

# Public Document Pack

Standards Committee

3 February 2021

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,  
HELD ON WEDNESDAY, 3RD FEBRUARY, 2021 AT 10.00 AM  
IN THE MEETING TO BE HELD UNDER PROVISIONS OF STATUTORY  
INSTRUMENT 2020/392. LINK TO LIVE STREAM WILL BE FOUND VIA  
[HTTPS://WWW.TENDRINGDC.GOV.UK/LIVEMEETINGS](https://www.tendringdc.gov.uk/livemeetings)**

<b>Present:</b>	Councillors Land (Chairman), Steady (Vice-Chairman), Fowler, J Henderson, S Honeywood, Turner and Wiggins
<b>Also Present:</b>	Sue Gallone (Independent Person), Clarissa Gosling (Independent Person), David Irvine (Independent Person) and Jane Watts (Independent Person)
<b>In Attendance:</b>	Lisa Hastings (Assistant Director (Governance) & Monitoring Officer), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer), Keith Durran (Democratic Services Officer), Debbie Bunce (Legal and Governance Administration Officer) and Emma Haward (Leadership Support Assistant)

**8. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies for absence on this occasion.

**9. MINUTES OF THE LAST MEETING**

It was moved and seconded and:-

**RESOLVED** that the minutes of the meeting of the Standards Committee, held on Thursday 16 July 2020, be approved as a correct record and signed by the Chairman, subject to an amendment to reflect the fact that Councillor Nick Turner had been unable to join the meeting due to technical difficulties and that he wished to have his apologies noted.

**10. DECLARATIONS OF INTEREST**

There were none on this occasion.

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

There were none on this occasion.

**12. A.1 - REPORT OF THE MONITORING OFFICER - REVIEW OF PLANNING PROBITY CODE AND PROTOCOL**

The Committee gave consideration to a detailed report of the Monitoring Officer (A.1) in relation to a review of the Council's Members' Planning Code/Protocol adopted in 2015 following the Local Government Association (LGA) Probitity in Planning Guidance – Advice for councillors and officers making planning decisions issued in December 2019.

In December 2019, the LGA had issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions, which was included as Appendix A to the Monitoring Officers report. The Standards Committee had agreed previously through its work programme to review the Council's Planning Protocol following the LGA publication.

It was reported that the LGA's Guidance had been circulated to the members of the Planning Committee in 2020. Those Members had also later been provided with a note on lobbying following a High Court decision involving the London Borough of Hackney, which had confirmed the Council's Protocol was consistent with the practices established within the judgement, so long as it was done openly.

The Committee was informed that Officers had undertaken a review of the Council's Planning Protocol following both the LGA's Guidance and High Court decision, and it was considered that the recommended practice as set out within the advice and guidance issued by the LGA was covered within the Council's existing Protocol, Members' Code of Conduct and working practices. Consequently, no further changes were suggested as a result of the LGA's guidance however, it was necessary to include additional wording within the Planning Protocol to cover situations when it was not possible to undertake Site Visits and to clarify that this did not impact upon the Planning Committee's ability to determine planning applications.

It was also recommended that regular training should be carried out to ensure the principles of Probity in Planning were known and fully understood by Councillors involved with planning decisions.

The Committee was made aware that the LGA Guidance stated that particular care needed to be taken in the use of social media by both Officers and Councillors, where it related to decision making functions. The use of social media was also an area which had been highlighted by the Local Government Ethical Standards Report published in 2019 and the LGA in its recent work to publish a Model Code of Conduct. Any training delivered for Tendring District Councillors should therefore include a section on using social media.

The Monitoring Officer confirmed that the Council's Code of Conduct was still robust. She told the Committee that whilst undertaking the review a case had been considered at the High Court regarding lobbying of Members and it was confirmed that it was appropriate for members of the Public to lobby Councillors on the Planning Committee. The Council's Code had a protection in that it advised Councillors to let the individual know that they would look at the case with an open mind. Case law had confirmed that it was fine for Councillors to read any letters sent to members of the Planning Committee and this had confirmed that the Council was up-to-date with the Judgment of the High Court.

The Monitoring Officer also confirmed that additional wording regarding site visits needed to be included within the Code to cover situations where site visits were not possible. It was not a legal requirement to have undertaken a site visit but if Members did so then a clear protocol must be in place which was included within the Council's Code.

During the current Pandemic it was confirmed that Members had been able to visit sites themselves to solely view the site, but no organised site visits were currently taking place, due to restrictions being in place since March 2020.

Members were then asked if they had any questions relating to the Code and Protocol and there was a query regarding whether when a Member had “called-in” an application should they withdraw from the meeting. The Monitoring Officer confirmed that this is not suggested practice within the Council’s Code, so any Member calling in an application was entitled to remain in the meeting during the consideration of that item as long as they were not part of the decision making process of the Planning Committee. Careful consideration must be taken if the member is part of the Planning Committee.

Having considered and discussed the information provided in the Monitoring Officer’s report:

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

**RESOLVED** that the Committee –

1. Notes the contents of the Report and are pleased that the Protocol remains robust and the Council are ahead of the Guidance and agrees that no changes are required to the Council’s adopted Members’ Planning Protocol as a result of the LGA’s Guidance;
2. Approves the recommended wording, as set out within the Report, to be added to the Member’s Planning Protocol covering situations where it is not possible for organised Site Visits to be undertaken;
3. Agrees the amendments are minor in nature and follow the implications of the ongoing Coronavirus Regulations currently in force and supports the Monitoring Officer using her delegated powers in accordance with Article 14 of the Constitution;
4. Endorses that awareness of the Council’s Protocol and the LGA’s Guidance on Planning Probity are covered within the regular training programmes for elected Members involved in planning decisions; and
5. Requests that Officers include a section on the use of social media in all training sessions for Members.

**13. A.2 - REPORT OF THE MONITORING OFFICER - REVIEW OF THE COMPLAINTS PROCEDURE**

The Committee gave consideration to a report of the Monitoring Officer (A.2) in relation to undertaking a review of the Complaints Procedure and to recommend any changes to Full Council for adoption.

The Committee was aware that the Standards Framework included the Complaints Procedure (contained within the Members’ Constitution Booklet). The Council’s statutory duty was to promote and maintain high standards of conduct and building

public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven principles of public life.

The current Procedure, which was attached as Appendix A to the Monitoring Officer's report, had been initially adopted by full Council in November 2013 and subsequently amended in 2017 following a review and recommended changes from the Standards Committee.

Delegation was given to the Monitoring Officer throughout the Procedure to undertake key elements of the complaints process to maximise independence from the political process.

The Monitoring Officer explained that the Local Government Ombudsman had looked at this Council's (TDC's) Complaints Procedure on a couple of occasions when a complainant who had been dissatisfied with the outcome of a complaint had gone to the Ombudsman for a further review. In all instances the Ombudsman had said that TDC's procedures were robust and if followed correctly - they would not look into the outcome of the complaint if the procedure has been correctly. The aim was to make the Procedure as clear as possible to anyone using it.

Through a recent referral to Essex Police, regarding an alleged Disclosable Pecuniary Interest offence under the Localism Act 2011, the Monitoring Officer had been requested to confirm the Legal Jurisdiction Criteria Test had been evaluated and met prior to referring the complaint to the Police. The Monitoring Officer had been requested to provide assurance that the following had been applied prior to further Police involvement:

- (a) The alleged conduct took place after the commencement of Section 34 of the Localism Act 2011.
- (b) The Subject Member was a member of the Council at the time of the alleged conduct.
- (c) The Subject Member was acting in an official capacity as a Councillor at the time of the alleged conduct.
- (d) The Subject Member was not acting as a member of another authority at the time of the alleged conduct.
- (e) If the facts are capable of establishment as a matter of evidence, the alleged conduct could be capable of a breach of the Code of Conduct.
- (f) That the complaint is not about dissatisfaction with the Council's decisions, policies and priorities.

In the event, the above assurances were given, the Police would consider commencing a criminal investigation, if crucially part (e) could be established regarding actual evidence, which the Monitoring Officer might be asked to provide.

The test and evaluation was undertaken implicitly by the Monitoring Officer however it was not expressly referred to within the Complaints Procedure. Consequently, it was being recommended that paragraph 4.5 of the Complaints Procedure be amended to state:

*"If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or*

*other regulatory agencies, subject to the necessary Legal Jurisdiction Criteria Test being applied”.*

No other changes to the Complaints Procedure were recommended by the Monitoring Officer.

Having considered and discussed the information provided in the Monitoring Officer’s report

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

**RECOMMENDED TO COUNCIL** that paragraph 4.5 of the Complaints Procedure contained within Part 6 of the Constitution be amended to include the additional text *“subject to the necessary Legal Jurisdiction Criteria Test being applied”.*

#### 14. **QUARTERLY COMPLAINTS UPDATE**

The Monitoring Officer circulated to the Committee the quarterly schedule, which gave an update on existing cases together with general details of new cases, without providing any names, and went through them with the Committee. There had been no requests for dispensations from Members.

DISTRICT	PUBLIC	CLOSED	No further action	Matter related to actions in private capacity
DISTRICT	TDC CLLR	Awaiting MO to issue final decision	pending	IP consulted – relates to behaviour in a remote meeting
PARISH (X3)	PUBLIC	Awaiting MO final decision	pending	Last response received from final Cllr by 1 <sup>st</sup> February – case to be assessed – relates to alleged failure to declare interests
DISTRICT	MO	With Cllr to respond	pending	Deputy MO will be dealing with the case due to conflict

The Committee noted the foregoing.

**15. CASE REVIEW PRESENTATION AND GUIDANCE UPDATE FOR THE COMMITTEE ON DECISIONS AND ACTIONS TAKEN NATIONALLY**

The Monitoring Officer gave the Committee a presentation and guidance update on decisions and actions taken nationally. All of those decisions were in the public domain and the Monitoring Officer went through each one in turn.

The Monitoring Officer also informed the Committee that the Law Commission had put forward proposals for reforming the offence of misconduct in public office.

It was also noted that in respect of the LGA's Model Code of Conduct, version 1 had been launched in early December, followed by version 2 in late December 2020 and that the LGA would be issuing guidance throughout 2021. This would be the subject of further consideration by the Committee through a separate piece of work in due course.

The Committee noted the foregoing.

The meeting was declared closed at 11.02 am

**Chairman**