

STANDARDS COMMITTEE

24 APRIL 2024

REPORT OF THE MONITORING OFFICER

A.2 MEMBERS' CODE OF CONDUCT COMPLAINTS PROCEDURE - HEARING PROCEDURE

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

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

EXECUTIVE SUMMARY

The Council approved the Standards Framework with effect from November 2013, which included a Complaints Procedure. The Complaints Procedure makes reference to the hearing in paragraph 7.1.2 and that it will follow the relevant procedures setting out how the hearing will be conducted. The purpose of the document is to ensure that all parties understand the process which will be followed at the hearing and to assist the Chairman to conduct a fair and proper hearing. When a hearing is convened, a copy of the procedures will be set out with the Report.

The current Hearing Procedure was approved by the Standards Committee in March 2014 and in consideration of the length of time since its adoption and with a Hearing pending, it is important to ensure the Council's procedures reflect best practice and are up to date.

The proposed amendments cover the expectation that the purpose of the Hearing is to consider the Investigators Report, the evidence in support and representations from the Parties. The process of the hearing is inquisitorial, and not adversarial. The purpose of the hearing is to establish the facts. Cross-examination of the Investigating Officer, the Councillor and witnesses is not permitted, all questions should be made through the Chair.

Evidence before the Committee may be given orally or by written statement. At any stage during the proceedings the Committee can request the attendance, in person or joining remotely, of any person making a written statement or any other person they consider will be able to assist them, but the Committee has no power to require the attendance of any person. Local authorities' committees are legally permitted to join third parties remotely so long as the decision makers are in person.

The Standards Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.

All Hearings will be held in public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applies, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing will be held in private. The Council's Monitoring Officer will provide the relevant advice.

The Standards Committee is required to take into account the views of an Independent Person before it makes its decision on an allegation, which has been investigated (Section 28(7) of the Localism Act 2011). These views should be given in the formal meeting, prior to the Committee retiring to deliberate, therefore small amendments are required to ensure that an Independent Person does not retire with the Committee (following best practice and supported by case-law).

Where District Councillors were required to make a decision in respect of a hearing held by the Town and Parish Sub-Committee, they will have due regard to, and take into account any views expressed by Town and Parish Councillors in reaching their decision.

RECOMMENDATION(S)

It is recommended that the Committee notes the contents of this report and approves the amended Hearing Procedure, as set out in Appendix A for immediate adoption for both the Standards Committee and the Town & Parish Councils' Standards Sub-Committee.

REASON(S) FOR THE RECOMMENDATION(S)

To ensure the Council's procedures follow best practice and case law.

ALTERNATIVE OPTIONS CONSIDERED

An alternative would be not to amend the Hearing Procedure at this time, however this option is not recommended as it is important to ensure the Council's procedures reflect best practice and case law. The last review of the Hearing Procedure was undertaken in 2014.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Hearing Procedure supplements Section 7.1.2 of the Council's Complaints Procedure for Members' Code of Conduct matters.

All Hearings will be held in Public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applies, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing will be held in Private.

The Members' Code of Conduct and hearings held by the Standards Committee to determine whether there has been a breach of the Code of Conduct supports the Financial Sustainability and Openness theme within the Corporate Plan for 2024-2028 adopted by full Council at its meeting in November 2023 (minute. No. 76).

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

LEGAL REQUIREMENTS (including legislation & constitutional powers)

The Council has formally adopted a Complaints Procedure which sets out the Council's 'arrangements' under **Section 28(6) and (7) of the Localism Act 2011 (as contained with Part 6 of the Council's Constitution)**. Tendring District Council must have in place "arrangements" under which allegations that a Member or co-opted Member of the Authority (or of a Town or Parish Council *within the authority's area*), or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.

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.

Within the Complaints Procedure, Section 7 sets out what happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

7.1.2 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.

Full Council has delegated the non-executive responsibility to approve procedures for the conduct of hearings into complaints against Members to the Standards Committee (Constitutional Reference Part 3.25).

FINANCE AND OTHER RESOURCE IMPLICATIONS

There are no finance or resource implications associated with this report.

USE OF RESOURCES AND VALUE FOR MONEY

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

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The Localism Act 2011 sets out the District Council's statutory duties for dealing with Members' Code of Conduct complaints.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Full Council has delegated the non-executive responsibility to approve procedures for the conduct of hearings into complaints against Members to the Standards Committee (Constitutional Reference Part 3.25).
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The Hearing Procedure should follow best practice, natural justice and case law ensuring that the Council's resources are used in an effective and efficient manner.

MILESTONES AND DELIVERY

If approved for adoption, the amended Hearing Procedure would come into immediate effect.

ASSOCIATED RISKS AND MITIGATION

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

OUTCOME OF CONSULTATION AND ENGAGEMENT

None undertaken.

EQUALITIES

Equality considerations are taken into account for each decision made.	
SOCIAL VALUE CONSIDERATIONS	
Social value considerations are taken into account for each decision made.	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
This is taken into account for each decision made.	
OTHER RELEVANT IMPLICATIONS	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
Crime and Disorder	Not applicable
Health Inequalities	Not applicable
Area or Ward affected	No Wards would be directly impacted by this decision.
ANY OTHER RELEVANT INFORMATION	
None	

PART 3 – SUPPORTING INFORMATION

BACKGROUND
Covered elsewhere within the report.
PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.
Minute No. 11 Standards Committee 18 th March 2014 - RESOLVED that Hearing Procedures, as set out in Appendix 1 to the report, for both the Standards Committee and the Town and Parish Councils' Standards Sub-Committee, be approved, subject to the following additional wording: That where District Councillors were required to make a decision in respect of a hearing, they have due regard to, and take into account any views expressed by Town and Parish Councillors in reaching their decision.
BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL
There are no background papers associated with this report.

APPENDICES	
Appendix A – Draft updated Hearing Procedure	
REPORT CONTACT OFFICER(S)	
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