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Standards Committee

6 April 2022

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON WEDNESDAY, 6TH APRIL, 2022 AT 2.05 PM
IN THE COMMITTEE ROOM, AT THE TOWN HALL, STATION ROAD, CLACTON-
ON-SEA, CO15 1SE**

Present:	Councillors Land (Chairman), Steady (Vice-Chairman), Alexander, Fowler, Turner and Wiggins
In Attendance:	Lisa Hastings (Deputy Chief Executive & Monitoring Officer), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer), Ian Ford (Committee Services Manager), Karen Townshend (Executive Projects Manager (Governance)), Debbie Bunce (Legal and Governance Administration Officer) and Matt Cattermole (Communications Assistant)
Also in Attendance:	The following Independent Persons: Sue Gallone (except items 31 (part – 33), David Irvine and Jane Watts

26. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor V E Guglielmi (with Councillor Alexander substituting), Councillor J Henderson (with no substitute) and Clarissa Gosling (one of the Council's four Independent Persons).

27. MINUTES OF THE LAST MEETING

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

RESOLVED that the Minutes of the meeting of the Committee held on 2 February 2022 be approved as a correct record and be signed by the Chairman, subject to the deletion from the text of Minute 20 of the following paragraph:-

“This Committee are asked to re-visit Appendix A at its meeting to be held on 6 April 2022, and to reflect upon the above training when doing so.”

28. DECLARATIONS OF INTEREST

There were no Declarations of Interest made by Members at this time.

29. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

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

30. REPORT OF THE MONITORING OFFICER - A.1 - ADOPTION OF THE LOCAL GOVERNMENT ASSOCIATION'S MODEL MEMBERS' CODE OF CONDUCT

Further to Minute 24 (2.2.22), the Committee reviewed part of the elected Members' Model Code of Conduct, as authored by the Local Government Association (LGA), in comparison to Tendring District Council's (TDC) Members' Code of Conduct (the Code), for eventual determination as to whether to recommend the Model Code to Full Council for adoption.

Members recalled that, in 2018, following a recommendation made by the Standards Committee, the Full Council had adopted the Members' Code of Conduct (the Code) as detailed within Part 6 of the Council's Constitution and as attached as Appendix A to the Monitoring Officer's report. The Code set out the standards, values and rules of conduct that elected Members were expected to abide by.

It was reported that, in May 2021, a final version of the Members' Model Code of Conduct (the Model Code) had been authored and released by the LGA (after two amended versions had previously been issued). The aim of the Model Code was to provide consistency for Members across Parish, Town, District and County Councils, especially for those Members representing two or more electorates (also known as 'dual hatters' or 'triple hatters').

As part of its work programme, the Standards Committee was requested to review TDC's Code in comparison with the Model Code, together with associated guidance, and recommend to Full Council as to whether the Model Code should be adopted or whether to review and keep the TDC Code. Should the Committee wish to recommend that the Model Code be adopted, it had previously been proposed that implementation would not take effect until the new municipal period following the 2023 District Council elections.

Members were informed that the LGA planned to undertake an annual review of the Model Code to ensure it continued to be fit for-purpose, incorporating advances in technology, social media and changes in legislation. Therefore this Authority would be required to review its Code, if adopted, to ensure consistency.

In addition to the publication of the Model Code, the LGA, in consultation with Monitoring Officers and associated Officers nationally, was compiling a training package for Members and Officers which could be utilised following elections, or for refresher training. The training package, which was currently in draft form, could be either completed in a single session or broken down into multiple sessions focussing on specific areas, whichever catered to Members' needs at that time, allowing for questions throughout. The training package could be conducted in person or online and there was supporting material available for Members' reference.

The training was broken down into 'bite size' sections following the Model Code with relevant scenarios and case studies. Due to the training package still being in draft form at this stage, a further report would be presented for discussion to the Committee at its next meeting.

The Model Code was attached as Appendix B to the Monitoring Officer's report.

The Committee was reminded that the TDC Code covered three main areas as follows:-

Part 1 set out some general obligations regarding the behaviour of elected and co-opted Members ("**Rules of Conduct**");

Part 2 explained how Members should behave if they had a personal/code interest in an item of Council business ("**Members' Interests**"); and

Part 3 set out rules requiring registration of interests for public inspection ("**Register of Members' Interests**")

Members were reminded that the Code covered the following areas:-

- Duties and Responsibilities
- Information
- Conduct
- Use of the Position
- Registration of Interests
- Sensitive Information
- Decision Making
- Compliance with the Law and the Authority's Rules and Policies
- Disclosable Pecuniary Interests
- Declaration of Members' Interests
- Declaration of Personal Interests generally
- Effect of Disclosable Pecuniary Interests on participation
- Effect of Personal Interests on participation

The Committee was informed that the LGA Model Code had been written in the first person, in order to make it more personal to individual Councillors and that it covered the following areas:

- General Conduct
- Respect
- Bullying, harassment and discrimination
- Impartiality of officers of the council
- Confidentiality and access to information
- Disrepute
- Use of position
- Use of local authority resources and facilities
- Complying with the Code of Conduct
- Interests
- Gifts and Hospitality

Members were advised that, although the Code and Model Code stated slightly differing titles for the areas covered within them, the content was extremely similar within each document and the Model Code covered each area in more detail giving some explanatory text. The main differences between the Code and Model Code were as detailed hereunder:-

The Code - 3.4 Conduct

“Members must:

- (a) not conduct themselves in a manner which could reasonably be regarded as bringing their office or 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 on accordance with their respective statutory powers.”

The Model Code - 8 Complying with the Code of Conduct

- “8.1 I undertake Code of Conduct training provided by my local authority.
- 8.2 I cooperate with any Code of Conduct investigation and/or determination
- 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.
- 8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

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

The Model Code also included a definition of bullying, something which the TDC Code did not have. The Committee on Standards in Public Life had recommended that local authorities included such a definition within their code.

The Code - 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
 - (i) the Authority's s.151 Officer / Chief Financial 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.

Decision making in this form was not referred to in the Model Code, however Article 13 within the Council's Constitution, set out the responsibilities and principles for decision making in detail, including reference to the Statutory Officers, therefore in the view of the Monitoring Officer, this would be sufficient were the Model Code to be adopted.

The Code - 3.6 Registration of Interests

In accordance with and subject to Part 2 of the Code, Members were 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.

The Model Code - 9.1 I register and disclose my interests

“Section 29 of The Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interest of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest.

The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.”

The Committee was made aware that, should the Model Code be adopted then particular attention would need to be given to training for Members in this area. Further research into the differences between the Interests sections would be conducted by Officers, with a report compiled, to be presented in further detail for discussion by the Committee at its next meeting.

Members were further informed that, from initial conversations between Monitoring Officers across the County, there did appear to be an eagerness for the majority of the authorities to consider and then subsequently adopt the Model Code, subject to approval from their respective Full Councils. Indeed, both Essex County Council and Southend-on-Sea City Council had received reports recommending adopting the Model Code. If all Essex Authorities adopted the Model Code, this would achieve the aim of bringing consistency across the county.

The Committee then duly considered and discussed this matter. That discussion included the following:-

- (i) the advantages and disadvantages of the two Codes;
- (ii) the possibility of the Monitoring Officer providing Members with a visual comparison of the two Codes on a “side-by-side” basis;
- (iii) the complexity of the language used within the two Codes;
- (iv) the potential to incorporate the definitions and explanatory text contained within the Model Code as part of TDC’s Code, possibly as appendices; and
- (v) the desirability generally of whether to adopt the Model Code, or amend the TDC Code with elements of the Model Code, or keep the TDC Code without any alterations being made.

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

RESOLVED that the Standards Committee:

- (a) notes the contents of the Monitoring Officer’s report and its Appendices;
- (b) confirms its satisfaction of the comparison of the Tendring District Council’s Members’ Code of Conduct and the LGA Model Code of Conduct; and

- (c) requests the Monitoring Officer to present in more detail the implications of the differences in Declarations and Registration of Interests, for the Committee to consider prior to agreeing its recommendations to Full Council.

31. CASE REVIEW PRESENTATION AND GUIDANCE UPDATE ON DECISIONS AND ACTIONS TAKEN NATIONALLY

The Monitoring Officer presented a guidance update on conduct complaint decisions and actions taken nationally.

The Monitoring Officer's external case review covered the following:-

Case 1 – Maldon District Councillor

- 6 complaints of bullying by the Councillor and his deliberately attempting to undermine the process had been upheld by the standards committee;
- that Councillor had then deliberately disrupted a subsequent full Council meeting which had necessitated the Police to be called and the meeting abandoned. The Councillor had shown no remorse for his actions despite the impact of his behaviour on a number of staff and Councillors; and
- that Member had subsequently been convicted earlier this year of breaching a non-molestation order in 2019. He had been given an eight month prison sentence (suspended) which had automatically disqualified him from the office of Councillor (Section 80 Local Government Act 1972). Therefore, he had lost his office due to an incident in his private life.

Case 2 – Financial Costs of Investigating Handforth Parish Council (Jackie Weaver)

- main problem was differing interpretations of Section 85 Local Government Act 1972 (disqualification of Councillor due to non-attendance at meetings);
- arguments at online parish council meeting had gone 'viral' and had attracted huge media attention which had exacerbated existing problem and had increased the number of conduct complaints;
- resulting report to Cheshire East Council's Audit & Governance Committee had had external costs of £85,000 due to threats of a Judicial Review and need for independent advice;
- other aggravating factors had included:-
 - i. three separate investigation reports involved six different councillors;
 - ii. reports had appendices in excess of 1,000 pages;
 - iii. breaches of Code had been found resulting in multiple recommendations;
 - iv. prolonged and repeated delay in the process;
 - v. Councillors had resigned;
 - vi. Monitoring Officer's offer of help had merely generated more complaints;
 - vii. allegations of financial impropriety had necessitated involvement of the Police and auditors;
 - viii. external organisations employed to carry out the investigations had had to implement protocols for the protection of their staff;
 - ix. complaints continued to be submitted;
 - x. Information Commissioner's Office was now also involved.

Case 3 – Borough Council forced to revise its Complaints Procedure

- a Borough Council had had the practice of referring all complaints (unless obviously vexatious, frivolous or politically motivated) to a Member Assessment Panel even if the Monitoring Officer was intending to take no further action;
- this had resulted in delays in the process and a detrimental impact on that Council's limited resources;
- that Council had now implemented revised arrangements; and
- lesson to be learnt was the need to ensure that robust frameworks were in place and that Councillors should be regularly informed on how the Monitoring Officer delegated powers were being exercised.

Case 4 – Breach of Code of Conduct by a Member of a Council in Wales

- Councillor in question had applied for planning permission to open a café but then proceeded to operate that café before the planning application had been determined;
- Councillor had relied on defence of “limited and confused knowledge of planning matters” despite his being a member of the Planning Committee and having undertaken the necessary training;
- Ombudsman had decided that the Councillor had brought both his office and the Council into disrepute;
- Standards Committee then proceeded to suspend the Councillor for one month for this “Serious breach”; and
- it was important to note that Wales had a different standards regime to England.

Case 5 – Deputy Monitoring Officer's Decision quashed by the High Court

- a Parish Council had accused one of its Members (Cllr R) of breaching its code of conduct (grounds were “not behaving during a meeting in a respectful way and acting in a way that could bring the Council into disrepute);
- a second complaint relating to the Chairman of that same meeting (Cllr C) was also processed;
- External solicitor had made an assessment of the two complaints and submitted their recommendations;
- the Deputy Monitoring Officer (DMO) had concluded that Cllr R had breached the Code but decided not to refer the complaint for further investigation. The DMO had further concluded that Cllr C's actions had not breached the Code;
- Cllr R had challenged the DMO's decision in Court on the following grounds:-

Ground A – the DMO had failed to make any clear findings on what Cllr R had actually said in the meeting;

Grounds B & C – the DMO had not considered Article 10 of the European Convention on Human Rights (right to freedom of expression); and

Ground D – the DMO had taken different approaches to dealing with the two complaints.

- Mrs Justice Lang had upheld the challenge in the High Court and had quashed the DMO's decision. In her judgement she had highlighted the following:-

Ground A – the DMO had failed significantly in her assessment and decision making process by not testing the inconsistencies that had been shown up in that assessment process;

Grounds B & C – the DMO’s interpretation and/or application of Article 10 of the European Convention on Human Rights (right to freedom of expression) had been flawed and she had failed to give effect to the enhanced right of political expression. Mrs Justice Lang had found:-

“In re-making the decision under Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the parish council to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of the other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful, and offensive.”

Ground D – Mrs Justice Lang had accepted that the two complaints could have had a different outcome due to their factual differences but that the DMO should have undertaken the same approach to both and that by failing to do so Cllr C had been more favourably treated than Cllr R.

The Monitoring Officer also reported that the Government, on 18 March 2022, had finally responded to the 26 recommendations made by the Committee on Standards in Public Life’s (CSPL) in its January 2019 report following its review of ethical standards in local government. She gave Members a brief precis of the Government’s response to the LGA and its Model Code and the issue of intimidation in public life and informed the Committee that she would be submitting a detailed report on this matter to its next meeting.

The Monitoring Officer also made Members aware that the CSPL would be undertaking a review of “Leadership” in looking to embed the Seven Principles of Public Life in public sector organisations.

The Committee thanked the Monitoring Officer for her presentation and duly noted the foregoing.

32. DRAFT COMMITTEE WORK PLAN FOR 2022/2023

The Committee considered the following draft Work Plan for 2022/2023:-

27th July 2022

- Review of Tendring District Council’s Code of Conduct and Local Government Association Model Code of Conduct
- Review of the Independent Person Protocol and recruitment preparations for 2023
- Regular Complaints update by Monitoring Officer

26th October 2022

- Review of the Monitoring Officer Protocol
- Case review and guidance update for the Committee on decisions and actions taken nationally
- Regular Complaints update by Monitoring Officer

1st February 2023

- Update on Mandatory Training
- Annual Report on declarations of interest (meetings, gifts and hospitality)
- Regular Complaints update by Monitoring Officer

15th March 2023

- Work Programme 2023/24
- New Member Induction Programme for 2023/24
- Regular Complaints update by Monitoring Officer

Members were aware that the above meeting dates were provisional pending ratification at the Annual Meeting of the Council on 26 April 2022 and that, in addition, individual matters might be referred to those meetings by the Monitoring Officer, in accordance with the Committee's Terms of Reference as necessary, for example, an appeal against a dispensation decision or a Code of Conduct hearing.

In response to a request made by Councillor Alexander, the Monitoring Officer (Lisa Hastings) undertook to refer the issue of whether a member of the Planning Committee should be enabled to appoint their substitute from a different political group to their own to the Review of the Constitution Portfolio Holder Working Party for its consideration.

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

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

RESOLVED that the Work Plan for the Standards Committee for 2022/2023 be approved and adopted.

33. QUARTERLY COMPLAINTS UPDATE AND OTHER GENERAL MATTERS

The Committee had before it the Monitoring Officer's quarterly schedule, which updated it on existing and new conduct complaint cases, along with other matters.

Conduct Complaints Update

TENDRING DISTRICT COUNCIL MONITORING OFFICER UPDATE APRIL 2022

Council	Complainant	Current status	Final outcome	Comments
Existing Cases from last update:				
TOWN	PUBLIC 2 x TOWN COUNCILLORS	ONGOING	Informal resolution	Matter related to claims of bullying. Informal resolution and training with an external company conducted. All Members within Town Council engaged to positive working arrangements going forward.
DISTRICT	PUBLIC	CLOSED	No further action	Matter relates to conduct in proceedings external to the Council. Inconsistent information provided by Complainant related to a separate dispute.
PARISH	PUBLIC	CLOSED	No further action	Complaint mainly related to the dissatisfaction of the Council's lack of action in a particular matter.
New Cases since last update:				
Council	Complainant	Current status	Final outcome	Comments
PARISH	PUBLIC	ONGOING	Response from Councillor identified in complaint only recently received.	Matter relates to conduct in a public meeting. Second complaint of this nature Independent Person will be consulted prior to any MO decision.
TOWN	PUBLIC	ONGOING	Response from	Matter relates to

			Councillor identified in complaint only recently received.	various areas which need to be identified more clearly. Independent Person will be consulted prior to any MO decision.
<u>General Notes – 2021/22 Summary:</u>				
<p>11 new cases had been received in 2021/22, however, 5 complaint forms had been sent relating to correspondence received for District/Parish/Town Councillors conduct but had not been returned.</p> <p>1 Town Council matter was still on-going from March 2021 but it includes all members and stakeholders as part of the process.</p> <p>1 District Councillor complaint from 2020/21 had been considered by the Standards Committee at a Hearing and a breach of the Code of Conduct had been found.</p> <p>1 District Councillor complaint had resulted in No Further Action.</p> <p>2 Parish Councillor complaints had resulted in No Further Action.</p> <p>1 Parish Councillor complaint had resulted in Informal Resolution including training.</p> <p>2 cases were pending.</p> <p>Training had been conducted at 1 Parish Council, with a recent request for training received from another Parish Council. A separate training session had been conducted for Clerks.</p>				
<u>Requests for Dispensations:</u>				
<p>6 separate requests had been received of which 5 had related to the same matter being discussed recently at several meetings. The TDC Website needed to be updated with that information.</p>				

The Committee noted the foregoing.

The meeting was declared closed at 3.28 pm

Chairman

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