



## STANDARDS COMMITTEE

<b>DATE:</b>	<b>Wednesday, 9 July 2025</b>
<b>TIME:</b>	<b>10.00 am</b>
<b>VENUE:</b>	<b>Committee Room, Town Hall, Station Road, Clacton-on-Sea, CO15 1SE</b>

### MEMBERSHIP:

**Councillor J Henderson (Chairman)**  
**Councillor Talbot (Vice-Chairman)**  
**Councillor Alexander**  
**Councillor Casey**

**Councillor Codling**  
**Councillor Doyle**  
**Councillor Land**

**Most Council meetings are open to the public and press. The space for the public and press will be made available on a first come first served basis. Agendas are available to view five working days prior to the meeting date and the Council aims to publish Minutes within five working days of the meeting. Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.**

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

**If you have any queries regarding webcasting or the recording of meetings by the public, please contact Bethany Jones Email: [bjones@tendringdc.gov.uk](mailto:bjones@tendringdc.gov.uk) or Telephone on 01255 686585**

DATE OF PUBLICATION: Tuesday, 1 July 2025

## **AGENDA**

### **1     Apologies for Absence and Substitutions**

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

### **2     Minutes of the Last Meeting (Pages 5 - 14)**

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Wednesday, 9 April 2025.

### **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 - Review of Tendring District Council's Members' Licensing Guidance for Councillors and Officers (Pages 15 - 42)**

To enable the Committee to consider the outcome of the review of the Licensing Guidance for Councillors and Officers carried out by the Monitoring Officer and her team.

To seek the Committee's approval that members of the Licensing and Registration Committee, the Portfolio Holder for Assets and Community Safety, Officers responsible for licensing services in the Governance and the Environment & Housing Directorates and the Independent Persons be consulted on the draft revised Licensing and Registration Probity Protocol.

### **6     Report of the Corporate Director (Law & Governance) & the Monitoring Officer - A.2 - Members' Code of Conduct Complaints Procedure Review (Pages 43 - 74)**

To present the Standards Committee with a proposed updated Complaints Procedure, reflecting best practice and case law for dealing with allegations that a Member has breached the Code of Conduct, for consideration for approval.

### **7     Complaints Update and National Policy Changes (Pages 75 - 76)**

The Committee will receive the Monitoring Officer's update regarding standards complaints and an update to the National Policy changes.

**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, 8 October 2025.*

## **Information for Visitors**

**FIRE EVACUATION PROCEDURE**

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

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

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

Your calmness and assistance is greatly appreciated.

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,  
HELD ON WEDNESDAY, 9TH APRIL, 2025 AT 10.00 AM  
IN THE TOWN HALL, STATION ROAD, CLACTON-ON-SEA, CO15 1SE**

<b>Present:</b>	Councillors Wiggins (Chairman), Alexander, Codling, Goldman, J Henderson and Talbot
<b>In Attendance:</b>	Lisa Hastings (Corporate Director (Law & Governance) & Monitoring Officer), Keith Simmons (Assistant Director (Corporate Policy & Support) & Deputy Monitoring Officer), Karen Hayes (Corporate Governance, Performance & Procurement Manager), Debbie Bunce (Legal Governance Officer), Bethany Jones (Committee Services Officer) and Katie Koppenaal (Committee Services Officer)
<b>Also in Attendance:</b>	Clarissa Gosling (one of the Council's four Independent Persons)

**38. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Councillor Oxley (with Councillor Goldman substituting), Sue Gallone (one of the Council's Independent Persons), David Irvine (one of the Council's Independent Persons) and Jane Watts (one of the Council's Independent Persons).

The Chairman (Councillor Wiggins) noted the absence of Councillor Land.

**39. MINUTES OF THE LAST MEETING**

It was moved by Councillor Talbot, seconded by Councillor J Henderson and:-

**RESOLVED** that the Minutes of the meeting of the Committee held on Wednesday, 5 February 2025 be approved as a correct record and be signed by the Chairman.

Councillor Talbot requested that the question of whether the requirement of senior officers and the Legal Team should have their private home address made public when applying for a planning application should be added to the current set of Minutes.

The Monitoring Officer reassured Members that, before the new Planning Probity Protocol, planning applications submitted by Tendring District Council colleagues would have had to go to Planning Committee to begin with; however, with the updated Planning Probity Protocol, a reduction in the number of Officers who had to apply through the Planning Committee had been made. There could be a possibility that the addresses of Officers could be abused but that would be dealt with accordingly. Allowing the applications to go to Planning Committee would show that Senior Officers could not influence the outcome of the decision. If there were a number of incidences that arose from the addresses being made public, then that would be looked into as a duty of care to the Officers concerned.

**40. DECLARATIONS OF INTEREST**

There were no Declarations of Interest made on this occasion.

---

**41. 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.

**42. REPORT OF THE MONITORING OFFICER - A.1 - ANNUAL REPORT ON DECLARATIONS OF INTEREST AND ASSOCIATED MATTERS**

Members recalled that it had been agreed at the meeting of the Standards Committee held on 29 June 2016 that, as part of its annual work programme, the Committee would receive an annual report on declarations of interest and associated matters. The report now before the Committee covered the period from 1 April 2024 to 31 March 2025 and provided statistics on:

- *the number of declarations of interest made at meetings;*
- *the number of offers of gifts and hospitality that had been registered by Members during this period; and*
- *updates to the Members' Register of Interests.*

The data had been collated from the Committee system Modern.gov which the Council started using as of August 2016 and from Members' submissions.

**Register of Members' Disclosable Pecuniary Interests**

The Committee was aware that the Council was required to publish the 'Register of Disclosable Pecuniary Interests' on its website in accordance with the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2021, which prescribed the categories of interests.

It was confirmed that the Council's website included a Register of Disclosable Pecuniary Interests and Other Registerable Interests for all District Councillors and that this was updated when an individual Member provided details of an amendment directly to the Monitoring Officer. Any entry, which was relevant to a business item on an agenda, must be declared by the individual Member and they must subsequently remove themselves from the meeting, unless a prior dispensation had been granted by the Monitoring Officer.

The Committee was informed that there had been a dispensation for all District Members granted by the Monitoring Officer for the purpose of the report of the Director (Finance & IT) – Formal Confirmation of Council Tax Amounts for 2025/26 to Full Council and subsequently the Human Resources & Council Tax Committee in February 2025.

**Declarations of Interest at meetings**

Members were required to declare Disclosable Pecuniary Interests, Other Registerable Interests and Non-Registerable Interests at meetings and those recorded on the committee system, as declared by District Councillors for the period 1 April 2024 to 31 March 2025 were set out in the Appendix A to the Monitoring Officer's report. The minutes of the relevant meetings also recorded the declarations.

**Use of blanket dispensations**

The Committee was reminded that this Council's former Members' Code of Conduct at paragraph 7.3, as agreed by full Council in January 2018, had contained blanket dispensations for any business of the Authority where that business related to the Council functions in respect of:

- i. housing, where the Member is a tenant of the Authority provided that those functions do not relate particularly to their tenancy or lease;*
- ii. school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;*
- iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, are entitled to the receipt of, such pay;*
- iv. an allowance, payment or indemnity given to Members;*
- v. any ceremonial honour given to Members; and*
- vi. setting Council Tax or a Precept under the Local Government Finance Act 1992*

Since their introduction, only category iv and vi dispensations had been called upon at meetings of the Cabinet and full Council.

Members recalled that the current Code of Conduct which had taken effect in May 2023 did not include blanket dispensations and so, consequently, the Monitoring Officer gave a blanket dispensation for the purposes of setting Council Tax under the Local Government Finance Act 1992, at the District Council's budget meeting held on 11 February 2025 (minute 105 referred).

*"A recorded vote is mandatory on any decision relating to the budget or Council Tax. This includes not only on the substantive budget motions agreeing the budget and setting Council taxes, but also on any amendments proposed at the meeting.*

*For other types of Interests, which need to be considered, Disclosable Pecuniary Interests (DPIs), Other Registerable Interests (ORIs) or Non-Registerable Interests are defined in the Code of Conduct and for DPIs & ORIs, these have been (or should have been) registered in advance, and with the exception of the Council Tax exemption for residing in the District, you should still consider if any other interests do apply. A blanket exemption/dispensation has not been applied for all."*

### **Declarations of offers/receipt of gifts and hospitality**

Following the Standards Committee's review of the Council's Gift and Hospitality Policy for Members, guidance and a notification form had been produced for all District Councillors in May 2016. Reference to declarations of offers/receipt of gifts and hospitality had been included within the mandatory Members' Code of Conduct training delivered by the Monitoring Officer in June and July 2023. There had been one recorded declaration of offers/receipt of gifts and hospitality made by a District Councillor in the time period of this report.

### **Members' Register of Interests**

The Committee was aware that, pursuant to the Localism Act 2011, within 28 days of becoming a Member or re-election or appointment to office, Members must register with the Monitoring Officer the interests which fell within the categories set out in Table 1 of

the Members' Code of Conduct, namely, Disclosable Pecuniary Interests (DPIs) which were as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". Members should also register details of other personal interests which fell within the categories set out in Table 2 (Other Registerable Interests).

It was reported that, at the conclusion of the May 2023 District, Town and Parish Council elections, all Members had received the relevant Disclosable Pecuniary Interest and Other Registerable Interests form as part of their induction procedure, to complete and return to the Monitoring Officer, for inclusion on the Council's website within a central register. Registration and the obligations to disclose DPIs, Other Registerable Interests and Non-Registerable Interests and the effect on participation had been covered within the mandatory Members' Code of Conduct training delivered by the Monitoring Officer in June and July 2023. In line with the requirements of the Council's External Auditors, an annual reminder had been sent to all District Members to ensure that all interests were up to date and that remained ongoing.

The Monitoring Officer clarified to Members that it did take several reminders to Members to keep the register up to date and that there were Members that had not yet responded.

It was moved by Councillor Talbot, seconded by Councillor J Henderson and unanimously:-

**RESOLVED** that the Committee notes the contents of the report (A.1) and supports Officers in that Members should be responding to requests to keep their Members' Register of Interest entries up to date.

**43. REPORT OF THE MONITORING OFFICER - A.2 - MANDATORY TRAINING FOR MEMBERS - ANNUAL UPDATE**

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

Members recalled that the Committee, as part of its annual work programme since 2014, had received a report providing details of the mandatory training provided to Members of the Planning and Licensing and Registration Committees.

***Mandatory Training in the context of Councillor Development more widely***

The Committee was aware that the mandatory training referenced in the report also formed part of the overall training provision for all Councillors within the framework established by the Council's "Councillor Development Statement" as reported to this Committee on 2 October 2019 (Minute 14 referred).

In 2021/22 the then Portfolio Holder for Corporate Finance and Governance had established a Working Party which provided a cross-party mechanism for the regular input into development opportunities for Councillors. The membership had provided for input from all of the main Committees of the Council and all the political groups on the Council that was broadly proportionate to the overall position on the Council as a whole.



Thus far five sessions had taken place, with a further session planned, along with specific planning development sessions.

Access to the Local Government Association's online training portal was available for all Councillors and the provided training modules included:-

*Community Engagement and Leadership*  
*Councillor Induction*  
*Commissioning Council services*  
*Equality, Diversity and Unconscious Bias*  
*The Effective Ward Councillor*  
*Facilitation and Conflict Resolution*  
*Handling Complaints for service improvement*  
*Handling intimidation*  
*Holding Council meetings online*  
*Influencing skills*  
*Licensing and Regulation*  
*Local Government Finance*  
*Planning*  
*Police and Crime Panels*  
*Scrutiny for Councillors*  
*Stress management and personal resilience*  
*Supporting mentally healthier communities*  
*Supporting your constituents with complex issues*

Members were told that the completed and returned evaluation sheets, circulated following any training sessions provided, were used to assist the Council to refine and improve its training offer.

The above list did not reference the training provided for Councillors through All Members' Briefings.

The Monitoring Officer clarified that only the Members that were going to be sitting on the Committees that required site visits for that specific meeting, should attend the site visit to be able to join in with the decision-making process.

It was moved by Councillor Alexander, seconded by Councillor Codling and unanimously:-

**RESOLVED** that the Standards Committee:-

- (a) notes the contents of the report (A.1) and its Appendix; and
- (b) continues to encourage Members of the Planning, Licensing and Registration and Audit Committees to attend all organised mandatory training events in order to comply with the requirements of the Council's Constitution.

**44. REPORT OF THE MONITORING OFFICER - A.3 - STANDARDS COMMITTEE WORK PROGRAMME 2025/26**

The Committee considered the following draft Work Programme for 2025/26:-

July 2025

- Updates by Monitoring Officer covering complaints and National Policy changes
- Licensing and Registration Probity Protocol
- Standards Hearing Procedure review
- Update on mandatory Members' Code of Conduct training

October 2025

- Updates by Monitoring Officer covering complaints and National Policy changes
- Town and Parish Councils' Code of Conduct and Interests review – including Local Government Reorganisation (LGR) implications
- Outcome of consultation from Licensing and Registration Probity Protocol
- Role of Monitoring Officer and review of administrative delegated powers

February 2026

- Case review and guidance update for the Committee on decisions and actions taken nationally
- Updates by Monitoring Officer covering complaints and National Policy changes
- Update on mandatory training for Members

April 2026

- Annual report on declarations of interest (including meetings, gifts and hospitality)
- Updates by Monitoring Officer covering complaints and National Policy changes
- Annual Work Programme for 2026/27

Members were made aware that the above meeting dates were provisional pending ratification at the Annual Meeting of the Council on 29 April 2025 and that, in addition, individual matters might be referred to those meetings by the Monitoring Officer, in accordance with the Committee's Terms of Reference as necessary, for example, an appeal against dispensation decision or a Code of Conduct hearing.

Having duly considered and discussed the contents of the draft work programme:-

It was moved by Councillor J Henderson, seconded by Councillor Talbot and unanimously:-

**RESOLVED** that the Work Programme for the Standards Committee for 2025/26 be approved and adopted.

#### 45. **COMPLAINTS UPDATE AND NATIONAL POLICY CHANGES**

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

<b>TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE APRIL 2025</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
<b>Existing Cases from last update:</b>				
<b>Council</b>	<b>Complainant</b>	<b>Current status</b>	<b>Final outcome</b>	<b>Comments</b>
DISTRICT	METROPOLITAN BOROUGH COUNCILLOR – received 18 August 2023	CLOSED	Standards Hearing – determined breach of Code of Conduct – Committee sanctions published on Council's website	Subject Member has sadly passed away.
TOWN	PUBLIC - received 05 Jun 2024	CLOSED 07 Mar 2025	Investigation concluded – conducted by externally appointed Investigator	Matter relates to behaviour whilst acting in an official capacity.  A final report has been received and submitted to all parties.  No evidence of a breach of Code of Conduct.
TOWN	PUBLIC – received 05 Dec 2024	ONGOING	Investigation – internally appointed Investigator	Matter relates to use of social media.

TOWN	PUBLIC – received 05 Dec 2024	ONGOING	Pending	Matter relates to public statements on the Town Council's website.
PARISH	PARISH COUNCILLOR – received 05 Mar 2025	ONGOING	Pending	Matter relates to behaviour between Parish Councillors whilst acting in an official capacity.
DISTRICT	PUBLIC – received 11 Mar 2025	ONGOING	Pending	Matter relates to communications between parties.
<b>New Cases since last update - two</b>				
<p><b><u>General Notes – 2024/25 Summary:</u></b></p> <p>Overall, eleven cases had been received so far in 2024/25.          Since the last update, one case investigation had been concluded by the externally appointed investigator, one remained ongoing being investigated by an internally appointed investigator and three remained ongoing.</p>				
<b>Requests for dispensations:</b>				
<p>A dispensation for all District Members had been granted by the Monitoring Officer for the purpose of the report of the Director (Finance &amp; IT) – Formal Confirmation of Council Tax Amounts for 2025/26 submitted to Full Council and Human Resources &amp; Council Tax Committee in February 2025.</p>				

Officers updated the Committee with the latest updates since the report had been published:-

- A Parish case was now into investigation with an internally appointed investigator;
- Last District case had been closed, and Code of Conduct training was to be given by the Monitoring Officer; and
- A further 4 cases had been received, 2 were for the same Councillor by the same complainant but for different reasons and the other 2 were from the same complainant but for 2 different Councillors.

The Monitoring Officer gave a presentation to Members on the following national matters:-

- *Welsh Community Councils: non-compliant registers of interests – April 24;*

- *Auditors' call for improved member-officer relations at council 2<sup>nd</sup> year running – April 24;*
- *Statutory Guidance on best value standards and interventions – May 2024;*
- *Seven themes to define best value;*
- *Theme 4. Culture;*
- *Mooney v Information Commissioner (18 June 2024);*
- *The Appellant was not the Complainant;*
- *The balancing test in respect of the third-party complainants' personal data;*
- *Spelthorne Borough Council – Oct & Dec '24;*
- *SBC Standards Committee Minutes – Dec 24;*
- *English Devolution White Paper – Dec 24;*
- *Consultation following the White Paper – December 24;*
- *The Committee for Standards in Public Life backs stricter standards regime – March 25;*
- *£20,000 in damages to Parish Clerk over defamatory Facebook posts by Councillor – Feb 25;*
- *Back to Spelthorne Borough Council – Damning best value report – March 25;*  
*and*
- *All about the money or culture of mistrust and broken relationships?*

The Committee **NOTED** the foregoing.

The meeting was declared closed at 11.12 am

**Chairman**

This page is intentionally left blank

## STANDARDS COMMITTEE

9 JULY 2025

### REPORT OF THE MONITORING OFFICER

#### **A.1 REVIEW OF TENDRING DISTRICT COUNCIL'S MEMBERS' LICENSING GUIDANCE FOR COUNCILLORS AND OFFICERS**

##### **PART 1 – KEY INFORMATION**

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

To enable the Committee to consider the outcome of the review of the Licensing Guidance for Councillors and Officers carried out by the Monitoring Officer and her team.

To seek the Committee's approval that members of the Licensing and Registration Committee, the Portfolio Holder for Assets and Community Safety, Officers responsible for licensing services in the Governance and the Environment & Housing Directorates and the Independent Persons be consulted on the draft revised Licensing and Registration Probity Protocol.

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

At its meeting held on 24 October 2024, the Committee agreed the Revised Work Plan that included a review of the Council's Licensing Guidance for Councillors and Officers to be carried out to ensure it was adhering to the best practice and easy to follow. The review conducted has researched various examples of such protocols from other Councils and the outcome has resulted in a revised approach with the first step being to refer to the document as the 'Licensing and Registration Probity Protocol'. Whilst a protocol for licensing matters had been located, it would have been adopted some considerable time ago and required a review.

This report sets out initial proposals arising from a review by the Monitoring Officer and following consideration by the Committee, seeks approval to consult with members of the Licensing and Registration Committee, Portfolio Holder for Assets and Community Safety, Officers responsible for licensing services in the Governance and the Environment & Housing Directorates and the Independent Persons on the draft revised Licensing and Registration Probity Protocol.

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

**It is recommended that:**

- a) the Committee notes the outcome of the review of best practice to produce a revised Licensing and Registration Probity Protocol for consideration;**
- b) subject to the outcome of the Committee's debate on the contents of the draft Licensing and Registration Probity Protocol, as set out in Appendix A;**
  - (i) approves that consultation be undertaken on the draft revised Licensing**

and Registration Probity Protocol; and

(ii) that the outcome of the consultation in ((b)(i) be reported back to the Standards Committee for consideration prior to recommendation on to Full Council for adoption and inclusion in the Council's Constitution.

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

In order to enable the necessary consultation to take place with relevant parties on the draft revised Licensing and Registration Probity Protocol and for the views expressed to be considered prior to any finalisation of the Protocol.

#### ALTERNATIVE OPTIONS CONSIDERED

Not to progress 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' Licensing and Registration Probity Protocol will form part of the Council's Constitution in Part 6 and will demonstrate effective and positive governance arrangements and promotes the maintenance of integrity, both real and perceived, within the Licensing and Registration Committee and its Sub-Committees 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)**

**Section 28 of the Localism Act 2011 requires Councils, including Tendring District Council, to adopt a Code of Conduct that is consistent with the Nolan Principles of:**

- (a) selflessness;**
- (b) integrity;**
- (c) objectivity;**
- (d) accountability;**
- (e) openness;**
- (f) honesty;**
- (g) leadership.**

**Councils deliver a range of services and are responsible for many functions. To support Councillors in their roles in respect of decision making across those services and functions it is highly beneficial to support the objectives of the adopted Code and the underpinning principles about by developing protocols such as that now presented to the Committee.**

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

There are no financial implications for the Council directly from the content of this report. The development of the Protocol set out at Appendix A has been undertaken within existing resources. Likewise, the consultation proposed through this report will be carried out within the same resource limits.

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

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

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Good decision making should underpin financial sustainability, and the proposed protocol supports good decision making.
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 Licensing and Registration 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.	There are no direct matters concerning economy, efficiency and effectiveness.

## **MILESTONES AND DELIVERY**

Standards Committee 24 October 2024 – Agreed to undertake review.

Standards Committee 9 July 2025 – Consider the outcome of the review

The following set out the milestones envisaged in the development/finalisation of the Licensing and Registration Probity Protocol (should the Committee approve the recommendations set out above).

Licensing and Registration Committee August 2025 – undertake consultation with Members of the Licensing and Registration Committee, the Portfolio Holder for Assets and Community Safety, Licensing Officers and the Independent Persons.

Standards Committee October 2025 – report outcome of consultation to Standards Committee for consideration and recommendations onto Full Council.

Full Council December 2025 – Council considers and adopts the proposed new Licensing and Registration Probity Protocol.

## **ASSOCIATED RISKS AND MITIGATION**

The Council must ensure that any Codes and Protocol which provide guidance for Councillors are up to date with current policy, legislation, case law, good practice and national guidance. Through this report, and its recommendations, the Council seeks to achieve this and thereby avoid the risks associated with no protocol or an out-of-date protocol.

## **OUTCOME OF CONSULTATION AND ENGAGEMENT**

Possible consultees include:-

Members of the Licensing and Registration Committee;  
Portfolio Holder for Assets and Community Safety  
Officers responsible for licensing services in the Governance and the Environment & Housing Directorates; and  
The Independent Persons.

## **EQUALITIES**

Part of the review of the Licensing and Registration Probity Protocol has been to ensure that it meets the requirements of the Public Sector Equality Duty in that the Council must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

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

The Committee, in its decision making should likewise consider the requirements of the Public Sector Equality Duty.

<b>SOCIAL VALUE CONSIDERATIONS</b>	
Not applicable to this report.	
<b>IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION</b>	
On the basis that local government reorganisation proceeds following the submission of proposals to Government by 26 September 2025, there will be a need to look at harmonising a range of policies and procedures across the Councils that will be combined (in full or in part). The Probity Protocol will be one of those documents and the adoption of the finalised Protocol will be a useful position statement to inform the harmonisation process.	
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050</b>	
Not applicable to this report.	
<b>OTHER RELEVANT IMPLICATIONS</b>	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
<b>Crime and Disorder</b>	None
<b>Health Inequalities</b>	None
<b>Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)</b>	None
<b>Area or Ward affected</b>	All
<b>ANY OTHER RELEVANT INFORMATION</b>	
The draft Licensing and Registration Probity Protocol is intended to be a 'sister' protocol to the adopted Planning Probity Protocol.	

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

<b>BACKGROUND</b>
At its meeting held on 24 October 2024, the Committee agreed its Revised Work Plan and this included a review of the Council's Licensing Guidance for Councillors and Officers to ensure it was adhering to the best practice and easy to follow. In undertaking the review, other Councils Licensing Protocols were examined with a view to assessing best practice to assist the drafting of this Council's Licensing and Registration Probity Protocol. Various examples identified different elements, such as interests, lobbying, Officer Member

relationship, Ward Councillor involvement, site visits, training etc.

Some of the Council's Licensing Protocols that was used were:

- Benford Borough Council;
- London Borough of Hammersmith and Fulham;
- Somerset Council; and
- South Holland District Council

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

Standards Committee 24 October 2024 – Minute 28 (refers)

- *“Licensing and Registration Committee Probity Protocol – Initial Draft for Consultation Purposes*

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

#### BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

[Licensing Protocol July 2010](#) – TDC original Licensing guidance document

[Minutes Template](#) – Standards Committee 24 October 2024

[Item 7 Guidance for Members dealing with Licensing Matters](#) – Bedford Borough Council – Guidance for Councillors dealing with Licensing Matters

[GUIDANCE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING AND LICENSING](#) – London Borough of Hammersmith & Fulham – Guidance for Councillors and Officers Dealing with Planning and Licensing

[Part 5](#) – Somerset Council – Local Code of Best Practice for the Licensing Process

[SOUTH HOLLAND DISTRICT COUNCIL](#) – South Holland District Council – Protocol on Good Practice in Licensing for Members and Officers Dealing with Licensing Issues

#### APPENDICES

Appendix A – Draft New TDC Licensing and Registration Probity Protocol.

#### REPORT CONTACT OFFICER(S)

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

**Name**

Lisa Hastings

Keith Simmons

	Bethany Jones
<b>Job Title</b>	<p>Corporate Director (Law and Governance) &amp; Monitoring Officer</p> <p>Assistant Director (Corporate Policy &amp; Support) &amp; Deputy Monitoring Officer</p> <p>Democratic Services Officer</p>
<b>Email/Telephone</b>	<p><a href="mailto:lhastings@tendringdc.gov.uk">lhastings@tendringdc.gov.uk</a> Telephone: (01255) 68 6561</p> <p><a href="mailto:ksimmons@tendringdc.gov.uk">ksimmons@tendringdc.gov.uk</a> Telephone: (01255) 68 6580</p> <p><a href="mailto:bjones@tendringdc.gov.uk">bjones@tendringdc.gov.uk</a> Telephone: (01255) 68 6587</p>

This page is intentionally left blank

# *Tendring* **District Council**



## **Part 6 – Licensing and Registration Probity Protocol**

### **Contents:**

- 1 Introduction
- 2 Role of Councillors
- 3 Relations to Members' Code of Conduct
- 4 Applications submitted by Council, Members or Officers
- 5 Member Training
- 6 Predisposition, Bias and Predetermination
- 7 Contact with Applicants, Objectors and Interested Parties
- 8 Lobbying of and by Councillors
- 9 Pre-application Discussions
- 10 Site Visits
- 11 Meeting of the Licensing and Registration Committee and Sub-Committees
- 12 Right to Fair Determination & Open and Fair Hearing

# APPENDIX A

## 1 INTRODUCTION

### 1.1 In this Protocol:

- **“Councillors” or “Members”** - Unless stated otherwise, references to Councillors/Members in this Code are to those Councillors dealing with Licensing matters via their appointment to Licensing Committee.
- **“Licensing Committee”** means the Licensing and Registration Committee, the Premises/Personal Licences Sub-Committee and Miscellaneous Licensing Sub-Committee. It also refers to the Planning Committee should it consider a combined matter involving premises matters under the Licensing Act 2003 and to the Full Council when dealing with licensing matters.
- **“Licensing matters”** include all applications for, and reviews of, licences, consents, permits and registrations etc. as set out in the Committee's terms of reference within Part 3 of the Council's Constitution.
- **“Party”** for Licensing purposes includes an applicant, or an objector.
- **“Interested party”** is any other person who has submitted a valid representation within the prescribed timescales in respect of the matter concerned and has a right to attend the hearing.
- **“Licensing administrative fairness duty”** means the particular responsibilities of the Licensing Committee Members who sit in formal administrative hearings and consider matters fairly following rules of natural justice and the relevant principles of the Human Rights Act 1998 in a non-political manner and make decisions in the public interest within (and for the purposes) of the particular licensing legislative framework.
- **“Monitoring Officer”** means the designated Officer and in their absence the reference to Monitoring Officer shall be deemed to include the Deputy Monitoring Officer.

### 1.2 There are fundamental principles of English Law that every decision-making body must observe and be seen to observe. These are called “the principles of natural justice” and they include:-

- (1) the right to have a fair determination;
- (2) there should be no bias leading up to, or in, the decision reached.

In arrangements for licensing matters to be heard and determined the Council will be focused on these principles. It will, in so far as it is able, also seek to minimise situations where it will be determining cases it itself would be a party in and otherwise make specific provisions for a separation of such roles.

### 1.3 This Protocol has been prepared:-

- (1) to assist Members to observe these principles in relation to reaching decision on licensing matters; and
- (2) to provide guidance to Members on how to maintain high standards of conduct in relation to their licensing responsibilities and also on how the Council's Code of Conduct applies to the licensing systems. It does not however replace or in anyway modify that Code.

### 1.4 In view of 1.2 and 1.3 above, Members should follow this Protocol when they deal with licensing matters. It is also important that Members follow all other Protocols of the Standards Committee as the Protocol is given in accordance with the Standards



# APPENDIX A

Committee's delegation to promote and maintain high standards of conduct by Members and co-opted Members of the Council.

- 1.5 One of the single largest areas of licensing that the Council is the licensing authority for relates to authorisations under the Licensing Act 2003. The activities regulated under this Act are:
- the sale of alcohol
  - the supply of alcohol by a members' club
  - regulated entertainment
  - late night refreshment
- 1.6 The Licensing Act 2003 is underpinned by four specific licensing objectives, which the licensing authority and the responsible authorities are required to promote in relation to premises and people licenced under the Act. The objectives are:
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm
- 1.7 Each of the objectives carries an equal significance.
- 1.8 The Licensing Act 2003 identifies the Authority itself as a designated Responsible Authority along with the likes of the Police, Trading Standards, Environmental Health, Children's Services etc. Each Responsible Authority has their own enforcement responsibilities in relation to premises licensed under the Act and each recognises the importance of effective co-operation and liaison to ensure that licence holders, designated premises supervisors, personal licence holders and club premises certificate holders both understand and comply with the law.
- 1.9 The Government strongly recommends that licensing authorities establish protocols on enforcement issues and, more generally, work collaboratively to promote the four licensing objectives in respect of matters covered by the Licensing Act 2003.
- 1.10 The Licensing Act 2003 is not the only legislative framework that the Council is the Licensing Authority for. Each framework applies different tests and responsibilities on the Council and others. One other such licensing framework is the Gambling Act 2005 and the Council (as Licensing Authority) is charged with promoting the three objectives in that Act in respect of applications, notices and determinations under that Act. The 2005 Act objectives are:
- \* preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
  - \* ensuring that gambling is conducted in a fair and open way
  - \* protecting children and other vulnerable people from being harmed or exploited by gambling.
- 1.11 The Licensing Act 2003 and the Gambling Act 2005 put local authorities firmly at the centre of decision making upon licences for regulated entertainment, the provision of alcohol, late night refreshment and the Licensing of Gambling Establishments and Small Lotteries. Another large part of the work of the Council in respects of licensing is that related to Taxi and Private Hire Services. The framework for this area of licensing

# APPENDIX A

is set out in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions Act 1976 (as amended and otherwise impinged by a range of other more recent legislation). Nationally there is guidance around vehicle standards and statutory guidance around driver expectations. While there are not the same 'objectives' clauses in the relevant Acts for Taxi and Private Hire Services, there is a clear approach that the fundamental consideration of the licensing Authority is public safety and consumer protection.

- 1.12 The role of Elected Members as part of the Licensing Committee is to examine the matters before them and apply the requirements upon them (and the Authority more generally) with an open mind and consider all relevant facts in determining the appropriate outcome of the matter. In doing so the Elected Member must maintain his/her impartiality and, as public perception of probity is critical, his/her appearance of impartiality too, during the decision-making process. This protocol is intended to ensure that this is achieved.
- 1.13 This Protocol is part of the Council's Constitution, and all Members and Officers are expected to comply strictly with its provisions. Any breach of the Protocol will be referred to the Monitoring Officer. If the breach is also a breach of the Code of Conduct for Members the matter will be dealt with through its associated complaints process.
- 1.14 The Protocol can be changed at any time by resolution of Council.

## **2 ROLE OF COUNCILLORS**

- 2.1 The role of an Elected Member at the Licensing Committee involves sitting in a formal hearing and following the rules of natural justice and the relevant principles of the Human Rights Act 1998 in making decisions.
- 2.2 Applying those principles, the following approach to hearings will be applied:-
  - (1) A party at a Committee must be provided with the written report together with any other information received regarding the substance of any allegation or objection or allegations (which may be relevant in the context of a proposed revocation of a licence or details of the application) and this is usually in the form of the written report to attendees (see (2) below)
  - (2) The written report must be provided to the party in a reasonable time for them to read and understand the content of the objection, allegation or, as the case may be, details set out in the report and the arrangements for representation
  - (3) A party must be able to put their case and be represented if they so wish and is entitled to a fair hearing
  - (4) A party must be able to present their case under conditions that do not place them at a disadvantage
  - (5) A party must be entitled to have their representations taken into account by the Committee
  - (6) Any member of the Committee having a Disclosable Pecuniary Interest or a local interest in the matter before the Committee must declare the nature of that interest and in the case of a Disclosable Pecuniary Interest must withdraw from the room in which the meeting is being held whilst the matter is being considered

# APPENDIX A

(7) The Committee should not make an irrational decision by taking into account matters it ought not to take into account of and/or taking into account matters of which it should take account

(8) There should be no bias leading up to, or in, the decision reached

(9) In its decision making, the Committee must ensure that its decision is proportionate to the case before it

2.3 Councillors serve the public and are responsible to the electorate. Officers advise Councillors and the Council and carry out the Council's work. Officers are employed by the council, not by individual Councillors, and it follows that instructions may only be given to Officers through a decision:-

- at a meeting of the Executive or of the Council, or a Committee or a Sub-Committee of either, or
- by an individual decision of the Leader or a Portfolio Holder properly taken in accordance with the decision-making protocol.

In so far as this Protocol is concerned, instructions will be taken by the Licensing Committee and relate to the matter being considered by the Committee.

2.4 It is crucial that Councillors serving on the Licensing Committee, or who become involved in making a licensing decision, must observe the requirement that a Member:-

*“must not use or attempt to use [their] position as a Member improperly to confer on or secure for [themselves] or any other person, an advantage or disadvantage”*

2.5 Councillors and Officers have different but complementary roles. Both Officers and Councillors are also subject to Codes of Conduct with which they must comply.

2.6 Councillors and Officers will treat each other with respect at all times and not engage in personal criticism in the course of any meeting. Concerns about Officer and Councillor conduct should be addressed to the Corporate Director (Law & Governance) (Monitoring Officer) or the Assistant Director (Corporate Policy & Support).

2.7 Councillors can expect Officers to give them all reasonable assistance in answering questions on licensing matters, except where that would infringe this or other codes, or contravene legal rules such as data protection. An Officer will state the reason if there are any such limitations on their ability to assist with Councillor queries.

2.8 Councillors serving on the Licensing Committee must determine each application/matter on the evidence presented by (or on behalf of) both the applicant/licensee and interested parties at a hearing. Councillors need to take account of relevant representations made by the applicant/licensee and interested parties but should not favour any person, group, company or locality, not put themselves in a position where they appear to do so, in making the decision. Councillors are barred from sitting on any Licensing Sub-Committee determining applications which fall within their own Wards only where they have a **prejudicial** interest under the Members' Code of Conduct. If the Member has a partner who is also an elected Councillor, they should not sit on the Licensing Committee hearing a matter concerning a premises in the Ward their partner represents or a person who lives in that Ward.

# APPENDIX A

- 2.9 Members must comply with the provisions of the Code of Conduct for Members which has been adopted by the Council, and which sets out the required standards of conduct for Councillors. The Code not only covers issues central to the preservation of an ethical approach to council business but also appropriate relationships with other Members, staff and the public which will impact on the way in which Members participate in the licensing process.

## 3 RELATIONSHIP TO MEMBERS' CODE OF CONDUCT

- 3.1 The rules contained in the Members' Code of Conduct must always be complied with first. These are both the rules on Disclosable Pecuniary Interests (DPIs) and any other interests identified by the Council, and the general rules and obligations giving effect to the (Nolan) Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 3.2 The requirements set out in the Code of Conduct on dealing with gifts and hospitality can be particularly relevant when dealing with licensing issues. Councillors and Officers should be very circumspect in response to any offers of gifts and hospitality, should seek appropriate advice where necessary, and should record in the relevant register any gifts and/or hospitality they do receive or refuse. This applies particularly in circumstances where it is known that licensing applications have been submitted, or are likely to be submitted, by the parties making such offers.

### DECLARATIONS OF INTEREST

- 3.3 The Council's Code of Conduct sets out requirements for Members on declaring Disclosable Pecuniary Interests, Other Registerable Interest 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.
- 3.4 A Member with a Disclosable Pecuniary Interest in respect of a particular licensing matter must declare it and take no part in the discussion or the determination of the proposal. Preferably this should take place prior to the hearing itself as a consequence of enquiries proceeding the despatch of the meeting papers or following this point upon the Member reading those papers. If the declaration takes place at the hearing, 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 if required, in advance of a Licensing Committee. It is unsatisfactory if a Member asks for guidance in the course of a debate.
- 3.5 **Do take into account when approaching a decision that the principle of Integrity (one of the Nolan Principles – one of the Seven Principles of 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:

# APPENDIX A

- (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;
  - provided the licensing framework permits this, the proposal will be reported to the Committee as a main item and not dealt with by Officers under delegated powers or, if the framework prevents this, it will be reported for information to the Committee at its next meeting setting out relevant officer decision and the decision;
  - 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 COUNCIL, MEMBERS OR OFFICERS

- 4.1 A Licensing application to the Council as Licensing Authority by serving and former Councillors, their family members and close associates, are perfectly legitimate. However, it is vital to ensure that they are handled in such a way that provides no grounds for accusations of favouritism or suspicion of impropriety.
- 4.2 Councillors on the Licensing Committee should not act as agents for people pursuing licensing matters within their Authority. Similarly, if they submit their own proposal to the Council as Licensing Authority they should state the nature of their interest and play no part in its processing and should, unless they are named specifically as the applicant on the requisite forms, notify the Council's Monitoring Officer of its submission.
- 4.3 Submission of an application by, or concerning, a Councillor would be regarded as a Disclosable Pecuniary Interest for the Councillor under the Council's Code of Conduct and as such, she or he must not attend any hearing during the consideration of the matter other than to exercise any rights that applicants or the wider public have to make representations, answer questions or give evidence.
- 4.4 The Council's Code of Conduct provides that Members should "not seek improperly to influence a decision about this matter" – this however does not imply that a Member is not able to explain their position to an Officer in advance of consideration by a Committee. The Member should take great care, of course, not to compromise the impartiality of anyone who works for, or on behalf of, the Council. They should also be aware that:
  - they should have no further access to Officers, documentation, etc than would be available to a member of the public
  - they should scrupulously avoid placing pressure on any Officer

# APPENDIX A

- their position as a Councillor creates a public expectation that the Member will observe the requirements of licensing legislation in relation to their own private property interests, or a property-owning company in which they have a material interest.
- 4.5 Although a Member may make a written submission in a private capacity to relevant Officers, they should not be made to individual Members. If a proposal is submitted by a family member, close associate or other “relevant person” then the Member must consider whether they have a Disclosable Pecuniary Interest in the application, and, if so, take no part in its processing. In any event, they should outline the association at the hearing for the record.
- 4.6 Applications may be received by the Council as the Licensing Authority from the Council itself acting in another capacity. This could include a licence application for a Council sponsored event or for Council owned premises. This could also include an application for a review of a premises licence/club premises certificate following a determination by the Council as an Environmental Health, Planning or Licensing Authority itself. Under the Licensing Act 2003, this situation is expressly permitted. Such applications will be dealt with in the same way as any other application and will give no advantage or disadvantage to the fact that it has been submitted by the Council (or following a recommendation). This should be no recommendation for a review of a premises licence/club premises certificate from the Full Council.
- 4.7 No Member of the Executive or any Committee making an application should seek to influence in any way the determination of the application/review by the Licensing Committee other than by having participated in the decision to apply for the licence/call for a review. Where the application is on behalf of the Council and is to be determined by the Licensing Committee, that Committee shall not be comprised of a Member of the Cabinet/Executive. They shall excuse themselves from participation as a Member of the Cabinet.
- 4.8 As identified earlier (at 3.6 above), applications submitted by Councillors, or by Officers in the Licensing Service, will as a general principle, be referred to the Licensing Committee for information. However, for legal reasons it will not be possible for the Licensing Committee to determine all such applications – for example, the Council normally has no option but to grant an uncontested application under the Licensing Act 2003. However, an information report will be submitted to the next meeting of the Committee in the spirit of openness and transparency. At that meeting, Members of the Committee will be free to ask about compliance with this Protocol by those involved in the application.
- 4.9 In the processing of relevant applications, references will be made to the Council, Councillors or Officer interest. The Councillor or Officer concerned will take no part in handling the application or determining the recommendation or making the decision on the application.
- 4.10 Where a Councillor frequently declares an interest in the Committee meetings and therefore is unable to take part in the proper consideration of licensing matters it will be referred to the Monitoring Officer who will decide whether to raise the matter with the relevant Group Leader, solely, for the purposes of determining whether another Member of that Group should take that allocated seat on the Committee.
- 4.11 A decision on the Council’s own licensing applications will be made in accordance with the same procedures applying to licensing applications submitted by other applicants. Licensing Committee members must give no regard to the interests of the Council

# APPENDIX A

itself, aside from receiving and taking into account, as permitted by law, any relevant representations received.

- 4.12 Members who are part of the Council's decision to apply for a licence, or who express a view in respect of such an application, should not be part of any hearing to determine the licence. Expressly there must not be any predetermination to grant the application solely because it has been submitted by the Council.
- 4.13 Councillors serving on other Council Committee/Scrutiny and Review Panels who also sit on the Licensing Committee are not permitted to have any prejudicial interest, which would disqualify them from taking part in the decision. If individual Councillors in this situation consider that they should declare an Other Registerable or Non-Registerable interest, they *may* still be permitted to speak and vote. Councillors are also at liberty to withdraw from the meeting if they so wish. Relevant Council Officers and, in particular, the Monitoring Officer will be pleased to give advice when Councillors are concerned over a conflict of interest.
- 4.14 The Council could apply for their own Premises Licences. Such applications must be, and be seen to be, dealt with fairly. During such an application process it is therefore important to be aware of any potential appearance of bias.

## **5 MEMBER TRAINING**

- 5.1 A Member (or designated named Substitute Member) cannot sit as a member of the Licensing and Registration Committee unless they have received specific training with regard to the determination of licensing applications (Part 4 – of the Constitution – Council Procedure Rules).
- 5.2 From time to time, the Council will provide training for Councillors on licensing matters. This will achieve compliance with the requirements for training under paragraph 5.1 above, new legal requirements on changes in national guidance from Government, the Gambling Commission etc or otherwise to extend the knowledge of Councillors sitting on the Licensing Committee. Training is also available 24/7 on the LGA's Learning Portal and is a good basis for introducing the requirements of the various licensing frameworks. The LGA also has an annual licensing conference and the Committee's Chairman and Vice-Chairman will be invited to attend this each year.
- 5.3 Members should not participate in decision making at meetings dealing with licensing matters if they have not attended the mandatory licensing training prescribed by the Council.
- 5.4 In relation to licensing issues, the procedures followed by the Council's Licensing Committee are set down in detailed guidance documents issued to both the applicant and other interest parties. These are reviewed periodically in the light of experience.
- 5.5 The Council is committed to a culture of continuous improvement in all of its services and will ensure that Officers and Members involved in the licensing process receive proper training/development to ensure that they are able to undertake their responsibility role.

## **6 PREDISPOSITION, PREDETERMINATION AND BIAS**

### **PREDISPOSITION**

# APPENDIX A

- 6.1 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 Licensing Committee before deciding on how to exercise their vote, there is no predetermination.

## PREDETERMINATION

- 6.2 **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 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 licensing matter.
- 6.3 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.
- 6.4 The following diagram is produced to help Councillors appreciate the range of circumstances (the following 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>

## BIAS

- 6.5 Councillors should not participate in the consideration of a licensing application if to do so would give the appearance of bias, and the decision may be challenged on the grounds of bias in the Courts. 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. Further, Councillors do not have to have a Other Registrable or Non-Registrable interest in order to come within the definition of bias. The Courts have held that it is primarily a matter that the Councillor



# APPENDIX A

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.

## 6.6 To avoid an appearance of bias:

- no Member sitting on the Licensing and Registration Sub-Committees can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the Sub-Committee which is considering the application and address the Committee as an 'interested party' or as the applicant's representative/witness.
- If a Member who sits on the Licensing Committees is approached by persons wishing to lobby him/her as regards the licence application then that Member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her Ward Member or the Licensing Officer who can explain the process of decision making. If the Member who sits on the Licensing Committees wishes to represent them then s/he will need to excuse him/herself from the Committee.
- A Member who are part of the Licensing Committee must avoid expressing personal opinions prior to the Committee decision. To do so may indicate that the Member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the relevant licensing legislative and policy framework (including taking account of any relevant national guidance).
- Political group meetings should never be used to decide how any Members on the Licensing Committee should vote. The view of the Local Government and Social Care Ombudsman is that using political whips in this manner may well amount to findings of maladministration.
- Councillors must not be Members of the Licensing Committee if they are involved in campaigning on the particular application.
- Other Members (ie those which do not sit on the Licensing Committee) need to be careful when discussing issues relating to matters which may come before the Licensing Committees as this can easily be viewed as bias/pressure and may well open that Member to accusations of such.
- Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether a representation is frivolous or vexatious).

## 6.7 Any attempt to put pressure on a Licensing Officer from any Member (whether they sit on the Licensing Committee or not) shall be recorded by the Officer and the application referred to the Assistant Director (Corporate Policy and Support).

## 6.8 It should be noted that a Member for a Ward, which would be directly affected by the application, is most at risk to being accused of bias. Such Members are also likely to be put under pressure to represent local 'interested parties' (i.e. objectors/supporters) or indeed 'responsible authorities' as regards a licence application. It is for this reason that, whilst there are no statutory requirements for Ward Members to excuse themselves from such licence applications (unless they have an interest), Members whose Ward includes the application, or whose Ward is likely to be affected by the application, will not sit on the Committees considering the application but s/he may wish to act as/or represent an 'interested party'. In this respect they must observe the same timelines as anyone else seeking to be an 'interested party'. Earlier in this Protocol, there is reference to the same approach as described in this paragraph applying to the Ward represented by the spouse of the Member concerned.

# APPENDIX A

- 6.9 Bias has been defined as “an attitude of mind which prevents the decision-maker from making an objective determination of the issues that he/she has to resolve”. The importance concept as regards bias is that there is no need for proof of actual or potential bias for there to be ‘procedural impropriety’ shown. It is sufficient that there is an appearance of bias. Accordingly, the test for bias is ‘whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias’.
- 6.10 ‘Bias’ also includes the situation where it is felt that the decision-maker has pre-determined the case upon his/her own prejudices. In the local government context, the most obvious example of pre-determination is where the impression is clearly given to persons (such as members of the public or a lobbyist) beyond conveying a mere pre-disposition, that ‘the Member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues’. In short, to avoid a claim of determination, you must be able to say with honesty that your mind is open and that you will determine the matter on the evidence, regardless of any pre-disposition that you may have conveyed.

## **PARTICIPATING IN DECISION MAKING**

- 6.11 Councillors are entitled, and are often expected, to have expressed views on licensing 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.
- 6.12 The Section makes it clear that if a Councillor has given a view on an issue, this, is 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.
- 6.13 However, decision-makers must not fetter their discretion by approaching the decision to determine a licensing application with a closed mind. It is a legal requirement to approach the determination of a licensing application with an open mind to prevent a legal challenge for pre-determination or bias (both being judicial grounds in administrative law).
- 6.14 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 consider 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; and

# APPENDIX A

- must be prepared to change their view right up to the point of making the decision.

6.15 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 Licensing Committee Member MIGHT compromise their role on the Committee and Councillors are advised to seek advice from the Monitoring Officer.

## **7 OFFICER DISCUSSION & MEETINGS WITH APPLICANTS, OBJECTORS AND INTERESTED PARTIES**

7.1 Councillors should refer those who approach them for licensing, 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 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 Corporate Director of Law and Governance or Assistant Director of Corporate Policy and Support 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 licensing 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 Assistant Director of Corporate Policy and Support or Licensing Manager 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 licensing file.

7.5 Discussion between a potential applicant and the Council as Licensing Authority prior to the submission of an application can be considerable to both parties. Such discussions should however only be dealt with by Officers.

7.6 Any pre-application discussions on licensing matters are normally between Officers and either the applicant or interested parties.

7.7 Discussions between the licence applicant and the Licensing Authority to the submission of an application (or prior to a decision being made) are often helpful to both parties. For example, a premises licence applicant may ask for advice on how to complete an 'operating schedule'. However, these discussions can often be viewed by objectors as a form of lobbying and the Authority must ensure it is not open to accusations of appearance of bias. Accordingly, Licensing and Registration Sub-Committee members should ensure that they do NOT take part in any pre-

# APPENDIX A

application/pre-decision discussions and that applicants are referred to the Licensing Officer.

## 8 LOBBYING OF/BY COUNCILLORS AND EXPRESSING VIEWS

- 8.1 Although lobbying is a normal and perfectly proper part of the political process, it is **not** acceptable in the case of Members who serve on the Licensing Committee about licensing matters given the “Licensing administrative fairness duty”.
- 8.2 With the possible exception of Ward Councillors who are not involved in the decision-making process, Councillors should avoid organising support for or opposition to a forthcoming licensing decision and should not lobby other Councillors. Councillors who decide to go public in support for a particular outcome will not be able to argue convincingly when it comes to a decision being made on the application that they have maintained an open mind. In such cases, the appropriate course for the Councillor to take is to make a declaration, withdraw from the meeting, and take no part in the decision-making process.
- 8.3 Ward Councillors have an important role to play as representatives of their communities and to bring local information to the decision-making process. Ward Councillors may therefore become involved in discussions with Officers about individual licensing issues. They should however remember that it is very easy to create the impression that they are using their position to influence the outcome.
- 8.4 Lobbying can be oral or by the circulation of letters or documents to all or some Councillors. Problems can occur if Councillors are given information or assurances by, for example, the licensee or applicant, their agents, neighbours, objectors or business colleagues/rivals, which are not part of the formal application or hearing process. Problems can also arise if the information provided to Councillors outside the formal process is misleading or untrue. Furthermore, there is a danger Councillors are manoeuvred into inadvertently confirming or denying confidential information to a third party. In relation to the quasi-judicial processes of the Licensing Committee and the need to conduct certain hearings in private, this action could leave the Council open to legal challenge. Caution may be necessary even after a matter is formally decided, if is subject to legal appeal.
- 8.5 Councillors must not put themselves in a position where they appear to favour a person, company or group. Even a ‘friendly’ private discussion with an interested party could cause others to mistrust the impartiality of Councillors. All Councillors, not just those on the Licensing Committee, should exercise caution in this regard. They should generally avoid any situation where they might be seen to be biased in advance of any official Council Licensing decision, and while not in possession of the full facts.
- 8.6 Specific guidance for Councillors who are also Members of the Licensing Committee is as follows, in relation to external lobbying:

The Member:

- should endeavour to avoid the hearing, and must avoid entering into correspondence over, a case that is being put to them by any interested party outside of the official process for dealing with Licensing matters. It may be necessary to politely interrupt a person trying to raise such an issue.
- should politely point out the reason why the matter must not be heard or considered by them in this situation, asking the person kindly not to continue, and not to raise further points direct with them. If the matter has been raised

# APPENDIX A

by correspondence, the Member need only pass the letter or email to the Licensing Officer and Officers will respond with the appropriate advice.

- should explain how the matter may be raised in the correct manner, i.e. in writing, to the Licensing Service.

The Member may also:

- provide procedural advice e.g. how to obtain further advice via Licensing Officers, the right to address the Licensing Committee as a deputation, how to make representations, where to obtain advice on appealing a decision, and so on
- should not under any circumstances indicate how they are going to vote, or give any opinion on, or reaction to, the matter being raised.
- should report all such contacts, with the details and any connected correspondence/paperwork, as soon as possible after they have occurred to the Licensing department, so that the incident can be recorded
- should not provide any information on the matter gained by virtue of their position that is not already in the public domain e.g. details from a report that may be heard with the press and public excluded by the Licensing Committee. In any case, where information is requested, best practice is to signpost the enquirer to official where Council sources of information. This avoids any accidentally selective provision of information by the Member, which although well intentioned, could be interpreted as bias
- refer the person to a Councillor who is not a Member of the Licensing Committee e.g. a colleague Ward Councillor, if the interested party is insistent on speaking to a Councillor. If despite the best efforts of the Member in compliance with the above, the person has not desisted as requested, and continues to put forward his/her, view by contacting or making submissions direct to the Member, the Member must:
  - in the absence of any written submission from the person appearing with the official papers at the Licensing Committee hearing, **or**
  - in the event that the official submission from the person is not the same as the information given to the Member
  - declare at the relevant Committee meeting the nature of the lobbying, who with, when, and the content of the issues raised, by whom and when.

- 8.7 Failure to follow these procedures above could prejudice the proper legal processing of the licensing matter, and this may have serious legal and financial consequences for the Council, also implications for the individual Councillor involved.

## **9 PRE-APPLICATION DISCUSSIONS**

- 9.1 Any pre-application discussions on licensing matters are normally between Officers and either the applicants or interested parties, not with Members.
- 9.2 Members will send applicants to the Licensing Officers for pre-applications discussions if approached.

## **10 SITE VISITS**

# APPENDIX A

- 10.1 The Council does not do site visits. If one was to happen, it would be under exceptional circumstances with specialist advice given. Councillors are advised not to conduct their own site visits.

## **11 MEETINGS OF THE LICENSING AND REGISTRATION COMMITTEE AND SUB-COMMITTEES**

- 11.1 Councillors must have the proper information to make an informed decision. An Officer recommendation is not provided in cases where this may prejudice Licensing and Registration Members, who must reach a collective decision based solely on the facts (subject to legal guidance).

- 11.2 The following information will be included in an Officer report to the Licensing and Registration Committee:-

- A clear description of the issue, application and/or decision required;
- Any relevant history in relation to the matter;
- All relevant evidence (even if apparently conflicting) that will enable Members to reach an informed decision;
- Details of any persons making witness statements and indicating willingness to provide verbal evidence to the Licensing and Registration Committee/Sub-Committees – such persons shall normally be available at the time of the meeting to be called if required, unless some other arrangement is made for the taking of evidence; and
- A list of the options available.

- 11.3 Details of any persons making representations, (are also given to the Members but may not be contained within the report) together with an advance indication of a wish to address the hearing personally, or through their representative.

- 11.4 Where a change in policy is being considered the following information will be included:

- Relevant existing requirements and policies.
- An appraisal of the implications of the decision
- An accurate summary of the response to consultation, or if this is to be a decision 'in principle', the recommended consultation that is to be carried out if Members agree.
- An Officer recommendation.

- 11.5 The majority of reports will be available for public inspection in accordance with the provisions for access to information and freedom of information. Occasionally the Licensing and Registration Committee/Sub-Committees will be asked to hear matters in private with the press and public excluded due to a need to respect personal confidentiality and privacy where sensitive issues are involved. This most often occurs in connection with Public Carriage driver hearings. In these circumstances the papers will not be publicly available in advance of the meeting, and the Licensing and Registration Committee/Sub-Committees will be asked to determine whether the meeting should be held in private to consider the report. Legal advice will be provided where necessary to assist with this decision.

## **COUNCILLOR ATTENDANCE**

- 11.6 It is important that the Councillors' decision takes account of all material issues, not solely those contained in the Officers' report, but also those which may be legally

# APPENDIX A

permitted to be presented orally or otherwise at the meeting. Any Councillor absent from any part of the meeting during consideration of a report must not vote on that matter.

## **MAKING REPRESENTATION ON LICENSING APPLICATIONS**

- 11.7 Members of the Licensing and Registration Committee/Sub-Committees may from time to time make representations on licensing applications. In these circumstances they are required to make their comments in writing and will also be afforded the opportunity to present their view at the appropriate meeting of the Licensing and Registration Committee/Sub-Committee. They may not participate in any part of the determination process.

## **PUBLIC SPEAKING AT COMMITTEE MEETINGS**

- 11.8 Where applications are considered pursuant to the Licensing Act 2003 or the Gambling Act 2005, by the Licensing and Registration Committee/Sub-Committees, the conduct of the meeting will be governed by the appropriate Hearings Regulations. The right to make representations under these Acts and Regulations is accordingly limited.
- 11.9 Consideration of applications for drivers of public carriages are held in closed sessions due to the sensitive nature.

## **DEFERMENT**

- 11.10 The Licensing and Registration Committee/Sub-Committees should only defer a decision where there are clear and legally permissible reasons for doing so.

## **12 RIGHT TO FAIR DETERMINATION & OPEN AND FAIR HEARING**

- 12.1 It is important that all the Licensing and Registration Committee/Sub-Committee Members read all of the agenda papers prior to each meeting and listen to all points raised during those meetings. Members have a duty to take into account all relevant matters, including licensing advice, and to ignore irrelevant matters. Members should present during the whole discussion of an item, or they should take no further part in the debate and should not vote on that item. Infrequently, certain applications may be adjourned at meetings for site visits etc and it is important that the same Members attend the subsequent meeting in order to determine the application.
- 12.2 Councillors, and Members of the Licensing and Registration Committee/Sub-Committees in particular, need to take account of the public's expectation that a licensing matter will be processed and determined in an open and fair manner, in which the Members taking the decision will take account of all of the relevant evidence presented before arriving at a decision, and that committing themselves one way or another before hearing all the arguments makes them vulnerable to an accusation of partiality. Determination of a licensing matter is a formal and fair administrative process involving the following rules and procedures, including the rules of natural justice, and is subject to rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review of the way in which a decision has been arrived at; or complain to the Ombudsman on the grounds of maladministration; or that a Member has breached the local Code of Conduct.
- 12.3 Councillors on the Licensing and Registration Committee/Sub-Committees must therefore not organise or get involved in organising support for the opposition to a

# APPENDIX A

licence application and must not lobby other Licensing and Registration Committee/Sub-Committee Councillors on a particular matter. Such actions can easily be misunderstood by parties to an application and by the general public and leave Committee Members and the Committee's decision open to attack.

- 12.4 A Councillor who does not sit on the Licensing and Registration Committee/Sub-Committee may wish to express an opinion and decide that a particular licensing issue is of such importance that he or she wishes to actively campaign either for or against the application in question. This would typically be in respect of a high-profile issue within the Ward which the Member represents. This is a legitimate political position for a Member to take, but in such special circumstances it would be impossible for that Member to be seen to remain impartial. Councillors not involved in the determination of a licensing matter may attend the public element of the hearing. Their status as a Councillor does not enable them to make any representations on licensing matters not available to members of the public. In line with any rights available to members of the public they may however make representations on licensing matters in accordance with the procedures approved by the Licensing and Registration Committee. A Member with a Disclosable Pecuniary Interest may not attend even in a private capacity and sit in the public gallery of any meeting of the Council, including one involved in the determination of a licensing matter.
- 12.5 A Member of the Licensing and Registration Committee that is to determine a licensing matter must not campaign for or against it prior to it being considered otherwise a challenge could be made for bias. If a Member of the Committee that is to determine a licensing matter feels that they must express an opinion on licensing matters before they are determined their continued membership of the Committee would not be possible having regard to their Licensing administrative fairness duty.
- 12.6 Members are entitled to hold a particular view for or against a particular decision and this is known as a predisposition, but they must still be able to consider and weigh relevant factors before reaching the final decision at a Committee meeting.
- 12.7 Section 25 of the Localism Act 2011 has sought to clarify the law regarding allegations that a decision is affected by bias or predetermination. Section 25 states that:
- “a decision maker is not to have had, or appeared to have had, a closed mind when making a decision just because:
- (a) 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 that matter, and
  - (b) the matter was relevant to the decision.”
- 12.8 Whilst Section 25 provides some comfort to Member on the extent to which they are entitled to express firm views on matters before decisions are made it is still the case that Members must retain an open mind at the time the decision is made and be prepared to listen to and consider the arguments, together with any advice or information from Officers, at the Committee meeting before finally making up their mind on how to vote.
- 12.9 Given the formal hearings nature of licensing matters and the licensing administrative fairness duty. Members of the Licensing and Registration Committee should not participate in any discussion on the merits or otherwise of particular cases including whether or not to grant or refuse any application. There should be no discussions at political group meetings to decide how Members will vote; this includes any pre-



# APPENDIX A

committee meeting or discussions between Licensing and Registration Committee members of a political group.

12.10 The fundamental principle is that a Member on a Committee determining a licensing matter must both:-

(a) have an open mind; and

(b) be capable of being seen by an objective and reasonable third party as having an open mind.

12.11 A Member of the Licensing and Registration Committee can pass on the views of a resident to the appropriate Officer prior to its hearing, but the Member must be careful not to be seen to be an advocate trying to influence the decision in any way on behalf of the resident. It would be inappropriate for the Member to pass on the views to a Member involved in the determination of the licensing matter.

12.12 Even if a Member of the Licensing and Registration Committee has not expressed a view on a licensing matter, if their mind is closed the Member should not participate in the hearing/determination of the matter. In these circumstances, another Member of the Committee or a substitute may attend to replace the Member (subject to the rules permitting or preventing such replacements and to them having undertaken the required training). It is not possible for a Member merely to act as a replacement for part of the meeting only while a particular licensing matter is determined. Any replacement Member must accept all of the principles set out in this guidance, including the need to have an open mind. In other words, the Member has declared an interest must not give an instruction or even an indication to the replacement Member on how that Member should vote. In addition, the Member should not seek or be seen to seek to influence the decision in any way, otherwise the integrity of the licensing processes would be damaged.

12.13 A Member should declare a Disclosable Pecuniary Interest if they are the partner of the applicant. Normally for the purposes of the Code of Conduct a Member can participate in and vote on an item having local interest where, for example, the applicant is a close associate or another family member. However, owing to the particular responsibilities of Licensing and Registration Members in respect of the licensing administrative fairness duty a Member with a local interest should not only disclose it but also should not participate in in and determine that application:

- A Member who is or has been regular customer of an applicant licensee or a former licence holder who would not even have any local interest should nevertheless not participate in the determination of that application
- A Member who has had any previous dealings regarding the premises should consider very carefully before they decide it is appropriate for them to participate in the determination of an application.

12.14 Ward Councillors are able to attend a Committee hearing as a party provided that they have submitted valid representation in advance and, therefore, they would have the same legal rights in this respect as any other person. They would have no other right to attend and speak at a meeting.

12.15 At no time should Councillors put pressure on Officers for a particular recommendation. Discussions between Councillors and Licensing Officers is beneficial and to be

## APPENDIX A

encouraged but should be only for the exchange of information and personal/professional views.

Draft

## STANDARDS COMMITTEE

09 July 2025

### REPORT OF CORPORATE DIRECTOR (LAW AND GOVERNANCE) & MONITORING OFFICER

#### **A.2 MEMBERS' CODE OF CONDUCT COMPLAINTS PROCEDURE REVIEW**

##### **PART 1 – KEY INFORMATION**

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

To present the Standards Committee with a proposed updated Complaints Procedure, reflecting best practice and case law for dealing with allegations that a Member has breached the Code of Conduct, for consideration for approval.

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

The Council approved the Standards Framework with effect from November 2013 which included a Complaints Procedure. The Complaints Procedure refers to a hearing in paragraph 7.1.2 and that it will follow procedures setting out how the hearing will be conducted. The Hearing Procedure was reviewed by the Committee in April 2024.

The purpose of the Complaints Procedure is to set out the framework as to how a complaint alleging a breach of Members' Code of Conduct will be dealt with, providing clear information and process to both the Complainant and Subject Member. This review is being conducted as it is important to ensure the Council's procedures reflect best practice and are up to date.

The proposed amendments consider points raised from Members of the Standards Committee and the Council's Independent Persons following a workshop with Officers reviewing the Complaints Procedure; strengthening and clarifying the investigation process should an alleged breach be determined for investigation by the Monitoring Officer and the process following the decision to refer to the Standards Committee for a hearing.

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

It is recommended that the Committee:

- (a) notes the contents of this report and provides comments through its debate on the draft amended Complaints Procedure, as set out in Appendix A and the associated flowchart in Appendix B;
- (b) subject to (a) recommends the draft amended Complaints Procedure set out in Appendix A to Full Council for approval and immediate adoption;
- (c) recommends to Full Council approving a delegation to the Standards Committee to amend the Complaints Procedure, following future reviews, for efficiency purposes and especially in readiness for Local Government Reorganisation preparation; and
- (d) subject to (c), endorses the Terms of Reference of the Standards Committee being amended to reflect the decision of Full Council.

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

To comply with the decision of the Standards Committee in February 2025, minute no. 36 where Officers were requested to undertake a further review the Council's Complaints Procedure, proposes amendments as necessary and produces a flowchart detailing the process, following an investigation being concluded to referral for a hearing, where evidence of a breach has been found.

Officers were requested to then present a revised Council's Complaints Procedure, Standards Hearing Procedure and flowchart to a future meeting of the Committee, ensuring the Council's procedure follow best practice and case law.

Through the review, officers have taken into account the Local Government Association Guidance on Member Model Code of Conduct Complaints Handling.

### ALTERNATIVE OPTIONS CONSIDERED

An alternative would be not to amend the Complaints Procedure at this time, however this option is not recommended as it is important to ensure the Council's procedures reflect best practice and case law.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

Part 6 Paragraph 1 of the Council's Constitution - Tendring District Council Complaints Procedure, states:

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...

1.3 Town and Parish Councils within the Tendring District are set out on the Council's website.

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

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

The Council has formally adopted the Complaints Procedure which sets out the Council's 'arrangements' under **Section 28(6) and (7) of the Localism Act 2011 (as contained within Part 6 of the Council's Constitution)**. Tendring District Council must have in place 'arrangements' under which allegations that a Member or co-opted Member of the Authority (*or of a Town 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.

Part 6 Paragraph 3.7 – The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.

Part 6 Paragraph 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

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

There are no finance or resources implications with this report.

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

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

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The Localism Act 2011 sets out the District Council's statutory duties for dealing with Members' Code of Conduct complaints.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Part 6 Paragraph 12 of the Council's Constitution – 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.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The Complaints Procedure should follow best practice, natural justice and case law ensuring that the Council's resources are used in an effective and efficient manner. The recommendation for a delegation from Council to the Standards Committee to approve future amendments to the Complaints Procedure demonstrates efficiency and effectiveness.

#### **MILESTONES AND DELIVERY**

The amended Complaints Procedure, once considered by the Standards Committee will require a recommendation onto Full Council for approval and adoption, before it can come into effect.

#### **ASSOCIATED RISKS AND MITIGATION**

Not presenting this information could have a detrimental impact on the Council's reputation.

#### **OUTCOME OF CONSULTATION AND ENGAGEMENT**

Standards Committee Members, Independent Persons and Officer workshops were conducted in reviewing the Complaints Procedure. This is a public document to be presented to the Standards Committee.

#### **EQUALITIES**

Equality considerations are taken into account for each decision made.

<b>SOCIAL VALUE CONSIDERATIONS</b>	
Social value considerations are taken into account for each decision made.	
<b>IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION</b>	
To ensure an efficient and effective way of working, and to respond to the requirement for a pre-unitary Joint Committee to recommend a Members Code of Conduct to the Shadow Authority for adoption, prior to its implementation, it is considered appropriate to request the delegation to the Standards Committee, to approve future amendments, following reviews in readiness for Local Government Reorganisation.	
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050</b>	
This is considered for each decision made.	
<b>OTHER RELEVANT IMPLICATIONS</b>	
<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>	
<b>Crime and Disorder</b>	Not applicable
<b>Health Inequalities</b>	Not applicable
<b>Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)</b>	Not applicable
<b>Area or Ward affected</b>	No Wards would be directly impacted by this decision.
<b>ANY OTHER RELEVANT INFORMATION</b>	
None	

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

<b>BACKGROUND</b>
<p>It was reported to the Standards Committee in February 2025 (minute no. 36) that the Standards Committee framework was responsible for the function of Standards Hearings, be it whether held by the Standards Committee for District Councillor complaints or a Sub-Committee for Town and Parish Councillor complaints.</p> <p>Members heard that matters reaching the need to invoke the Standards Hearing Procedure arose from complaints received under the Council's Members' Code of Conduct complaints procedure and followed a finding that evidence of a breach of the Members' Code of Conduct existed.</p> <p>The Committee was reminded that in April 2024 the Committee had considered a proposed updated Hearing Procedure that reflected best practice and case law, and which would supplement the Council's Complaints Procedure for dealing with allegations that a Member had breached the Code of Conduct.</p>

Full Council had previously approved the Standards Framework with effect from November 2013, which had included a Complaints Procedure.

The Complaints Procedure referred to the hearing in paragraph 7.1.2 and that it would follow the relevant procedures setting out how the hearing would be conducted. The purpose of the document was to ensure that all parties understood the process which would be followed at the hearing and to assist the Chairman to conduct a fair and proper hearing. When a hearing was convened, a copy of the procedures would be set out with the Report. Members were told that at its April 2024 meeting, the Committee had been also informed that the Hearing Procedure had been approved by the Standards Committee in March 2014. In consideration of the length of time since its adoption and with a Hearing due to be held in May 2024, it was felt important by the Monitoring Officer to ensure that the Council's procedures reflected best practice and were up to date. The Standards Committee had subsequently approved the amended Hearing Procedure for immediate adoption for both the Standards Committee and the Town and Parish Councils' Sub-Committee.

Officers also told Members that the opportunity for a further review of the Standards Hearing Procedure came after a Standards Hearing was conducted in May 2024 where the procedure was utilised and had been put through a 'stress test', having been infrequently used as the necessity had not arisen. The Hearing Procedure had not failed and was robust in its application, however there were some operational matters prior to the Hearing which would be addressed in the process, once a matter was referred for a hearing by the Monitoring Officer.

Subsequently, informal discussion sessions had taken place with Members of the Standards Committee and Independent Persons, with their views and subsequent amendments reflected within the Officer report and within the Standards Hearing Procedure as appropriate; whilst still reflecting the Standards Framework and Terms of Reference of the Standards Committee.

Finally, Members heard that once the proposals had been considered by the Standards Committee through a formal decision, further work could be undertaken on the documentation for approval.

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

Minute no. 79 Full Council 26 November 2013 RESOLVED that following the meeting of the Conduct Committee held on 19 November 2013 during which Members had made a number of comments on the proposed new standards arrangements:

- a) The proposed new Standards Framework, as reported, be approved and that it replaces the Conduct arrangements which were agreed by the Council in May 2012;
- m) The Complaints Procedure.....be approved.

Minute no. 36 Standards Committee February 2025:

RESOLVED that the Standards Committee:-

- a) notes the contents of the Officer report and endorses the proposals as set out therein;

b) requests that Officers further review the Council's Complaints Procedure, proposes amendments as necessary and produces a flowchart detailing the process following an investigation being concluded to referral for a hearing, where evidence of a breach has been found; and

c) requests that Officers then present a revised Council's Complaints Procedure, Standards Hearing Procedure and flowchart to a future meeting of the Committee.

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

Tendring District Council Members' Code of Conduct – Part 6 of the Council's Constitution

#### **APPENDICES**

**Appendix A** - Tendring District Council Complaints Procedure – proposed amendments

**Appendix B** – Flowchart - Summary of process following investigation and referral to the Standards Committee to conduct a hearing, to be inserted as Annex F within the Complaints Procedure.

#### **REPORT CONTACT OFFICER(S)**

<b>Name</b>	<b>Lisa Hastings</b>
<b>Job Title</b>	Corporate Director Law and Governance
<b>Email/Telephone</b>	lhastings@tendringdc.gov.uk
<b>Name</b>	<b>Karen Hayes</b>
<b>Job Title</b>	Corporate Governance, Performance and Procurement Manager
<b>Email/Telephone</b>	khayes@tendringdc.gov.uk



## 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

DRAFT

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 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 ("Subject Member"). In exceptional cases, we may agree to withhold your name and address from the Subject Member 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 Subject Member 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 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. Any determination by the Standards Committee is on a balance of probabilities.
- 3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaint's 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 deciding 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 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 **Subject 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 **Clerk** 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 **Subject Member** ~~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 **authority** 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 **standards 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 **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 the councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice (R (Greenslade) v Devon County Council 2019). That means that the councillor must know what they are accused of and be given the opportunity to comment on the allegations.**

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 **can only** ~~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 **Subject** 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 **Subject** Member to provide his/her explanation of events, and to identify what documents ~~they~~ need to see and who ~~should be~~ ~~he needs to~~ interviewed. 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. **At this stage, the Subject Member should clearly identify any matters of contention within the draft Investigation Report and for these to then be included within the final Investigation Report. Any highlighted matters of contention will in turn be made known to the Standards Committee, if (and only if) the matter is to proceed to a Standards Hearing, should the evidence as set out in the Investigation Report support a finding of failure to comply with the Code of Conduct and informal resolution is not appropriate (see section 7 below).**
- 5.6 Having received and taken account of any comments which you, or the **Subject Member** ~~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.
- 5.7 **It is important to highlight that the Investigation Report follows the format, or similar, as agreed with the Monitoring Officer, as set out in Annex E. The Investigation Report is the outcome of a thorough investigation, and should the matter proceed to a hearing, it is expected that no new information will be produced by the Parties or the Investigator. The Report must be clear to follow, and demonstrate the robustness of the investigation undertaken.**
- 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 **Subject Member** ~~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 **formally** 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.

#### Procedure following Investigation to referral for a Standards Committee hearing:

The Council has produced a summary of the procedure following investigation to referral for a Standards Committee hearing for ease of reference and is included as Annex F.

At the hearing, will following the Council's **formally adopted Hearing Procedure, as set out in Annex G** and a copy of which will be provided **in advance of the Standards Committee**.

For reasons of fairness and proportionality a hearing should wherever possible take place within three months of the date on which the investigator's report was completed. Where that is not possible, for example because the matter is awaiting the outcome of other matters being dealt with by outside bodies or other investigations into the Subject Member, the Monitoring Officer should notify the relevant parties of the reason for the delay and provide an estimated timescale.

However, the hearing should not take place sooner than 14 days after the Investigation Report has been issued unless the Subject Member agrees. This is to allow them sufficient time to prepare their defence and consider any witnesses they may wish to call.

#### Notification of Hearing Date:

Once a date has been set for a Hearing the Monitoring Officer should notify:

- (i) the Subject Member;
- (ii) the Investigator;
- (iii) the relevant Independent Person(s);

- (iv) the Complainant (if appropriate);
- (v) the Clerk of any relevant Town or Parish Council.

The Monitoring Officer should also outline the Hearing Procedure; the Subject Member's rights and additionally request for a written response from the Subject Member within a set time. This is to find out whether the Subject Member:

- (a) intends to be represented at the hearing
- (b) disagrees with any of the findings of fact in the Investigation Report, including reasons for any of these disagreements
- (c) wishes to give evidence to the hearing, either verbally or in writing
- (d) would like to call relevant witnesses to give evidence to the Standards Committee

Note - should the Subject Member wish witnesses to attend the Hearing, either in person or virtually, sufficient reasoning should be given as to why the evidence as set out in the Investigation Report needs to be demonstrated further. Witnesses may be called but clear, timely reasons should be given, and it should be noted that no cross-examination is permitted.

- (e) request any part of the hearing to be held in private
- (f) request any part of the Investigation Report or other relevant documents to be withheld from the public.

The investigator should also be asked if they wish to call any witnesses.

Availability:

If the Subject Member is unable to make the specified date the Standards Committee may arrange for the hearing to be held on a different date, if they are satisfied that the Subject Member has given an acceptable reason. Where the Subject Member does not give an acceptable reason or does not reply within a specified time, the Standards Committee should proceed with the date and may consider the report in the Subject Member's absence if the Subject Member does not go to the hearing. The Subject Member should not be able to evade having the case heard simply by refusing to cooperate and the Code of Conduct makes failure to cooperate a potential breach. However, the Standards Committee should make clear at the start of the hearing that they have considered whether they can proceed in the absence of the Subject Member and should record their reasons.

If one or more witnesses are unavailable on the given date the Monitoring Officer, in consultation with the Standards Committee chairman, should decide how the material they would bring to the hearing could be presented and whether another date needs to be looked for. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect although it may be that their views were already sought as part of the investigation so the Standards Committee would need to evaluate how they could proceed without them. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.



### Holding a pre-hearing

As soon as a date has been set for a hearing the Standards Committee should hold a private pre-hearing. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

At the pre-hearing the Standards Committee should:

- Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing. For example, if the dispute is about the time of a particular conversation but that time is not relevant to whether the Code has been breached or not, there would be little point focussing on that. On the other hand, if that alleged discrepancy were material the Standards Committee needs to satisfy itself how it would resolve that difference at the hearing.
- Consider any additional evidence it considers is required at the hearing.
- Identify any witnesses it thinks it would want to hear from.
- Decide if witnesses which the Subject Member or Investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality. For example, if an incident has occurred at full council there would be no need to call every member as a witness but equally the Standards Committee may feel it needs to hear from a couple of witnesses representing different sides. Similarly, if the Subject Member decides to call a number of character witnesses the Standards Committee should take a view as to how relevant that is and how many would suffice.
- Consider whether there are any parts of the hearing that are likely to be held in private on the grounds that they contain 'exempt' material (see section on confidentiality below) though the final decision will rest with the Standards Committee on the day. The presumption should be to hold a public hearing unless there is specific exempt or confidential information as defined by Part VA of the Local Government Act 1972.
- Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses. The Monitoring Officer will advise if any conflicts mean that a councillor should stand down from the Standards Committee.

**It is important that at the pre-hearing Standards Committee members do not debate the merits of the case.**

Note: the pre-hearing would not of itself be a formal meeting so would not be open and often these matters can be dealt with through correspondence. Once the pre-hearing has been held the Monitoring Officer should write to everyone involved in the complaint at least two weeks before the hearing. This should confirm the date, time and place for the hearing, note whether the Subject Member or Investigator will be represented at the hearing. It should also list those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the hearing.

### Hearing:

## Roles and Responsibilities at the Hearing:

### Officer roles:

Monitoring Officer – commissioned the investigation and determined that a Standards Hearing was an appropriate course of action.

Investigator – presents the content and findings of their investigation report to the Committee

Deputy Monitoring Officer – provides procedural advice to the Standards Committee throughout the Standards Hearing (including within deliberations).

The Council's Legal Services are to be available to provide legal advice to the Standards Committee throughout the Hearing. Should a Subject Member wish to be legally represented at a Standards Committee Hearing, the Legal Advisor shall be seated with the Standards Committee in order to provide legal advice throughout the Hearing.

### Committee's role:

The Standards Committee conducts a hearing in accordance with the formally adopted procedures, 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.

### Subject Member and their representative:

Subject Member should answer questions posed to them by the Standards Committee; however, this cannot be forced upon them. If they do not wish to answer themselves, they may choose to do so through their representative. The Standards Committee will take into consideration the fact that the Subject Member would not directly answer any questions.

### Hearing Procedure:

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 Subject 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.

At the conclusion of the presentation of the material from the Investigator and Subject Member, the Chairman of the Standards Committee should call a short adjournment in order for the Council's Independent Person to consider and prepare their view prior to presenting it to the Standards Committee. This period will also allow the Standards Committee a private recess in order to consult with the Council's Legal Advisor.

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, and comments from the Independent Person, will ~~may adjourn the meeting for a short period and~~ adjourn the meeting 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 **Subject** Member of this finding. The Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the **Subject** Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the **Subject** 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.

**Due to the importance of consultation with the Council's Independent Person, they are entitled to request a short adjournment to consider and prepare their view prior to presenting it to the Standards Committee.**

**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 **Subject** 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 **The Subject Member will be reminded that paragraph 8.4 of the Members' Code of Conduct states that they will comply with any sanction imposed on them following a finding that they had breached the Code of Conduct. Should the Subject Member fail to comply with any sanction, due to the existence of an ongoing breach, the matter will be reported back to the Standards Committee, to determine what action to take.**

*The Code expressly states "It is extremely important for ... a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer".*

- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer consulting 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 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**

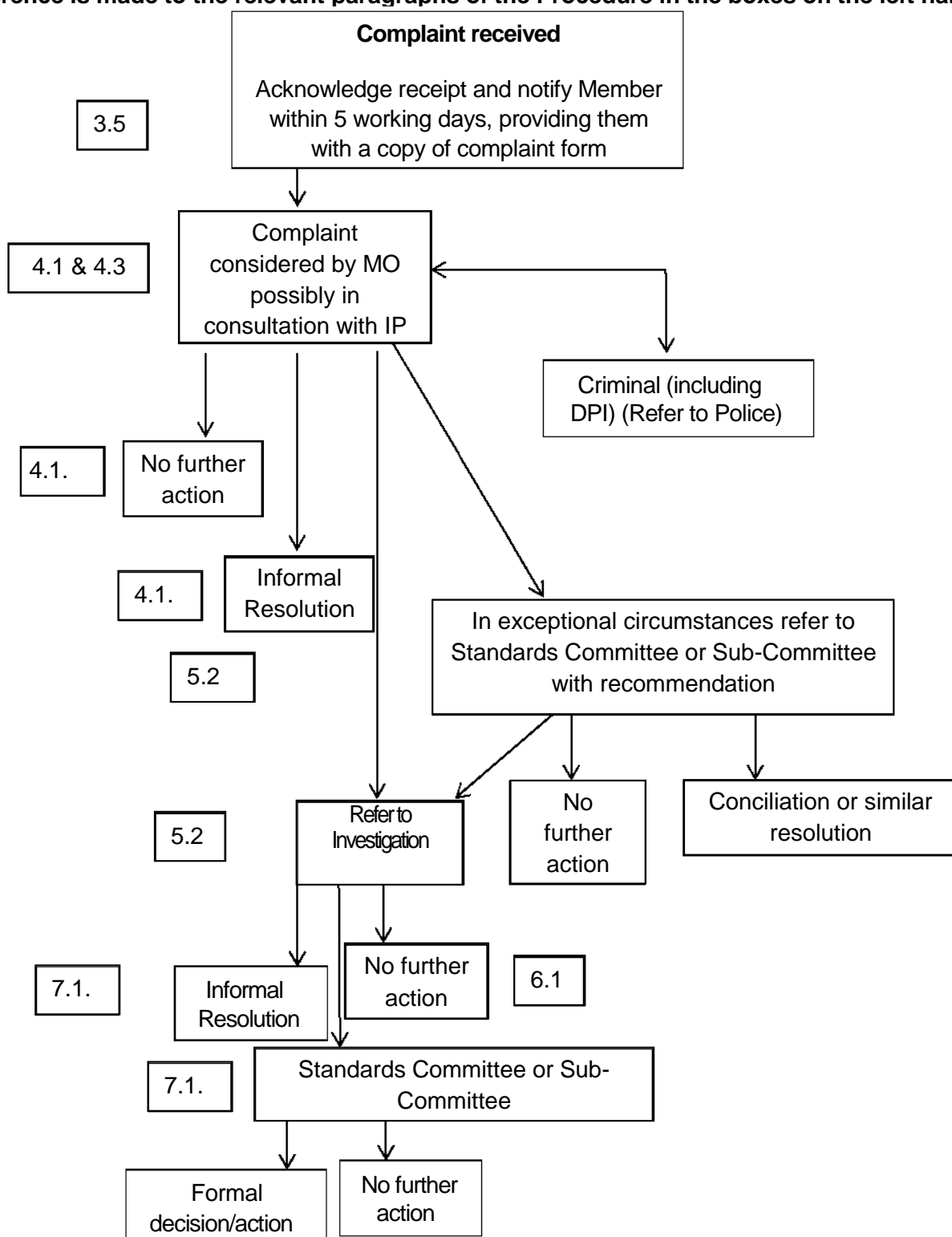
The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

## **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.

**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)**



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 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> </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>9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and</p> <p>10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.</p>	<p>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
<b>Town and Parish Councils' Standards Sub-Committee</b>	<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>

		<p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p> <p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>
--	--	---

## **ANNEX D**

### **CONDUCT COMPLAINTS ASSESSMENT CRITERIA**

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

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

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

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

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

## ANNEX E

### STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

**Subject 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.

**Any investigation should therefore bear in mind some Key Principles:**

- **Proportionality.** That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up. Equally not all of the steps in this procedure need be followed in every instance of a formal investigation – a judgment must be made, in consultation with the Monitoring Officer, in each case based on its complexity and contentiousness.
- **Fairness.** The investigation should make sure that the Subject Member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report. Again, this may depend on the nature of the complaint – for example, an alleged failure to declare an interest may be largely a factual matter which needs little or no investigation rather than one that needs to involve evidence from other parties. A councillor quickly admitting to an error may not need further detail to be probed.
- **Transparency.** As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case.
- **Impartiality.** An investigator should not approach an investigation with pre-conceived ideas and should avoid being involved where they have a conflict of interest.

#### 1. Planning Stage:

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

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

#### 2. Evidence Gathering Stage:

- Contact the Complainant to request any supporting or documentary evidence relating to the complaint.
- Contact the Subject Member with details of the complaint and seek an explanation.

- If new evidence is obtained through the investigation that the Subject Member has not been made aware of, this should be provided to the Councillor to respond to either orally or in writing.

### 3. Interview Stage:

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

### 4. Report Stage:

#### Purpose of the report

The report should be treated as an explanation of all the essential elements of the case and a justification for why the Investigator has concluded there has been a breach or not.

The report should cover:

- agreed facts;
- any disputed facts together with the Investigator's view, if appropriate, as to which version is more likely;
- whether those facts amount to a breach of the code or not; and
- the reasons for reaching that conclusion.

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct;
- that there has not been a failure to comply with the Code.

~~• Review evidence from interviews and any documentary evidence provided.~~

• Draft the report to contain:

#### ○ An Executive Summary:

The beginning of the Investigation Report should contain the salient points from the investigation, whether or not the Subject Member was acting in official capacity, identify what the alleged breaches of the Members' Code of Conduct are and whether on the balance of probabilities they have been breached, supporting evidence and the role of the Standards Committee in deciding whether there has been a breach.

#### ○ The Interview Process

Details of who was interviewed, who supplied information and whether through written documentation or verbally

#### ○ Agreed facts:

#### ○ Facts not agreed and matters in dispute:

#### ○ Article 10, Freedom of Expression:

Consideration given to be given as to whether relevant to the circumstances of the complaint;

- Subject Member's length of service and Code of Conduct training
- An assessment on **each** of the alleged breaches of the Code of Conduct
  - (i) forming the complaint and
  - (ii) 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.

ANNEX F – insert the final flowchart – Appendix B to the Standards Committee Report

ANNEX G – insert formally adopted hearing procedure.

**PROCESS SUMMARY & CHECKLIST**

following an investigation being concluded to referral for a hearing, where  
evidence of a breach has been found

(reference paragraph 7.1.2 of the Complaints Procedure)

<b>STEP</b>	<b>ACTION</b>	<b>TIMESCALE</b>	<b>COMPLETED</b>
<b>1.</b>	<p><b>NOTIFICATION OF MATTER BEING REPORTED FOR A HEARING:</b></p> <p>Parties to be notified by the Monitoring Officer that it is considered necessary in accordance with paragraph 7.1.2 to report the Investigation Report to the Standards Committee, which will conduct a hearing, before deciding whether the Subject Member has failed to comply with the Code of Conduct.</p> <p>Notice of the Standards Committee meeting date to be notified in due course.</p>	Within 5 working days of the Investigators Final Report being received.	
<b>2.</b>	<p><b>SCHEDULE DATE FOR THE STANDARDS COMMITTEE</b></p> <p>A hearing should wherever possible take place within three months of the date on which the investigator's report was completed. Schedule date of meeting seeking availability from the Committee Members, Independent Person and relevant Officers.</p> <p>If possible, to include the Subject Member, but not mandatory.</p> <p>Chairman of the Standards Committee to confirm the date, as per the Constitution.</p>	Date to be scheduled within 2 weeks, but will be further in advance to allow next steps to proceed	
<b>3.</b>	<p><b>NOTIFY PARTIES</b></p> <p>Once the date for the Standards Committee has been scheduled – Monitoring Officer to notify the following:</p> <ul style="list-style-type: none"> <li>the Subject Member</li> <li>the Investigator</li> </ul>	Within 1 working day of date being agreed with the Chairman of the	

	<ul style="list-style-type: none"> <li>the relevant Independent Person(s)</li> <li>the Complainant (if appropriate)</li> <li>the Clerk of any relevant Town or Parish Council.</li> </ul> <p>Provide a copy of the Council's formally adopted Hearing Procedure, as set out in Annex F.</p> <p><b>Request the Investigator to confirm within set timescale whether they wish to call any witnesses.</b></p> <p><b>Refer the Subject Member to paragraph 7.1 Pre-Hearing Process and request the written response required in Step 4 below.</b></p>	Standards Committee.	
4.	<p><b>REQUEST WRITTEN RESPONSE FROM SUBJECT MEMBER</b></p> <p>The Subject Member to provide a written response within a set time. This is to find out whether the Subject Member:</p> <ul style="list-style-type: none"> <li>(i) will be represented at the hearing, if so, confirmation as to whether this is legal representation or general support.</li> <li>(ii) disagrees with any of the findings of fact in the Investigation Report, including reasons for any of these disagreements.</li> <li>(iii) intends to give evidence to the hearing, either verbally or in writing.</li> <li>(iv) wishes to call relevant witnesses (name and reason) to give evidence to the Standards Committee.</li> </ul> <p><u>Note</u> - should the Subject Member wish witnesses to attend the Hearing, either in person or virtually, sufficient reasoning should be given as to why the evidence as set out in the Investigation Report needs to be demonstrated further. Witnesses may be called but clear, timely reasons should be given, and it should be noted that no cross-examination is permitted.</p>	Response to be received with 5 working days.	



	<p>(v) request any part of the hearing to be held in private</p> <p>(vi) wants to request any part of the Investigation Report or other relevant documents to be withheld from the public.</p>		
<b>5.</b>	<p><b>AVAILABILITY</b></p> <p>Respond in accordance with paragraph 7.1.2 of the Complaints Procedure if the Subject Member or witnesses are unable to make the specified date.</p>		
<b>6.</b>	<p><b>SCHEDULE A PRE-HEARING BRIEFING</b></p> <p>Send the Investigation Report and Draft Committee Report to the Standards Committee members to prepare for the pre-hearing step.</p>	Following receipt of the written response from the Subject Member	
<b>7.</b>	<p><b>HOLD A PRE-HEARING FOR THE STANDARDS COMMITTEE MEMBERS TO:</b></p> <p>(i) Decide whether any of the findings of fact in the investigation report are in dispute.</p> <p>(ii) If so, how relevant they are likely to be at the hearing.</p> <p>(iii) Consider any additional evidence it considers is required at the hearing.</p> <p>(iv) Identify any witnesses it thinks it would want to hear from.</p> <p>(v) Decide if witnesses which the Subject Member or Investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality.</p> <p>(vi) Consider, on the advice of the appropriate officer, whether there are any parts of the hearing that are likely to be held in private on the grounds that</p>	3 weeks before the Scheduled Standards Committee meeting to allow the next step to be progressed.	

	<p>they contain 'exempt' material though the final decision will rest with the Standards Committee on the day.</p> <p>(vii) Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses.</p> <p>(viii) To include a Briefing on the Hearing Procedures.</p>		
8.	<p><b>PRE-HEARING ACTIONS</b></p> <p>Once the pre-hearing has been held the Monitoring Officer should write to everyone involved in the complaint.</p> <p>To confirm:</p> <ul style="list-style-type: none"> <li>(i) The date, time and place for the hearing</li> <li>(ii) Whether the Subject Member or Investigator will be represented at the hearing</li> <li>(iii) Those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the hearing.</li> </ul>	At least two weeks before the hearing.	
9.	<p><b>PUBLISH THE STANDARDS COMMITTEE AGENDA</b></p> <p><b>Part A Report</b></p> <p><b>Part B Report (include the Investigators Report)</b></p>	At least 5 clear working days before the meeting.	

TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE JULY 2025				
Council	Complainant	Current status	Final outcome	Comments
<b>Existing Cases from last update:</b>				
Council	Complainant	Current status	Final outcome	Comments
TOWN	PUBLIC – received 05 Dec 2024	ONGOING	Investigation – internally appointed Investigator	Matter relates to use of social media.
TOWN	PUBLIC – received 05 Dec 2024	ONGOING	Pending	Matter relates to public statements on the Town Council's website. Relates to Town Council rather than individual Councillors.
PARISH	PARISH COUNCILLOR – received 05 Mar 2025	ONGOING	Investigation – internally appointed Investigator	Matter relates to behaviour between Parish Councillors whilst acting in an official capacity.
DISTRICT	PUBLIC – received 11 Mar 2025	ONGOING	Investigation – internally appointed Investigator	Matter relates to communications between parties.
TOWN	PUBLIC – received 02 April 2025	CLOSED	No further action	Matter relates to behaviour whilst acting in an official capacity. Also relates to a long running dispute between parties in which resolution should be sought between parties.
TOWN	PUBLIC – received 02 April 2025	CLOSED	No further action	Matter relates to behaviour whilst acting in an official capacity. Also relates to a long running dispute between parties in which resolution should be sought between parties.
<b>New Cases since last update - two</b>				
<b><u>General Notes – 2025/26 Summary:</u></b>  Overall three cases have been received so far in 2025/26.				

Since the last update, one case remains being investigated by one internally appointed investigator, with a further two assigned to this investigator. One case remains ongoing and two cases have been closed with no further action.

#### **Requests for dispensations:**

One dispensation was granted by the Monitoring Officer for the purpose of the meeting of the Planning Committee on 13 May 2025. Advice was given by the Monitoring Officer in respect of a potential request for a dispensation and upon discussion the Councillor decided not to formally request a dispensation.

**Members' Code of Conduct training** - training was conducted by the Monitoring Officer at the All Members' Development Session on 18 June 2025.

**Members' Declaration of Interests** – Reminders were given to all Members present at the above meeting, and through electronic communication to all Members, that Disclosable Pecuniary Interests, Other Registerable Interests and Non-Registerable Interests must be updated annually and within 28 days of any change. The Council's External Auditors have previously made reference to outstanding updates. At the time of writing, two Councillors remain outstanding in providing any update.