



STANDARDS COMMITTEE

DATE: Monday 26 September 2016
TIME: 10.00 am
VENUE: Council Chamber, Council Offices,
Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor Heaney (Chairman)	Councillor Nicholls
Councillor Honeywood (Vice-Chairman)	Councillor Steady
Councillor J Brown	Councillor Whitmore
Councillor Cawthron	

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Katie Sullivan on 01255 686 585

DATE OF PUBLICATION: THURSDAY 15 SEPTEMBER 2016

AGENDA

1 Apologies for Absence and Substitutions

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

2 Minutes of the Last Meeting (Pages 1 - 4)

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on 29 June 2016.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or other interest, and the nature of it, in relation to any item on the Agenda.

4 Report of the Monitoring Officer - A.1 - Annual Update on Mandatory Training for Members (Pages 5 - 18)

To update the Standards Committee, as part of its agreed work programme, on the current position of mandatory training for Members (and named substitute members) of the Council's Audit, Licensing & Registration, Planning and Standards Committees.

5 Report of the Monitoring Officer - A.2 - Outcome of a Code of Conduct Investigation - Complaint against a District Councillor (Pages 19 - 52)

In accordance with the District Council's Complaints Procedure, following a Members' Code of Conduct investigation, the Monitoring Officer is required to report the outcome to the Standards Committee.

6 Report of the Monitoring Officer - A.3 - Review of the Code of Conduct

To review the Members' Code of Conduct, with particular attention to the definitions of interests.

The Members' Code of Conduct is included as Appendix 1A for item A.2 (Pages 29 – 38). Please refer to this for information.

7 Report of the Monitoring Officer - A.4 - Quarterly oral update from the Monitoring Officer

(1) The Monitoring Officer will give a quarterly update on Complaints.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held in the Council Chamber - Weeley at 10.00 am on Monday 12 December 2016.

Information for Visitors

FIRE EVACUATION PROCEDURE

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

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**MINUTES OF THE STANDARDS COMMITTEE
HELD ON WEDNESDAY 29 JUNE 2016 AT 10.00 A.M.
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present: Councillors Heaney (Chairman), Honeywood (Vice-Chairman), Baker, J A Brown and Cawthron

In Attendance: Monitoring Officer (Lisa Hastings) and Democratic Services Officer (Katie Sullivan)

Also in Attendance: John Wolton (Independent Person)

5. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor Nicholls (with Councillor Baker substituting).

6. MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE HELD ON 12 MAY 2016

The minutes of the meeting of the Standards Committee, held on 12 May 2016, were approved as a correct record and signed by the Chairman.

7. DECLARATIONS OF INTEREST

There were no declarations of interest received.

8. STANDARDS COMMITTEE – ANNUAL WORK PROGRAMME

There was submitted a report (A.1) by the Monitoring Officer which sought to agree the Committee's work plan for the 2016/2017 Municipal Year.

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

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

The overall approach of the arrangements was to seek:

- Information and training for Members and Officers to increase awareness and support good standards of behaviour;
- Proportionality – responses to complaints which were proportionate to their seriousness;
- Timeliness – with clear timescales for the various stages of complaints to be progressed;
- Checks, balances, reporting requirements and delegation to the Monitoring Officer of key elements of the process to maximise independence from the political process; and

- Early and informal intervention to resolve complaints wherever possible (including an expectation that Group Leaders would play a key role).

The Monitoring Officer stated that the arrangements had been adopted by full Council in November 2013, and that elements had been reviewed in 2014, 2015 and 2016 to ensure that the procedures and protocols were robust, up to date and fit for purpose. The Members' Code of Conduct and the Monitoring Officer Protocol had not been reviewed since their adoption.

Members were informed by the Monitoring Officer that she believed that there might be some merit in undertaking a light touch review of the Code and to consider removing the distinction between "Other and Non Pecuniary Interests" by joining them together and reviewing the definitions. The three different types of interest had caused confusion with Members and the public and therefore, could be made simpler. In addition, it had been raised whether the provisions on declarations of interests had gone far enough and questions had been asked whether the Council should be retaining a register of interests. Matters such as membership of various groups or organisations had caused concerns with elected Members and the public that those were not registered, and whilst this was not required on a statutory basis, provisions could be included within the local Code. Members discussed the advantages of a register of interests, beyond the statutory minimum which is required by the legislation and welcomed further exploration in this area.

The Monitoring Officer informed Members that nationally, a number of Councils had reviewed their codes since adoption, some in response to feedback on definitions or areas which were missing, or due to the lack of sanctions available if the obligations were compromised. New ideas such as a voluntary acceptance of suspension and a recall scheme were emerging and information on those could be presented to the Committee for information through the review of the Code. Members agreed that this would be a good idea for their next meeting. The Committee discussed reviewing the Code in a working group style and this would be arranged when necessary.

The Monitoring Officer also believed that it was appropriate and reasonable for the Protocol, which set out how the Monitoring Officer role should be performed, to be also subject to a review, in order to ensure that Members remained content and confident with the roles and responsibilities as set out.

To enable the Committee to focus on promoting high standards of conduct as well as reacting to complaints it was considered appropriate to discuss and agree a work plan for the Committee for 2016/17. Members referred to Appendix 1 of the Monitoring Officer's report.

It was moved by Councillor Heaney, seconded by Councillor Baker and **RESOLVED** that:

- (a) The contents of the report be noted; and
- (b) The Annual Work Plan for 2016/2017, as set out in Appendix 1 to the Monitoring Officer's report, be approved, subject to:
 - The inclusion of a review of the Monitoring Officer Protocol at the September 2016 meeting.

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

Quarterly Complaints Update

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

- (1) There had been an increase in the number of complaints received from members of the public against District and Parish Councillors, however, there had been no cause for concern as no re-occurring theme existed.
- (2) Requests for a Dispensation had been received from Councillor I Henderson and also Councillor J Hones. Both requests had been granted.
- (3) The Monitoring Officer informed Members that a Councillor had asked if the Standards Committee would consider recommending to Council that Group Leaders should be allowed to sit on the Standards Committee.

Following discussion by the Committee, it was moved by Councillor Heaney, seconded by Councillor Baker and **RESOLVED** that the Committee does not agree to recommend to Council that Group Leaders should be allowed to sit on the Standards Committee.

- (4) During a discussion between the Committee on recent Political Group changes the Monitoring Officer informed Members that the Council would soon be using modern.gov and that District Councillors' profiles would show the Political Group they belonged to on the Council and only the Political Party they stood for when elected.

Members asked questions and raised concerns in regards to those District Councillors who were not part of a Group being put into the category 'Others', as the term 'Independents' which was used by other authorities had been used for a Political Group.

Following discussion by the Committee, it was moved by Councillor Heaney, seconded by Councillor Honeywood and **RECOMMENDED TO COUNCIL** that:

'In order to clarify/reduce confusion with members of the public, all District Councillors who are not part of a Group on this Council should no longer be put into the category 'Others' and instead there should be a category with the name 'Non-Aligned' for those'.

The meeting closed at 11.26 a.m.

Chairman

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STANDARDS COMMITTEE

26 SEPTEMBER 2016

REPORT OF THE MONIOTRING OFFICER

A.1 MANDATORY TRAINING FOR MEMBERS – ANNUAL UPDATE

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To update the Standards Committee, as part of its agreed work programme, on the current position of mandatory training for Members (and named substitute members) of the Council's Audit, Licensing & Registration, Planning and Standards Committees.

The Committee's approval is also sought to a slight amendment to the Planning Code and Protocol and delegation to Officers in consultation with the Chairmen of the Planning and Standards Committees to make minor amendments to the Protocol.

EXECUTIVE SUMMARY

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

RECOMMENDATION(S)

That the Standards Committee:

- (a) notes the contents of this report and its Appendices;**
- (b) encourages members of the Planning, Licensing & Registration and Audit Committees to attend organised mandatory training to comply with the constitutional requirement; and**
- (c) delegates authority to the Monitoring Officer and Head of Planning Services, in consultation with the Chairmen of the Standards and Planning Committees, to make minor amendments to the Planning Code & Protocol.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The contents of the report and subsequent decision of the Standards Committee will enable the Council to demonstrate good governance in connection decision-making processes and monitoring of member training.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

The cost of external training organised for elected Members is met through a specified training budget and is therefore within existing resources. When changes are made to committee membership or named substitutes this does have an impact on the resources available. Although, Officers will try to accommodate availability, alternative or additional training will not be offered to Members who fail to attend an organised session unless, or until, a further larger session is available.

Sessions arranged by Tendring District Council are sometimes offered to other Councils for their members to attend and in doing so, a contribution towards the cost of hosting is received.

Risk

The integrity of Members, their decision-making and that of the Council and its committees, are good governance. Appropriate training should minimise or eradicate the risk of legal challenge through statutory appeals or judicial review.

The aim of the Planning Code & Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

LEGAL & CONSTITUTIONAL

Mandatory attendance at site visits, briefings and specific training was adopted by Council on 3 June 2014 as a pre-requisite for members (and named substitutes) of the Council's Audit, Licensing & Registration, Planning and Standards Committees and this is now part of the Council Procedure Rules included within its Constitution.

Planning and Licensing decisions are quasi-judicial and both can be challenged by specific statutory appeal routes in addition to being subject to judicial review on administrative grounds.

Various pieces of legislation provide criteria to be considered for the majority of decisions taken by the Council's Planning and Licensing & Registration Committees and the Licensing (General Purposes) and Premises and Personal Sub-Committees. Knowledge of their provisions and how these are applied, together with general decision-making principles are essential in those areas of expertise.

The Planning Code and Protocol was approved by the Standards Committee and following a recommendation to full Council, incorporated within the Constitution. The Monitoring Officer has delegated authority from full Council to make minor amendments to the Constitution. The amendment required to the Planning Code and Protocol is to reflect the procedure undertaken at the planning site visits and prevents the opportunity for residents to lobby Planning Committee members, who will later be making decisions in respect of the applications.

OTHER IMPLICATIONS

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

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

Wards Affected: All

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION

The Standards Committee as part of its annual work programme since 2014 has received a report providing details of the mandatory training provided to members of the Planning and Licensing and Registration Committees.

Appendix A attached to this report provides details of the Planning Committee Mandatory Training for 2015/16. The Committee will note that a range of subjects has been covered by the programme, all of which form part of the various considerations to be taken into account by the Planning Committee when making decisions on applications, or enforcement action. Recently the Planning Committee received a report on the outcome of appeals made against Council decisions and following on from the report, a dedicated session for appeals has been scheduled to review whether any themes exist.

The Monitoring Officer has attended some of the training sessions for the Planning Committee and personally covered declaration of interests and general procedural rules concerning decision making. A concern has been raised that one section of text in the Planning Code and Protocol gives the impression that more than one resident can address the Planning Committee members at the site visits. The relevant text is as follows:

“The Chairman will then invite the applicant, local Ward Members present, Town and Parish Councillors and local residents present (one at a time) to point out any relevant features of the site and its surroundings, ask related questions and raise any site-related issues that they wish to draw to the attention of Councillors.”

The intention has always been that ‘a resident representative’ could address the Planning Committee on site visits, which is exactly the same procedure followed at the Committee meeting, in accordance with the Public Speaking Scheme. However, recently more residents are attending site visits and attempting to lobby the Planning Committee members, either collectively or individually, which can be difficult to manage and increases the risk of perceived prejudice or impartiality. A minor amendment is required to clarify the ability to address the Committee on site visits, which would be undertaken by the Monitoring Officer and Head of Planning Services, in consultation with both the Chairmen of the Planning and Standards Committees.

Appendix B attached to this report provides details of the proposed training programme for the Planning Committee for 2016/17. Members of the Committee specifically requested further Habitats training and a dedicated session with Essex County Council’s Highways representative; this demonstrates the importance the Committee members give to the considerations they must take into account.

Appendix C attached to this report details the training record for the Licensing & Registration Committee. Generally sessions are organised covering a range of topics and these have been offered to other Councils for their members to attend. Recently, two new members of our Committee attended an external session provided by Colchester Borough Council to ensure that they complied with the constitutional requirement to undertake mandatory training. The feedback is often positive on the training delivered.

The Head of Finance, Revenues and Benefits and Section 151 Officer has confirmed that all members of the Audit Committee have received training prior to being involved with the Committee's decision making.

The Monitoring Officer can confirm that due to the type of matters considered by the Standards Committee, each topic involves consideration of the relevant factors and in doing so the Committee receives a range of information to take into account. When hearings are required to determine the outcome of Members' Code of Conduct complaints a briefing is held with the Committee beforehand.

To ensure that the training is successful and the application of the principles is understood by Members, each session tends to have a workshop style question and answer session at the end. This style has been adopted by the Licensing & Registration and Planning Committees' training sessions and has worked well for both Members and officers and encourages debate.

The Committee will note that there are some gaps with attendance and constitutionally, any Member who has not undertaken a form of training relevant to the work of these committees will not be able to sit on them to consider business. If there is an urgent need, officers could offer a short session however, it is not considered an effective nor efficient use of resources to deliver these on a one-to-one basis.

BACKGROUND PAPERS FOR THE DECISION

There are no background papers arising from this report.

APPENDICES

Appendix A - Planning Committee Mandatory Training for 2015/16
Appendix B - Planning Committee Training Programme for 2015/16
Appendix C - Licensing & Registration Committee Training Record

PLANNING COMMITTEE MANDATORY TRAINING 2015/16

COUNCILLOR	Member of Planning Committee	Named Substitute Member of Committee	Attendance At Training Event								TOTAL
			28/05/15	10/06/15	08/07/15	10/09/15	30/09/15	02/12/15	20/01/16	24/02/16	
			Determining Planning Applications	Local Plan Training	Local Plan Training	Resolving Breaches	Determining Planning Applications	Conditions S106 & CIL	Trees, Landscape & Ecology	Appeals	
Amos, C											0
Baker, A Member of Cttee since 3/6/16	✓		X	X		X					3
Bennison, L Member of the Cttee since 1/12/15	✓						X		X	X	3
Bray, J				X	X		X	X	X	X	6
Broderick, J					X			X			2
Brown, B E											0
Brown, J A											0
Brown, M											0
Bucke, R										X	1
Callender, R											0
Calver, G											0
Cawthron, P			X	X	X	X		X			5
Chapman, J				X							1
Chittock, J				X				X			2
Coley, A		✓	X		X	X				X	4
Cossens, M											0
Davis, A Member of the Cttee from 26/5/16 until 3/6/15 and from 7/7/15 until 23/10/15		✓	X	X		X	X	X	X	X	7
Everett, R Member of the Cttee since 23/10/15	✓					X	X	X	X	X	5
Fairley, Z Member of the Cttee since 26/5/15	✓		X			X	X	X	X	X	6

PLANNING COMMITTEE MANDATORY TRAINING 2015/16 cont.

COUNCILLOR	Member of Planning Committee	Named Substitute Member of Committee	Attendance At Training Event								Total
			28/05/15	10/06/15	08/07/15	10/09/15	30/09/15	02/12/15	20/01/16	24/02/16	
			Determining Planning Applications	Local Plan Training	Local Plan Training	Resolving Breaches	Determining Planning Applications	Conditions S106 & CIL	Trees, Landscape & Ecology	Appeals	
Gray, L Member of the Cttee since 26/4/16	✓		X								1
Griffiths, C			X								1
Guglielmi, C			X		X	X			X	X	5
Guglielmi, V		✓	X			X				X	3
Heaney, R Member of the Cttee since 26/5/15	✓					X					1
Henderson, I											0
Henderson, J											0
Hones, J Member of the Cttee since 28/5/15	✓		X	X	X	X		X	X	X	7
Honeywood, P											0
Howard, T					X						1
Hughes, J Member of Cttee from 3/6/15 until 7/7/15 and since 4/5/16	✓		X	X	X		X				4
Khan, M											0
King, K											0
Land, D				X	X		X				3
Massey, A				X		X	X	X			4
McWilliams, L Member of the Cttee since 1/6/15	✓		X		X	X	X	X	X	X	7
Miles, D											0
Mooney, J				X							1
Newton, M				X	X	X	X	X	X	X	7
Nicholls, F Member of Cttee from 26/5/15 until 3/6/16		✓	X						X		2
Pemberton, A					X				X		2

PLANNING COMMITTEE MANDATORY TRAINING 2015/16 cont.

COUNCILLOR	Member of Planning Committee	Named Substitute Member of Committee	Attendance At Training Event								T o t a l
			28/05/15	10/06/15	08/07/15	10/09/15	30/09/15	02/12/15	20/01/16	24/02/16	
			Determining Planning Applications	Local Plan Training	Local Plan Training	Resolving Breaches	Determining Planning Applications	Conditions S106 & CIL	Trees, Landscape & Ecology	Appeals	
Platt, M				X	X						2
Poonian, B Member of the Cttee from 26/5/15 until 4/5/16			X	X			X		X		4
Porter, A			X		X						2
Raby, R Member of the Cttee from 28/5/15 until 26/4/16		✓	X	X		X	X	X	X	X	7
Scott, G			X								1
Skeels, M J		✓	X	X	X		X				4
Skeels, M J D			X	X			X				3
Steady, G											0
Stephenson, M		✓	X	X		X	X	X	X	X	7
Stock, N											0
Talbot, M			X	X	X	X	X	X	X	X	8
Turner, N		✓	X	X	X	X		X	X		6
Watling, G											0
Watson, K Member of the Cttee from 28/5/15 until 1/12/15		✓	X	X			X		X		4
White, J Member of the Cttee since 26/5/15	✓		X	X	X	X	X	X	X	X	8
Whitmore, E					X	X					2
Winfield, C				X							1
Yallop, K											0

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COUNCILLOR	Member of Planning Committee	PLANNING COMMITTEE TRAINING PROGRAMME								TOTAL
		Named substitute of Planning Committee	Barrister (Robin Green)	ECC Highways	G Guiver	S Meecham	S Ennos	S Harwood-Bee	D Walker	
			Habitats 27.04.16	15.9.16	Appeals 25.10.16	Local Plan Update 7.12.16	Determining Planning Applications 24.1.17	IT/Service Transformation/Communication 8.3.17	Design Review 13.4.17	
Amos, C										0
Baker, A (member of Committee since 3/6/16)	✓		X (not a member of the Committee at the time)							0
Bennison, L	✓		✓							1
Bray, J										0
Broderick, J										0
Brown, B E										0
Brown, J A										0
Brown, M										0
Bucke, R										0
Callender, R										0
Calver, G										0
Cawthron, P										0
Chapman, J										0
Chittock, J										0
Coley, A		✓								0
Cossens, M										0
Davis, A		✓								0
Everett, R	✓		✓							1
Fairley, Z	✓		✓							1
Ferguson, T		✓								0
Fowler, M	✓		✓							1
Gray, L	✓		✓							1
Griffiths, C										0
Guglielmi, C										0
Guglielmi, V		✓								0
Heaney, R	✓		✓							1

PLANNING COMMITTEE TRAINING PROGRAMME cont.

COUNCILLOR	Member of Planning Committee	Named substitute of Planning Committee	ATTENDANCE AT EVENT							TOTAL
			Barrister (Robin Green)	ECC Highways	G Guiver	S Meecham	S Ennos	S Harwood-Bee	D Walker	
			Habitats 27.04.16	15.9.16	Appeals 25.10.16	Local Plan Update 7.12.16	Determining Planning Applications 24.1.17	IT/Service Transformation/Communication 8.3.17	Design Review 13.4.17	
Henderson, I										0
Henderson, J										0
Hones, J	✓		✓							1
Honeywood, P										0
Howard, T										0
Hughes, J (member of Committee since 4/5/16)	✓		(not a member of the Committee at the time)							0
Khan, M										0
King, K										0
Land, D										0
Massey, A										0
McWilliams, L	✓		✓							1
Miles, D										0
Mooney, J										0
Newton, M										0
Nicholls, F		✓								0
Pemberton, A										0
Platt, M										0
Poonian, B										0
Porter, A										0
Raby, R		✓								0
Scott, G										0
Skeels, M J		✓								0
Skeels, M J D										0
Steady, G										0
Stephenson, M		✓								0
Stock, N										0
Talbot, M										0

PLANNING COMMITTEE TRAINING PROGRAMME cont.

COUNCILLOR	Member of Planning Committee	Named substitute of Planning Committee	ATTENDANCE AT EVENT							TOTAL
			Barrister (Robin Green)	ECC Highways	G Guiver	S Meecham	S Ennos	S Harwood-Bee	D Walker	
			Habitats 27.04.16	15.9.16	Appeals 25.10.16	Local Plan Update 7.12.16	Determining Planning Applications 24.1.17	IT/Service Transformation/Communication 8.3.17	Design Review 13.4.17	
Turner, N		✓	✓							1
Watling, G										0
Watson, K		✓								0
White, J	✓		X (holiday)							0
Whitmore, E										0
Winfield, C										0
Yallop, K										0

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Record of Formal Training
LICENSING & REGISTRATION COMMITTEE

Committee Member (current)	Attended Training
Councillor Cossens	Yes
Councillor Callender	Yes *
Councillor Amos	Yes * (missed 1 hour of training)
Councillor B. Brown	Yes *
Councillor M. Brown	Yes *
Councillor Bucke	Yes
Councillor V. Guglielmi	Yes
Councillor J. Henderson	Yes *
Councillor Porter	No
Councillor R. Raby	Yes *
Councillor M. Skeels (Jnr)	Yes *
Councillor Watson	Yes *
Councillor Whitmore	Yes *
Councillor White	Yes *
Councillor Colin Winfield	Yes *

(*) indicates attended the mandatory session held on 14th July 2015

Note: Not all of the current members were members of the Licensing Committee from May 2015, therefore further sessions were arranged, details of which are set out below.

Date: Wednesday 14 October 2015

Subject: Annual (mandatory) Licensing and Registration Committee and General Purposes and Personal and Premises Sub-Committee Training

Facilitator: Alan Tolley (external licensing expert)

Councillor	Attended Licensing Committee Training	Notes
J Bray	✓	Substitute Member of Licensing & Registration Committee
J Broderick	X	Member of the Licensing (General Purposes) Sub-Committee since 5 July 2016
J Chittock	✓	
Z Fairley	✓	Substitute Member of the Licensing & Registration Committee
V Guglielmi	✓	Member of the Licensing and Registration Committee since 26 May 2015
I Henderson	✓	Substitute Member of the Licensing & Registration Committee
J Hughes	X	Substitute Member of the Licensing & Registration Committee
K T King	X	Substitute Member of the Licensing & Registration Committee
N Turner	✓	Substitute Member of the Licensing & Registration Committee
G Watling	✓	Substitute Member of the Licensing & Registration Committee

Following the AGM, further changes to the membership of the Licensing & Registration Committee required additional licensing training to be organised:

Date: 17th June 2016 - an external session organised at Colchester Borough Council

M. Cossens	✓	Chairman of Licensing and Registration Committee
R. Bucke	✓	Member of the Licensing & Registration Committee
A. Porter	X	Member of the Licensing & Registration Committee since May 2016

Future training for Licensing is scheduled for 13/10/2016

STANDARDS COMMITTEE 26 SEPTEMBER 2016

REPORT OF THE MONITORING OFFICER

A.2 OUTCOME OF A CODE OF CONDUCT INVESTIGATION – COMPLAINT AGAINST A DISTRICT COUNCILLOR

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

In accordance with the District Council's Complaints Procedure, following a Members' Code of Conduct investigation, the Monitoring Officer is required to report the outcome to the Standards Committee.

In this case, the Investigator's finding was that the Councillor has not breached the Code of Conduct based upon the right to freedom of expression, although there were concerns that the Councillor's behaviour demonstrated a lack of good judgement when using social media.

Consequently, the Standards Committee should consider promoting a review of the Council's Social Media Policy, understanding the principles of the right to freedom of expression, in order to provide councillors with guidance.

EXECUTIVE SUMMARY

A Complaint was received in January 2016 from District Councillor Paul Honeywood regarding the actions of District Councillor Ivan Henderson under the Members' Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

The complaint alleged that Councillor I. Henderson had breached the Tendring District Council Members' Code of Conduct. The basis of the complaint concerned the alleged circulation of inaccurate and misleading information on the subject of the Careline Lifting Service along with quotes attributed to Cllr. I Henderson appearing in national and local media. It was alleged that inaccurate information was also promoted by Cllr I. Henderson through his own Twitter account. The complaint referred to:

- (i) Not having regard to three of the Seven Principles of Public Life:
 - Selflessness
 - Objectivity
 - Honesty
- (ii) Paragraph 3.4(a) of the Members' Code of Conduct: by conducting himself in a manner which could reasonably be regarded as bringing his office, or the authority, into disrepute.

On 4 March 2016, having considered the responses received from both parties, the Monitoring Officer decided that it was reasonable and appropriate that this complaint merited further investigation. There was a fairly wide difference of opinion between whether information shared on social media was incorrect and misleading and if so, the impact of the media reporting and subsequent use of social media on the proposed Careline Lifting Service.

If there is a potential breach of the Code of Conduct and informal resolution, or mediation, is not appropriate, the Monitoring Officer must consider an investigation. It is important to stress that the investigation did not look into any policy decision. Politically motivated complaints are not referred for investigation. Consideration of whether the policy for introducing a lifting service and the ability to charge for it is right or wrong would not be the subject of the investigation. The investigation was commissioned to look at the evidence of how information was used, whether it was correct or not, and if not, if it was used intentionally to mislead the public and bring the Council into disrepute.

The parties were informed of the Monitoring Officer's decision and that an external investigator would be appointed. Section 5 of the Complaints Procedure sets out how an investigation is conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

All parties have had the opportunity to comment on the investigation report in its draft form and the findings contained therein. Consultation has been undertaken with the Independent Person. The final investigation report was received by the Monitoring Officer on 1 September 2016.

If an investigation concludes that there is no evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 6.1 provides the Monitoring Officer with the authority to, in consultation with the Independent Person, to decide no further action is required. In such circumstances, the Monitoring Officer will notify the Standards Committee.

The Monitoring Officer agrees with the outcome of the investigation which is as follows:

- Councillor I. Henderson is found to have been acting in his capacity as a councillor (official) when posting on social media and engaging with the press in the circumstances of this case. The Members' Code of Conduct was therefore relevant.
- A finding that he failed to comply with the Members' Code would be a disproportionate restriction on his freedom of expression and, therefore, it was recommended that Councillor I. Henderson is found not to have breached the Code.
- There were concerns that *“some of Councillor I. Henderson's posts on Twitter demonstrated a lack of good judgement on his part. The way in which councillors use social media is increasingly becoming an issue for councils across the country. It is therefore recommended that a summary of the investigation findings are provided to the Council's Standards Committee”*.
- It is recommended that guidance be made available to all councillors on the appropriate use of social media.

RECOMMENDATION

That the Standards Committee:

- (a) Notes the outcome of an external investigation undertaken on behalf of the Monitoring Officer in respect of Councillor Ivan Henderson;**
- (b) notes the Investigator's concerns that the behaviour demonstrated a lack of good judgement on Councillor Ivan Henderson's part when using social media;**

- (c) notes that Councillor Ivan Henderson has been found not to have breached the Code of Conduct and subject to reporting this to the Committee, no further action will be taken in respect of Councillor Ivan Henderson;
- (d) notes that the basis of the finding to this particular case is on the right of freedom of expression, notwithstanding there is still an expectation of high standards of behaviour for all councillors in accordance with the Code of Conduct and Principles of Public Life; and
- (e) agrees to a review of the Council's Social Media Policy to provide councillors with guidance and parameters on appropriate use of social media.

BACKGROUND:

To understand the context of the Investigator's findings it is necessary to provide some background information some of which is already in the public domain due to the subject matter of the complaint. A summary of the information provided to the Monitoring Officer is included for the Committee to note the outcome of the investigation and assist with its further considerations.

At the Council's Cabinet meeting, held on 11 December 2015, Councillor Tom Howard (at the time Portfolio Holder for Finance and Transformation) submitted a report that updated the Financial Baseline 2016/17, Detailed Budget Proposals for a Revised Budget 2015/16 and Original Budget for 2016/17. This report and recommendations included the publication of possible future fees and charges so that they could go through the required budgeting approval process.

At this meeting Councillor I. Henderson, in his capacity as Leader of the Labour Group, questioned Councillor Howard on various matters associated with the budget report, including a newly listed charge for Careline Lifting linked to the Council's Careline service.

Councillor Howard stated:-

"basically there is a service that's being introduced where what happens is that people often on Careline often fall over at home and then what's happening is that people are being called out ... paramedics are being called out to go to them, to go to the site, then basically a lot of the time all that they need is for the person to be lifted up rather than treat any injury or illness. So what is being introduced is a pilot last year initially was that we provided a service where we go there first to assess the situation and if there was no injury or medical requirement then we would provide that lifting service and I believe this saves five or six hundred visits by paramedics. So there is quite a significant saving to the relevant service who would have been coming out to those without a real need. So that is a service that we are now providing and therefore that charge is to pay for that service in its entirety so, if people wish to subscribe to that service they pay for the cost of the cover."

In response to Councillor I. Henderson's question "so a person who falls over has to pay £21 if someone turns up to pick them up?" Councillor Howard responded "yes, but they do not have to subscribe to that".

On 12 January 2016, Councillor Paul Honeywood (Portfolio Holder for Housing) made a complaint to the Monitoring Officer alleging that Councillor I. Henderson had failed to comply with the Council's Members' Code of Conduct. Councillor Honeywood alleged that

following the Cabinet meeting a considerable amount of inaccurate and misleading information appeared in national and local media about the proposed Careline Lifting service. Councillor Honeywood's complaint was that these articles were supported by quotations attributed to Councillor Henderson and that he subsequently promoted them through his Twitter account.

Councillor Honeywood said in his complaint that Mr Nigel Brown, the Council's Communications and Public Relations Manager, had tried to counter this misinformation in a press release on 17 December 2015, which was distributed to various media outlets and all councillors. Councillor Honeywood alleged that despite this, Councillor I. Henderson continued to promote misleading and inaccurate information.

In his complaint, Councillor Honeywood said that a number of other local authorities had introduced a similar service without ever being subjected to the attention this Council's proposal received. Councillor Honeywood alleged that Councillor I. Henderson's approach to publicising the proposed lifting service in a misleading and inflammatory manner directly led to the media coverage and ensuing fallout.

TIMELINE (all of this information occurred in the public domain):

- **Friday 11 December 2015:**
Cabinet meeting where Councillor I. Henderson asked Councillor Howard for clarification about Careline Lifting.
- **Monday 14 December 2015:**
The Daily Mirror ran the "box article" referring to Careline Lifting as a "money making scam" which Councillor Henderson tweeted twice.
- **15 December 2015:** Councillor Henderson re-tweeted the "box article".
- **17 December 2015:** The Sun and Mail ran critical articles quoting Councillor Henderson. The Mail described the service as a cost cutting measure and suggested that people who didn't pay would be left on the floor.
- **17 December 2015:** The Council issued its press release to counter the misinformation.
- **18 December 2015:**
Further critical coverage occurred in a range of local and national media. Also that day Councillor Henderson tweeted links to a Mirror article three times. The article quoted him as saying people who didn't pay would be lying on the floor.
- **19 December 2015:**
Councillor Henderson tweeted links to the Mail Online article three times.
- **22 December 2015:**
Bernard Jenkin MP accused Councillor Henderson on Twitter of needlessly frightening vulnerable people. Councillor Henderson rebutted his comments.
- **7 January 2016:** Councillor Henderson promoted a petition.

It is undisputed that Councillor Henderson made public statements in the press and shared

information on Twitter that was critical of the Council's proposed Careline Lifting service.

As a leading opposition member, it is part of his role to challenge and scrutinise the actions of the ruling group.

It was not part of the investigation to consider the rights and wrongs of Careline Lifting or interfere with any policy decisions. The focus was only as to whether Councillor I. Henderson intentionally misled or deceived the public. In doing this, the right to freedom of expression, in particular the higher level of protection offered to political speech and the reality of political life were pertinent.

FREEDOM OF EXPRESSION

In considering whether Councillor I. Henderson breached the Code consideration was given to Article 10 of the European Convention on Human Rights (ECHR). It is important for the Committee to understand the principles of the right to freedom of expression and its restrictions. Article 10 provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others ...”

It is also important to note the words of Collins J in ***Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)*** [at para.39]:

“The burden is on [the Adjudication Panel for England] to justify interference with freedom of speech. However offensive and undeserving of protection the appellant's outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions”.

The right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within the terms of Article 10(2) justifying that interference. A key issue for determination was thus whether a finding of a breach of the Code on the facts as found, would represent no greater an impairment to an elected member's right to freedom of expression than is necessary to accomplish the legislative objective of the Code. Any finding that Councillor I. Henderson breached the Code in relation to his comments in the press and on Twitter would amount to a restriction to his right of freedom of expression. The investigation considered whether the comments related to matters within his legitimate concerns as a councillor (political or quasi-political comment) as they would benefit from a high level of protection under Article 10.

The question as to whether information is fair and balanced should be, in the first instance, the stuff of political debate and journalistic analysis. The presumption should be that censure through the regulatory approach of the Code of Conduct should be reserved for cases where impropriety, mischief, or abusive ends are being pursued under the mask of promoting debate. Politicking, even if it involves unbalanced and misleading information,

is not necessarily a form of deception, provided that the core assertions are correct.

A clear distinction exists between “rough and tumble” politicking, which is aimed squarely at the competence of political opponents and the spreading of information about actual services for vulnerable people. In the latter scenario, a member should be alive to the risk that the added octane and publicity lent to their arguments by the emotive content might be at the expense of the customers of services and their carers.

In assessing the extent to which a councillor’s use of Twitter should be restricted, the importance of freedom of political expression in the political sphere should be considered. In a democratic system the actions, or omissions of any governing body must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion.

In *Heesom v Public Service Ombudsman for Wales*, Mr Justice Hickinbottom considered a councillor’s right to free speech in some detail. His considerations drew attention to a number of earlier cases in which the following propositions could be derived:

- While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
- The enhanced protection applies to all levels of politics, including local.
- Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
- Whilst, in a political context, Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
- The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
- Past cases draw a distinction between facts on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said
- As Article 10(2) expressly recognises, the right to freedom of speech brings with it

duties and responsibilities however, any restriction must respond a “pressing social need”.

There have been other cases in which the Courts have given consideration to freedom of expression, the public interest in such a freedom, and on the other side of the balance, the public interest in proper standards of conduct by elected members. The Article 10 balancing process is highly fact sensitive and while decisions will provide valuable guidance on the general approach, the Courts have stressed that it is important to keep in mind the particular facts in any one case. What is essential is who the comments are directed to, who is involved in the debate and if the recipient is not part of the political environment, the impact of the comments on them. In addition, it is possible to justify interference with the right to freedom of expression if the intention, or impact, results in civil, or criminal activity, such as defamation, inciting public disorder, or breach of equality duties.

SUMMARY OF THE INVESTIGATORS CONSIDERATIONS & CONCLUSIONS:

CONSIDERATIONS:

The investigation considered whether Councillor I. Henderson has shown the necessary regard for four of the seven principles of public life:

- Selflessness: Holders of public office should act solely in terms of the public interest.
- Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- Honesty: Holders of public office should be truthful.
- Leadership: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs (this Principle was included by the Investigator).

In addition, whether Councillor I. Henderson failed to comply with paragraph 3.4 of the Council’s Code of Conduct (the Code), which provides that members must conduct themselves in a manner which could reasonably be regarded as bringing their office or authority, into disrepute.

The complaint alleged that Councillor I. Henderson continued to promote inaccurate information via his Twitter account by sharing and retweeting comments and articles when he clearly knew them to be false. Councillor I. Henderson’s comments in the press were not found to be deliberately deceptive; clearly the articles that featured them and those that he subsequently tweeted included a number of inaccuracies. Importantly, Councillor I. Henderson continued to share this information after the Council had issued its press release.

The external investigator raised serious concerns about Councillor I. Henderson’s use of Twitter. Councillor I Henderson was entitled to take a view on Careline Lifting and has the right to freedom of expression, which is vital in political debate. Councillor I. Henderson expressed the view that he should be free to share information on Twitter without others assuming that he is in some way supporting or adding credibility to it (“*A public debate was in progress and I believe that re-tweeting was a legitimate way of furthering this debate*”);

in this the Investigator considered him mistaken.

Councillor I. Henderson should have been able to rely on the responses given to him at Cabinet however, despite the potential impact on current Careline customers; he did not seek additional information before speaking to the press and sharing articles about the matter. It is the duty of councillors not merely to give voice to any information they receive; they should think carefully about the accuracy of the information they spread and the underlying evidence for their assertions (whether their own or others'). In the Investigator's view had Councillor I. Henderson's intention truly been to "*inform the debate*" he would have made an effort to, at least, refer to the Council's press release, or the more accurate reportage in his later tweets. Instead, even after the Council's press release had countered some of the inaccurate reporting, Councillor I. Henderson continued to spread potentially misleading information in the form of newspaper articles and re-tweeted comments. While Twitter is a fairly recent construct, **McAlpine v Bercow** for example, indicates that users who share / retweet dubious information may be found liable regardless of the source. In this instance his decision to rely on the limited and ambiguous information provided by Councillor Howard in Cabinet speaks more of political opportunism than concern for vulnerable people.

That said, Councillor I. Henderson was fundamentally opposed to the principle behind the Careline Lifting proposal and believed he was using politics ethically to support some of the most vulnerable people in Tendring. Following the publication of the Council's press release, he knew (or should have known) that some of the information he was spreading contained inaccurate and misleading information. Councillor I. Henderson did not seem to weigh his responsibility to abide by the key underlying principles of public life against the political opportunity afforded by the negative response the lifting service proposal received. This was not a proposal about pot holes, or rubbish collection. It had the potential to affect many vulnerable people and their carers. As time went on and the Council corrected the misinformation, the Investigator found that Councillor I. Henderson did put politics before some of the Nolan principles and in so doing risked causing unnecessary distress to the very people within the community that he was purporting to represent.

A key question when considering this complaint was the extent to which Councillor I. Henderson should be held responsible for the public reaction and media coverage described in Councillor Honeywood's complaint. Councillor Honeywood alleged that Councillor I. Henderson had to take responsibility for all the 'fallout' from the negative publicity, including an allegedly inaccurate website petition, a cyberattack on the Council website and staff being inundated with hateful email and telephone enquiries about the matter. Councillor Honeywood pointed out that other councils had managed to implement a similar policy without experiencing the same problems.

It was the Investigator's view that it is disingenuous for Councillor I. Henderson to claim no responsibility for the 'fallout' that ensued and was somewhat concerned that throughout the investigation process he rejected any criticism of his own conduct; he selected which articles and comments to share, choosing those that best supported his position despite the potential impact the misleading information included in those tweets might have had on vulnerable people. The Investigator was of the view that Councillor I. Henderson's conduct was not the main cause of the difficulties created for the Council and its officers by the public reaction to the Careline Lifting proposal.

There is a distinction to be made between bringing a council into disrepute through misconduct, which is clearly a Code breach, and accusing a council of pursuing or

considering a disreputable policy. The latter may bring a council into disrepute by reducing its reputation but attacking council policy is also a key function of Members, particularly opposition Members. In this case it is important to judge that the focus is maintained on the ethical basis of Councillor I. Henderson's actions rather than the "noise" which followed the media coverage.

The principles in the *Heesom case* (referred to above) are relevant to the finding. In line with those principles, Councillor I. Henderson's contribution to the misinformation spread by the media should be significant before a failure to comply with the Code may be found. A significant part of the good reputation of local government depends on Members' ability to use the press, politics and political discourse to achieve desired outcomes. Councillors must be allowed to draw attention to, and attack, council policies that they disagree with. At times the methods which members deploy to that end will be so offensive, or inaccurate, that the Code, and at times the law, is breached. In the investigator's view though, while some of the information shared by Councillor I. Henderson would not have stood up to close scrutiny, it was not sufficiently inaccurate (in that the proposal involved the introduction of charging customers an additional amount for Careline Lifting) or out of line with how the service had been described in Cabinet (in particular by Councillor Howard) in the first instance, to represent a breach of the Code.

There is no doubt that Councillor Henderson contributed to the media storm but the Cabinet's presentation of the lifting proposal on 11 December 2015 had started to raise questions. On balance, the Investigation did not consider that his contribution was sufficient to reduce public confidence in his own, or his Council's, ability to fulfil their functions. It was, therefore, recommended that Councillor I. Henderson was found not to have breached the Code.

CONCLUSION:

- Councillor Ivan Henderson is found to have been acting in councillor (official) capacity when posting on social media and engaging with the press in the circumstances of this case. The Code of Conduct was therefore engaged.
- A finding of failure to comply with the Council's Code would be a disproportionate restriction on the right to freedom of expression and is therefore recommended that Councillor I. Henderson is found not to have breached the Code.
- There were concerns that *"some of Councillor I. Henderson's posts on Twitter demonstrated a lack of good judgement on his part"*. The way in which councillors use social media is increasingly becoming an issue for councils across the country. It is therefore recommended that a summary of the investigation findings are provided to the Council's Standards Committee.
- Councillor I. Henderson was urged to reflect on his conduct and consider whether he thought enough about the impact on vulnerable people of spreading false information. It should be of concern to him that service users who may already have had anxieties about using emergency services needed accurate information from Council officers, accurate information which he could have been promoting from the public platform from which he was operating.
- Social media is having a massive impact on the relationship between councillors and their constituents. It can be used to inform, connect and mobilise a community. It can help Members test the temperature of public opinion; it can be used to shape or explain policy and it can be used to gather casework. With this opportunity comes risk. Improper use of social media by a councillor can expose the council to security risks and reputational damage and may risk breaching the Data Protection

Act.

- The Council, through its Standards Committee, is encouraged to use this opportunity to introduce a social media policy that ensures that councillors are given suitable guidance as to what the Council deems to be an appropriate use of social media and indicates how any risks or pitfalls can be minimised or mitigated in the future.

CONSULTATION WITH THE INDEPENDENT PERSON

John Wolton, one of the Council's Independent Persons has responded that this case clearly involves political differences from the time of the Cabinet meeting, the subsequent use of social media and submission of the complaint.

The investigation although necessary, has involved individuals' time and expense for the authority, and it is unfortunate that this started with a Cabinet Report, which, when questions were asked, the responses and details were unclear. Details of the Policy introducing the charges should have been known and considered first, especially when the service users would be vulnerable people.

However, Councillor I. Henderson 'jumped on' what he saw as a political opportunity but with his vast experience he should have also considered the impact of the way in which he shared the information and used the media attention, especially after the Council's press release.

John Wolton noted the reliance on freedom of expression and agreed with the investigator's findings and looking at it from a member of the public's viewpoint concurs with the concerns raised.

MISCELLANEOUS MATTERS

A Report of the Housing Portfolio Holder was presented to Cabinet on 19th February 2016, which supplied details on the enhanced Careline Service and gave consideration of options and costs of the Scheme to all current and future Careline Customers, which included the lifting service.

In future, if implementation of a new, or changed, policy requires Cabinet approval due to the impact on service users, the policy report will include proposals for setting fees and charges rather than inclusion within the annual budget setting report, as the latter would not include the necessary detail and requires a further report in any event to seek policy approval.

APPENDICES

- Appendix 1 – Code of Conduct and Complaints Procedure

TENDRING DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT

1. Introduction

- 1.1 Trust and confidence in public office-holders and institutions are important for the functioning of local authorities. This is particularly true in the case of elected office-holders. The Council has therefore adopted this Code of Conduct to promote and maintain high standards of conduct in public life. It is each Councillor's responsibility to comply with the provisions of this Code.
- 1.2 The Code of Conduct applies to all elected Councillors, voting co-opted members and appointed members.

2. When does the Code of Conduct apply?

- 2.1 In this Code "meeting" means any meeting of
- (a) Tendring District Council ("the Authority");
 - (b) the Executive of the Authority
 - (c) any of the Authority's or its Executive's committees, sub committees joint committees, joint sub-committees, or area committees (including working parties); or
 - (d) informal meetings with other Members and/or Officers relating to the discharge of the Authority's functions.
- 2.2 The Code of Conduct applies—
- (a) whenever you conduct the business, or are present at a meeting, of the Authority; or
 - (b) whenever you act, claim to act or give the impression you are acting in the role of Member to which you were elected or appointed; or
 - (c) whenever you act, claim to act or give the impression you are acting as a representative of the Authority (including representation on outside bodies); or
 - (d) at all times and in any capacity, in respect of conduct identified in paragraphs 3.4(a) and 3.5; or
 - (e) in respect of any criminal offence for which you have been convicted during your term of office.
- 2.3 Where you are elected, appointed or nominated by the authority to serve on any other authority or body you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body.

- 2.4 Where you are elected, appointed or nominated by the authority to serve on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, unless it conflicts with any other lawful obligations to which that other body may be subject.

3. Rules of Conduct

- 3.1 As a Member of Tendring District Council you shall have regard to the Seven Principles of Public Life.

Selflessness Holders of public office should act solely in terms of the public interest.

Integrity 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.

Objectivity Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty Holders of public office should be truthful.

Leadership Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

These general principles are the underlying principles behind the rules of conduct set out below.

3.2 In fulfilling your **Duties and Responsibilities**

You must not:

- (a) breach your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) disrespect others;
- (c) bully or harass any person; or
- (d) do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the Authority.

3.3 **Information**

You must not:

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

3.4 **Conduct**

You must:

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
- (b) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the Authority.
- (c) comply with any request of the authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.

3.5 **Use of your Position**

You must not:

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of the Authority—
 - (i) imprudently;

- (ii) in breach of the Authority's requirements;
- (iii) unlawfully;
- (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed;
- (v) improperly for political purposes; or
- (vi) improperly for private purposes.

3.6 Decision Making

You must:

- (a) when participating in meetings or reaching decisions regarding the business of the Authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the Authority's officers, in particular by—
 - (i) the Authority's head of paid service;
 - (ii) the Authority's s.151 Officer/ Chief Finance Officer;
 - (iii) the Authority's Monitoring Officer/ Chief Legal Officer;
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

3.7 Compliance with the Law and the Authority's Rules and Policies

You must:

- (a) observe the law and the Authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
- (b) comply with the provisions of the Bribery Act 2010 or similar;
- (c) comply with the Authority's Gifts and Hospitality Policy;
- (d) comply with any other policy (or part of policy) which sets out required conduct from Members, for example the Member/Officer Working Protocol and Planning Code for Members, or similar.

PART 2 MEMBERS' INTERESTS

4. Disclosable Pecuniary Interests

- 4.1 You have a Disclosable Pecuniary Interest in any business of your authority if it is of a description set out in 4.2 below and is either:
- (a) an interest of yours,
or that of a Relevant Person being:
 - (b) an interest of your spouse,
 - (c) an interest of your civil partner, or
 - (d) an interest of a person you are living with as a spouse or civil partner,

and in the case of paragraphs 4.1(b) – (d) you are aware that the Relevant Person has the interest.

- 4.2 “Disclosable Pecuniary Interests” are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are:-

Employment, office, trade, profession or vacation

Any employment, office, trade, profession or vocation carried on for profit or gain.

Sponsorship

Any payment or provision of any other financial benefit (other than from the relevant Authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a Member, or towards the election expenses of the Member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Contracts

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant Authority—

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

Land

Any beneficial interest in land which is within the area of the relevant Authority.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant Authority for a month or longer.

Corporate tenancies

Any tenancy where (to the Member's knowledge)—

- (a) the landlord is the relevant Authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—

- (a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant Authority; and
- (b) either—
 - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

5. Other Pecuniary Interests

5.1 You have a Pecuniary Interest in any business of the Authority where it relates to or is likely to affect:

- (a) any person or body who employs or has appointed you;
- (b) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraphs 6.1 (a)-(b) which has been fully discharged within the last 12 months;

6. Non-Pecuniary Interests

6.1 You have a Non-Pecuniary Interest in any business of the Authority where it relates to or is likely to affect –

- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
 - (b) any body –
 - (i) exercising functions of a public nature;
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
- of which you are a member or in a position of general control or management;
- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;

- (d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of their family or friends to a greater extent than the majority of:-
 - (i) (in the case of Authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority's area.

7. Disclosure of Interests (Disclosable Pecuniary Interests, Other Pecuniary Interests and Non-Pecuniary Interests)

- 7.1 Subject to sub-paragraphs 7.2 to 7.3, where you have a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.
- 7.2 Sub-paragraph 7.1 only applies where you are aware or ought reasonably to be aware of the existence of the Relevant Person's Interest.
- 7.3 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 7.1 but by virtue of paragraph 12 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary Interest you need not disclose the nature of the interest to the meeting.
- 7.4 Where you have a Pecuniary Interest in any business of the Authority and a function of the Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's Monitoring Officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.
- 7.5 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 7.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

8. Disclosure of Interests generally

- 8.1 Subject to sub-paragraph 8.2 below, you have a duty to disclose any interest, as set out in paragraphs 5 and 6 above, in considering any business of the Authority, where that interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- 8.2 You do not have a disclosable interest in any business of your Authority where that business relates to the functions of your Authority in respect of:
- i. housing, where you are a tenant of your Authority provided that those functions do not relate particularly to your tenancy or lease;
 - ii. school meals or school transport and travelling expenses, where you are 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 you are in receipt of, or are entitled to the receipt of, such pay;
 - iv. an allowance, payment or indemnity given to Members;
 - v. any ceremonial honour given to Members; and
 - vi. setting Council Tax or a Precept under the Local Government Finance Act 1992

9. Effect of Disclosable Pecuniary Interests on participation

- (a) If you are present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and you are aware of that Interest:
- (i) You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
 - (ii) You must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Authority's Monitoring Officer.
- (b) If you have a Disclosable Pecuniary Interest in any business of the Authority you must not:
- (i) exercise executive functions in relation to that business; and
 - (ii) seek improperly to influence a decision about that business
- (c) If a function of the Authority may be discharged by a Member acting alone and you have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that

function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

10. Effect of Other Pecuniary or Non-Pecuniary Interests on participation

- 10.1 If you have a pecuniary interest (other than a disclosable pecuniary interest) or a non-pecuniary interest in any business of your Authority which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-
- (a) Disclose the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)
 - (b) Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making your representations or in any other case when the business is under consideration, unless you have obtained a dispensation from your authority's Monitoring Officer

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

11.1 Subject to paragraph 12, you must, within 28 days of—

- a. this Code being adopted by or applied to your authority; or
- b. your election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the authority,

register in your authority's register of members' interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- (i) disclosable pecuniary interests as referred to in paragraph 4 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time.
- 11.2 Subject to paragraph 12, you must, within 28 days of becoming aware of any new Disclosable Pecuniary Interest as referred to in paragraph 4 that you, your spouses, civil partner or person with whom you live as if they were your spouse or civil partner or change to any interest registered under paragraph 4 above by providing written notification to your authority's Monitoring Officer.

12. Sensitive Information

- 12.1 Where you have a Disclosable Pecuniary Interest referred to in paragraph 4 or other Pecuniary Interest referred to in paragraph 5, and the nature of the interest is such that you and your authority's Monitoring Officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 12.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 18.1 is no longer sensitive information, notify your authority's Monitoring Officer.
- 12.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

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

2. The Member Code of Conduct

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

3. Making a complaint

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

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

standards@tendringdc.gov.uk

The Complaints Form can be downloaded from the website.

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which is available on request from the reception at the Council Offices or via the website. You must also include all relevant information relating to the complaint which you have to enable it to be fully considered.

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

- 3.4 The authority does not normally investigate anonymous complaints, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct and there is a clear public interest in doing so.
- 3.5 Following receipt of your complaint, the Monitoring Officer will: -
- (a) acknowledge receipt of your complaint within 10 working days of receiving it;
 - (b) notify, within 10 working days, the member that is the subject of the complaint that you have made a complaint about them and provide them with the information set out on the complaint form; excluding any personal information but including your name and address, unless this is to be withheld in accordance with section 3.3 above; and
 - (c) keep you and the Member that is the subject of the complaint informed of the progress of your complaint.
 - (d) Your complaint will be given a reference number which will appear on complaint documentation to preserve the privacy of the complainant and the subject Member until the complaint outcome is determined.
- 3.6 The Complaints Procedure Flowchart is set out at the end of this procedure for reference.
- 3.7 The Complaints Procedure follows the principles of natural justice and the presumption of innocence until proven otherwise.
- 3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaints procedure. The Monitoring Officer will also adhere to this confidentiality and only inform/contact any such individuals which are identified in the procedure or by the parties. If the details of

the complaint are made public, it may be necessary for a statement to be issued by the Monitoring Officer for clarification only.

4. Will your complaint be investigated?

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

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation.

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

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

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

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

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

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

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or

agreeing to mediation and/or other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

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

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify the Police or other regulatory agencies.

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

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

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

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

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

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed. Any information supplied to the Monitoring Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, maybe shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards Committee is

convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.

- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town and 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.

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

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

7.1.1 Informal Resolution

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

7.1.2 Hearing

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

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and available for public and press inspection, however, the Investigators Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

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

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, may adjourn the meeting for a short period and deliberate together in private. The hearing will then be reconvened and the

Decision will be announced in public. It is expected that this will usually be on the same day.

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

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

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

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

- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
- 8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;
- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to (*or recommend that the Town or Parish Council*) arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (*or recommend to the Town or Parish Council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Town or Parish Council*);
- 8.1.7 Recommend to 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 to Committee) the exclusion of *(or recommend that the Town or Parish Council exclude)* the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

9. What happens at the end of the hearing?

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

- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will compromise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Association of Local Councils);

- 10.3 At least one of the three 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 the 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 three 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.

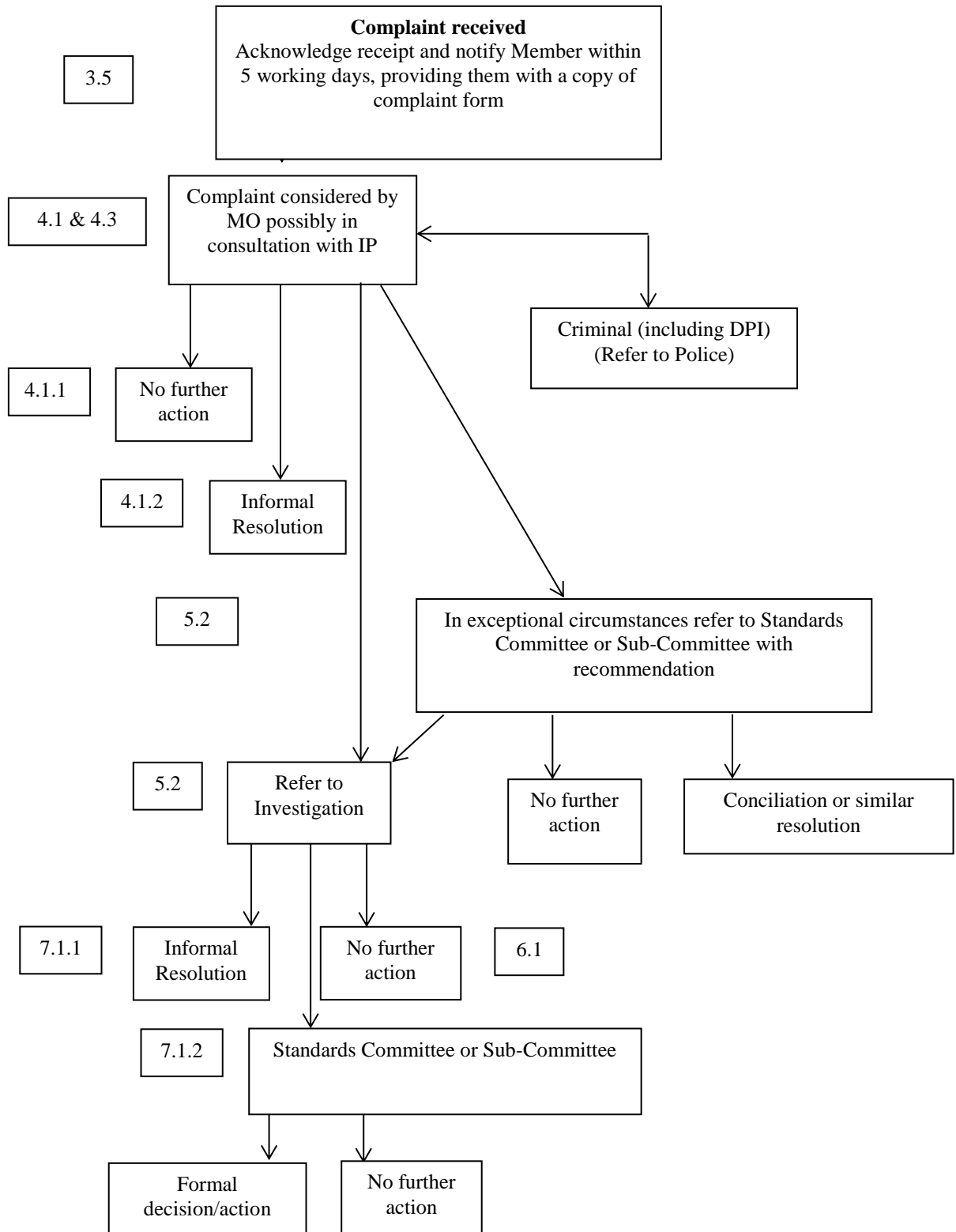
13. Appeals

- 13.1 There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee.
- 13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

ANNEX B

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

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



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.

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

1. It is serious enough, if proven, to justifying 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 a 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’ and Members’ time. This is an important consideration where the complaint is relatively minor.

ANNEX E

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

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

1. Planning Stage:

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

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

2. Evidence Gathering Stage:

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

3. Interview Stage:

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

4. Report Stage:

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

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

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