

TENDRING DISTRICT COUNCIL



MEMBERS' CODE OF CONDUCT

(Adopted by the Council on 23 January 2018)

(Code as regards the conduct which is expected of all elected Councillors, voting co-opted members and appointed members)

TENDRING DISTRICT COUNCIL**MEMBERS' CODE OF CONDUCT****1. INTRODUCTION TO THE CODE OF CONDUCT**

- 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 for elected Members (also referred to as "Councillors") to promote and maintain high standards of conduct in public life. It is each Member's responsibility to comply with the provisions of this Code.
- 1.2 The Code of Conduct applies to all elected Members, voting co-opted Members and appointed Members.
- 1.3 The Code covers three main areas:
- **Part 1** sets out some general obligations regarding the behaviour of elected and co-opted Members ("**Rules of Conduct**")
 - **Part 2** explains how Members should behave if they have a personal/code interest in an item of Council business ("**Members' Interests**")
 - **Part 3** sets out rules requiring registration of interests for public inspection ("**Register of Members' Interests**")

The Principles of Public Life are set out in the Appendix.

2. Interpretation of when the Code of Conduct applies?

- 2.1 In this Code "meeting" means any meeting of
- (a) Tendring District Council ("the Authority");
 - (b) the Cabinet (also known as the Executive) of the Authority
 - (c) any of the Authority's or Cabinet's committees, sub committees joint committees, joint sub-committees, or area committees (including working parties and panels); 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 a Member conducts the business, or are present at a meeting, of the Authority; or
 - (b) whenever a Member acts, claims to act or gives the impression they are acting in the role of Member to which they were elected or appointed; or

- (c) whenever a Member acts, claims to act or give the impression they 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 they have been convicted during their term of office.

- 2.3 Where a Member is elected, appointed or nominated by the Authority to serve on any other authority or body they must, when acting for that other authority or body, comply with the code of conduct of that other authority or body.
- 2.4 Where a Member is 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, they 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. Principles of Public Life

- 3.1 The Localism Act 2011 requires the Authority to have a code of conduct which is consistent with the 'Nolan Principles' determined by the Committee on Standards in Public Life. These Principles are set out in the Appendix A to this Code. The Code is consistent with the Nolan Principles but any breach of the principles is not by itself a breach of the Code.

Members of Tendring District Council shall have regard to the Seven Principles of Public Life as it is these principles which underpin the Rules of Conduct set out below.

PART 1

RULES OF CONDUCT

3.2 In fulfilling Duties and Responsibilities

Members must not:

- (a) breach their 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

Members 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

Members must:

- (a) not conduct them self in a manner which could reasonably be regarded as bringing their 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 the Position

Members must not:

- (a) in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for them self, or any other person, an advantage or create or avoid for them self, 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 they have been elected or appointed;
 - (v) improperly for political purposes; or
 - (vi) improperly for private purposes.

3.6 Registration of Interests

In accordance with and subject to Part 2 of the Code, Members are required to register details of their Disclosable Pecuniary Interests and their Personal Interests within 28 days of

becoming a Member (or being re-elected or reappointed) or a change in those details, in the Authority's Register of Interests.

3.7 **Decision Making**

Members 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.

3.8 **Compliance with the Law and the Authority's Rules and Policies**

Members must:

- (a) observe the law and the Authority's rules governing the claiming of expenses and allowances in connection with their duties as a Member;
- (b) comply with the Local Authority Code of Publicity made under the Local Government Act 1986 and any relevant guidance issued;
- (c) comply with the provisions of the Bribery Act 2010 or similar;
- (d) comply with the Authority's Gifts and Hospitality Policy;
- (e) 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**

Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.

4. Disclosable Pecuniary Interests

- 4.1 Disclosable Pecuniary Interests (DPIs) are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are set out in Appendix B to this Code. It is important that Members understand what amounts to a DPI, that they identify carefully all DPIs relevant to them and that they take the necessary action required by law. Breach of the requirements related to DPIs is a criminal offence and are referred to the Police.
- 4.2 A Member will have a Disclosable Pecuniary Interest in any business of their Authority if it is of a description set out in Appendix B and is either:
- (a) their own interest, or that of a Relevant Person being:
 - (b) an interest of their spouse,
 - (c) an interest of their civil partner, or
 - (d) an interest of a person with whom they are living with as a spouse or civil partner,

and in the case of paragraphs 4.2(b) – (d) the Member is aware that the Relevant Person has the interest.

5. Personal Interests

- 5.1 A Member will have a Personal Interest in any item of business of the Authority where it relates to or is likely to affect –
- (a) any person or body who employs or has appointed them;
 - (b) any existing contract for goods, services or works, which has not been fully discharged or has expired within the last 2 years, and made between the Authority and
 - (i) the Member,
 - (ii) a Related Person;
 - (iii) a body in which the Member has a Disclosable Pecuniary Interest; or
 - (iv) a person or body of the description specified in paragraphs 5.1 (c)-(d) below;

-
- (c) any body of which the Councillor is a member or in which they hold a position of general control or management and to which they are appointed or nominated by the Authority;
- (d) any other body of which the Councillor is a member and in which they hold a position of general control or management –
- (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);
- (e) the interests of any person from whom the Member has received a gift or hospitality with an estimated value of at least £50;
- (f) a decision in relation to that business which might reasonably be regarded as affecting the financial position or wellbeing of:
- (i) the Member or
 - (ii) a Related Person (if the Member is aware of its existence)
- to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, affected by the decision;

5.2 Related Person is defined as:

- a member of the Councillor's family; or
- any person with whom the Councillor has a close business or personal association.

In the case of a Related Person, a Councillor is only required to declare those interests which they are aware or ought reasonably to be aware of the existence.

6. Declaration of Members' Interests

6.1 Subject to sub-paragraphs 6.2 to 6.3, where a Member has a Disclosable

Pecuniary or Personal Interest in any business of the Authority and they are present at a meeting of the Authority at which the business is considered, they must declare to that meeting the existence and nature of that interest whether or not such interest is registered on their Register of Interests or for which they have made a pending notification.

6.2 Sub-paragraph 6.1 only applies where a Member is aware or ought reasonably to be aware of the existence of the Relevant Person's (as defined in 4.2 above) Interest or the Related Person's (as defined in 5.2 above) Interest.

6.3 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 but by virtue of paragraph 11 (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 or Personal Interest they do not need to declare the nature of the interest to the meeting.

6.4 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 and they are acting as a Cabinet Member, making an executive decision in relation to that business they 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.

7. Declaration of Personal Interests generally

7.1 Subject to sub-paragraphs 7.2 & 7.3 below, a Member has a duty to declare any Personal Interest, as set out in paragraph 5 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 their judgement of the public interest.

7.2 Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.

7.3 A Member does not have a declarable interest in any business of the Authority where that business relates to the functions of the Authority in respect of:

- i. housing, where the Member is a tenant of the Authority provided that those functions do not relate particularly to their tenancy or lease;
- ii. school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, 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

8. Effect of Disclosable Pecuniary Interests on participation

- (a) If a Member is present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and they have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and they are aware of that Interest:
 - (i) the Member 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) the Member must withdraw from the room or chamber where the meeting considering the business is being held unless they have received a dispensation from the Authority's Monitoring Officer.
- (b) If a Member has a Disclosable Pecuniary Interest in any business of the Authority they 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 they have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function they 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 them self).

9. Effect of Personal Interests on participation

- 9.1 If a Member has a Personal interest (not a Disclosable Pecuniary Interest) in any business of the 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 the Member's judgement of the public interest and they are present at a meeting of the Authority at which such business is to be considered or is being considered the Member must:-
- (a) Declare 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 representations or in any other case when the business is under consideration, unless they have obtained a dispensation from the Authority's Monitoring Officer.

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

- 10.1 Subject to paragraph 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
 - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of Disclosable Pecuniary Interests as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner in so far as they are aware of their interests at that time.
- 10.2 Subject to paragraph 11, Members must, within 28 days of becoming aware of any new or amended Disclosable Pecuniary Interest as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner or change to any interest registered under paragraph 4 above by providing written notification to the Authority's Monitoring Officer.
- 10.3 Subject to paragraphs 10.5 and 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
 - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Personal Interests details of Personal Interests as referred to in paragraph 5, that the Member is aware of at that time.
- 10.4 Subject to paragraphs 10.5 and 11, Members must, within 28 days of becoming aware of any new or amended Personal Interest as referred to in paragraph 5 or change to any interest registered under paragraph 5 above by providing written notification to the Authority's Monitoring Officer.
- 10.5 The provisions of paragraphs 10.3 and 10.4 above, do not apply to any Personal Interest which concerns a Related Person, as these interests are not required to be registered in advance and only declared at a meeting of the Authority at which the business is considered and the Member is present.
-

11. Sensitive Information

- 11.1 Where a Member has an interest referred to in paragraphs 4 or 5, and the nature of the interest is such that the Member and the Authority's Monitoring Officer consider that disclosure of details of the interest could lead to the Member or a person connected with them 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 the Member has an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 11.2 Members must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's Monitoring Officer.
- 11.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that the Member or a person who lives with them may be subject to violence or intimidation.

APPENDIX A

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

The Nolan Principles

<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	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.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	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.
<i>Openness</i>	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.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	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.

APPENDIX B

“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.

**TENDRING DISTRICT COUNCIL
COMPLAINTS PROCEDURE****1. Context**

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

2. The Member Code of Conduct

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

3. Making a Complaint

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

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

standards@tendringdc.gov.uk

The Complaints Form can be downloaded from the website.

- 3.2 The Monitoring Officer is a senior officer of the authority who has a statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the

system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

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

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

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

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

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

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

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

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

4. Will your complaint be investigated?

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

- 4.1.1 Merits no further action
- 4.1.2 Merits early informal resolution or mediation
- 4.1.3 Merits further investigation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer’s report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer’s report is sufficient, subject to 6.3 below, the Monitoring Officer will write to you and to the member concerned (*and, if appropriate, to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor*), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.

Exceptional cases may include but not be limited to matters where the evidence is so finely balanced or is in the public interest to do so.

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

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

7.1.1 Informal Resolution

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

7.1.2 Hearing

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

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

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

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

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

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

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

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

- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
- 8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;
- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to (*or recommend that the Town or Parish Council*) arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed (*or recommend to the Town or Parish Council that the Member be removed*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Town or Parish Council*);
- 8.1.7 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of (*or recommend to the Town or Parish Council that it withdraws*) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or

- 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of (*or recommend that the Town or Parish Council exclude*) the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.
- 9. What happens at the end of the hearing?**
- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member (*and to the Town or Parish Council if appropriate*), make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.
- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent Person will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.
- 10. Who forms the Standard Committee or Sub-Committee?**
- 10.1 The Standards Committee will comprise of 7 District Councillors;
- 10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Tendring District Association of Local Councils);
- 10.3 At least one of the two Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether a member's conduct constitutes a failure to comply with the Code of
-

Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who are the Independent Persons?

- 11.1 The Council has appointed two Independent Persons to support the Standards Committee and Sub-Committee.
- 11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.
- 11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person protocol which sets out some general principles.

12. Revision of these Arrangements

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

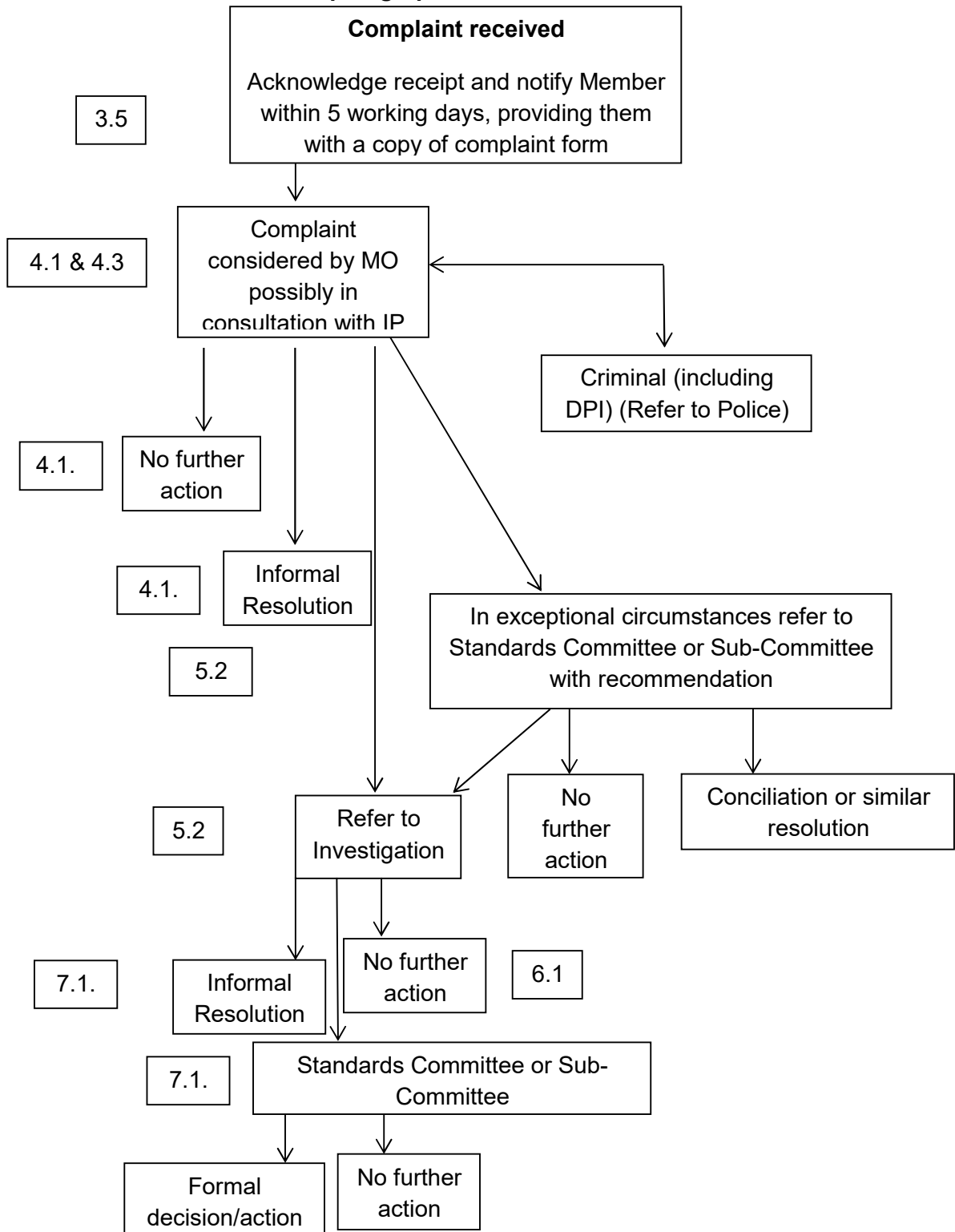
13. Appeals

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

ANNEX B

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

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



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

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

(Grey)

	<p>8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;</p> <p>9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and</p> <p>10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.</p>	<p>consideration for further investigation.</p> <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p>
--	---	---

	<p>Proceedings:</p> <ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Tending District Council Members and Co-opted Members referred to it by the Monitoring Officer; and 4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council. 	<ol style="list-style-type: none"> 4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct. 5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011. 6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.
Committee	Functions and Terms of Reference	Delegated Functions
Town and Parish Councils' Standards Sub-Committee	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p>Proceedings:</p>	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tending District alleging a breach of the Members' Code of

(Grey)

	<ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer’s advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and; 	<p>Conduct of the Council/Town or Parish Council (“Code”) in accordance with the Complaints Procedure.</p> <ol style="list-style-type: none"> 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether
--	--	--

	<p>4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.</p>	<p>the complaint:</p> <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation • Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation. <p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p> <p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide</p>
--	---	---

		advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.
--	--	--

**ANNEX D
CONDUCT COMPLAINTS ASSESSMENT CRITERIA****Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee**

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

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

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

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

ANNEX E
STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

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

1. Planning Stage:

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

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

2. Evidence Gathering Stage:

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

3. Interview Stage:

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

4. Report Stage:

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

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