to summarise the main points.*

*I think it's very important to take into account Councillor Turner's 25 years of dedicated service. He has done a tremendous job for his community over the years.*

*He has consistently demonstrated professionalism even in the most heated debates. His responses though strong were in line with the robust nature of Council discussions. He has shown a willingness to engage and rectify any perceived breaches of conduct reinforcing his respect for the Council's standards, demonstrating his integrity Councillor Turner has actively sought to mend fences whenever his actions were seen as*

*disrespectful. His apologies and his willingness to engage in dialogue with effected parties underscore his commitment to fostering a harmonious working environment.*

*Councillor Turner has been misrepresented in his commitment to equality. His proven track record of actively participating in initiatives aimed at enhancing inclusivity starkly contrast with the accusations of discriminatory behaviour. Notably, he has experienced 'ageism', a protected characteristic that was conspicuously absent from the Investigating Officer's final report. Moreover, the discussions perceived as discriminatory were, in reality, valid and necessary engagements in policy advocacy designed to promote community safety and equality. Addressing sensitive issues surrounding Afro-Caribbean and Muslim communities, though challenging, is essential for the comprehensive dialogue needed to improve. Councillor Turner should be commended for his bravery for bringing these crucial topics to the forefront, fostering a necessary discourse that many might avoid due to its complexity and sensitivity. The Defence strongly contests the idea that Councillor Turner's actions have brought disrepute to the Council. His conduct has consistently aimed at advancing the community's interests, often being misunderstood in the complex situations that are part and parcel of his remit.*

*The Defence has pointed out significant procedural differences that impact the credibility of the allegations. Lack of attendance records at key meetings shows an unprofessional approach to the proceedings. The absence of a definitive recording of the meetings, a function which is available, in both Zoom and MS Teams means that the Investigating Officer's findings, on a balance of probabilities, are based on subjective rather than objective information.*

*The substantial delay in filing the complaint (72 days from the first meeting and 48 days from the second meeting) suggest a lack of urgency or severity, which questions the motions behind the allegations, especially as one of the SIG Officers who was party to the discussion between Ross McLeod and Beck Macdonald-Lofts, namely Bethany Hanson after the 29<sup>th</sup> June meeting had ended has refused to give a statement or appear as a witness despite multiple requests.*

*At the 5<sup>th</sup> June meeting there are no minutes or attendance records available. At the 29<sup>th</sup> June meeting of the 49 attendees confirmed in the minutes only nine, including Councillor Turner provided statements. Others either refused or stated that they had nothing to report.*

*Councillor Turner has actively engaged in critical discussions about safety and policy particularly concerning coastal management reflecting his commitment to public welfare. His remarks have, sometimes, been taken out of context or misunderstood detracting from the substantive issues he aimed to address. The Defence asserts that any controversial remarks made by Councillor Turner were aimed at improving community safety and were not intended to offend. His immediate apologies for any unintended offence highlight his responsiveness and accountability.*

*Considering Councillor Turner's long-standing dedication, procedural gaps in the investigation and his efforts to address the concerns raised, we urge a reassessment of the charges. It is crucial that the Committee's judgement reflects a balanced view of his intentions and the factual context of his actions, and also, his capacity at these meetings remains a point of contention at this time.*

*Councillor Turner's robust and challenging contributions to debate are a fundamental aspect of his role as an elected official but are also protected under UK Law specifically under the principles of freedom of speech as enshrined in the Human Rights Act 1998, which upholds the right to express opinions freely, without interference, a crucial element of effective democracy and governance. Thank you for your attention to this matter."*

<u>Questions from the Independent Investigator (Mr Kenyon) to Councillor Turner/ his representatives</u>	<u>Responses thereto from Councillor Turner/ his representatives</u>
<i>You referred a few moments ago about, and I quote "procedural gaps in the investigation", can you explain to me what the procedural gaps in the investigation were please?</i>	<i>[Mr. Cannon} Yes, the procedural gaps relate to the lack of definitive records, the lack of attendance records, the lack of minutes which don't seem to have been given due weight in our opinion.</i>
<i>How do you think that Cllr. Turner's expertise and his undoubted commitment to his role as a Councillor and to his community are relevant to the complaint and relevant to whether he breached the Code as one would hope that he wasn't the only Member who was committed to his community and had a certain amount of expertise? How would you think that they were relevant to the Committee's consideration of the complaint please?</i>	<i>[Mr. Cannon] I think that the point here is that in the presentation by the RNLI, which would seem to be a substantial part of this case, it is alleged that there was a dispute on fact between Councillor Turner and Ross McLeod. So you have to consider whether Councillor Turner was in actual fact correct in what he was saying which if that had been accepted by Ross McLeod would not have led to this dispute and that does not seem to have been considered.</i>
<i>Can you please point to where there is evidence of a dispute between Ross McLeod and Councillor Turner? Until I read Councillor Turner's defence submission yesterday I hadn't encountered any suggestion that there was a dispute between them, rather that it was Councillor Turner that launched a personal attack on Ross McLeod so can you please point me to where in the evidence that I have put forward that there is evidence of a dispute between them?</i>	<i>[Ian Taylor] There clearly was a dispute on that occasion in that meeting. Ross McLeod stated "that he did not go so far as to attack me personally". He's made that statement very clear. There was most definitely a difference of opinion at that meeting involving them on the Walton Lifeboat and the Black Swimming Association. I quote Mr. McLeod verbatim - "He didn't appear to take any of that on board. He was in transmit mode. He said that the materials did not reflect those who were drowning in his area though he didn't go so far as to attack me personally." So that's a clear statement from Mr McLeod that he didn't feel attacked at any stage though there was clearly a difference of opinion.</i>
<i>A dispute would suggest that there was some kind of argument but I've not heard anyone before today suggest that there had been some kind of argument?</i>	<i>[Ian Taylor] Wouldn't you accept that the words "He didn't appear to take any of that on board" implies that there was a difference of opinion going on?</i>
<i>How do you believe that the comment –</i>	<i>[Ian Taylor] Well, what does that</i>

<p><i>“Don’t get me started on the Germans” supports the view that he was not discriminatory during the 29<sup>th</sup> June meeting?</i></p>	<p><i>comment mean? How is that discriminatory? There is nothing intrinsically discriminatory in that comment. He could be referring to a time in a holiday camp, he could be referring to football, he could be referring to anything. On this occasion he was referring to something else in a jocular manner. I don’t think that this issue is to do with anything discriminatory against Germans or people of German descent. He had no idea that there was somebody there who was half-German. He did not intend to deliberately offend anybody. He just made a comment in relation to the coast where there are pillboxes and reminders of the Second World War and currently there is a large German company who are planning on bring cables and electricity onto the coast, which is unwanted because of the nature of that delivery which is by large above ground pylons which is a well-known dispute throughout the East of England at the moment and it was light-hearted remark. He had no idea there was a person there who was half-German. He wasn’t trying to offend and he was just making a reference and if we come to that then we are all in trouble.</i></p>
<p><u>Questions from members of the Committee to Councillor Turner/ his representatives</u></p>	<p><u>Responses thereto from Councillor Turner/ his representatives</u></p>
<p><i>[Cllr. Alexander] Did you at any time during the long time that you served on the SIG have any knowledge that you were not there in an official capacity?</i></p>	<p><i>[Ian Taylor] I don’t think it’s in dispute that Cllr. Turner did think that he was acting on behalf of the Council. Councillor Turner did believe that he was a member of the SIG. It’s whether what he believes is actually correct. We have to delve a bit deeper into that and decide whether that capacity actually existed. This issue of capacity will have to be decided at some point perhaps at a higher level.</i></p>
<p><i>[Cllr. Alexander] At any time did you receive any training in respect of sitting on that committee or what the expectations of TDC of you would have been at that time?</i></p>	<p><i>[Ian Taylor] Councillor Turner did not receive any training in relation to this committee and he has not received any committee reports or policy statements or anything to guide him in his role on</i></p>

	<p><i>this committee, which is one of the reasons why the capacity issue is relevant. Usually when Councillors are appointed to outside bodies they have policies agreed by Cabinet or by Portfolio Holders or Officer decisions to support them. There's nothing in this case, which would indicate that Cllr Turner was alone in believing that he was representing the Council. He wasn't, in effect he was attending as a local person with an interest in coastal matters who had been invited to this committee a number of years ago and there it rested. There is no governance from the Council associated with this at all.</i></p>
<p><i>[Cllr. Alexander] With no training and with the undoubted enormous amount of knowledge you have within this whole sphere, how did you see your role there and what were you to bring to that committee?</i></p>	<p><i>[Ian Taylor] Cllr. Turner has always mastered his brief. In my experience of having known him over a number of years, it's one of the greatest respects that he shows all Officers is that he goes off and learns what he's talking about. He studies it. He was asked to attend this group over 13 years ago. Throughout that time he's listened, learnt, done his research and he's well aware of the issues at stake and the issue at stake at this particularly meeting on 5<sup>th</sup> June was the Shoreline Management Plan. What happened unfortunately was a bit of a mess up. He believed that he was there at a normal meeting to discuss the Shoreline Management Plan when, in actual fact, it was a training session designed to be shorter and more brief. That's why he got muddled, the meeting wasn't handled well, people spoke over each other to try and get their points across and that is the situation as it was.</i></p>

### 13. **SUMMING UP**

The Investigating Officer (Melvin Kenyon) summed up the Complaint as follows:-

*"The matter of capacity for me, on the balance of probability and the evidence available is not in question. I think Councillor Turner himself believed that he was a representative of the Council. Everyone who attended those meetings of the SIG believed him to be a representative of the Council. The Council paid the subscription fees to the SIG and Councillor Turner claimed expenses from the Council for his attendance, on occasion, at SIG meetings. Now these two meetings were virtual but we know that he previously*

*claimed expenses. We could get into a semantic discussion about what “the Council” means, but it does seem to me that paying the subscription fees, sending Council Officers along with Councillor Turner when he attended meetings, paying his expenses when he claimed them, does indicate some kind of acceptance on behalf of “the Council” (whatever that means), of Councillor Turner being ‘in capacity’, quite apart from the fact that he agrees that he was in capacity.*

*I have set out the fact that based on the evidence available and the balance of probability there are four breaches of the Code, I won’t repeat them, we’ve heard them several times over. What I will say finally is this is not about Councillor Turner’s service as a Councillor over the years or his public service more generally. This is about issues more generally within those two SIG meetings that arose. Those are set out in my Report. I’ve drawn conclusions on the basis of the evidence available to me and I have concluded that Councillor Turner breached the Code of Conduct. Thank you.”*

Mr. Ian Taylor then summed up the Respondent Councillor’s (Councillor Turner) case as follows:-

*“We’ve heard the four allegations. I won’t repeat them again for brevity. I’ll go straight to the meeting on 5<sup>th</sup> June where the Investigating Officer’s conclusions were that in behaving as he did Councillor Turner breached the Tendring District Council Code of Conduct by showing a lack of respect by attacking in a personal way two of the persons attending that meeting and, more generally, by failing to respect those attending the meeting and, in behaving as he did, he brought his own role as a Councillor into disrepute.*

*So the dispute here is how did he behave? How was his behaviour so reprehensible as to meet the criteria for this allegation? He’s acknowledged himself that he’s enthusiastic about this subject. He’s acknowledged himself that he was not fully aware of the purpose of this meeting. But nobody at any stage claimed a personal attack. There were no records of the meeting or a recording. These are all just people’s personal remembrances given some considerable time later. I think it was three months or more before this complaint was officially made.*

*Nick Hardiman, who was the Environment Agency representative there, said that he ‘does not remember some of the things that were said, but at the time thought, well that’s just Councillor Turner. I know that he does not like or agree with and hasn’t signed up to the Shoreline Management Plans. He appears to be a Climate Change sceptic and dislikes some of the things that we are trying to do in the plans. His attacks have tended to be against the plans themselves.’ I think that’s a clear statement from this Officer that he didn’t feel personally attacked, it was about the Plans that he was representing. I know there are further comments from Mr. Hardiman in the Investigator’s Report that says that if there were a more junior officer there they may not have liked it but I’m robust enough to do so. Well that’s why, in my experience, you don’t send junior officers to attend meetings that are at a high level. The point is that there were senior officers there and they should be robust enough to engage in a discussion of serious importance.*

*The claim that Councillor Turner irritated other people as evidenced in the chat room use at that meeting is something that I’d like to dispute. The message that was conveyed in the chat room was basically just a reminder to Councillor Turner or anyone else that it was intended to be a training session. They did not say anything about how*

*rude or this is unacceptable or outrageous or offensive. It merely said this is a training session. This is where we are trying to get some perspective on what was actually said at this meeting and how offensive it was.*

*Councillor Turner has acknowledged that he is extremely concerned about the Environment Agency's Shoreline Management Plan. I would think it incumbent upon all of us from this area to be concerned about the Shoreline Management Plan, which essentially says 'we will wait and see what happens and we might do something if it occurs, which for those of us who have been involved in commemorations for those who have died in this area as a result of the Sea coming in, I think it's a bit more incumbent on us to take this a bit more seriously.*

*I don't believe for one second that there's evidence to support that Councillor Turner overstepped the mark at this meeting. He misunderstood its purpose. The people running the meeting handled it badly and they were frustrated because they'd arranged a one hour meeting for a training session, always risky in my experience but nevertheless. There were no complaints arising from this meeting at the time. It was done and dusted on the 5<sup>th</sup> June. No reference was made to it until three months later.*

*I'd like to move now to the 29<sup>th</sup> June meeting. Again, the Investigating Officer stated that based on the evidence Councillor Turner breached the Tendring District Council Code of Conduct by attacking a representative of an external organisation in a personal way. Well, there's no evidence to support this. As we discussed earlier in the questions, Ross McLeod representing that outside body specifically says: "he didn't go so far as to attack me personally". I'm not sure how you can reconcile those two things. Saying that Councillor Turner attacked someone personally when the very person he is supposed to have attacked specifically says that he wasn't attacked personally. I don't know where we go from there because it is just wrong.*

*World Drowning Day – this is where those who involved themselves in the investigation collectively went into 'shock, horror' and claimed what had been said was 'outrageous, I'm offended, I'm upset' and some of the people involved in this went as far as accusing Councillor Turner of being racist, and using racist language. I don't get it. It's not there is it. He didn't attack anyone personally. Attendees don't recall clearly what was said. But on a balance of probabilities supported by the facts here two statements did match and that was that Councillor Turner said "It's not that they [South Asian or Afro-Caribbean communities] can't swim but more that they don't want to." Which was then paraphrased as "can't float, won't float" kind of thing. That in itself is not a racist statement and to imply otherwise is deeply offensive to Councillor Turner and to everybody else. For clarity, Councillor Turner is not a racist. In fact, he supports minority groups a great deal and he did on this specific occasion. He was the only one advocating an urgent need for those communities to learn to swim in greater numbers because they die in greater numbers by drowning on the coast. There is nothing more unedifying than seeing a group of wholly white people playing the racial discrimination card to support their own ends rather than support the people they claim to be protecting. The Black and South Asian communities require protection, they need to be encouraged to learn to swim, their children and young people die disproportionately. The statistics are really alarming. In America 80% of black people don't swim. In this case Councillor Turner was very clear on this. There is absolutely no evidence to support the claim that racist comments were made by Councillor Turner.*

*In conclusion, the Investigation Officer's findings in relation to this is disputed in the strongest possible terms. It's a crucial fact that the personal remarks seem to be the ones that tip Councillor Turner's behaviour over the edge in terms of whether his behaviour was acceptable at these meetings. I don't think that there is any evidence to support that. I think that there is a collection of statements made by people who can't recall clearly or exactly what happened. There is no supporting of that. There is no recording or decent minutes of these meetings to support that. What Minutes there are have been made later to try and bolster the case. In fact, Councillor Turner is owed an apology. He should be congratulated for raising a difficult issue. Uncomfortable truths are never good to hear. You may not like it but they need to be said sometimes. It takes someone like Councillor Turner, a Councillor of great experience to have the courage to do that. I think that it's a shame that after all the years that he did spend attending this committee that nobody felt the need to have a quiet word with him or to instigate some mediation. Instead, he's been hung out to dry for something that he didn't actually say. He made no racist comments whatsoever and all he did was engage in decent debate. If anything we learn as a country it is if liberty is to mean anything or democracy is to mean anything then it is the right to say something that people might not want to hear. In this case that's all that Councillor Turner did. He frustrated people, he irritated people but he didn't do anything to breach the Members' Code of Conduct. There is no evidence in this investigation report to suggest that. I conclude my summing up. Thank you."*

**14. INDEPENDENT PERSON'S VIEWS AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

The Independent Person then had the opportunity to provide their views on this matter as to whether there had been a failure to comply with the Code of Conduct, which the Committee would take into account before it made its decision on the allegation.

Sue Gallone (Independent Person) made the following statement:-

*"My views are on whether I consider there to have been a breach of the Code of Conduct. I've read all of the papers and I've listened very carefully to what we've heard here today. I'm very mindful that we're talking here about the balance of probabilities and therefore I've given some attention to the weight of the evidence in front of us which are the statements from those at the meetings, the complaint itself, Councillor Turner's account of these events, the small comment in the chat and the minutes of the meetings that have been available to the Investigator as well.*

*It seems to me that the events have taken place. Nobody really disagrees with that. It's the extent and strength of feeling that's at dispute here in my view. We've had representations that Councillor Turner is robust and passionate in his beliefs and he puts that over and that is understandable for a Councillor. The question I feel is how far have those comments gone, have they gone too far. In my view in going to those four alleged breaches of the Code, I would say that items 1 and 2 have been breached based on the behaviour at the meetings on the 5<sup>th</sup> June and 29<sup>th</sup> June.*

*On the 5<sup>th</sup> June there appears to have been a personal attack on the representative of the Environment Agency and the SIG themselves. On the 29<sup>th</sup> June there was certainly a verbal attack on the RNLI representative who was treated, as the witnesses have attested, disrespectfully.*



*I think that it is also important to take into account that both of those meetings were disrupted quite significantly in achieving their purpose. So in that way I do think that the Code of Conduct which requires Councillors to treat other Councillors with respect and also to treat other representatives and partner organisations with respect, has been breached in my view. I think that also leads to the fourth alleged breach namely bringing TDC into disrepute and I do think that has done that by treating others without respect.*

*The third item, about failing to promote equalities in a discriminatory matter I found more difficult to form a view on. I have looked at the headline of the Code, which is about saying that discrimination is unfair treatment towards particular groups. I don't see that in the accounts that we have of the meetings. I think those with protected characteristics haven't been subject to unfair treatment but when you look at the LGA guidance notes and indeed Mr. Kenyon has drawn attention to these in his report's conclusions, we also have to consider whether there were any comments, slurs, jokes, statements, questions or gestures that were derogatory or offensive to an individual's or group's characteristics and whether any of the comments promoted negative stereotypes relating to an individual's or group's characteristics and I think that the comments made could be seen in that particular light. I do believe these are very sensitive matters and as has been said Councillor Turner hasn't been afraid to raise these matters the language and perhaps the setting has been clumsy here but I do think it hasn't met the guidance about the Code of Conduct in that case.*

*So those are my views on the breach of the Code of Conduct for the Committee to consider."*

In response to a question raised by the Head of Democratic Services (Keith Simmons) as to whether she had a view on the matter of Councillor Turner acting 'in capacity', Sue Gallone informed the Committee that her view was that Councillor Turner had been acting 'in capacity'.

**15. THE COMMITTEE'S DELIBERATIONS AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

The Committee (accompanied by the Head of Democratic Services & Elections and the Executive Projects Manager – Governance) retired to consider and deliberate in private the complaint prior to reaching its decision.

**16. THE COMMITTEE'S DECISION AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

Upon the Committee's return the Chairman was required to announce the Committee's decision in the following terms:-

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

The Committee was also required to give detailed reasons for its decision, which would be included within the published Decision Notice.

Upon the resumption of the meeting, the Chairman (Councillor Wiggins) accordingly read out the proposed decision.

It was then moved by Councillor Alexander, seconded by Councillor Newton and:-

**RESOLVED** that the Committee's formal decision is as follows:-

**Case:** Concerns a complaint received in August 2023 from Cllr Ernest Gibson of South Tyneside Council. Cllr Gibson was (and is) the Chair of the Local Government Association's Coastal Special Interest Group (SIG) and presided at meetings of that Group's meetings on 5 and 23 June 2023. Those meetings were held online.

The complaint is set out in the Investigator's report at page 37 of the Report to this meeting as referenced at agenda item 7.

In addition to the Investigator's report, on behalf of this Council's Monitoring Officer, the Council received witness interview notes with the complainant, Sidonie Kenward of the Marine Management Organisation, Beccy MacDonald-Lofts as the lead officer for the SIG, Ross MacLeod of the RNLI, Rhys Hobbs of Cornwall Council, Cllr Derek Bastiman of North Yorkshire Council (who is also Deputy Chair of the relevant SIG), Alysha Stockman of East Suffolk Council, Cllr Noel Galer of Great Yarmouth Borough Council, Nick Hardiman of the Environment Agency and Cllr Nick Turner (the subject member of the complaint) from this Council.

The Committee also received two reports from the Council's Monitoring Officer, referenced at Agenda Items 5 and 7 respectively. The report at Agenda Item 5 provided the Committee with more generalized information around the complaint and the process to the meeting today. That report included the Code of Conduct, the Council's complaints procedure in respect of the code, the hearing procedure and the Local Government Association's Guidance on the Code of Conduct. The report at Agenda Item 7 included further detail of the specifics of the complaint and advice and guidance.

The defence submission from the subject member has been provided to the Committee together with questions posed by him to Beccy MacDonald-Lofts and her responses to those questions.

Through today's hearing the Committee has also received oral evidence through statements made to it, responses to questions and the views of its Independent Person.

The Committee has considered all of these documents and oral evidence as part of its role in reviewing whether the subject member was acting in an official capacity to which the Code applies and, if that was the case, whether there had been breaches of the Code as described in the material presented to the Committee.

**Facts:**

The crux of the complaint concerns interventions by the subject member at meetings of the Local Government Association's Special Interest Group (SIG) on 5 and on 23 June 2023. The SIG was attended by many representatives (Councillors and Officers) from a range of coastal authorities who, like this Council, were Members of the SIG. The meetings were also attended by representatives of other agencies, authorities and national organisations with an interest in/who contribute to the work of the SIG. Certain of the interventions from the subject member at the meetings were stated, in the

complaint and through the investigator's report, to have breached the Councillor Code of Conduct adopted by this Council.

The breaches of the Code were stated as being of the General Conduct paragraphs 1.1, 1.2, 2.3 and 5.1 of that Code.

At page 25 of the report to the Committee in support of Agenda Item 5, the Monitoring Officer confirmed that the Councillors Code of Conduct of Tendring District Council had been adopted on 22 November 2022 (with a commencement date of 23 May 2023). On page 25 of the report of the Monitoring Officer at agenda item 5, the Committee was informed that the subject Member had attended mandatory training on the Council's Code of Conduct on 21 June 2023.

Prior to this complaint being considered now by the Committee, there had been no complaint about the subject member and his language and behaviours at meetings of the SIG.

The subject member has stated that at the meeting on 5 June 2023 of the SIG, he apologized and left the meeting. He also states that he apologized unreservedly in respect of his interventions complained of at the 29 June meeting of the SIG. Following the complaint being received, the subject member resigned from the SIG and subject member apologized unreservedly for any offence given upon the complaint being passed to him.

#### **View of the Independent Person**

The Committee acknowledges the view provided to it of the Independent Person during this hearing.

#### **Decision of the Committee**

Based on the balance of probabilities and the evidence available, the Committee concludes and decides that:

**The subject member was acting in official capacity in his attendance at the meetings of the SIG on 5 and 29 June 2023;**

In reaching this conclusion, the Committee is satisfied that it has received evidence of:

- \* This Council being a member of the SIG,
- \* The Council paying the subscriptions required for membership of the SIG,
- \* The sole Member of the Council in attendance at the meetings of the SIG being the subject member,
- \* The subject member recognized membership of the SIG on his general interests form,
- \* The subject member making a claim for travel expenses on official business to attend a SIG event (prior to the complained of meetings),
- \* There was a general acceptance of representation by all concerned at SIG Meetings, and
- \* That, in response to the complaint, the subject Member resigned from the SIG.

**The Committee then found, as a matter of fact, that the subject member's conduct amounted to a relevant breach of the Code of Conduct as follows:**

Code	5 June SIG Meeting	29 June SIG Meeting
1.1 I treat other Councillors and Members of the public with respect	Here the breach amounted to behaviours to particular individuals in front of others attending the meeting and wholly disrupting the meeting as arranged. The interventions by the subject member took up a significant portion of the meeting time allocated for the meeting. This was being disrespectful to those other attendees.	Here the breach amounted to behaviours to particular individuals in front of others. Here he failed generally to respect others who were in attendance.
1.2 I treat Local Authority employees, employees and representatives of partner organisations, and those volunteering for the local authority with respect and respect the role they play	Here the breach amounted to attacks in a personal way on two of those who attended the meeting. The two individuals were Mr Nick Hardiman representing The Environment Agency and Beccy MacDonald Lofts as the Lead Officer for the SIG)	Here the breach was the subject member's lack of respect by attacking a representative of an external organisation in a personal way. The representative here was Ross MacLeod of the RNLI.
2.3 I promote equalities and do not discriminate unlawfully against any person		Here the breach was the use by the subject member of inappropriate language referencing a number of groups characteristics that were taken to be offensive to those groups and this was not promoting equalities.
5.1 I do not bring my role or local authority into disrepute	By acting as he did, as set out above, the subject member also brought this Council into disrepute. It is noteworthy that there was evidence that certain representatives were considering leaving SIG.	By acting as he did, as set out above, the subject member also brought this Council into disrepute.

Each separate finding of a breach of the Code of Conduct was then assessed against Article 10 of the European Convention on Human Rights to determine whether the breach (on the face of it) constituted an infringement of the subject member's rights

under that Article. **The Committee concluded that there was no such contravention of Article 10.**

**However, the Committee also considered that - if there was a breach of Article 10 in any one of the breach areas - the consequential restriction on the subject member from the finding involved one, which was justified by reason of the requirement of article 10 subparagraph 2.**

The above constitutes the decision of the Committee, however, the Committee also would wish the following to be read into the record:

It is noted that the subject member offered an apology at the meeting of the SIG, upon receipt of the complaint and during the interview with investigator appointed by the Monitoring Officer.

The Committee recognises the years of public service undertaken by the subject member on this Council and in raising significant matters of public policy. Nothing in this hearing should seek to undermine that legacy. We do not consider that there was a conscious discriminatory intent by the words used at the meeting on 29 June of the SIG.

We believe the points being made, by the subject member, could have (and should have) been made in a different way and that alternative language and behaviours could have made the points the subject member states he wanted to make; whether that was around policies to permit coastal retreat, the safety of sea users as a consequence of the closing of RNLI boat stations and the safety of different groups when going swimming in the sea.

The Committee does not consider any alleged failings by the SIG chairmanship/secretariat should excuse breaches of this Council's Code of Conduct for Members.

**17. ONLY REQUIRED IF COMMITTEE DECIDES THAT THE COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT - REPRESENTATIONS AS TO SANCTION(S)**

If the Committee decided that the Councillor had failed to comply with the Code of Conduct it would then consider any representations from the Investigator and/or the Respondent Councillor as to the appropriate sanction, as set out in Section 8 of the Complaints Procedure, and based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.

Section 8 set out the available sanctions as follows:-

- (1) *Publish its findings in respect of the Member's conduct on the Council's website;*
- (2) *Report its findings to Council for information;*
- (3) *Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;*

- (4) *Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;*
- (5) *Instruct the Monitoring Officer to arrange training for the Member;*
- (6) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority;*
- (7) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or*
- (8) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.*

The Investigating Officer (Melvin Kenyon) declined to make any representations as to the sanctions to be applied, as he did not feel it would be appropriate to do so.

Ian Taylor, on behalf of Councillor Turner, requested that no further sanctions be imposed on Councillor Turner over and above those that he had already incurred i.e. the loss of his committee and outside body appointments and the loss of his Group membership.

**18. INDEPENDENT PERSON'S VIEWS AS TO THE SANCTION(S) TO BE APPLIED (IF ANY)**

The Independent Person then had the opportunity to provide their views on this matter as to the Sanction(s) to be applied (if any), which the Committee would take into account before it made its decision.

Sue Gallone, Independent Person, made the following statement:-

*"My view on the sanctions are that it is necessary to publish the findings and to report the findings to Council in the interests of transparency and democracy. With regard to the Council appointments, I think the ongoing status of those is more a matter for the Party and Council rather than me to have a view and so I don't have a particular view on that. In terms of training I don't see the need for further standards training for the Code of Conduct. Councillor Turner has had plenty of training on that but I do wonder if there is some scope for some sort of one-to-one advisory section to reflect on this experience and how things might be done differently. But, I am applying experience from elsewhere here and I don't know if that would be possible within this Council.*

*Likewise, on the outside appointments I don't have a view on that. I think that's for the Council and the Leader. The resource sanctions numbers seven and eight are I think too draconian to restrict access in that way. And although this is a serious finding I don't think it's of a nature where that is necessary. So those are my views for the Committee to consider. Thank you."*

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**19. THE COMMITTEE'S DELIBERATIONS AS TO SANCTION(S) TO BE APPLIED**

The Committee (accompanied by the Head of Democratic Services and the Executive Projects Manager – Governance) then retired once more to consider and deliberate in private what action, if any, should be taken.

**20. THE COMMITTEE'S DECISION AS TO SANCTION(S) TO BE APPLIED**

On the Committee's return the Chairman was required to announce the Committee's decision as to what actions they had resolved to take, having regard to Section 8 of the Complaints Procedure.

The Committee would also consider whether it wanted to make any specific recommendations to the Council with a view to promoting and maintaining high standards of conduct among Members.

Upon the resumption of the meeting, the Chairman read out the proposed sanctions.

It was then moved by Councillor Baker, seconded by Councillor Newton and:-

**RESOLVED** that the Committee's formal decision as to the sanctions to be applied is as follows:-

"The Committee has considered the representations from the subject member and the views of the Independent Person. It also acknowledges that the Investigating Officer did not make representations on the sanctions.

It is the Committee's considered view that the following sanctions should be applied in response to the finding of the breach of the Code of Conduct for Members, announced already:

- (1) Publish its findings in respect of the Member's conduct on the Council's website;
- (2) Report its findings to Council for information;
- (3) Instruct the Monitoring Officer to arrange training for the Member;

*The suggestion from the Independent Person for this style of training to be more of a 1:1 reflective session around learning from the complaint is one the Committee endorses.*

In addition, the Committee finds that there should be an apology issued by the subject member to the Coastal SIG and to this Council recognising the finding of this Committee.

Further, while recognising that decisions around membership of Committees for a non-aligned Member (which the subject member currently is), is a matter for Full Council, the Committee considers that any decision to appoint the subject member to a Committee should be after the apologies requested have been issued and the training undertaken.

Likewise, while the decision of appointments to outside bodies is a matter for the Leader of the Council, the Committee considers that any decision to appoint the subject

member to an outside body should be after the apologies requested have been issued and the training undertaken.

We hope that the apologies and training can both be expedited and therefore not delay the appointments referenced.

The Committee considered that there was a breach of Article 10 in applying the sanctions concerned. However, and accepting that political debate has a higher protection under Article 10, the consequential restriction on the subject member from the sanctions applied are ones which are justified by reason of the requirement of article 10 subparagraph 2.”

The Chairman confirmed that a full written Decision Notice would be issued within seven working days following the hearing.

The meeting was declared closed at 5.51 pm

**Chairman**



## STANDARDS COMMITTEE

24 October 2024

### REPORT OF THE MONITORING OFFICER

#### A.1 **STANDARDS COMMITTEE – INDEPENDENT PERSONS RECRUITMENT**

(Report prepared by Lisa Hastings and Karen Hayes)

#### PART 1 – KEY INFORMATION

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

To enable the Committee to comment on Independent Persons' recruitment pack prior to advertisement and to determine the representatives of the Standards Committee on the interview panel.

##### **EXECUTIVE SUMMARY**

At the meeting on 27 November 2018, Council 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.

The appointments as Independent Persons (IPs) were extended for a year from May 23-24, at Full Council on 22<sup>nd</sup> November 2022 (Minute no. 52).

At its Annual Council meeting on 30<sup>th</sup> April 2024, Tendring District Council approved (Minute no. 14) that –

- 1. The previous local arrangements for joint appointments to both roles, being the Independent Remuneration Panel and Independent Persons ceases;**
- 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;
- 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 and 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**

With regard to the roles of Independent Persons for the Ethical Standard arrangements, a pool of Independent Persons are available through the Public Law Partnership (covering Essex, Hertfordshire and Suffolk) that can be called on by any authority, subject to the necessary approvals through formal appointments. These arrangements are considered appropriate to use where capacity or conflicts of interest are an issue. Whilst the Council has previously

approved and adopted this flexibility, using the pool has not been required due to having four Independent Persons. Therefore, it is 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.

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

### **Term of Office**

Whilst the term is to be determined by Full Council on appointment, the practice which has been adopted since 2018 has been to appoint Independent Persons for a term of 4 years, which aligns with the term for elected members. However, it is also essential to provide continuity, developing the relationship between the Independent Persons with the Monitoring Officer is 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 CSPL 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 is 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 require dedicated resources being committed by the Council, to ensure the role is sufficiently performed. In addition, experience obtained depends upon the number of Member Code of Conduct complaints received and this cannot be predicted in advance; a longer term of office 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 will always encourage individuals to express an interest in the role.

## **RECOMMENDATION(S)**

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

- a) Notes the contents of this report;**
- b) Supports the proposal to recruit 4 Independent Persons, for a term of office for 4 years at the suggested allowance of £600 per annum (subject to Full Council approval on appointment);**
- c) Endorses previously appointed Independent Persons being permitted to reapply for this role;**
- d) Subject to debate within the meeting, supports the recruitment pack for the role of the Independent Persons; and**
- e) Authorises 3 members of the Standards Committee to form part of the Interview Panel.**

--

<b>REASON(S) FOR THE RECOMMENDATION(S)</b>
To present to the Standards Committee the draft Independent Person Recruitment Pack for comment on and to determine the representatives of the Committee to form part of the Interview Panel. <b>PICK UP MATTERS TO BE COVERED THROUGH DEBATE</b>

<b>ALTERNATIVE OPTIONS CONSIDERED</b>
To utilise the pool of Independent Persons available through the Public Law Partnership (covering Essex, Hertfordshire and Suffolk) that can be called on by any authority, subject to the necessary approvals through formal appointments.

## PART 2 – IMPLICATIONS OF THE DECISION

<b>DELIVERING PRIORITIES</b>
The existence of sound governance, internal control and financial management practices and procedures are essential to the delivery of Corporate priorities supported by effective management and forward planning within this overall framework.

<b>LEGAL REQUIREMENTS (including legislation &amp; constitutional powers)</b>
Section 28(6) and (7) of the Localism Act 2011 requires the Council to appoint at least one Independent Person to work with the Monitoring Officer within the Standards Framework.  In accordance with the Council's Constitution, the advertisement of vacancies of Independent Person(s), the review of applications received, the interview of suitable candidates and the making of recommendations to Council as to who should be appointed, are delegated to the Chief Executive or Monitoring Officer. However, as both of these independent roles do have strong engagement with Councillors, the Chief Executive and Monitoring Officer are of the view that it is considered appropriate that representatives from the Committee are involved in the recruitment process.

<b>FINANCE AND OTHER RESOURCE IMPLICATIONS</b>
<b>Finance and other resources</b> The previous allowance for the dual role of Independent Person and member of the Independent Remuneration Panel for Tendring District Council was £600 per annum (last reviewed in 2018). Due to the length of time since the last review, it is recommended retaining £600 per annum for the sole role of Independent Person (subject to review by Full Council).

<b>USE OF RESOURCES AND VALUE FOR MONEY</b>	
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;	As stated within Finance and other resource implications
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Advertisement of vacancies, interview and recommendation of appointment to Full Council

	has been delegated to the Chief Executive and Monitoring Officer.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Nothing to add in the context of this report.
<b>MILESTONES AND DELIVERY</b>	
Take into consideration the comments of the Standards Committee in relation to the Independent Persons' Recruitment Pack prior to the advertisement and determine the representatives of the Standards Committee on the interview panel for the subsequent interview process.	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
There is a risk that the position of Independent Persons does not get recruited to, or applicants are not of the calibre required, along with appropriate experience available within the role.	
<b>OUTCOME OF CONSULTATION AND ENGAGEMENT</b>	
It is requested that Members of the Standards Committee discuss the content of the Independent Persons' Recruitment Pack and determine whether they wish to recommend any amendments. As stated in the main body of the report, the vacancies would be advertised locally.	
<b>EQUALITIES</b>	
<p>In line with the Public Sector Equality Duty, public bodies such as the Council must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment and victimisation to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.</p> <p>The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.</p> <p>The proposed Independent Persons' Recruitment Pack does not impact on the protected characteristics.</p>	
<b>SOCIAL VALUE CONSIDERATIONS</b>	
There is an element of social value relating to the Independent Persons' role in that the public must have confidence that complaints raised against Members that relate to the Members' Code of Conduct will be looked at in a fair manner. The Recruitment Pack and Process are considered robust to ensure this confidence.	
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030</b>	
Not applicable.	
<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>	All Wards could be affected
<b>ANY OTHER RELEVANT INFORMATION</b>	
None	

### PART 3 – SUPPORTING INFORMATION

#### BACKGROUND

The following recruitment process was undertaken for the roles in 2018/19:

- Up to 4 people were to be appointed to serve as both the Independent Remuneration Panel and Independent Person;
- An allowance of £600 per annum was allocated for payment to each person;
- A Recruitment Pack be produced incorporating comments from the Standards Committee;
- The posts were advertised locally
- Interviews be undertaken by a joint Member / Officer panel;
- The recommended appointments by the Panel be submitted directly to Full Council for approval.

The Committee on Standards in Public Life (CSPL) reported the outcome of their national review in a report published in January 2019, which included a number of recommendations relating to Local Government Ethical Standards. The report also includes a number of Best practice recommendations, those which relate to the role and responsibilities of the Independent Person were:

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

Whilst the following did not translate into the formal recommendation or within the list of best practice, the CSPL report stated (page 56) *“The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory”*.

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

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

*In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution “fresh” and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the*

*stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council.*

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

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

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

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

At its meeting on 27 November 2018, Full Council agreed the appointment of the current four Independent Persons for the purposes of Standards arrangements.

At its meeting on 22 November 2022, Full Council extended the appointment for a year from May 23-24.

At its Annual Council meeting on 30 April 2024, Full Council approved 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 required for 2026/27 and into the next 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.

**BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None

**APPENDICES****Appendix A – Independent Persons' Recruitment Pack****REPORT CONTACT OFFICER(S)**

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

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**TENDRING DISTRICT COUNCIL**

**STANDARDS COMMITTEE  
INDEPENDENT  
PERSONS**

**INFORMATION AND  
APPLICATION PACK**

## CONTENTS OF INFORMATION AND APPLICATION PACK

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Thank you very much for expressing an interest in this role of an Independent Person on Tendring District Council's Standards Committee.

In this information and application pack you will find out more about the Standards Committee and what might be expected of you should you become an Independent Person. You will also find a short application form, if you wish to apply for the role.

The promotion and maintenance of the highest possible standards of behaviour in the work of the Council is of the greatest importance. Similarly, independent people being part of these arrangements helps to build confidence within the community that the Council is doing its best in this areas. The strong working relationship between officers and Councillors has been a feature of the Council for many years irrespective of the groups forming the administration. The cultivation of an inclusive approach across the Council Chamber with Group Leaders and those involved in Overview and Scrutiny and in Audit has meant that constructive challenge and review have been integral to the governance of the Council for the benefit of residents.

We are looking for persons who have an independent and **analytical mind**, are tactful and have good interpersonal skills, and can give clear and reasoned advice. It is important that the selected people have the profile and experience that the community would respect in bringing an independent and informed perspective to the standards processes.

Thank you once again for your interest.

**Ian Davidson**

**Chief Executive**

**DRAFTING NOTE:**

**Discuss at Committee whether to include a Message from the Chair of the Standards Committee and/or Monitoring Officer?**

# APPOINTMENT OF INDEPENDENT PERSON AND INDEPENDENT REMUNERATION PANEL MEMBER

## SELECTION TIMETABLE AND HOW TO APPLY

### The timetable

The closing date for receipt of applications is **[insert date 2024]**.

Short-listing is scheduled for later that week and interviews will take place on **[insert date 2024]**.

Candidates will be interviewed by a Panel of three Councillors from the Council's Standards Committee and three officers. The final appointments will be made by full Council at its meeting on **[insert date 2024]**. The term of office for the current Independent Persons was extended until May 2025.

All applications will be assessed against the selection criteria outlined in the application form and person specification. Candidates who are invited for interview will be notified after the short-listing process has taken place. Contact is likely to be by email if an email address is provided by the applicant.

If you have any questions about becoming an Independent Person, please contact Lisa Hastings, the Council's Monitoring Officer, on 01255 686561 or email [lhastings@tendringdc.gov.uk](mailto:lhastings@tendringdc.gov.uk)

### How to apply

Should you wish to apply for this position, please complete the application form and include a statement that you feel demonstrates how you meet the criteria and would be suitable for the role.

You should then either post the completed form to:

Karen Hayes  
Executive Projects Manager - Governance  
Tendring District Council  
Town Hall  
Station Road  
Clacton-on-Sea  
Essex  
CO15 1SE

or email to [standards@tendringdc.gov.uk](mailto:standards@tendringdc.gov.uk)

## **TENDRING DISTRICT COUNCIL**

Tendring District Council is a Local Authority within Essex, named after the peninsula of Tendring that the Council's administrative area covers. Within the district there is a population of 148,100, with 67,500 households and 4,740 businesses.

Tendring is represented by 48 elected Councillors and its administration is comprised of two groups of Independent Councillors as well as Labour and Liberal Democrat Councillors. 769 staff members are employed to ensure residents, businesses and visitors can depend upon the indispensable services delivered by the Council.

The Council's Corporate Plan 2024 - 2028 (Our Vision) sets out the key areas of focus for the authority and works as a guide to continue improving and developing the Council and the District alongside its partners. Community Leadership is core to our ethos. As a community leader, our Council is a deliverer, facilitator and influencer in delivering outcomes for our residents.

Councillors are democratically accountable to the residents of their District Ward and have an overriding duty to the whole community, including those persons who did not vote for them at election time.

There are also twenty seven Town and Parish Councils within the District.

Further information can be found on the Council's website at [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk)

## **THE STANDARDS COMMITTEE**

The Council agreed at its meeting on 26 November 2013 to create a Standards Committee and a Town and Parish Councils' Sub-Committee, which comprise of District Councillors and representatives from the Tendring District Association of Local Council (TDALC).

### **Composition**

The Standards Committee (the Committee) shall consist of seven Members of Tendring District Council;

No more than one Member shall be a Member of its Cabinet;

No Leaders of Political Groups will be Members of the Committee;

The only Members permitted to be substitutes on the Committee will be those named at the beginning of the Municipal Year by the Political Group Leaders;

No Member will be permitted to participate in meetings of the Standards Committee or its Sub-Committee unless they have undertaken specific Standards Committee training;

No substitute Members will be permitted, unless they have undertaken specific Standards Committee training;

The Committee is politically balanced in accordance with Section 15 of the Housing and Local Government Act 1989;

The Committee will have a standing Chairman and Vice Chairman appointed by the Full Council. However, when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Committee who is not from the same Political Group as the Member who is the subject of the complaint (nor of the same Group as the Complainant if a Member of the Council); and

A Member of the Standards Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

The terms of reference for Standards Committee are as follows:

### **Terms of Reference**

The Standards Committee will have the following roles and functions:

1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;

2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels in the Council.
3. To advise the Council on the adoption or revision of the Members' Code of Conduct;
4. To advise, train or arrange training on matters relating to and assisting Members, Co-Opted Members and Town and Parish Councillors on observing the Members' Code of Conduct;
5. To approve procedures for the conduct of hearings into complaints against Members;
6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;
7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework;
8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;
9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and
10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.

## **Proceedings**

1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;
2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;
3. In accordance with the Hearings Procedure, to hear and determine complaints about Tendring District Council Members and Co-Opted Members referred to it by the Monitoring Officer; and
4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.

## **TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE**

### **Composition**

Three Members of the Standards Committee and three non-voting co-opted Town and Parish Council Members to be nominated by the Tendring District Association of Local Councils;

The nominated Town and Parish Council Members will be of independent standing and will not have served as District or County Councillors for a period of four years prior to their nomination;

A Member (or non-voting Co-Opted Member) of the Town and Parish Councils' Standards Sub-Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

### **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.

### **Proceedings**

1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;
2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;
3. In accordance with the Hearings Procedure, to hear and determine complaints about Tendring District Council Members and Co-Opted Members referred to it by the Monitoring Officer; and
4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.

The Standards Committee will usually have four quarterly meetings and also additional meetings as necessary for the purpose of progressing allegations of misconduct.



## **THE INDEPENDENT PERSON: SPECIFICATION**

### **How has this role come about?**

#### **LOCALISM ACT 2011**

Under section 27(1) of the Localism Act 2011 (“the Act”) a “relevant authority” (which includes a local 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 “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 – the so-called “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, principal authorities must have in place - (a) arrangements under which allegations can be investigated; and (b) arrangements under which decisions on allegations can be made.

By section 27(7), arrangements put in place under subsection (6)(b) must include provision for the appointment by the principal authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

In accordance with the Act, Tendring District Council has adopted the Local Government Association’s Model Members’ Code of Conduct, formal Complaints Procedure (as its ‘arrangements’) and an Independent Person Protocol.

Tendring District Council has decided to appoint **[INSERT NO.]** Independent Persons.

### **What is the role of an Independent Person?**

The Independent Person’s role is to work with the Council’s Standards Committee and Monitoring Officer to help to ensure high standards of conduct in the Council and amongst elected Councillors within the District. One or all of the Independent Persons may be consulted at various stages of the complaints process in respect of any allegation that a Councillor has breached their Code of Conduct and on other Code of Conduct matters. The Independent Person’s role is set out in more detail in the Protocol.

## **Who is eligible?**

Under the legislation, a person is not considered independent and is therefore ineligible if he/she:

- Is, or has been within the past 5 years, a member, co-opted member with voting rights, or someone who has stood for office within the last 5 years, or officer of the Council or of one of the Town or Parish Councils in the District; or
- Is, or has been within the past 5 years, a relative, or close friend, of a member, co-opted member with voting rights, or someone who has stood for office within the last 5 years, or officer of the Council or of one of the Town or Parish Councils in the District. For this purpose, “relative” means –
  - a. A spouse or civil partner;
  - b. Living with the person as husband and wife or as if they were civil partners;
  - c. A grandparent of the person;
  - d. A lineal descendent of a grandparent of the person;
  - e. A parent, sibling or child of the person;
  - f. A spouse or civil partner of c., d. or e. above;
  - g. Living with a person defined at c., d. or e. above as husband and wife or as if they were civil partners

## **How long is the appointment?**

This will be confirmed on appointment, but it is likely that the Council will appoint to the role of Independent Persons for a maximum four-year term, which reflects the ordinary term of office of a councillor.

## **Do I have to live or work in the District?**

Not necessarily, but a connection to the District will add to the merits of your application.

## **How will the successful candidate be appointed?**

The positions are being advertised through a Press release, using local and regional media and via the Council's website. The Council may only appoint someone who makes a formal application and the appointment must be approved by a majority of the members of the Council.

A Panel of the Council's Standards Committee, which comprises 3 Members of the Committee and three Officers will be convened to conduct interviews. The Panel will recommend those applicants that it feels should be appointed to the Council.

## **What sort of person is the Council looking to appoint?**

The applicant would ideally live or work in the Counties of Essex or Suffolk to have an understanding of the area and some of the issues facing it. Applicant will want to have a desire to serve the public interest, and the local community, to uphold local democracy and

be ambassadors for impartiality; supporting the Council's goals of being accountable, open, principled and committed to equal opportunities.

No particular professional background is specified, but the person should be able to demonstrate probity and high ethical standards and abide by the Council's Independent Persons' Protocol. It is important that the Independent Persons have the profile and experience that the community would recognise and respect as bringing an independent and informed perspective to the process.

Training and support will be provided.

### **Is the position paid?**

An allowance of **£600** per annum will be paid for the role of Independent Person.

### **How much time does it involve?**

The workload of the Independent Persons will vary, according to the number of allegations of misconduct that are received. There are usually four ordinary meetings of the Standards Committee each year and additional meetings will be held to progress complaints. Committee meetings are generally held during the day. Also, the Independent Persons will be consulted by the Monitoring Officer on various occasions, as set out in the Independent Person role description. This may be by telephone, email or meeting.

# INDEPENDENT PERSON PROTOCOL

## TENDRING DISTRICT COUNCIL INDEPENDENT PERSON PROTOCOL

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

### Principles

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

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

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

(Note: "Member" is an alternative reference to "Councillor")

## **TENDRING DISTRICT COUNCIL COMPLAINTS PROCEDURE**

### **1. Context**

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member (with voting rights) of this Authority (“Tendring District Council” or a Town or Parish Council within its area (see 1.3 below)) has failed to comply with the Member Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the Member Code of Conduct.
- 1.2 Under **Section 28(6) and (7) of the Localism Act 2011**, Tendring District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Authority (*or of a Town or Parish Council within the authority’s area*), or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Town and Parish Councils within the Tendring District are set out on the Council’s website.
- 1.4 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation against a Member, which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles.

### **2. The Member Code of Conduct**

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the website or on request from reception at the Council Offices.
- 2.2 Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should visit the website operated by the Town or Parish Council or request the Town or Parish Council Clerk to allow you to inspect the Town or Parish Council’s Code of Conduct.

### **3. Making a Complaint**

- 3.1 If you wish to make a complaint, please write to or email:

The Monitoring Officer, Tendring District Council,  
Corporate Services, Town Hall, Station Road,  
Clacton-on-Sea, Essex CO15 1SE

[standards@tendringdc.gov.uk](mailto:standards@tendringdc.gov.uk)

The Complaints Form can be downloaded from the website.

3.2 The Monitoring Officer is a senior officer of the authority who has a statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which is available on request from the reception at the Council Offices or via the website. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. The name and address of a complainant will be provided to the member that is the subject of the complaint. In exceptional cases, we may agree to withhold your name and address from the member. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form along with the reasons why you feel it necessary for your name and address to be withheld. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.

3.5 Following receipt of your complaint, the Monitoring Officer will:-

- (a) acknowledge receipt of your complaint within 10 working days of receiving it;
- (b) notify, within 10 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above;
- (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint; and
- (d) your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.

3.6 The Complaints Procedure Flowchart is set out at the end of this procedure for reference.

3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.



3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaints procedure. The Monitoring Officer will also adhere to this confidentiality and only inform/contact any such individuals which are identified in the procedure or by the parties. If the details of the complaint are made public, it may be necessary for a statement to be issued by the Monitoring Officer for clarification only.

#### 4. Will your complaint be investigated?

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

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation

4.2 In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

4.3 The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria included at **Annex D (set out at the end of this procedure for reference)**.

Where the Monitoring Officer has taken a decision, you will be informed of the decision and the reasons for that decision. The Monitoring Officer may require additional information in order to come to a decision, and may come back to you for such information. In the absence of a response from you within 15 working days the Monitoring Officer may close the complaint. Information may be requested from the member against whom your complaint is directed to enable the Monitoring Officer to take the decision. In the absence of the subject Member's response within 15 working days the Monitoring Officer may proceed with the complaint.

Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer *may* also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

Any failure to comply with the time scale by the Monitoring Officer or parties concerned will be notified to the Standards Committee or Sub-Committee together with reasons for the delay and the member subject of the complaint and the complainant will be kept informed of progress and reasons for the delay.

- 4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or agreeing to mediation and/or other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

Where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required for informal resolution or mediation; this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies, subject to the necessary Legal Jurisdiction Criteria Test being applied.

## **5. Referral to the Standards Committee or Sub-Committee and how is the Investigation conducted?**

(The Committee and Sub-Committee Terms of Reference are included at **Annex C (set out at the end of this procedure for reference)**).

- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints a summary of which is attached as **Annex E (set out at the end of this procedure for reference)**.

The Council has a Town and Parish Councils' Standards Sub-Committee which has responsibility for dealing with complaints regarding the actions of a Town or Parish Councillor, reference to the Sub-Committee throughout this procedure relates to the Town and Parish Council's Standards Sub-Committee.

- 5.2 If the Monitoring Officer decides that a complaint merits further investigation without referral to the Standards Committee or Sub-Committee, he/she will commission the investigation to be undertaken by a suitably qualified investigator with requisite experience and may include another officer of the Council, a senior officer of another authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained.

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information

received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed. Any information supplied to the Monitoring Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, may be shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards Committee is convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.
- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer's report is sufficient, subject to 6.3 below, the Monitoring Officer will write to you and to the member concerned (*and, if*

*appropriate, to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.

- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.  
Exceptional cases may include but not be limited to matters where the evidence is so finely balanced or is in the public interest to do so.

**7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

- 7.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and will then either refer the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with one of the Independent Persons and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or mediation and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee or Sub-Committee (*and the Town or Parish Council*) for information, but will take no further action.

7.1.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Committee or Sub-Committee which will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and made available for public and

press inspection, however, the Investigators Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

At the hearing, following the Council's procedures, a copy of which will be provided, the Investigating Officer or the Monitoring Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Standards Committee or Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee or Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

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

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

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

**8. What action might the Standards Committee or Sub-Committee take where a member has failed to comply with the Code of Conduct?**

8.1 The Standards Committee or Sub-Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-

8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;

8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;

- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to *(or recommend that the Town or Parish Council)* arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed *(or recommend to the Town or Parish Council that the Member be removed)* from all outside appointments to which he/she has been appointed or nominated by the authority *(or by the Town or Parish Council)*;
- 8.1.7 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of *(or recommend to the Town or Parish Council that it withdraws)* facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of *(or recommend that the Town or Parish Council exclude)* the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

## **9. What happens at the end of the hearing?**

- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member *(and to the Town or Parish Council if appropriate)*, make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.

9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent Person will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.

## **10. Who forms the Standard Committee or Sub-Committee?**

10.1 The Standards Committee will comprise of 7 District Councillors;

10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Tendring District Association of Local Councils);

10.3 At least one of the two Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether a member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **11. Who are the Independent Persons?**

11.1 The Council has appointed two Independent Persons to support the Standards Committee and Sub-Committee.

11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person protocol which sets out some general principles.

## **12. Revision of these Arrangements**

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

## **13. Appeals**

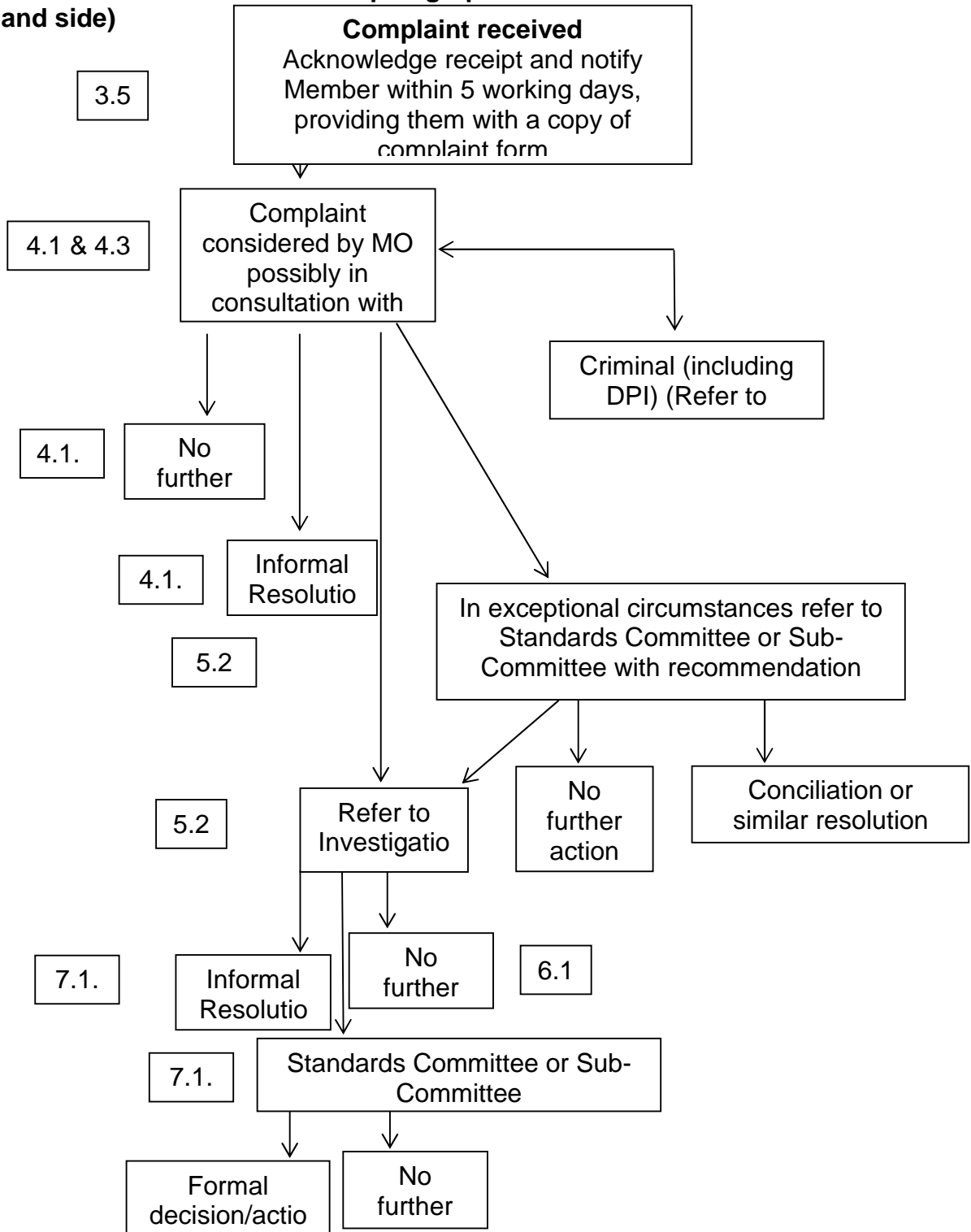
13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee.

13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

**ANNEX B**

**This Flowchart is to be read in conjunction with the Tendring District Council's Complaints Procedure**

(Reference is made to the relevant paragraphs of the Procedure in the boxes on the left hand side)





**ANNEX C – STANDARDS COMMITTEE AND TOWN AND PARISH COUNCILS’ SUB-COMMITTEE  
TERMS OF REFERENCE**

Committee	Functions and Terms of Reference	Delegated Functions
<b>Standards Committee</b>	<ol style="list-style-type: none"> <li>1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;</li> <li>2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels of the Council;</li> <li>3. To advise the Council on the adoption or revision of the Members’ Code of Conduct;</li> <li>4. To advise, train or arrange training on matters relating to and assisting Members, Co-opted Members and Town and Parish Councillors on observing the Members’ Code of Conduct;</li> <li>5. To approve procedures for the conduct of hearings into complaints against Members;</li> <li>6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;</li> <li>7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members’ Code of Conduct and the other elements of the Standards Framework;</li> <li>8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;</li> <li>9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and</li> <li>10. To maintain oversight of the Council’s</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members’ Code of Conduct of the Council/Town or Parish Council (“Code”) in accordance with the Complaints Procedure.</li> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> </li> </ol>

	<p>arrangements for dealing with complaints delegated to Standards Town and Parish Sub- Committee.</p>	<p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p>
	<p><b>Proceedings:</b></p> <p>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</p> <p>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</p> <p>3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and</p> <p>4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.</p>	<p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct.</p> <p>5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011.</p> <p>6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>

Committee	Functions and Terms of Reference	Delegated Functions
<p><b>Town and Parish Councils' Standards Sub-Committee</b></p>	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> <li>3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and;</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure.</li> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether</li> </ol>
	<ol style="list-style-type: none"> <li>4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.</li> </ol>	<p>the complaint:</p> <ul style="list-style-type: none"> <li>•Merits no further action</li> <li>•Merits early informal conciliation</li> <li>•Merits further investigation</li> <li>•Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> <ol style="list-style-type: none"> <li>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</li> <li>4. Commission external resources to investigate,</li> </ol>

		<p>undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>
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## **ANNEX D CONDUCT COMPLAINTS ASSESSMENT CRITERIA**

### **Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee**

1. The complaint is not considered sufficiently serious to warrant investigation;
2. The complaint appears to be simply motivated by malice or is "tit-for-tat";
3. The complaint appears to be politically motivated;
4. It appears that there can be no breach of the Code of Conduct; for example that it relates to the Councillor's private life or is about dissatisfaction with a Council decision;
5. It is about someone who is no longer a Councillor;
6. There is insufficient information available;
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances, e.g. an allegation of bullying, harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee;
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

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

1. It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee or Sub-Committee; or
2. There are individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to consider; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to consider; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him/her to consider.

**Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' time and Members' time. This is an important consideration where the complaint is relatively minor.**

## **ANNEX E STANDARDS COMPLAINTS INVESTIGATION PROCEDURE**

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

### **1. Planning Stage:**

Upon receipt of an instruction to carry out an investigation the Investigator should:-

- Acknowledge receipt of the instruction to conduct the investigation.
- Maintain a written record throughout the investigation.
- Assess whether any additional information is required from the complainant.
- Identify the paragraph(s) of the Members' Code of Conduct that are alleged to have been breached.
- Identify the facts which will need to be determined to establish if the Member has breached the Member Code of Conduct.
- Identify the evidence that is needed to determine the issues.
- Consider how to undertake the evidence gathering.
- Identify how long it is likely to take to conduct the investigation.
- Tendring District Council has imposed a 3 month deadline for an investigation to be completed; this may be reduced by the Monitoring Officer in each individual case. The Investigating Officer must confirm that the deadline is achievable and regularly update the Monitoring Officer, subject member of the complainant and the complainant as to progress.

### **2. Evidence Gathering Stage:**

- Contact the complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the subject member with details of the complaint and seek an explanation.
- If new evidence is obtained through the investigation that the subject member has not been made aware of, this should be provided to the Councillor to respond to either orally or in writing.

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

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

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

- Review evidence from interviews and any documentary evidence provided.
- Draft the report to contain:
  - Details of who was interviewed, who supplied information and whether through written documentation or verbally;
  - Agreed facts;
  - Facts not agreed and corresponding conflicting evidence;
  - An assessment on all of the alleged breaches of the Code of Conduct forming the complaint and those identified by the Monitoring Officer or Investigator;
  - Conclusions as to whether a breach has occurred;
  - Where a draft report is issued this will be supplied to both the complainant and subject member for comment, in addition to the Monitoring Officer.

In all cases the Investigator will issue a final report and the Monitoring Officer will then determine appropriate action to be taken in line with the report conclusion.

# Tendring District Council



## APPLICATION FORM FOR ROLE OF INDEPENDENT PERSON

### PERSONAL DETAILS

TITLE	MR/MRS/MISS/MS/OTHER* * Please specify .....
NAME	
ADDRESS	
TELEPHONE NUMBER (daytime)	
TELEPHONE NUMBER (mobile)	
EMAIL ADDRESS	



## REFERENCES

**REFERENCES** - Please give the details of two people\* who are not related to you and who are able to provide references, relating to your suitability for the role.

NAME		NAME	
ADDRESS		ADDRESS	
TEL.NO.		TEL.NO.	
EMAIL		EMAIL	
POSITION		POSITION	
Note that references may be taken up prior to interview unless you indicate otherwise			

## ADDITIONAL INFORMATION

Please use the space on the next page to give details of why you would like to become one of the Council's Independent Persons and why you believe you are suitable for the position, taking into account the person specification and selection criteria. You may wish to tell us about your personal qualities and skills and work experience including voluntary activities and leisure interests.

The selection criteria include:

- A keen interest in standards in public life
- A wish to serve the local community and uphold local democracy
- High standards of personal integrity
- An ability to be objective, independent and impartial
- Sound analytical skills
- Leadership qualities, particularly in respect of exercising sound judgment
- Tact and diplomacy in handling sensitive situations
- A broad range of experience
- Good interpersonal skills

- Some knowledge of local government and an understanding of the political process

**Additional Information contd ...**

Please continue on a separate sheet of paper if necessary ...

**PLEASE SIGN AND DATE THIS DECLARATION**

- I confirm that to the best of my knowledge and belief the information given in this application is accurate.
- I confirm that I am not, nor have I been within the past 5 years, a member, co-opted member with voting rights or officer of Tendring District Council or of one of the Town or Parish Councils in the District of Tendring.
- I confirm that I am not a relative or close friend of a member, co-opted member with voting rights or officer of Tendring District Council or of one of the Town or Parish, Councils in the District of Tendring.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

When completed, please return to:

**Karen Hayes  
Executive Projects Manager - Governance  
Tendring District Council  
Town Hall  
Station Road  
Clacton-on-Sea  
Essex  
CO15 1SE**

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## STANDARDS COMMITTEE

24 OCTOBER 2024

### REPORT OF THE MONITORING OFFICER

#### **A.2 REVIEW OF TENDRING DISTRICT COUNCIL'S MEMBERS' PLANNING CODE AND PROTOCOL**

##### **PART 1 – KEY INFORMATION**

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

To enable the Committee to consider the results of the review of the Planning Protocol carried out by the Monitoring Officer and her team.

To seek 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.

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

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 & Protocol following the LGA publication.

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.

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 to the document as the 'Planning Probity Protocol'. This also aligns with the Planning Probity Protocol adopted for the Tendring Colchester Borders Garden Community Joint Committee.

This report sets out initial proposals following a review by the Monitoring Officer and following consideration by the Committee, seeks approval 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.

## RECOMMENDATION(S)

It is recommended that:

- a) The Committee notes the outcome of the review of the Planning Protocol carried out by the Monitoring Officer;
- b) subject to the outcome of the Committee's debate on the contents of the draft Planning Probity Protocol, as set out in Appendix A;
- (c) approves that consultation be undertaken on the draft revised Planning Probity Protocol; and
- (d) subject to (b), the outcome of the consultation be report back to the Standards Committee for consideration prior to recommendation onto Full Council for adoption.

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

In order to enable the necessary consultation to take place with relevant parties on the draft revised Planning Probity Protocol.

## ALTERNATIVE OPTIONS CONSIDERED

Not to proceed any 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.

## 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).



**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 in 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 – Consider the outcome of the review and make recommendations to Full Council.

Planning Committee November/December 2024 – undertake consultation with Members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and Independent Persons.

Report outcome of consultation to Standards Committee in February 2025 for consideration of recommendation onto Full Council.

Full Council 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 Councillors 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**

Possible consultees include:-

Members of the Planning Committee;  
Portfolio Holder for Housing and Planning;  
Planning Officers; and  
The Independent Persons.

### **EQUALITIES**

Part of the review of the Planning 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, sexual orientation.

### **SOCIAL VALUE CONSIDERATIONS**

Not applicable to this report.

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

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.**

**Crime and Disorder**

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 has been produced for Members consider and consult on and consequently, adopt as best practice.</p>	

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

<b>BACKGROUND</b>
<p>At its meeting held on 19 July 2023, the Committee was informed that through the production of the Planning Probity Protocol for the Tendring Colchester Borders Garden Community Joint Committee in 2022 (attached Appendix C) a different format had been adopted, which was considered easier to follow. In addition, the Planning Advisory Service (PAS) through their website outlines some of the best practice they have found to assist Councils in reviewing their own codes of practice. Various examples are suggested for different elements, such as councillor involvement in pre-application advice, interests, lobbying, dealing with petitions, officer member relationships, ward councillor involvement, site visits, referral of delegated applications to Planning Committee, public speaking, training etc.</p> <p>Consequently, the Committee had agreed that rather than simply add wording to an existing Protocol, a fresh review would be undertaken of the document.</p>
<b>PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.</b>
<p><u>Standards Committee 19 July 2023 – Minute 6</u></p> <p><b>“RESOLVED that -</b></p> <p><i>(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;</i></p> <p><i>(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</i></p> <p><b>(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.”</b></p>

**BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

[A2 Review of Planning Code & Protocol.pdf](#)

[Minutes Template \(tendringdc.gov.uk\)](#)

[Part 6 Codes and Protocols - Codes and Protocols \(tendringdc.gov.uk\)](#) – 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](#)

**APPENDICES**

**Appendix A: New TDC Planning Probity Protocol.**

**REPORT CONTACT OFFICER(S)**

<b>Name</b>	Bethany Jones
<b>Job Title</b>	Committee Services Officer
<b>Email/Telephone</b>	<a href="mailto:bjones@tendringdc.gov.uk">bjones@tendringdc.gov.uk</a> Telephone: (01255) 686587

# CONSTITUTION OF THE DISTRICT OF TENDRING

## Part 6 – Planning Probity Protocol

### Contents:

- 1 Introduction
- 2 General role and conduct of Members and Officers
- 3 Relationship to Members' Code of Conduct
- 4 Applications submitted by the Council, Members or Officers
- 5 Member training
- 6 Predisposition, predetermination and bias
- 7 Contact with Applicants, Developers and Objectors
- 8 Lobbying of and by Members
- 9 Site Visits/Inspections
- 10 Post-submission discussions – INCLUDED ELSEWHERE IN APPENDIX – STILL REQUIRED?
- 11 Public Speaking at Meetings
- 12 Reports and Decision Making
- 13 Planning appeals
- 14 Planning enforcement

### 1 INTRODUCTION

- 1.1 This Planning in Probity Protocol ("Protocol") has been prepared using the advice in the Local Government Association's revised guidance note on good planning practice for Members and Officers dealing with planning matters – Probity in Planning: the Role of Councillors and Officers (December 2019).
- 1.2 **The aim of this Protocol:** To ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 1.3 **The key purpose of planning:** *"the purpose of the planning system is to contribute to the achievement of sustainable development"* (para 7 of the National Planning Policy Framework (NPPF). Planning matters have a significant impact on our lives and the area where we live, work or play. Consequently, planning attracts a great deal of public and media interest. It is important that the system operates, and is seen to be operated, in an honest, open and transparent manner.
- 1.4 **Your role as a Member of the Planning Committee:** To make planning decisions openly, impartially, with sound judgement and for justifiable planning reasons.
- 1.5 **When the Protocol applies:** This Protocol applies to Members at all times they are involved in the planning process. This includes, where applicable, when part of decision-making meetings of the Council, exercising the functions of the planning authority or when involved on less formal occasions, such as meetings with Officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications. If you have any doubts about the application of this

Protocol to your own circumstances you should seek advice early, and preferably well before any meeting takes place, from the Monitoring Officer.

- 1.6 In this Protocol when the term “Councillor” or “Member” is used it means that the advice is applicable to all Members of the Council. The term “Planning Committee Member” means a Member or a substitute Member of the Council’s Planning Committee.
- 1.7 **Relationship to the Members' Code of Conduct:** Members are reminded that the Planning Probity Protocol is designed primarily for Members of the Council’s Planning Committees and Members who, for whatever reason, find themselves involved in the planning process. Whilst the Protocol interprets the Members’ Code of Conduct with respect to planning matters it is subordinate to the Members’ Code of Conduct and in the event of any inconsistencies arising between this Protocol and the Members’ Code of Conduct, the Members’ Code of Conduct shall prevail.

## **2 GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS**

### **OFFICERS:**

- 2.1 The function of Officers is to support and facilitate the Councillors in their work and to ensure that robust and lawful decisions are made. Planning decisions must be made in accordance with the Local Plan and other material planning considerations (section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004).
- 2.2 The Director of Planning makes decisions on the majority of planning applications under delegated powers and makes recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee. Officers will provide professional advice and will provide Members with a recommendation on whether or not planning permission should be granted, based on the Officer’s assessment.
- 2.3 In considering applications and in advising members of the public on planning policy, the determination of planning applications, enforcement and other planning matters, Officers must:-
- act fairly and openly and avoid any actions that would give rise to an impression of bias;
  - avoid inappropriate social contact with applicants and their agents, objectors and other interested parties;
  - approach each planning application or issue with an open mind, avoiding preconceived ideas;
  - carefully weigh up all relevant planning issues before making a decision;
  - make decisions and recommendations purely on planning grounds having regard to the Local Plan and other material considerations;
  - give professional, objective and consistent advice; and,
  - carry out the decisions of the Committee insofar as they relate to the completion of any legal agreement, or instigation or defence of proceedings.

### 3 RELATIONSHIPS TO MEMBERS' CODE OF CONDUCT

3.1 The rules contained in the Members' Code of Conduct must always be complied with first. This is both the rules on Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules and obligations giving effect to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

3.2 Do then apply the rules in this Protocol, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Protocol, you may:

- put the Council at risk of proceedings on the legality of the related decisions or maladministration;
- undermine the integrity of such important decision making and reduce public trust and confidence; or
- put yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

### 3.3 DECLARATIONS OF INTERESTS

The Council's Code of Conduct sets out requirements for Members on declaring Disclosable Pecuniary Interests, Other Registerable Interests and Non-Registerable Interests and the consequences on participation of having such an interest. These must be followed scrupulously, and Members should review their situation regularly. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.

A Member with a Disclosable Pecuniary Interest in respect of a particular planning matter must declare it and take no part in the discussion or the determination of the proposal. He or she should leave the room before the item is considered. The responsibility for this rests with each Member. Advice can be obtained in advance from the Monitoring Officer or their Deputy if required, in advance of a Planning Committee meeting. It is unsatisfactory if a Members asks for guidance in the course of a debate.

3.4 **Do** disclose the existence and

3.5 **Do take into account when approaching a decision that the principle of Integrity (one of the Nolan Principles in Public Life) is defined as**

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

3.6 It is therefore advisable that Members:

- (i) Note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate Officer, in person or in writing, but that your role as a Councillor may

place additional limitations on you in representing the proposal in which you have an interest.

(ii) Notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest or other personal conflict of interest and note that:

- you should send the notification no later than submission of that application where you can;
- the proposal will always be reported to the Committee as a main item and not dealt with by Officers under delegated powers;
- you must not get involved in the processing of the application; and
- it is advisable (but not mandatory) that you employ an agent to act on your behalf in respect of the proposal when dealing with Officers and in public speaking at Committee.

## **4 APPLICATIONS SUBMITTED BY THE COUNCIL, MEMBERS OR OFFICERS**

### **APPLICATIONS SUBMITTED BY THE COUNCIL**

4.1 The Planning Committee Terms of Reference (as set out in Part 3 of the Constitution) requires that the following Planning Applications are referred to the Planning Committee for determination:

- a) the applicant is the Council or someone acting as applicant on the Council's behalf or in respect of Council owned land unless the application is recommended for refusal; and
- b) the applicant is a Member of the Council, or a member of permanent staff employed by TDC and there is an Officer recommendation for approval.

## **5 MEMBER TRAINING**

5.1 A Member (or designated named Substitute Member) cannot sit as a member of the Planning Committee unless they have received specific training with regard to the determination of planning applications (Part 4 of the Constitution - Council Procedure Rules).

5.2 The Council provides training for Councillors on planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover topics or to look at matters in greater depth. Training events are open to all Councillors and where places are limited, current Members and named Substitute Members of the Planning or Planning Policy and Local Plan Committees will take priority.

5.3 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

5.4 **Do** endeavour to attend any other specialised training sessions provided and arranged by the Council under a continuing programme, since these will be designed to extend your knowledge of planning policy, law, regulations, regulations, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.



- 5.5 Organised training provides opportunities to review a sample of planning decisions to ensure that Members judgements have been based on proper planning considerations.

## 6 FETTERING DISCRETION IN THE PLANNING PROCESS

### PREDISPOSITION, PREDETERMINATION AND BIAS

- 6.1 In addition to declaring Disclosable Pecuniary interests, Other Registerable Interests and Non-Registerable Interests, members of a Planning Committee need to avoid any appearance of bias or of having predetermined their view at the time of making a decision on a planning application.
- 6.2 The law on **bias and predetermination** (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly. Decision makers are entitled to be **predisposed** to particular views.

### PREDISPOSITION

- 6.3 A distinction is drawn by the Courts between a Councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination) and a predisposition to an initial view. Where the Councillor is clear they have an open mind and are willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote, there is no predetermination.

### BIAS

- 6.4 Councillors should not participate in the consideration of a planning application if to do so would give the appearance of bias, and the decision may be challenged on the grounds of bias in the High Court. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" It is not the Councillor's view of whether they are biased that is relevant but the view of the independent observer. Perception is important and can lead a fair-minded observer to consider that there is a real possibility of bias, they should not participate in making the decision and should withdraw from the room (or virtual meeting where appropriate). Further, Councillors do not have to have a personal interest in order to come within the definition of bias. The Courts have held that it is primarily a matter for the Councillor to judge whether to withdraw but given the scope for challenge the Councillor should always err on the side of caution. Whilst not every application will raise the question of bias, there will be occasions when a member of the public in possession of all facts might consider that there is a real risk of bias. In these circumstances, the Councillor should seek advice from the Monitoring Officer or Deputy Monitoring Officer.

### PREDETERMINATION

- 6.5 **Predetermination occurs where someone closes their mind to any other possibility beyond that predisposition**, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The leading case on local authority bias and predetermination acknowledges the

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difference between Judges sitting judicially and Councillors making decisions in a democratic environment. Given the role of Councillors, there must be ‘clear pointers’ before predetermination is established. Where there is predetermination, the Councillor should not participate in the consideration of a planning application.

- 6.6 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a “closed mind” and likely to leave the committee’s decision susceptible to challenge by Judicial Review. The latter is the perfectly normal process of someone making up their mind.
- 6.7 EXAMPLE: a Councillor who states, “Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee” will be perceived very differently from a Councillor who states, “Many people find windfarms ugly and noisy, and I will need a lot of persuading that any more windfarms should be allowed in our area”. The former has a closed mind and is predetermined, whereas the latter is predisposed but is maintaining an open mind.
- 6.8 The following diagram is produced to help Councillors appreciate the range of circumstances (the following is guidance only; any specific questions should be raised with the Council’s Monitoring Officer):

Lawful	No view	
	Predisposition	<ul style="list-style-type: none"> <li>• Manifesto pledges/commitments</li> <li>• Policy making and setting</li> </ul>
Unlawful	Predetermination	<ul style="list-style-type: none"> <li>• Clearly expressed intention to vote in a particular way on an individual application whatever the information provided</li> </ul>
	Bias	<ul style="list-style-type: none"> <li>• Membership of an organisation that supports or opposes particular developments or development types</li> </ul>

## PARTICIPATING IN DECISION MAKING

- 6.9 Councillors are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under Section 25(2) of the Localism Act 2011. The Section provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because:
  - the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
  - the matter was relevant to the decision.

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The Section makes it clear that if a Councillor has given a view on an issue, this, considered in isolation, does not show that the Councillor has a closed mind on that issue. So, the mere fact that a Councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that Councillor from being able to participate in discussion of that issue and to vote on it.

- 6.10 However, decision-makers must not fetter their discretion by approaching the decision to determine a planning application with a closed mind. It is a legal requirement to approach the determination of a planning application with an open mind to prevent a legal challenge for pre-determination or bias (both being judicial review grounds in administrative law).
- 6.11 When Councillors come to make the decision, they:
- are entitled to have and to express their own views on the matter, provided they are prepared to reconsider their position in the light of all the evidence and arguments;
  - must keep an open mind and hear all of the evidence before them, both the Officers' presentation of the facts and their advice as well as the arguments from all sides;
  - are not required to cast aside views on planning policy held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account of material considerations and must disregard considerations irrelevant to the question and legal context at hand;
  - must be prepared to change their view right up to the point of making the decision; and
  - come to a decision after giving what they feel is the right weight to those material considerations.
- 6.12 Councillors can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of their issues. Councillors can support or oppose an application and represent the views of their residents in their role as a Ward Councillor. To do so as a Planning Committee Member MIGHT compromise their role on the Committee and Councillors are advised to seek advice from the Monitoring Officer or Deputy Monitoring Officer.
- 6.13 Members should take the opportunity to exercise their separate speaking rights as a Ward Member where you have represented your views or those of local electors and fettered your discretion, but do not have a Disclosable or other personal conflict of interest. Where you do:
- advise the Committee Officer or the Chairman that you wish to speak in this capacity before commencement of the item and in accordance with the Public Speaking Scheme;
  - remove yourself from the seating area for Members of the Planning Committee for the duration of **Page 15**
  - ensure that your actions are recorded within the minutes.

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## 7 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 7.1 Councillors should refer those who approach them for planning, procedural or technical advice to Officers.
- 7.2 Councillors should only attend those meetings organised in accordance with this Protocol and must not attend private meetings with applicants, developers or groups of objectors.
- 7.3 Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Director of Planning or Head of Planning and Building Control to organise it. The Officer(s) will ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action, that the meeting is properly recorded on the public file at the earliest convenience. In all cases, the involvement of Councillors will be recorded in any subsequent planning application, whether in any delegated report or in any Committee report.
- 7.4 **Do** otherwise:
- follow the Authority's rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Head of Planning and Building Control any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

## IN ADDITION, IN RESPECT OF PRESENTATIONS BY APPLICANTS/DEVELOPERS

- 7.5 **Don't** attend a planning presentation without requesting an Officer to be present.
- 7.6 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 7.7 **Do** remember that the presentation is a form of lobbying and not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning Committee of the Planning Authority.
- 7.8 **Do** be aware that as the presentation is a form of lobbying, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a Committee.

## 8 LOBBYING OF AND BY COUNCILLORS

- 8.1 Lobbying is a normal and perfectly proper part of the political process. Members of the public, applicants or local interest groups will often seek to influence a decision through an approach to their Ward Member. In the case of a Planning Committee Member, care needs to be taken to avoid the perception of bias or predetermination of any planning matter.
- 8.2 A Planning Committee Member should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said (or read what is put in writing

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and sent to them), it may subsequently prejudice their impartiality and ability to participate in the Committee's decision-making, if they are asked to express either an intention to vote one way or another or such a firm point of view that amounts to the same thing.

8.3 Planning Committee Members should ensure that it is made clear to any lobbyists that they will only be in a position to reach a final decision on any planning matter after they have heard all of the relevant arguments and looked at the relevant information during the sitting of the determining Committee.

8.4 Planning Committee Members should therefore:

- suggest to lobbyists that they write to the Director of Planning in order that their views can be included in the Officer reports prepared for determination under delegated powers or by Committee;
- pass on any lobbying correspondence received (including plans, data, correspondence etc. in respect of an application) to the Director of Planning or email [PlanningSupport&Development@tendringdc.gov.uk](mailto:PlanningSupport&Development@tendringdc.gov.uk) as soon as practicably possible so that it can be taken into account and included in the report on the application;
- remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and, taking account of the need and duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
- not accept gifts or hospitality from any person involved in or affected by a planning proposal, but if a degree of hospitality is entirely unavoidable, ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality; and,
- inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate Officers to follow the matter up where necessary.

8.5 Planning Committee Members should note that, subject to the requirements to ensure that Members comply with the Members' Code of Conduct and the rules regarding bias and pre-determination and ensure that they take appropriate action in relation to Disclosable Pecuniary Interests, they are not precluded from:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, or other Members or appropriate Officers, provided they do not consist of or amount to predetermination and they can make clear they are keeping an open mind when it comes to making the decision;
- seeking information through appropriate channels; or,
- being a vehicle for the expression of opinion or speaking at the meeting as a ward Member, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

8.6 In the interest of openness, it is recommended that Planning Committee Members should make the necessary declarations that they have been lobbied on any particular matter at the Committee when the application is being considered under the Declaration of Interests item on the agenda.

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- 8.7 Planning Committee Members should not become a member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Member does, he/she may appear to be biased. Whilst they may be able to address the Committee as a ward Member or an objector, Members are not able to participate or vote on any matter in respect of which they have a disclosure pecuniary interest unless they have received a dispensation for this purpose.
- 8.8 Members can join general groups which reflect their areas of interest, and which concentrate on issues beyond particular planning proposals, but they should disclose a personal interest where that organisation has made representations on a particular proposal. A Member should make it clear to that organisation and the Committee that they have reserved judgement and the independence to make up their own mind on each separate proposal.
- 8.9 Members should not excessively lobby Planning Committee Members regarding their concerns or views on a planning application, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 8.10 Members should not decide or discuss how to vote on any application at any sort of political group meeting or lobby any other Member to do so.

### **9 SITE VISITS/INSPECTIONS**

#### **CONDUCT AT THE SITE VISIT**

- 9.1 Officers will arrange the site visit in advance with relevant parties. There is no right to enter on private land without permission of the landowner. Where appropriate, officers will obtain permission from the landowner or his/her agent for those invited to attend the site visit to enter the land. If permission is not given for Members and Officers and other interested parties to enter, the site will have to be viewed from the public highways/areas where this is possible.
- 9.2 The Chairman (or Vice-Chairman) will control proceedings throughout.
- 9.3 The Chairman will explain that the purpose of the site visit is to obtain information relevant to the determination of the application.
- 9.4 The Chairman will introduce the Planning Officer who will describe the proposals to Members with reference to matters of fact and features on the land and the submitted plans/drawings and summarise the relevant issues and material considerations. It is expected that Members will already be familiar with the planning Officer's report where one has been provided.
- 9.5 Members may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of the planned development.
- 9.6 Other Officers may be present to provide other specialist/expert advice/information where relevant/required (e.g. Highways Engineers, Tree Officers or Environmental Health Officers etc.)
- 9.7 Members will then be invited through the Chairman to ask any questions of fact or seeking clarification from the Officers present. Members should not direct these

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questions to the applicant or others present. Any matters not to hand will be reported at the Planning Committee meeting. Discussion on the merits of the application will not be permitted, and Members should refrain from making comments on the proposal.

- 9.8 Representatives of Objectors and/or supporters may be invited/allowed to attend the site visit as interested parties. However, the right of a representative to address the Planning Committee does not arise until this item is reached on the agenda during the relevant meeting of the Planning Committee. Presentations from interested parties should on no account be made. However, occasionally it may be appropriate for interested parties to be asked, through the Chairman, to point out important or relevant site features. At no point during the site visit will debate or comment on the planning merits or otherwise of the proposal be permitted, as the proper time for such debate/comment is at the relevant meeting of the Planning Committee.
- 9.9 A Ward Councillor(s) may attend the site visit; however, any Ward Councillor(s) will refrain from debating or commenting on the planning merits or otherwise of the proposal. Ward Councillors will be permitted to make representations at the relevant meeting of the Planning Committee.
- 9.10 During the site visit, no separate discussions regarding the application must take place with Officers or Members and either applicants, objectors or supporters. In order to assist in ensuring that Members receive the same information, they are required to keep together in one group with the Chairman and the Planning Officer during the entirety of the accompanied site visit. They will not break-off to discuss the proposal separately with residents or the applicant.
- 9.11 During the site visit, Officers and Planning Committee Members will not accept any representations (including verbal presentations, documents, letters or petitions) from applicants, objectors or supporters. Any representations should be sent to the Planning Department, and these will be reported to the relevant meeting of the Planning Committee.
- 9.12 No hospitality will be accepted by Officers and Members from the applicant or any other interested party present at the site visit.
- 9.13 The Planning Committee Members present at the site visit will sign an attendance sheet. Planning Committee Members failing to attend the Site Visit will not be considered to have sufficient knowledge of the site and the issues arising from the Site Visit to enable them to take part in determining the application when it is presented to the Planning Committee for consideration.
- 9.14 The Chairman (or Vice-Chairman) will conclude the site visit. Members will leave the site promptly, as a group, and refrain from talking to the applicant, objectors or other interested parties. No indication of the views of Members or the likely outcome of the Planning Committee's deliberations on the application will be given. To do so might imply that a Member's mind is already made up.
- 9.15 If Members require further information or clarification of any aspect of the development, the Officer(s) attending the site visit will be asked to ensure that such information is available by the time the application is considered by Members at the relevant meeting of the Planning Committee.

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- 9.16 The Practice of the Council is to visit application sites prior to their consideration at Planning Committee. The Head of Planning and Building Control will identify which sites will need to be visited. If the Committee have visited a site recently then this site will not be visited again.
- 9.17 The purpose of the site visit is for Members to gain factual knowledge of a site and make a visual assessment of the proposal and its relationship with adjoining development.
- 9.18 The Members will be provided with a "Member Pack" which includes a selection of the PowerPoint slides that will be displayed at the Committee. These describe the application proposal and summarise the main issues.
- 9.19 Officers will arrange with the developer/landowner, where possible, for Members to gain access to the site.
- 9.20 Before Members get on the bus, the Planning Committee Chairman, will ask Members whether they need to declare an interest in an application. When the bus arrives at each site Members will be reminded again of their need to declare any interest they may have, as it may only become apparent to Members that they have an interest when they arrive at a site. The Head of Planning and Building Control will record any interests that are declared.
- 9.21 If Members declare a Disclosable Pecuniary Interest, an Other Registerable Interest or Non-Registerable Interest, then they should remain on the bus and not take part in the site visit. If a Member declares an Interest then they are not able to take part in the visit. It is incumbent upon the Member to ensure the impact of their interest before taking part in the site visit.
- 9.22 Members also need to consider whether they have an open mind about the application before taking part in a site visit.

### **EXCEPTION TO THE COUNCIL'S LOCAL PRACTICE OF UNDERTAKING SITE VISITS**

- 9.23 Whilst it is the Council's standard local practice to undertake site visits, there will be exceptional circumstances where an organised site visit is not possible.
- 9.23 Site visits are not legally required for the determination of planning applications but forms part of local practice, which protocols must clearly set out. If a site visit cannot be organised, due to exceptional circumstances, a planning application can still be determined by the Planning Committee, so long as the guidance issued by the Council is adhered to.
- 9.24 Should circumstances prevail where the Council has had to determine if it is not possible to organise a site visit, Members of the Planning Committee will be issued with guidance by the Monitoring Officer, which is relevant to the particular situation arising. Such guidance will take into account health and safety risk assessments, current legislation and central government guidance, including that issued by the Planning Inspectorate and/or the Chief Planning Officer.

### **10 POST-SUBMISSION DISCUSSIONS**

**[THIS IS STILL BEING DISCUSSED AS IT COULD REPEAT PREVIOUS PARAGRAPHS]**



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## 11 PUBLIC SPEAKING AT MEETINGS

- 11.1 **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
- 11.2 **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 12 REPORTS & DECISION MAKING

- 12.1 In coming to a decision on a planning application, a Planning Committee Member must:
- come to the meeting with an open mind;
  - Comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Council's Local Plan and Development Plan Documents unless material considerations indicate otherwise.
  - not communicate with anyone (except Officers, other Planning Committee Members and public speakers through the Chairman) orally, electronically, in writing or by any other means during the proceedings of the Committee;
  - come to a decision only after due consideration of all the information reasonably required to base a decision upon;
  - not vote on a proposal unless they have been present to hear the whole debate including the Officer's presentation and any public speaking (and where applicable, attended the site visit); and
  - ensure that if they are proposing, seconding or supporting a decision contrary to the Officer's recommendation or the Local Plan, that they identify and understand the planning reasons leading to their conclusion and that they consider any professional advice given. Reasons must be given before a Secunder to the proposal is sought and the vote is then taken and recorded.
- 12.2 Reports to the Planning Committee will normally be available at least five working days to the meeting.
- 12.3 All applications submitted to the Planning Committee will have a full written report from Officers including a reasoned assessment of the proposal, reference to relevant policies and a justified recommendation and analysis of available options. Reports will cover the substance of any objections and the views of people and bodies that have been consulted.
- 12.4 Any oral presentations raising new matters and updates by Officers to the Planning Committee will be minuted.
- 12.5 Members should ensure that they are present for the whole presentation by Officers and subsequent debate on a particular matter and do not attend or leave part way through. This is to ensure that they are able to hear all the relevant evidence and debate in relation to a proposal. In the event that Members are not present for the whole of that process and miss a substantial proportion of it they should consider whether they are in a position to vote. The Chairman will be able to offer advice on this point.

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- 12.6 Where an application is recommended for refusal the reasons will be set out in full in the Officer's report.

### **DECISIONS CONTRARY TO THE OFFICER RECOMMENDATION**

- 12.7 Members must indicate reasons at the Planning Committee meeting for approval or refusal of applications determined contrary to Officer advice, including identifying relevant policies. Pressure should never be put on Officers to "go away and sort out planning reasons".
- 12.8 Where an application is being considered at the Planning Committee for refusal contrary to Officer advice, the proposed reasons for refusal will be agreed at that Planning Committee meeting. The reasons will be recorded in the minutes and be based on material planning considerations and the relevant policies supporting the refusal. An opportunity will be given to the Officer to explain the implications of the contrary decision. If a successful planning appeal follows a refusal contrary to Officer advice, clear identification of good reasons for refusal will reduce the chance of a cost award.

### **FREE FROM POLITICAL INSTRUCTION**

- 12.9 Members of the Planning Committee must make planning decisions on planning grounds. "Whipping" is inappropriate, and decisions should not be taken in party grounds on how to vote on particular applications prior to the Planning Committee meeting.

### **DECLARATIONS OF INTERESTS**

- 12.10 The Council's Code of Conduct sets out requirements for Members on declaring pecuniary and non-pecuniary interests and the consequences of having such an interest. These must be followed scrupulously, and Members should review their situation regularly. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.
- 12.11 A Member with a pecuniary interest in respect of a particular planning matter must declare it and take no part in the discussion or the determination of the proposal. He or she should leave the room before the item is considered. The responsibility for this rests with each Member. Advice can be obtained from the Head of Legal and Democratic Services if required, in advance of a Planning Committee meeting. It is unsatisfactory if a Members asks for guidance in the course of a debate.

### **REQUESTS BY MEMBERS FOR INFORMATION**

- 12.12 Wherever possible, Members should give advance notice of additional information they intend to request, or information they intend to contest, at the Planning Committee meeting so that Officers can be in a position to assist and avoid the unnecessary deferral of a decision.

### **PUBLIC PARTICIPATION**

- 12.13 In order to give greater opportunity to applicants and objectors to express their respective points of view, the Planning Committee operates a scheme of public participation.

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## 13 PLANNING APPEALS

- 13.1 Appeals into the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Members are able to attend. Members are encouraged to attend such hearings, as they can be a good learning experience. This part of the code is concerned with Members who wish to actively participate in these appeals.
- 13.2 If a Member wishes to attend a public inquiry or informal hearing as a Ward Member or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the Director of Planning to ensure that they are aware of the process and that they do not act in a manner which compromises their position as a Member of the Council or brings the Council into disrepute or puts the decision made at risk of challenge.
- 13.3 A Member cannot attend an appeal on behalf of the Council's Planning Committee, even if they sat on that Committee, unless this is as part of the Council's case as decided by the Director of Planning. The decision of the Planning Committee will be documented in the minute and set out in the decision notice. The Planning Officer will present the Council's case of its planning merits, in accordance with the Planning Committee's decision. The inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed.
- 13.4 Where the appealed decision was contrary to the Officer's recommendation, Officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.

## 14 PLANNING ENFORCEMENT

- 14.1 Under the scheme of delegation, all planning and conservation matters are delegated except for the determination of certain planning applications that are specified in the constitution. As decisions on planning enforcement matters are not planning applications, they are delegated decisions to Officers and are therefore dealt with by Officers.
- 14.2 However, principles around such decisions apply as set out in Part 3.6 (paragraph 7) of the constitution. This provides that the delegation of powers to Officers is underpinned by the principle of culture of consultation and liaison with Members, as appropriate, and the ability of Officers to refer matters to the relevant decision-making body, where it is felt that this is appropriate due to the nature of an issue.
- 14.3 So Officer's may decide to refer a planning enforcement matter to the Planning Committee for determination where consultation with Members is deemed necessary given the nature of issues involved.
- 14.4 The Members' Referral Scheme only relates to planning applications and not decisions on planning enforcement cases, so cannot be used by Members to refer a planning enforcement matter to the Planning Committee.
- 14.5 There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way. Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

## APPENDIX A

- 14.6 In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 59 which provides; 'Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.'
- 14.7 The Council's current local enforcement plan for breaches of planning control is the 'Local Planning Enforcement Policy (v.2: September 2022), which will be updated from time to time.'

## STANDARDS COMMITTEE

24 OCTOBER 2024

### REPORT OF HEAD OF DEMOCRATIC SERVICES & ELECTIONS

#### A.3 TOWN & PARISH COUNCILS' STANDARDS SUB-COMMITTEE – APPOINTMENT OF TENDRING DISTRICT COUNCIL MEMBERS

(Report prepared by Ian Ford, Committee Services Manager)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To enable the Committee to appoint Tendring District Council's members to serve on the Town and Parish Councils' Standards Sub-Committee for the remainder of the 2024/2025 Municipal Year.

##### BACKGROUND

Article 9 (Standards Committee and Town & Parish Councils' Standards Sub-Committee) of the Council's Constitution states that the Council will 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 requires 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 will be of an independent standing and they will not have served as a District Councillor or as a County Councillor for a period of four years prior to their nomination.

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

I can report that Frank Belgrove, Alresford Parish Councillor and the Chairman of TDALC, emailed the Committee Services Manager on 23 September 2024 and confirmed that TDALC's three appointments to the Town & Parish Councils' Standards Sub-Committee remain 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.

## **RECOMMENDATIONS**

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

- (a) appoints three of its members to serve on the Town & Parish Councils' Standards Sub-Committee for the remainder of the 2024/2025 Municipal Year; and**
- (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.**

## **REVISED COMMITTEE WORK PLAN 2024/25 – STANDARDS COMMITTEE**

### **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 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

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

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TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE OCTOBER 2024				
Council	Complainant	Current status	Final outcome	Comments
<b>Existing Cases from last update:</b>				
Council	Complainant	Current status	Final outcome	Comments
DISTRICT	METROPLITAN BOROUGH COUNCILLOR	CLOSED	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.
DISTRICT	PUBLIC	CLOSED	Investigation – no further action	Matter relates to behaviour whilst acting in an official capacity and misuse of Council resources.
PARISH	PARISH COUNCILLOR	ONGOING – INFORMAL RESOLUTION AND TRAINING		Matter relates 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 relates to behaviour whilst acting in an official capacity.
DISTRICT	PUBLIC	CLOSED	No further action	Matter relates to behaviour whilst acting in an official capacity.
PARISH	PUBLIC	ONGOING		Matter relates to behaviour whilst acting in an official capacity.
DISTRICT	PUBLIC	ONGOING		Matter relates to behaviour whilst acting in an official capacity and behaviours between District Councillors.
DISTRICT	PUBLIC	ONGOING		Matter relates to behaviour whilst acting in an official capacity.
<b>New Cases since last update - six</b>				

**General Notes – 2023/24 and 2024/25 Summary:**

Overall 8 cases were received in 2023/24 and six so far in 2024/25. Since the last update, one case was heard at a Standards Hearing, one was referred for investigation resulting in no further action as there had not been a breach of the Code of Conduct and another closed with no further action, again with there not being a breach of the Code of Conduct.

The other 6 cases remain ongoing, with one being referred for investigation with an externally appointed investigator and one being referred for informal resolution and Code of Conduct training.

Since the last update, two Code of Conduct sessions have been conducted at Harwich Town Council and St Osyth Parish Council, which have been open to all Town and Parish Councillors across the District. These sessions were well attended with good engagement which led to useful discussions. A dedicated session was also held at Brightlingsea Town Council.

**Requests for dispensations:**

There have been three requests for dispensations during this period.