

Public Document Pack

Standards Committee

16 May 2024

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON THURSDAY, 16TH MAY, 2024 AT 10.06 AM
IN THE COMMITTEE ROOM, AT THE TOWN HALL, STATION ROAD, CLACTON-
ON-SEA, CO15 1SE**

Present:	Councillors Wiggins (Chairman), Alexander, Baker, Land, Newton and Talbot
Also Present:	Councillors Harris (except items 15 - 20) and Turner
In Attendance:	Lisa Hastings (Assistant Director (Governance) & Monitoring Officer), Keith Simmons (Head of Democratic Services and Elections & Deputy Monitoring Officer), Ian Ford (Committee Services Manager), Karen Hayes (Executive Projects Manager (Governance)), Keith Durran (Committee Services Officer) and James Dwan (Communications Officer)
Also in Attendance:	Carol Cannon (representing Councillor Turner), Tony Cannon (representing Councillor Turner), Sue Gallone (Independent Person), David Irvine (Independent Person), Ian Taylor (representing Councillor Turner) and Jane Watts (Independent Person)

1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor Jo Henderson (with no substitute) and Councillor Ann Oxley (with Councillor Andy Baker substituting). In addition, an apology for absence was submitted on behalf of Clarissa Gosling, one of the Council's Independent Persons.

2. MINUTES OF THE LAST MEETING

It was moved by Councillor Newton, seconded by Councillor Talbot and:-

RESOLVED that the Minutes of the meeting of the Committee held on Wednesday 24 April 2024 be approved as a correct record and be signed by the Chairman.

3. DECLARATIONS OF INTEREST

Councillor Baker declared for the public record that he had had, in general terms only, a conversation with Councillor Turner about the Investigation into Councillor Turner's alleged misconduct. This conversation had been several months ago. He confirmed that he did not consider himself pre-determined and that therefore he would remain in the meeting and take part in the Hearing.

Councillor Alexander declared for the public record that he was personally acquainted with Mr and Mrs Cannon (advocates for Councillor Turner) through shared political affiliations solely. He confirmed that he did not consider himself pre-determined and that therefore he would remain in the meeting and take part in the Hearing.

Councillors Alexander, Baker, Land, Talbot and Wiggins were all acquainted with Ian Taylor (an advocate for Councillor Turner) through his previous employment as an Officer with Tendring District Council. None of those Members considered themselves

pre-determined and they therefore remained in the meeting and took part in the Hearing.

4. 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.

5. REPORT OF THE MONITORING OFFICER - A.1 - REPORT OUTCOME OF MEMBERS' CODE OF CONDUCT INVESTIGATION

It was reported that a complaint had been received in August 2023 from Councillor Ernest Gibson ("the Complainant"), an elected Member of South Tyneside Council and the Chairman of the Local Government Association's Coastal Special Interest Group, regarding the alleged behaviour of District Councillor Nick Turner under this District Council's Members' Code of Conduct. That Code of Conduct was attached as Appendix A to the Monitoring Officer's report (A.1).

Members were aware that the Local Government Association ("LGA") was the national membership organisation for Principal Councils. In view of the diversity of Councils in membership of the LGA, it had a number of Special Interest Groups ("SIG"). Through those SIGs, all Councils with common characteristics could form groupings to express a sectional interest. The LGA website indicated that it had 21 SIGs at present. The LGA expected SIGs to have at least 10 Councils in membership. SIGs were able to speak for their interests as part of the LGA provided their policies or statements did not conflict with, or undermine, LGA policy as a whole, or damage the interests of other member authorities. SIGs were able to make representations direct to Government and elsewhere on matters arising directly from their special interest, and to obtain LGA assistance in doing so. The LGA Coastal SIG existed to champion the collective interests of coastal communities by increasing awareness and debate on environmental, economic and social issues at all levels in relation to the coast. It had a membership of 57 coastal local authorities. Together it covered 60% of England's coastline and served 16 million people.

The Committee was informed that the aforementioned Complaint had been submitted on 16th August 2023 and referred to the alleged behaviour of Councillor Turner at two virtual meetings of the SIG held on 5th June and 29th June 2023, in that Councillor Turner had contravened this Council's Members' Code of Conduct. Councillor Turner was the sole attendee at those meetings from Tendring District Council.

Members were reminded that complaints received relating to the Code of Conduct must be dealt with in accordance with the Council's formally adopted Complaints Procedure, as set out in Part 6 of the Council's Constitution (Part 6.19 to 6.34). The Complaints Procedure was attached as Appendix B to the Monitoring Officer's report (A.1), which had been adopted by full Council on 26th November 2013.

Pending completion of an Investigation of the complaint, the Committee was informed that the then Leader of the Conservative Group, Councillor G Guglielmi, had suspended Councillor Turner from the Conservative Group and had removed him from Committees whilst the investigation took place. The Leader of the Council had done the same with regard to outside bodies. Since that time, Councillor Turner had left the Conservative

Political Group on the Council and had sat as a non-aligned Councillor (i.e. not within a Political Group).

The Committee was made aware that, on 25th August 2023, the Monitoring Officer had decided that it was reasonable and appropriate that the Complaint merited further investigation. The parties had been informed of this decision and that an external investigator would be appointed. Section 5 of the Council's Complaints Procedure set out how an investigation should be conducted and under Section 5.6 that the Investigation Report must contain a conclusion as to whether the evidence supported a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure set out the Investigation Procedure.

It was reported that, Mr Melvin Kenyon, of Kenyon Brabrook Ltd, had been appointed by the Monitoring Officer as the external investigator for this complaint. Following a thorough investigation, Mr Kenyon had concluded that there was sufficient evidence to show that Councillor Turner, based on a balance of probabilities and the evidence available, had breached Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Council's Code of Conduct. This conclusion was set out in Mr Kenyon's Investigation Report.

Members were advised that all parties had had the opportunity to comment on the Investigation Report and the findings contained therein. The report had been finalised on 10th January 2024.

The Committee was reminded that, if an investigation concluded that there was evidence of a failure to comply with the Code of Conduct, then the Council's Complaints Procedure at Section 7.1 provided the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, where it could reasonably be resolved without the need for a hearing by the Standards Committee.

Although the procedure did not require consultation with an Independent Person if the Monitoring Officer considered that informal resolution was not an appropriate course of action, and that the matter should therefore be referred for a hearing before the Standards Committee, it had been considered that seeking their view on this occasion was beneficial prior to making the decision. The Monitoring Officer had noted that Councillor Turner had offer an apology at the outset, when the complaint had been initially received however, the Monitoring Officer's thoughts had been captured in the Decision Notice dated 25th August 2023, being as follows:-

"Whilst it is acknowledged that Councillor Turner has resigned from the LGA's Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Cllr Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated."

Having read the Investigation Report, the Monitoring Officer had noted that Councillor Turner had offered a further apology for offence caused by his actions, which he had described as unintended and unconscious on his part. However, the Monitoring Officer had not consider these as being appropriate or proportionate and she had therefore determined to refer the matter to the Standards Committee for a hearing to be undertaken by Members.

Hearing & Decision:

In summary, the Standards Committee conducted a hearing under the Council's adopted Hearing Procedure before deciding whether the Member had failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

In accordance with paragraph 7.1.2 of the Council's Complaints Procedure the Investigator's Report had been kept confidential, until the day of the hearing in order to protect the parties.

Procedures relating to the hearing were set out within the body of the Monitoring Officer's report (A.1) and attached as Appendix C thereto. All Hearings would be held in public unless the relevant paragraph of Schedule 12A of the Local Government Act 1972 applied, however the public interest test must be considered and therefore it would only be in exceptional circumstances that the hearing would be held in private.

With regard to the exclusion of the press and public from this Hearing, the Council's Monitoring Officer's advice was as follows:-

“Acting in accordance with paragraph 7.1.2 of the Council's Complaints Procedure the Investigator's Report will only be kept confidential and remain in Part B, until the day of the Hearing to protect the parties. The Committee is required to decide whether to pass a resolution “under Section 100A(4) of the Local Government Act 1972, for the press and public to be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act”. In making the decision, the Committee will give consideration to, whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article (as set out in Part 5 of the Council's Constitution - Access to Information Procedure Rules Part 5.4 to 5.6). Consequently, it is recommended that the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator's Report in Public.”

It was also pointed out that, should the Standards Committee determine that the Member had failed to comply with the Code of Conduct they had the power to take action in respect of that Member as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. The actions available to the Standards Committee were set out in Paragraph 8.1 of the Complaints Procedure.

The Monitoring Officer also presented an update which had been prepared and circulated following publication of the public documentation pack:for this meeting as follows:-

“AGENDA Item No. 5 – REPORT OF THE MONITORING OFFICER - A.1 – Report Outcome of Members' Code of Conduct Investigation (Pages 17-172)

Standards Committee Hearing training – page 24

PART 4 - COUNCIL PROCEDURE RULES:

33.3 Training Members of the Audit, Human Resources and Council Tax, Licensing and Registration, Overview and Scrutiny, Planning and Standards Committees

In addition to specific training required as and when necessary, training shall be provided to all Members appointed to the ... Standards Committees on an annual basis at an appropriate date and time after each annual meeting of the Council and such training shall be mandatory. The Monitoring Officer ... decides whether the training offered/provided is/was sufficient and "fit for purpose".

A Member cannot sit as a member of the Standards Committee unless they have received specific training with regard to the Hearings Procedure and participation in Hearings.

All District Councillors Attended the Mandatory Code of Conduct Training delivered by the Monitoring Officer in June/July 2023.

Specific Standards Committee Hearing training was conducted on 17 January 2024 by Hoey Ainscough Associates Ltd, an external local governance support resource for all tiers of Local Government. The training was conducted for Standards Committee Members, Independent Persons and Officers. A recording of the training session was made, and those Members and Independent Persons who were unable to attend the training session, have viewed the full recording and confirmed this in writing.

All Members of this Standards Committee, including named Substitute Members and Independent Persons, have completed the training.

The Monitoring Officer's advice with regards to the Exclusion of the Press and Public – page 30

Confirmation that the advice as set out on page 30 of the Agenda pack applies to the additional information and updates which have been circulated to Standards Committee Members and the Subject Member, Councillor Turner on blue pages and currently held in Part B.

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights, as the outcome of any hearing will not impact upon the rights of a councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice. A hearing is like any other committee of the Council. The rules around access to information also apply as they do to other committees – in that the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

The Guidance on Member Model Code of conduct Complaints Handling published by the LGA, states under its hearing section, "the panel (referring to the Committee) should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that Members of the public, and Councillors have confidence in its procedures and findings. Decisions should be seen as open, unprejudiced and unbiased".

Councillor Turner was asked whether he wished to request any part of the hearing to be held in private, and wants any part of the investigation report to be withheld. He

confirmed he wished the Investigators Report to be retained within Part B and therefore, Councillor Turner should be able to make representations on this point to the Committee before consideration of exclusion of the press and public.”

It was moved by Councillor Baker, seconded by Councillor Alexander and:-

RESOLVED that the Standards Committee:-

- (a) notes the contents of the report (A.1) in readiness for deciding whether to exclude the press and public before a Hearing is undertaken; and
- (b) notes the Monitoring Officer’s advice in respect of the exclusion of the Press and Public, as contained within the aforementioned report.

6. EXCLUSION OF PRESS AND PUBLIC

Members were requested to consider passing the following resolution:-

“That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act.”

The Committee, earlier on in the meeting (under Minute 5 above) had duly noted the Monitoring Officer’s Advice (as set out in her A.1 Report) namely: *“That the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator’s Report in Public.”*

Ian Taylor, acting on behalf of Councillor Turner, made the following representation:-

“Councillor Turner has asked that this Hearing be conducted in Part B on the grounds that he’s already suffered quite considerably as a result of these allegations being made and the subsequent investigation. He’s lost his attendance at Committee, he’s had his Party whip withdrawn from and he’s already had his role as a Councillor severely reduced on the back of this allegations. I think that he would prefer just to trust to this Committee in its open and independent hearing to make a decision before we release any press release or any statements to the public. He thinks that’s fair, we think that’s fair and that’s the way we’d like to proceed.”

The Head of Democratic Services and Elections (Keith Simmons) referred to paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Local Government Act 1972 and asked Mr. Taylor if he had any specific representations to make as to the applicability of those paragraphs.

Mr. Taylor responded as follows:-

“The information that we’d like withheld from the public at the moment is the allegation that Councillor Turner is a racist which comes out in many of the statements involved in this. We think that is a matter, which should stay private until it has proven to be true.”

The Chairman (Councillor Wiggins) adjourned the meeting at this time whilst the Committee retired to deliberate this matter. The Head of Democratic Services and

Elections and the Executive Projects Manager – Governance (Karen Hayes) retired with the Committee to support the Committee Members in those deliberations.

Following the resumption of the meeting, the Chairman read out the following statement:-

“The Committee has considered the resolution set out in the Agenda at item 6 namely:-

‘That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act.’

Whether to exempt material and consideration of a matter under the exempt provisions referred to is a discretion for local authorities. It is not a requirement. In considering the resolution in the agenda the Committee has been made aware that paragraph 1 of Schedule 12A concerns information relating to any individual. Here exempt information is in this category if, and so long, as all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. By way of example – names, addresses, telephone numbers can identify individuals. When considering any information relating to an individual the Committee will also consider the Council’s Data Protection Act responsibilities. And paragraph 5 of the same schedule concerns information in respect of which a legal or a claim to legal professional privilege could be maintained in legal proceedings. Here exempt information falls in the category if, and for so long, in the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Privilege lies with the client, which broadly is the Council. The Monitoring Officer’s advice as set out in the A1 report:-

‘Acting in accordance with paragraph 7.1.2 of the Council’s Complaints Procedure the Investigator’s Report will only be kept confidential and remain in Part B, until the day of the Hearing to protect the parties. The Committee is required to decide whether to pass a resolution “under Section 100A(4) of the Local Government Act 1972, for the press and public to be excluded from the remainder of the meeting on the grounds that the conduct of the Hearing will involve the likely disclosure of exempt information as defined in Paragraphs 1 and 5 of Part 1 of Schedule 12A, as amended, of the Act”. In making the decision, the Committee will give consideration to whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article (as set out in Part 5 of the Council’s Constitution - Access to Information Procedure Rules Part 5.4 to 5.6). Consequently, it is recommended that the exclusion of the press and public resolution is not passed, to enable the hearing to proceed with the Investigator’s Report in Public.’

From the update sheet:-

‘Confirmation that the advice as set out on page 30 of the Agenda pack applies to the additional information and updates which have been circulated to Standards Committee Members and the Subject Member, Councillor Turner on blue pages and currently held in Part B.

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights, as the outcome of any hearing will not impact upon the rights of a councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice. A hearing is like any other committee of the Council. The rules around access to information also apply as they do to other committees – in that the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

The decisions should be seen as open, unprejudiced and unbiased.'

Councillor Turner was asked whether he wished to request any part of the hearing to be held in private, and wants any part of the investigation report to be withheld. He confirmed he wished the Investigator's Report to be retained within Part B and therefore, the Committee received representations on behalf of the Subject Member (Councillor Turner).

Having considered all relevant matters the Committee concluded that the public interest in the disclosure of the information around the individuals referenced in the report at item 7 on the Agenda and the information in which a claim to legal professional privilege in the same report outweighed the public interest in withholding that disclosure. As such, the Committee does not approve the resolution at Agenda item 6. As a consequence of this the report at item 7 shall be placed in the public domain to facilitate the physical placing of the report in the public gallery and the access to the same via the Council's website. The Committee shall adjourn for up to 15 minutes and then continue with consideration of that report and the remaining items on the agenda associated with this hearing."

It was then moved by Councillor Baker, seconded by Councillor Newton and:-

RESOLVED that the exclusion of the press and public resolution be not passed, in order to enable the meeting to now proceed with the Investigator's report and the rest of the Agenda items heard in public.

The Chairman then adjourned the meeting to enable the Investigator's report and other related documents to be placed in the public domain through the physical placing of the report et cetera in the public gallery and the access to the same via the Council's website.

Upon the resumption of the meeting and upon being asked by the Chairman, the Committee Services Manager (Ian Ford) confirmed that the Investigator's report and other related documents had been placed in the public domain through the physical placing of the report et cetera in the public gallery and that it had been made accessible to the same via the Council's website.

7. REPORT OF THE MONITORING OFFICER - B.1 - INVESTIGATOR'S REPORT & FINDINGS

The Committee was aware that Mr. Melvin Kenyon, of Kenyon Brabrook Ltd, had been appointed as the external investigator into the complaint against Councillor Nick Turner. The complaint and the Monitoring Officer's Decision Notice had been used to define the scope of the investigation (as set out in Section 5 of the Investigation Report).

Councillor Turner's initial response to the Complaint was included at section 5.2 of the Investigation Report.

Following a thorough investigation (the approach and formal interview methodology was set out in Section 6 of the Investigation Report) it had been concluded that there was sufficient evidence to show that Councillor Turner, based on a balance of probabilities and the evidence available, had breached Paragraphs 1.1, 1.2, 2.3 and 5.1 of the Council's Code of Conduct.

Both parties had had the opportunity to comment on the draft Investigation Report and the findings contained therein. Through consideration of the draft report, Councillor Turner had not indicated that he disputed the contents, the evidence presented or that he would wish to make further representations to those included within his interview. Councillor Turner's response was set out in Section 6.3 of the Investigation Report. The Investigation Report had been finalised on 10th January 2024 and had been formally sent to Councillor Turner on 23rd February 2024.

If an investigation concluded that there was evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 7.1 provided the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, where it could reasonably be resolved without the need for a hearing by the Standards Committee.

Although the procedure did not require consultation with an Independent Person if the Monitoring Officer considered that informal resolution was not an appropriate course of action, and that the matter should be referred for a hearing before the Standards Committee, it had been considered, by the Monitoring Officer that, on this occasion, seeking their view would be beneficial, prior to making the decision. That communication and its response had been as follows:-

From Lisa Hastings, Monitoring Officer to Independent Person (Jane Watts) via email on 25th January 2024:

"Dear Jane,

Further to Karen's email and to progress to the next stage of the process, in respect of the complaint against Cllr Turner, I am required to decide either to refer the matter for a hearing before the Standards Committee or in consultation with one of the Independent Persons seek an informal resolution or mediation. I have included the relevant extracts from the procedure for ease of reference

Although the procedure does not require me to consult an Independent Person if I consider that informal resolution is not an appropriate course of action, and that the matter should be referred for a hearing before the Standards Committee, I feel seeking your views would be beneficial.

Councillor Turner offered an apology at the outset, when the complaint was received, however, at the time I considered this to be an apology which did not demonstrate being sorry for the alleged conduct, it appeared more about that others were offended by his actions and a lack of the impact of those behaviours. Throughout the investigation, Councillor Turner has offered further apologies and these are captured within the Investigator's Report however, again, I do not consider these to be sufficient to recognise the seriousness and scale of the complaint, the national platform on which the behaviours were witnessed, the number of agencies involved and the potential damage

to Tendring District Council. There is no acceptance of the Code of Conduct, breaches thereof, even having seen the final report and an apology has not been given to TDC. Therefore, in the circumstances, I feel that it is not appropriate to seek a further apology but to refer the matter to the Standards Committee for a hearing to be undertaken by Members.”

Reply from Independent Person (Jane Watts) to Monitoring Officer via email on 25th January 2024.

“Dear Lisa,

Having read the investigator's report, I am in complete agreement with you - I don't think either mediation or an informal resolution is appropriate in this case.

I don't think Councillor Turner believes that his conduct needs to change; he seems to think that others are too sensitive if they find him disrespectful, overbearing or are offended by what he says.

*Kind regards,
Jane”*

Councillor Turner and the Complainant had been subsequently notified that the Monitoring Officer had exercised her discretion to refer the matter to the Standards Committee so that the Investigation Report could be considered by Members through the hearing process. Upon receipt of the notification that a Hearing was required and of a copy of the Hearing Procedures, Councillor Turner had requested the Investigator to call witnesses in support of his report. This had not been considered necessary, however, witness statements had been provided for the following witnesses and those statements were attached as Annexes 1-9 to the Monitoring Officer's report (B.1) i.e.

- *Annex 1 – witness statement of Cllr Ernest Gibson, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor*
- *Annex 2 – witness statement of Sidonie Kenward, Marine and Terrestrial Planner at the Marine Management Organisation*
- *Annex 3 – witness statement of Beccy MacDonald-Lofts, Lead Officer the LGA Coastal Special Interest Group*
- *Annex 4 – witness statement of Ross MacLeod, Public Affairs Manager (Water Safety), RNLI*
- *Annex 5 – witness statement of Rhys Hobbs, Environmental Resilience and Adaptation Manager, Cornwall Council*
- *Annex 6 – witness statement of Cllr Derek Bastiman, Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor*
- *Annex 7 – witness statement of Alysha Stockman, Partnerships Engagement Support Officer at East Suffolk Council*
- *Annex 8 – witness statement of Cllr Noel Galer, Great Yarmouth Councillor*
- *Annex 9 – witness statement of Nick Hardiman, Expert Adviser – Coast National FCRM at the Environment Agency*

Councillor Turner had then requested that the following witnesses be called, on his behalf, so that his team could question them at the hearing. Requests had been duly sent, however, all of them who had responded had declined to attend, wishing to rely on their written statements only. Beccy Macdonald-Lofts however, had agreed to answer

any written questions from Councillor Turner, the Chairman of the Committee or the Committee itself. Councillor Turner had been provided with that information.

WITNESS	ORGANISATION	RESPONSE
Sidonie Kenward	Senior Marine Planner, Marine Management Organisation	Thank you for the opportunity to attend however I politely decline. My detailed statement covers everything.
Ross MacLeod	Public Affairs Manager (Water Safety), RNLI	Thanks for the email and apologies for the delay. After careful consideration I've decided to politely decline Cllr Turner's request to attend the hearing as I don't have anything further to add to the information already provided.
Beccy MacDonald-Lofts	Lead Officer, Local Government Association Coastal Special Interest Group Co-Secretariat All Party Parliamentary Group for Coastal Communities	Unfortunately, I will be away attending a conference in Blackpool on that day and so it is looking very unlikely that I will be able to attend. However, if Cllr Turner, the Chair or Committee have any questions for me please do feel free to send them over and I will send you a written response.
Councillor Gibson	South Tyneside Council	No response received
Councillor Bastiman	Conservative member of North Yorkshire Council	No response received
Councillor Noel Galer	Great Yarmouth Councillor	No response received
Nick Hardiman	Expert Adviser – Coast National FCRM at the Environment Agency	No response received
Rhys Hobbs	Environmental Resilience and Adaptation Manager, Cornwall Council	No response received

The Committee was advised that the Investigation report should be treated as an explanation of all the essential elements of the case and a justification for why the Investigation had concluded that there had been a breach of the Code of Conduct or not. The report should cover the agreed facts, any disputed facts, whether those facts amounted to a breach of the Code or not; and the reasons for reaching that conclusion. In many cases, the Committee might not need to consider any evidence other than the Investigation Report and any other supporting documents. However, the Committee might need to hear from witnesses if more evidence was needed, or if people did not agree with certain findings of fact in the report.

The Standards Committee must also determine whether, having considered the report and the evidence presented, Councillor Turner was acting 'in capacity', despite the Council having no formal record of him being appointed to the LGA Coastal SIG as an Outside Body on behalf of Tendring District Council.

Should the Standards Committee, following consultation with the Independent Person determine, on a balance of probabilities that Councillor Turner had failed to comply with the Members' Code of Conduct, they had the power to take action as may be relevant, proportionate, and necessary to promote and maintain high standards of conduct. The actions available to the Standards Committee were set out in Paragraph 8.1 of the Complaints Procedure, which had been included within the A1 Report.

The Monitoring Officer's report (B.1) also provided the Committee with information and advice in relation to the following pertinent matters:-

- Members' Code of Conduct and specifically paragraphs 1.1, 1.2, 2.3 and 5.1;
- the key principles of any investigation: proportionality; fairness; transparency; and impartiality;
- Human Rights Act 1998 (Section 6);
- Article 10(1) of the European Convention on Human Rights including the pertinent judgement of Hickinbottom J in *Heesom v Public Services Ombudsman for Wales*;
- Guidance on the LGA Model Councillor Code of Conduct (2021) especially in relation to respect, discrimination and disrepute; and
- LGA Guidance on Member Model Code Complaints Handling (2021) and specifically the presentation of evidence.

An update sheet had been circulated to all parties prior to the commencement of the meeting, which stated:-

"AGENDA Item No. 7 – REPORT OF THE MONITORING OFFICER - B.1 – Report Outcome of Members' Code of Conduct Investigation (Pages 5-122)

Two packs of additional material has been sent to Members of the Standards Committee, Independent Persons and the Subject Member, Cllr Turner.

(i) Additional Private Documentation Pack containing the recorded text of Cllr Turner's interview with the Investigator (Melvin Kenyon) (page 5-11)

Cllr Turner's defence submission (page 13-27)

(ii) Response of Beccy MacDonald-Lofts to questions posed to her, through the Chair of the Standards Committee, by Cllr Turner

The following are verbal updates from the Monitoring Officer, which will be delivered during the above meeting of the Standards Committee:

(iii) The following clarification question was received from Cllr Newton on 12 May 24, which is detailed as follows:

'I just wanted to point out that on page 26 on the public agenda under the heading Councillor's Response, 4th line down reads "he obviously didn't understand the modern mind" Yet in the Part B page 39 5.2 Subject Member Response 8th line down it reads " I truly do understand the modern mind" which of these statements are correct? Is this an oversight?'

The Monitoring Officer has supplied the following response:

'Thank you for your email and being so thorough with your reading. You are correct in that the extract from Cllr Turner's response on 18th August 2023 (page 39 on Blue Pages states "I truly do understand the modern mind". My summary in the Part A report comes from the words he used in the interview with the Investigator, which was as follows:

"As I said in my email, "I am shocked at how what I said can be so misconstrued" and "I truly do not understand the modern mind". I stand by what I wrote in that email – I have read it back several times to myself – it was an instant response and I thought that was what was required. I don't comprehend this, I find it appalling, it shuts down conversation."

Therefore, the email from Cllr Turner on 18th August did miss out the word 'not' but he used 'not' in his interview, which is confirmed in the statement I have just circulated to the Committee. Thank you for highlighting this and we will make reference to this in the update sheet.'

(iv) Legal Requirements - Hearing Procedures - page 10 of the Part B report

Councillor Turner was provided (on 7th May 2024) with the revised Hearing Procedures approved by the Standards Committee on 24th April 2024 and he was requested to confirm the following information in writing:

1. Whether he would wish to be represented at the hearing and if so, by whom;

Response: I will have 3 representatives and awaiting confirmation as I type.

Note: No further information has been provided.

2. Whether he disagreed with any of the findings of fact in the investigation report, including reasons for any of these disagreements;

Response: We consider there are few, if any findings of fact within the report. The concerns revolve around omissions in the report and where the witnesses have made statements without any backing evidence.

Note: no matters of dispute were provided at the draft report stage.

3. *Whether he would wish to give evidence to the hearing, either verbally or in writing;*

Response: Yes, I have attached my written defence submission for circulation to the committee in good time for the meeting.

Note: previously circulated to the Members of the Committee on Friday 10th May

4. *Whether he would wish to call relevant witnesses to give evidence to the Standards Committee;*

Response: We have requested that witnesses attend so that we can establish the robustness of their evidence, but they have all declined including it would appear the complainant who, as yet, has not responded, making the procedure inherently unfair to myself under 'Natural Justice. I have attached a list of questions for Ms McDonald-Lofts to answer in writing as offered.

Note: questions and responses circulated to all parties.

5. *Whether he would request any part of the hearing to be held in private;*

Response: Exclusion of Press and Public - in private

Note: no reasons provided

6. *Whether he would request any part of the investigation report or other relevant documents to be withheld from the public.*

Response: To be withheld

(v) *The Human Rights Act 1988 - Article 10, Freedom of Expression - page 10 of the Part B report Standards Committee members requested the complete wording for Article 10 to be provided:*

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The three stage process set out on page 10 of the Part B report, used by Wilkie J in Sanders No. (1) (at [72], and by Beatson J in Calver (at [39]) was also referenced in Robinson, R (On the Application Of) v Buckinghamshire Council, <https://www.bailii.org/ew/cases/EWHC/Admin/2021/2014.html> when considering domestic authorities on the application of Article 10 ECHR to decisions of standards bodies under the previous statutory scheme.

The principal basis of the challenge was that the decision was in breach of section 6 of the Human Rights Act 1998, as it violated Cllr Robinson's right to freedom of expression under Article 10 of the European Convention on Human Rights. In the High Court, Mrs Justice Lang concluded that the claim should succeed.

Paragraph 74:

The Deputy Monitoring Officer [who was the decision maker in this case] failed to refer to the statements made by the Claimant and given the importance that was placed upon his statements, for the purposes of the Code and Article 10, it was considered a significant failing in the assessment and decision-making process. It was not possible to say what a difference it would have made to the outcome if this exercise had been properly undertaken.

Paragraph 94:

"In conclusion, I find the DMO's interpretation and/or application of Article 10 flawed, and she failed to give effect to the Claimant's enhanced right of political expression. 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 PC 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 other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful and offensive".

It is therefore important that in reaching its decision the Standards Committee record their findings and undertake the required assessments by following the three stage process as set out in the Wilkie J (where it was concluded, following applying Article 10(2) to the facts of the case, the Appellant's words were no more than expressions of personal anger and abuse and did not constitute political expression, which attracted a higher level of protection under Article 10).

In proceeding with their Hearing the Committee was requested to bear in mind the following:-

"that the Standards Committee in undertaking a Hearing in accordance with the Council's Hearing Procedures, as set out in Appendix C to report A1:-

- (a) determines, on a balance of probabilities, whether Councillor Nick Turner was acting 'in capacity' at the meetings of the Local Government Association Coastal Special Interest Group on 5th and 29th June 2024 and if so;
- (b) whether, on a balance of probabilities, he failed to comply with Paragraphs 1.1, 1.2, 2.3 and/or 5.1 of the District Council's Members' Code of Conduct (with detailed reasons to be provided to support that determination);
- (c) subject to (b), determine what action, if any, the Committee should take as a result of any such found failure, following consultation with an Independent Person; and
- (d) considers any further recommendations arising through the Hearing Procedure."

The Committee noted the foregoing.

8. OPENING OF THE HEARING

The Chairman explained that:-

- (1) the hearing had been convened in accordance with the Council's Complaints Procedure and that an investigation had been conducted, the outcome of which was that it was considered there was evidence of a failure to comply with the Members' Code of Conduct;
- (2) the Parties had been made aware of the content of the Investigator's Report and that this had been circulated to Members of the Committee;
- (3) the Monitoring Officer had referred the matter for a hearing because upon conclusion of the investigation, informal resolution had not been considered appropriate, for the reasons given within the Committee Reports; and
- (4) the purpose of the Hearing was to consider the Investigator's Report, the evidence in support and representations from the Parties. If the Committee departed from the recommendation from the Investigating Officer and/or Monitoring Officer detailed reasons would be required and which would be published in the Decision Notice.

The Chairman then asked all persons present to introduce themselves, which they duly did. In the course of these introductions, it was noted that the Independent Persons present had the following roles:

Sue Gallone (Independent Person) – allocated to support the Committee

David Irvine (Independent Person) – allocated to provide support to Councillor Turner

Jane Watts (Independent Person) – allocated to support the Monitoring Officer.

9. HEARING THE COMPLAINT - PRESENTATION OF THE INVESTIGATOR'S REPORT

The Investigating Officer then had the opportunity to present their report, which would include:-

- (i) any documentary evidence or other material;
- (ii) the calling of such witnesses as they considered necessary; and
- (iii) the making of representations to substantiate the conclusion that the Councillor had failed to comply with the Code of Conduct.

That report and documentary evidence had to be based on the complaint made to the Council i.e. no new points were allowed.

The Investigator (Melvin Kenyon) reported that, on 16th August 2023, Cllr Ernest Gibson had submitted a Standards Complaint to Tendring District Council using the Council's Complaint Form. The salient parts of the text read as follows:-

"I am the Chair of the Local Government Association Coastal Special Interest Group ("the Group"). It is in that capacity that I make this complaint, as it concerns the behaviour of Cllr Turner at the quarterly meeting of the Group which took place on 29th June 2023, and at a joint meeting which the Group had with the Environment Agency concerning the SMP [MK: Shoreline Management Plan] Explorer tool, on 5th June 2023. The meetings took place remotely, via the Zoom and Teams platforms. I am in no doubt that the Members' Code of Conduct adopted by Tendring District Council applied to Cllr Turner at the material times, in view of the fact that he was attending the meetings in his capacity as a Councillor. I have set out the details of Cllr Turner's behaviour at each of the above meetings below

1. LGA Coastal SIG/Environment Agency SMP Explorer Feedback Session

This session was kindly held by the Environment Agency to afford elected members of the group an opportunity to discuss and provide feedback about the upcoming Shoreline Management Plan Explorer tool which is being developed in consultation with the Secretariat. At the session, Cllr Turner embarked upon a wholly inappropriate and disrespectful verbal attack upon Mr Nick Hardiman of the Environment Agency, in the context of setting out his negative views of Shoreline Management Plans and how he feels that his council will not be adopting the guidance provided (based on climate change modelling) in relation to future planning as it does not fit with the council's plans. Whatever his views of the tool, the personalisation of these views, directed as they were towards Mr Hardiman was not only highly disrespectful, but frankly shocking to those who witnessed it.

To compound matters, when Lead Officer Beccy MacDonald-Lofts attempted to politely steer the discussion back to the task at hand - that is - to allow all present to provide their feedback on the tool, Cllr Turner directed his aggression and disrespect towards her stating that he felt the work of the Secretariat was not good enough. Another Councillor attending the session commented in the chat, "I think it was brief comments Cllr Turner and this is a training session." Cllr Turner's behaviour was not only obstructive in terms of delaying the progress of this session, but was also highly damaging to his reputation, the reputation of the Council of which he was acting as a representative, and the Group itself.

2. LGA Coastal SIG June Quarterly Meeting

Following a presentation to the Group by Mr Ross MacLeod of the RNLI, Cllr Turner proceeded to launch a verbal attack on Mr MacLeod and the RNLI in general, stating that he was not happy with the RNLI for many reasons but mostly due to the loss of an RNLI station, a matter which was highly inappropriate to raise in the manner it was, and at that particular time. Whilst I accept that members' strength of feelings about certain matters can at times make it difficult to maintain the leadership standards as set out in the Nolan Principles, Cllr Turner continued to speak over both Mr MacLeod and myself when we made a number of attempts to speak. Cllr Turner's constant interruptions and overbearing manner was not only highly disrespectful to our colleague from the RNLI, but to me as Chair of the group. The Group is lucky to have senior officers from a variety of service providers in attendance at its meetings, and I have serious concerns that the conduct of Cllr Turner will jeopardise their willingness to attend in the future. Our ability to exert influence in Westminster will consequently be at risk of being prejudiced.

3. LGA Coastal SIG June Quarterly Meeting

At the above meeting, Cllr Turner also considered it appropriate to make the comment "don't get me started on the Germans." It was not clear to me whether Cllr Turner intended this comment to be a joke, but whatever his intention, it was wholly inappropriate given that it grouped everyone of a particular nationality together in what was undoubtedly a negative remark. The comment was indicative of a discriminatory view held by Cllr Turner which flies in the face of paragraph 2.3 of the Code of Conduct.

4. LGA Coastal SIG June Quarterly Meeting

During the same meeting, Cllr Turner made comments in response to Mr MacLeod from the RNLI which were as shocking as they were offensive. Cllr Turner asserted that people of Afro-Caribbean descent are unable to float, a misconception which Mr MacLeod attempted to respond to, and respectfully correct. However, before Mr MacLeod was able to finish his response, Cllr Turner spoke over him clarifying what he meant by the comment by pointing out that it is not that people of Afro-Caribbean descent can't float, but that in his experience they won't float. The implication was that members of the community were unable or unwilling to learn how to float. They were as distasteful as they were untrue. The comments were made in the context of his experience of why people had sadly lost their lives within his council district and whilst discussing the work which the RNLI had been doing in promoting World Drowning Prevention Day and engaging with groups which are often hard to reach. The comments made by Cllr Turner were simply unacceptable in that context or indeed in any circumstances.

Cllr Turner continued to make deeply racist remarks about people of Afro-Caribbean descent, before making comments about the clothing that people of certain specific faiths wear when in the sea, indicating that in his view the clothing was inappropriate. Cllr Turner's comments, together with the overbearing way in which he made them, speaking over others who were trying to reply to them, left those in attendance in no doubt about his attitudes towards those of different ethnicity or belief. Cllr Turner's comments were highly offensive, and had they been made by an officer of a local authority, I would expect them to face the most serious disciplinary sanctions. I do not believe that by virtue of his status as an elected member, Cllr Turner should be able to avoid being held to account for his actions.

General

As mentioned above, Cllr Turner's behaviour was witnessed by all present at each of the above meetings. I am aware that three complaints have already been made to me about the behaviour

and I attach hereto, copies of the communications I have received from the Marine Management Organisation, the RNLI, and Beccy MacDonald-Lofts. Should I receive further complaints concerning Cllr Turner's behaviour I will pass them on to you. I doubt very much that Cllr Turner will deny making the comments which are the basis of my complaint, he appeared comfortable in making them to the large audiences which he had at the material times. However should you require any corroboration of any of the elements of my complaint I can provide you with the list of attendees at each meeting.

I consider that the matters I have seen fit to raise with you are far from trivial, and that is in the public interest for such behaviour to be called out - indeed the Nolan principles contain an expectation that poor behaviour will be challenged. I would respectfully suggest that the behaviour about which I am concerned goes way beyond being simply "poor". Cllr Turner's comments would strongly indicate that his view of your Council's motto is that the Council works "For the Good of All" so long as you are not German, of Afro-Caribbean descent or of a different faith. I am sure that is not what the members and officers of your Council believe

.... Finally, the Group's AGM is scheduled to take place in Skegness in September 2023. I do not anticipate that this complaint will have been concluded by the time of the AGM. Whilst the complaint remains "live", given that it is submitted by me and supported

by a number of those who were in attendance at the quarterly meeting in June and who will be present in September, I do not consider that it is appropriate for Cllr Turner to attend. In the circumstances I would be receptive to Tendring DC appointing a substitute member to attend in Cllr Turner's place."

On 18th August 2023, Cllr Turner had written to Lisa Hastings, the Council's Monitoring Officer, by email in response to the Complaint as follows:-

"Good Afternoon Mrs Hastings,

I was of the opinion that the complaint against was as I have stated. I was completely unaware of this complaint from the LGA Coastal SiG. I resign from LGA Coastal Communities SiG as of now. I am also shocked at how what I said can be so misconstrued. I truly do understand the modern mind. I have always found the truth to be the best way forward and that sometimes needs pressure to emerge with overview and scrutiny.

As to the comments:

The SMP:

As of 2055 the seawall from Frinton to Holland Haven is hold the line or managed retreat. This means that the EA may allow Frinton Golf and Tennis Club to be flooded. Also the gardens and more than likely the houses 3,5,7,9,15,17 Second Avenue. There was a refresh of the SMP over the last 2 years. I took that to mean that the above position would be reviewed. I first asked this question at a SiG meeting in 2020, I believe in London. I was given information that lead me to believe that would be the case. James Ennos was with me. Locally I got a different view and pursuing it further at County and National Level the differences between local and National became apparent. I was only trying to get to the bottom of this review. It has been raised at the Naze Management Board.

Douglas Carswell raised it in Parliment and told me he spoke with the EA. This resulted in the position taken by the EA from no active intervention or managed retreat to hold the line or managed retreat. I have fought this since it was first brought to my attention in 2009. It does matter as I know of at least one property that did not sell becuase of the seawalls designation. I was just trying to get to the knowledge that would allow the Authority to protect itself fully.

The meeting refered to was a misunderstanding on my behalf. I should not have attended as I gathered later it was for Officers. This was not pointed out to me before the meeting started. I apologise unreservedly for any offence given. Also as soon as I realised the meeting was not for me. I did apologise and left the meeting.

As to the drownings I was told it was because bathing costumes where not being used and the poor unfortunates entered the sea in clothes not suitable to swim or wade in. As we were discussing the issue of beach safety, I thought it best to mention our experience. It was walking on broken glass. Similar to the other Community mentioned. I heard the comments I made from a teacher some years ago. I wanted to know if that was the case and secondly report back to the Seafronts team via the senior Officer. If we are not honest about these issues how can we avoid the tragic cases we have had over the last few years? Tendring has one of the worst records for beach accidents. I apologise unreservedly for any offence given.

As to the RNLI, another issue that the Naze Management Board knows all about. Due to the heavy handedness of the RNLI they have lost the Coxswain, 8 crew members the co-ordinator has been sacked and the lifeboat, as far as I am aware, is not longer capable of answering an emergency. On top of the that the RNLI is now advertising for a local crew. This is a National issue. I gather that in parts of Cornwall that some Communities have set up there own life boats. It is a tragic tale and I was trying to get information that will enable the RNLI still to function in Walton. I failed. If offence was taken at my robust defence of the Institution and the Mariners locally then for that I am sorry.

As a Yachtmaster, I would be far more upset if I am in an emergency situation at sea and no one responds to my mayday. Something up and till very recently one could completely rely on. On top that the link between the RNLI and local Families has been broken. It has been the tradition of Seaside Towns with an RNLI presence for the young men of local Families to become volunteers in the and for the RNLI. This tradition is being broken. That is something worth fighting for. If I was too robust in my questioning it was only because the issue is of great importance to the Towns of Harwich, Walton, Clacton and B'sea. I am truly sorry that I could not find a meeting of minds and that the complainant felt insulted. He was not. It was just to attempt to winkle out the true reasoning behind the RNLI's new policy. Then for us to figure a way around the problem. Please remember that we have one of the busiest shipping lanes in Europe on our doorstep. A large Marina and a Tourist Strategy that is central to the Authority plus 35 miles of coastline.

I only attend these meetings to learn and share any knowledge I have. It is a great shame that meetings now cannot be truly open, honest and straight forward."

In her 25th August 2023 Decision Notice the Monitoring Officer had: (i) presented the relevant paragraphs of the Members' Code of Conduct; (ii) summarised the Complaint; (iii) summarised the Subject Member's response; (iv) made a recommendation that an external investigation take place "due to the circumstances and the seriousness of the allegations"; and (v) gave the reasons for her decision. Mrs Hastings had written:-

"Both parties' comments have been sought in accordance with the Members' Code of Conduct Complaints Procedure before considering whether this case merits further investigation.

Whilst it is acknowledged that Councillor Turner has resigned from the LGA's Coastal SIG and apologised for an[y] offence given, it is not considered that informal resolution is appropriate in this circumstance. There is a wide difference of opinions between the Complainant and Cllr Turner on the manner of the debate within the meetings. Cllr Turner in his response has acknowledged his comments and not denied them, but the impact of them appears to be unappreciated.

However, there is also the potential for a huge detrimental impact on the working relationship between the Council, and external stakeholders not only within the meetings but far wider. The LGA, agencies, organisations and local authorities across the Country within the SIG are national bodies and the actions of Councillor Turner are likely to be found in breach of the Code of Conduct. The alleged behaviour directed towards individuals needs to be investigated, as does whether Councillor Turner has brought the District Council into disrepute on such a national platform.

I would also like the investigation to explore how and in what capacity Councillor Turner was attending the LGA Coastal SIG, this is not an Outside Body appointment made by the Leader. It is however, disclosed as an Other Registerable Interest on Councillor Turner's form. I have been informed Council officers may have attended with him in the past.

Whilst acknowledged from the information on the LGA Coastal SIG, Tendring District Council is a member and would appropriate to be so, this is not an outside body we have appointed to or can locate membership details. Although, the officer who may have had the records, has recently left the Council."

The Investigator had used the Complaint and the Monitoring Officer's Decision Notice to define the scope of the Investigation.

In investigating the Complaint Mr. Kenyon had gathered evidence at formal interview from the following people (listed in the order in which he had interviewed them):-

- (i) Cllr Ernest Gibson – Complainant, Chair of the LGA Coastal Special Interest Group and a South Tyneside Councillor;
- (ii) Sidonie Kenward - Marine and Terrestrial Planner at the Marine Management Organisation;
- (iii) Beccy MacDonald-Lofts – Lead Officer the LGA Coastal Special Interest Group;
- (iv) Ross MacLeod - Public Affairs Manager (Water Safety), RNLI;
- (v) Rhys Hobbs - Environmental Resilience and Adaptation Manager, Cornwall Council;
- (vi) Cllr Derek Bastiman – Deputy Chair of the LGA Coastal Special Interest Group and North Yorkshire Councillor;
- (vii) Alysha Stockman - Partnerships Engagement Support Officer at East Suffolk Council;
- (viii) Cllr Noel Galer – Great Yarmouth Councillor;
- (ix) Cllr Nick Turner – Subject Member and Tendring District Councillor; and
- (x) Nick Hardiman – Expert Adviser – Coast |National FCRM at the Environment Agency.

The interviews had been carried out between 20th September and 20th December 2023 using the Zoom video communications platform or similar. The written record of those interviews were set out in Annexes 1-9 of the Monitoring Officer's report (B.1).

In addition, Mr Kenyon had invited a number of others to be interviewed as follows:-

- Clare Nolan Barnes of Blackpool Council had said: "I can't recall anything at that meeting and I may well have not been at the meeting for the whole time Maybe I missed this part of the agenda".
- Cllr Jane Hugo of Blackpool Council had said that she was not at the 29th June meeting.
- Graeme Smith of Teignbridge District Council had not responded to Mr. Kenyon's invitation.
- Cllr James Bensly of Great Yarmouth Council had said:- "I'm sorry I don't think it will be of much use".
- Through Beccy Macdonald-Lofts, on several occasions, Mr. Kenyon had invited her colleague Bethany Handson, Project Officer at the SIG, to speak to him but without success.

In the course of establishing whether Councillor Turner had been acting “in capacity”, Mr. Kenyon had taken into account the following matters:-

- (1) Case Law e.g. Livingstone v Adjudication Panel for England [2006]; Bartlett v Milton Keynes Council [2008] APE 0401; First Tier Tribunal Case No. LGS/2011/0537.
- (2) LGA Guidance.
- (3) Tendring District Council records: Outside Bodies; Expenses claims; Subscription Invoices; Cllr Turner’s Register of Interests (July 2023);
- (4) Evidence from Interviews with Cllr Turner; Cllr Gibson and Beccy Macdonald-Lofts.
- (5) LGA Coastal Issues SIG Membership List 2010/11.
- (6) LGA Coastal Issues SIG Minutes and other documents.

Other matters highlighted in Mr. Kenyon’s report included:-

- (a) Official details of the Subject Member (Cllr. Turner);
- (b) Relevant legislation and protocols e.g. Localism Act 2011; TDC’s Code of Conduct; When does the Code of Conduct apply?
- (c) Context – District of Tendring;
- (d) Context – the LGA Coastal Issues SIG;
- (e) Formal Interview Methodology;
- (f) Findings, Evaluations and Conclusions.

On the basis of the evidence available to him and on the balance of probability Mr. Kenyon had concluded, in relation to ‘Capacity’ that Cllr Turner was attending the meetings of the LGA Coastal Special Interest Group on 5th June and 29th June 2023 in his capacity as a Tendring District Councillor.

His attendance at the two meetings of the SIG had borne the hallmarks of “official attendance”. However, it had not officially been recognised as such by TDC for reasons unknown. For at least eight years, the Council had not seen the SIG as an outside body or officially recognised Cllr Turner as serving as its representative on a body, which appeared to be bringing some considerable value to Tendring.

Cllr Turner had behaved, both at those meetings and apparently previously, as if he had been formally appointed to the Group and he would have given the impression to a reasonable member of the public with knowledge of all the facts that he was acting as a Tendring councillor and as a representative of the Authority.

Certainly, the Chair, the Lead Officer and others who had attended those (and earlier) SIG meetings had believed him to be the Tendring District Council representative. So too did Council officers. Mr. Kenyon did not doubt either that Cllr Turner himself believed it though he did not know whether he knew that his attendance was not officially sanctioned by the Council. The two positions were not mutually exclusive and, either way, the available evidence and the balance of probability suggested that Cllr Turner was acting as a Tendring District Councillor and a Council representative.

The Tendring District Council Code of Conduct was therefore engaged.

The Council’s Monitoring Officer, in her report (B.1) had agreed with the above assessment and would have no reason to depart from it.

In relation to the complaint itself, based on the evidence available to him and on the balance of probability, Mr. Kenyon had concluded that at various times during the “virtual” meetings of the Local Government Coastal Special Interest Group on 5th and 29th June 2023, which he had attended as a representative of Tendring District Council:-

1. *Cllr Nick Turner breached paragraph 1.1 of the Tendring District Council Code of Conduct by failing to treat other councillors with respect.*
2. *Cllr Turner breached paragraph 1.2 of the Code by failing to treat local authority employees, employees and representatives of partner organisations with respect and failing to respect the role they play.*
3. *Cllr Turner breached paragraph 2.3 of the Code by failing to promote equalities and behaving in a discriminatory manner.*
4. *Cllr Turner breached paragraph 5.1 of the Code by bringing his own role and Tendring District Council into disrepute.*

On the basis of the above conclusions Mr. Kenyon had made the following recommendations:-

1. **That the Monitoring Officer acts in accordance with paragraph 7.1 of the Tendring District Council Complaints Procedure by reviewing the Report and then either referring the matter for a hearing before the Standards Committee or Sub-Committee or in consultation with one of the Independent Persons seeks an informal resolution or mediation; and**
2. **That the Monitoring Officer provides training for councillors and/or provides them with clear, written guidance on how to complete their Registers of Interest in particular in relation to Outside Bodies and other external interests.**

Mr. Kenyon had shared the Draft Report with the Monitoring Officer. The intention was that she could ensure that, on its face, the Report was indicative of a satisfactory investigation and was of the required standard.

In the event, in the absence of the Monitoring Officer, the Draft Report had been reviewed by the Council’s Deputy Monitoring Officers, Linda Trembath (Head of Legal Services) and Keith Simmons (Head of Democratic Services and Elections), who had confirmed that they were: “satisfied that the [I]nvestigation ha[d] been a thorough one and that [that] was reflected in the [R]eport.”

Mr. Kenyon had recommended that the Draft Report be shared with one of the Authority’s Independent Persons and that their comments be sought. He had then shared the Draft Report, with its draft conclusions and recommendations, in confidence, with the Complainant and the Subject Member. They had been invited to comment on it.

Mr. Kenyon had received a response from the Subject Member who had written:

“Having appraised myself of every opportunity to apologise for any offence caused, which was unintended and to paraphrase the report itself, most definitely “unconscious” on my part, I am not sure what more can be said. Nothing was said to me at the

meetings or directly to me afterwards, which if it had been, could hopefully have enabled the apology to be received sooner. In terms of the requirement of a formal complaint and subsequent investigation and report I can only offer a quote from Alexander Pope: "Blessed is the man, who expects nothing, for he shall never be disappointed" Letter to Fortescue 23-09-1725".

The Complainant had not replied to Mr. Kenyon.

Mr. Kenyon had subsequently submitted the Final Report containing his final conclusions and recommendations to the Monitoring Officer for her consideration in line with the Council's arrangements.

At the Hearing, Mr. Kenyon made the following statement:-

"Good morning again. I'm going to speak for something less than 20 minutes. There may be some little repetition of what has already been said, for which I apologise. I'll start with a few words about the LGA Coastal Special Interest Group or SIG which is central to the Complaint.

The SIG has been around for at least 15 years and brings together representatives of 57 member councils and other significant stakeholders to "champion the collective interests of coastal, estuarine and maritime communities".

The SIG represents 16 million people in England and covers 60% of the English coastline. It is a well-established, well-attended, important group with many nationally known stakeholders, ministerial contacts, and considerable influence in central Government. It has a high profile and national reach. The Committee may wish to reflect on that when considering the Complaint.

The Complaint is about Cllr Nick Turner's alleged behaviour at two "virtual" meetings of the SIG in June last year. You will have seen the wording of the Complaint in Section 5 of my Report. I have done many standards investigations and written many reports. They all follow the same logical sequence. I set out my findings - the evidence on which I rely. Then, I evaluate that evidence and draw conclusions from it. Finally, based on my conclusions, I make recommendations. I don't reach any conclusions without having the evidence to support them.

There are 24 pages of evidence in my Report. Section 7 presents evidence around the key question of whether Cllr Turner was "in capacity" when the events in question took place. Section 8 looks at the specific allegations against him and consists almost entirely of extracts from the summaries of my interviews with the individuals listed in Section 6.2. Those included Cllr Turner and the Complainant, Cllr Ernest Gibson, who is Chair of the SIG and a member of South Tyneside Council, which is currently the Lead Authority for the SIG.

The Hearing Procedure permits me to call witnesses, but I have almost never done that in any hearing, and I won't be doing it today either. Instead I will allow the extracts taken from the statements in Sections 7 and 8 to act as my witnesses.

So, with that in mind, I will assume that Committee members have read the Report and remind them of my conclusions. I will take questions after I have finished if I may.

In presenting my conclusions I'm sure the Committee knows that I am not required to demonstrate that a member has breached their code of conduct "beyond reasonable doubt" which is the standard of proof in a criminal matter. At times, Cllr Turner's "defence submission" appears to present it that way but, in fact, I am required to reach my conclusions "based on the available evidence and the balance of probability" - a much lower standard of proof. And just before discussing my conclusions, I invite the Committee to note three points.

- *First, Cllr Turner's response to the Complaint in Section 5.2 of the Report where **he apologises unreservedly for any offence given**. In his defence document he describes it as a "**sincere apology**".*
- *Second, when speaking to me he described his own version of events, which you can find in Section 8.2.10. There **he seems to confirm that his behaviour wasn't acceptable though he seems to dispute the effect that behaviour had on other people**.*
- *Then finally, in his defence document he "**acknowledges the unintended offence his comments caused**".*

That seems pretty unequivocal to me.

CONCLUSIONS – CAPACITY

So, my conclusions. I had first to decide whether Cllr Turner was acting in his capacity as a councillor when he attended the two meetings.

As Members will of course know, under the Localism Act 2011 unless a councillor is acting "in capacity" they cannot be held to have breached a code of conduct no matter how reprehensible (or even unlawful) their actions might have been.

Whilst the Localism Act is silent on what being "in capacity" means, there is some case law that helps us decide whether, in a given set of circumstances, a member can be deemed to be "in capacity". We refer to some of that in our Report and also to the LGA Guidance, which helps us interpret the Council's Code of Conduct.

I was asked by the Monitoring Officer to consider the question of capacity particularly carefully in this instance because the situation was less straightforward than might normally be the case.

On the one hand, I had to consider the fact that the SIG was not recognised by the Council as an "outside body" and, that for at least eight years, Cllr Turner had not been appointed as a Council representative on the SIG. So, his involvement was not apparently "official" in the eyes of the Council.

On the other hand I noted that Cllr Turner had taken an active part in the work of the SIG for at least 13 years; he had given the impression over those 13 years that he was there to represent Tendring District Council; he saw himself as a Council representative and disclosed his membership of the SIG in his Register of Interests; the Council paid the SIG annual subscription fees, and on occasion Council officers accompanied him to meetings; and Cllr Turner claimed and was presumably paid his expenses when he attended certain SIG meetings.

So, it appeared to us, based on the evidence and the balance of probability, - that a reasonable member of the public with knowledge of all the facts would have concluded that Cllr Turner was acting as a Tendring councillor and a representative of the Authority when he attended SIG meetings. That was certainly the impression formed by the Chair, the Lead Officer and, presumably, Tendring Council officers as well. The Tendring District Council Code of Conduct was therefore engaged.

CONCLUSIONS – SIG MEETINGS

We turn next to our conclusions about the allegations made against Cllr Turner.

The **5th June meeting** was convened to gather feedback on a piece of software called the SMP Explorer Tool in a short session led by Nick Hardiman, of the Environment Agency. There were few invitees to the meeting, and we spoke to only four individuals about what happened, one of whom was Cllr Turner.

Based on that evidence and the balance of probability the meeting does not appear to have progressed as intended. Cllr Turner was to some extent successful in repurposing or hijacking the meeting to instead discuss matters which were important to him. That appears clear (as does her irritation) from the comment made at the time by Hartlepool Councillor Rachel Creevy in the MS Teams “Chat” facility. It appears clear too from the evidence given by Cllr Turner himself.

Even though there are few specifics about his exact words, Cllr Turner’s behaviour at that meeting appears to have been unprofessional, poor, and unacceptable. He had indulged in a “strong, extended rant”. Witnesses chose to describe him, amongst other adjectives, as being “over-zealous, obstructive, even aggressive”. He was overly critical, talked over people, would not be calmed down and would not listen to reason, it was said. He would not allow the meeting to progress as it was intended to.

Speaking somewhat generally, the Complainant said, “Basically, he is disruptive and has been for a long time, but on this occasion he did overstep the mark. He really excelled himself”. The Lead Officer said, “His disruptive behaviour at meetings has become a consistent issue for us”.

Nick Hardiman echoed their observations saying, “I have found him to be someone who wishes to stir and provoke ... his interventions have often been aggressive and have sought to rubbish what a person is doing.” He commented that “he was very unprofessional ... he crossed the line into unprofessional behaviour”.

The evidence also suggests that Cllr Turner made a personal attack on Nick Hardiman, something that Mr Hardiman confirmed to us. Cllr Turner appears too to have followed that by being “personally abusive” towards the Lead Officer. In making such personal attacks he was damaging his own reputation and, potentially, that of the Council and the SIG. He went beyond the protections afforded by Article 10 of the Human Rights Act and we do not in any event consider that the context was political in the accepted sense of the word.

When we spoke to Cllr Turner, he suggested that his behaviour as described in the Complaint was an exaggeration and was not sufficient to breach the Code. At the same time, he seemed to be recognising, as I have said, that his behaviour had not been acceptable. However, he denied making “personal attacks” saying “they are being

paranoid". In any event he saw fit, as I have also said, to "apologise unreservedly for any offence given".

When we spoke to Cllr Turner we did not doubt that he feels strongly and passionately about defending the coastline in Frinton. Nor did we doubt, to use his own words, "his unwavering commitment to his duties and the community he serves". But that isn't the issue. The issue is that it appeared to us, on the evidence available, that he had failed to control his strength of feeling at the 5th June meeting.

We therefore concluded that, in behaving as he did, Cllr Turner breached the Code of Conduct by showing a lack of respect by attacking in a personal way two of those who attended the meeting and by failing more generally to respect others who attended. In behaving as he did he brought his own role as a councillor into disrepute and, in acting as he did whilst he was a representative of the Council on an outside body, he brought the Council into disrepute.

*Turning to the **29th June Quarterly Meeting**, which this time had 49 attendees, we spoke to nine interviewees, including Cllr Turner, about what had happened. Based on their evidence and the balance of probability it appears to us that Cllr Turner's behaviour was once again unacceptable and mirrored somewhat his behaviour on 5th June. The minutes of the meeting suggest that things did not run smoothly, with Cllr Turner the apparent cause.*

- Interviewees referred to his derogatory comments about an external organisation, this time it was the RNLI.*
- He again made what felt like a personal attack, this time on Ross MacLeod who was at the meeting to represent the RNLI.*
- Witnesses once more referred to Cllr Turner's unwillingness to be diverted away from trying to focus the business of the meeting on issues local only to him.*
- Witnesses again spoke of his behaviour being part of a pattern over the years.*
- Cllr Turner showed a "low level of self-awareness" and was "oblivious to the offence he was causing".*
- Witnesses said he was "not helpful or constructive", he was "very rude", "derogatory", "offhand" and disrespectful towards others.*
- One witness spoke of him being "in transmit mode".*
- In behaving as he did, in the eyes of some, he damaged the reputation of the SIG, this time in front a much larger audience, some of whom had not attended previously.*
- Once again Cllr Turner felt that he had to "apologise unreservedly for any offence given".*

Based on this evidence we conclude that Cllr Turner again breached the Code of Conduct by showing a lack of respect by attacking a representative of an external organisation in a personal way and by failing more generally to respect others who had attended the meeting. He went beyond the protections afforded by Article 10 of the Human Rights Act and we do not in any event consider that the context was political in the accepted sense of the word. In behaving as he did he brought his own role as a councillor into disrepute and, in acting as he did whilst representing the Council on an outside body, he brought his Council into disrepute.

However, on 29th June, Cllr Turner went further than he had done on 5th June. His reference to Germans – "intended as a joke", he said - went unnoticed by some of those

we spoke to (though not by one attendee who is half-German and who was deeply upset by his “joke”). When we spoke to him, Cllr Turner did not dispute that he had said something like “Don’t get me started on the Germans” but we felt that his references to Operation Sea Lion and pillboxes were very telling. The juxtaposition of those and the comments he made to us about his references to Germans appeared to us to betray an attitude that was rooted squarely in Second World War thinking. This is not in some way an “ageist” observation (as Cllr Turner has suggested) but instead seems to reflect his own comment to me, “It’s a different world and I just don’t comprehend it any longer”. His words, not mine.

His derogatory references to swimming, floating, drowning, dress, Afro-Caribbeans and, arguably, Muslims caused very considerable offence and discomfort to some, though not all, of those present.

Cllr Turner did not appear to dispute that he had said what he was alleged to have said but he seemed to be completely oblivious as to how and why his behaviour had caused offence. On the one hand, some of our, perhaps more charitable, interviewees felt his views and opinions were old-fashioned and that they were more common, perhaps, a generation or two ago. On the other hand there were those who went so far as to call his behaviour “racist”. He had used “racial stereotyping”, they said. At the same time, when we spoke to him his concern that there were people of all kinds who visited Frinton who were, as he saw it, ill-equipped for, and ignorant of the dangers of, swimming in the sea did appear genuine.

So, on the balance of probability we tend to the conclusion that Cllr Turner made the remarks he made out of ignorance rather than malice and that his language was clumsy and patronising rather than being rooted in what might be described as out-and-out racism.

Notwithstanding his motives, based on the evidence available to us and the balance of probability, it appears to us that Cllr Turner further breached the Code of Conduct by exhibiting discriminatory behaviour on 29th June.

We agree with the words of one interviewee who indicated that, even though she did not feel personal offence at what he had said, Cllr Turner’s behaviour had reflected badly on the community he represented as a councillor. In other words, in her opinion, he had brought the Council into disrepute.

BREACH

So, in summary, based on the evidence available to us and on the balance of probability, we conclude that at various times during the meetings of the LGA Coastal Special Interest Group on 5th and 29th June 2023, which he attended in his capacity as a representative of Tendring District Council, Cllr Nick Turner:

1. **Breached paragraph 1.1 of the Tendring District Council Code of Conduct by failing to treat other councillors with respect;**
2. **Breached paragraph 1.2 of the Code by failing to treat local authority employees and representatives of partner organisations with respect and failing to respect the role they play;**
3. **Breached paragraph 2.3 of the Code by failing to promote equalities and behaving in a discriminatory manner; and**

4. Breached paragraph 5.1 of the Code by bringing his own role and Tending District Council into disrepute.

Thank you for your attention.”

10. HEARING THE COMPLAINT - QUESTIONS BY THE RESPONDENT COUNCILLOR

The Respondent Councillor (or their representative) then had the opportunity to question (but not cross-examine) through the Chairman:-

- (i) the Investigating Officer upon the content of their report; and/or
- (ii) any witnesses called by the Investigating Officer.

This was solely the Councillor’s opportunity to ask questions arising from the Investigator’s report i.e. not to make a statement.

<u>Questions asked by the representatives of Councillor Turner</u>	<u>The Investigator’s Responses thereto</u>
<i>[Mr. Cannon] I would like to raise this question of capacity, which this Committee is being asked to resolve. One would have expected that would have been resolved earlier in the proceedings. There is no argument that Cllr. Turner believed that he was acting in capacity but shouldn’t the Investigator have obtained actual proof of that?</i>	<i>If I understand the question correctly that is what I have done in this Report. If I carry out an Investigation the first thing that I have to assure myself of is that the Member in question is acting in capacity. There are occasions on social media use where there can be an issue over that. But in this instance the question revolved around the fact that the Council had not formally recognised Cllr Turner as being in capacity. So it isn’t my job as it were to decide before an Investigation starts whether someone was acting in capacity, It is my job as part of the investigation to decide whether a Member is in capacity and that is what I have done here.</i>
<i>[Mr. Cannon] So it is accepted that there is no actual evidence or proof that Cllr. Turner was acting on behalf of the Council?</i>	<i>He was in capacity based upon the evidence available to me as the Investigator, Councillor Turner was acting in capacity and I think that you have just said that Cllr. Turner has accepted that he was acting in capacity. The argument for his being in capacity I have put forward in my statement of a few moments ago and I have argued more fully in my Report so Councillor Turner was in capacity in my view based on the evidence available to me and the balance of probabilities and I think that you are saying that Cllr. Turner accepts that for the last however many years that he has represented</i>

	<p><i>Tendring District Council on the SIG he was acting as a representative of the Council so no argument he was in capacity.</i></p>
<p><i>[Mr. Cannon] Could we enquire where Mr. Kenyon set the bar on unacceptable standards of behaviour bearing in mind that it is a very subjective matter and what is acceptable to one person will be unacceptable to another. And why in the final report he did not highlight inconsistencies in the witness statements listed here.</i></p>	<p><i>I'll give the example of "bullying" that is a good yardstick and we are not talking about it here but I'll give it as a good example. There are those people who believe that it is the case that if someone says "boo" to them then they are being bullied. And the view that I take of that when I carry out an investigation is that I think that we need something rather more than "boo" for someone to be bullied. What I have done is set out in the report is set out the Guidance that accompanies the Model Code that was adopted by the District Council which provides, if you like, a yardstick against which to measure Members' behaviour and that is what I have relied upon. I think that that Guidance is very helpful. I can't quote it verbatim but it is there in the report and that helped me decide plus the fact that there were quite a large number of people there who said that his [Cllr Turner's} behaviour was unacceptable. There were one or two who were not quite as offended but the majority of people to whom I spoke were quite clear that there had been personal abuse and that Cllr. Turner had gone further than what was acceptable in that kind of forum in the words he had used towards people and in his behaviour and so the yardstick if you like is set out in the report and is extracted from the Guidance that accompanies the LGA Model Code which is the Code that Tendring District Council adopted. As far as drawing out inconsistencies I think I did draw that out. I may not have explicitly written a sentence that says that but is quite clear from the evidence, which has not been withheld it is there in the report. As far as I am concerned Cllr. Turner went further than he should have done and breached the Code.</i></p>
<p><i>[Mr. Cannon] I would also like to ask Mr. Kenyon the percentage of attendees</i></p>	<p><i>First of all, it's a question of proportionality. There is a cost to the</i></p>

<p>during the 29th June meeting that responded. There was a total of nine including Cllr. Turner, one of whom did not “sign off” his statement but it has been included within the report which is a concern. In total, there was 49 attendees at that meeting. Some of the others were contacted, but declined to submit a statement. One, in particular, was at an after meeting discussion between Beccy MacDonald-Lofts and Ross Macleod and she has refused multiple requests to give a statement or attend as a witness. I would like to hear Mr. Kenyon’s views on that please.</p>	<p>Council in carrying out an investigation. If I had interviewed all 49 people or attempted to do that I would probably still be interviewing. So that is point number one. Point number two is that I can’t force anybody to, as it were, submit to an interview by me. I can’t do that. And point three is that whether an individual chooses to take part shouldn’t be taken as an indication of anything other than that they’ve got nothing to say or perhaps that they are uncomfortable with the process. I find people who are uncomfortable with the process all the time and just won’t take part even if they are important to the process. I have no power to force them to do it so nine people out of 49 given that there are complaints that I investigate where there are two or three people interviewed, seems to me to be a reasonable number. I did try to interview more but for various reasons given I wasn’t able to do that but I think nine people interviewed as far as the 29th June meeting is concerned is more than enough to form a judgement and that’s what I have done.</p>
<p>[Mr. Cannon] The next question concerns the format of the meeting. These were online meetings (either Zoom or MS Teams) but the facility to manage these type of online meetings is available to the Administrator. It is very difficult when you have a situation like this to be sure how much was caused by the poor management of the online meeting and the poor chairing of the meeting and how much was down to Cllr. Turner’s exuberance. So could Mr. Kenyon please tell us what allowances he made because these meetings were held online?</p>	<p>I made no particular allowances for these being online meetings. What is true is the secretariat or the constitution of the SIG at that time apparently did not allow them to ‘mute’ individuals. My understanding is that after the second of these meetings, I think in September and I think in response to one of the questions being asked, they changed the constitution/ standing orders or whatever they call them, to enable them to mute or to exclude somebody and that was done in direct response to what had happened on the 5th and 29th of June. So I’m afraid that I can’t be in the mind of the secretariat as to why they did or did not try to manage it but it is certainly the case that they believed that they didn’t have, as it were, the formal ability to exclude Cllr. Turner at that time.</p>
<p>[Mr. Cannon] Could I enquire of Mr. Kenyon whether he actually established what facilities they did have? Who was</p>	<p>They were using Microsoft Teams. I’m not an expert on Microsoft Teams but I do know, as I said a few moments ago</p>

<i>controlling the meeting?</i>	<i>that they did not have or rather they felt that they had not got the right, as it were, to exclude Cllr. Turner. So short of Cllr. Turner switching his own feed off I imagine that they had not got any wherewithal but I'm afraid I'm not a Teams expert.</i>
<i>[Mr. Cannon] I would like to enquire how Mr. Kenyon maintained impartiality in his report and avoided favouring the Officers against Cllr. Turner?</i>	<i>It's what I do. I have no stake in the outcome of these things. It sounds like the wrong words to choose but actually apart from wanting to ensure that the evidence tells the story, I don't care what the outcome is. I have no skin in the game. So what I do is gather the evidence, I write the evidence up and I draw conclusions based on that evidence. When I carry out investigations and I've done a lot of those over the past few years I can confirm that it is not the case that every investigation that I do results in a finding of a breach of the code and so I balance the evidence available to me and as far as I am concerned the clue is in the job title, which is "independent".</i>
<i>[Mr. Cannon] The concern is in drawing his conclusions from what had occurred did Cllr. Turner realise that he was in breach of the Code?</i>	<i>I'm sorry but I did not understand the question.</i>
<i>[Mrs. Cannon] The question to the Investigating Officer is – during the investigation and in obtaining the witness statements and in doing the summary of the evidence from the complainants statements, did he not draw a conclusion in relation to whether or not Councillor Turner was aware of the breaches in this alleged behaviour.</i>	<i>If I have understood correctly, I take you back to what Cllr. Turner said in his response to the complaint which was first of all, I think twice, he apologised wholeheartedly for any offence given, and he didn't really dispute these events had taken place. The question is in his mind I think is whether he had caused offence or not. And the witnesses I spoke to said, most of them, said they had been offended or had seen how offence could have been caused by what he had said. So I think that Cllr. Turner himself has agreed that there is a need to apologise and has used in his defence documents the words "sincere apology" so in answer to your question if he didn't know it at the time he does now.</i>
<i>[Mrs. Cannon] So at the time of this report being written and this investigation being conducted he wasn't aware. Do you concur with that</i>	<i>I think you would have to ask Cllr. Turner that. I don't know what was in Cllr. Turner's mind.</i>

<i>conclusion?</i>	
<i>[Mrs. Cannon} I'm asking the Investigating Officer because he had drawn the conclusion. If you don't know the rule..?</i>	<i>He had signed his Acceptance of Office, he'd had training on the Code of Conduct and in signing his acceptance of office he had signed up to the Code of Conduct.</i>
<i>[Mr. Cannon] The final question I have to Mr. Kenyon is in relation to the allegations in the witness statements that appear in the final report concerning Cllr. Turner having racist views when there is actually no substantial evidence to support that. Why do they still appear in the final report? There is a reference in Becky MacDonald-Lofts' statement to a Police referral, which is now contradicted in her answer to our questions, which were subsequently submitted. I believe there was a referral to the Police from the Monitoring Officer but no action, nothing has occurred. So why is that still in the report and now in the public domain?</i>	<i>It was put into the public domain in the first part of this Hearing today. I'm required to investigate it because that was one of the allegations. I said a few moments ago that, on the balance of probabilities, we tend to the conclusion that Cllr. Turner made the remarks he made 'out of ignorance rather than malice' and that his language was 'clumsy and patronising' rather than being rooted in what may be described as out and out racism. That was the conclusion that I reached in the report. Those who were of the view that Cllr. Turner's remarks were and there are those who were, let's say, less convinced, I think I used the words more charitable, the conclusion that I reached was that he said what he said out of ignorance rather than malice, his language was clumsy and patronising rather than being rooted in what may be described as out and out racism. I'm not sure that I can say much more and that is in the Report on Page 77 of your pack. The Police matter is outside the scope of my Investigation.</i>

11. HEARING THE COMPLAINT - COMMITTEE MEMBERS' QUESTIONS

Members of the Committee then had the opportunity to question (but not cross-examine) through the Chairman:-

- (i) the Investigating Officer upon the content of their report; and/or
- (ii) any witnesses called by the Investigating Officer.

This therefore was the Committee's opportunity to ask questions arising from the Investigator's report but not to make statements.

<u>Questions from the members of the Committee to the Investigator (Mr. Kenyon)</u>	<u>Responses made thereto by Mr. Kenyon</u>
<i>[Cllr. Land] Was it clear to the Authority that this was an official outside body that it had a representative on?</i>	<i>It would be fantastic for me as an Investigator if what 'in capacity' means was codified in the Localism Act. It's</i>

	<p>not. There is some Case Law, some of which I have referred to in my report and other Case Law that I haven't referred to in my report, which predates the Localism Act but is still legally relevant as far as interpretation is concerned which we use to help us determine whether someone is 'in capacity'. <i>Prima facie</i>, if someone has attended a Council meeting and is standing up and speaking or is on a Committee such as today then they are acting 'in capacity'. But there are occasions when it is not as clear cut. The ones that I am often called in to make a judgement on are around things such as social media where the boundaries between a Member acting in their private capacity and in their capacity as a Councillor are less clear. In this instance I have weighed the evidence as to whether Cllr. Turner was acting in capacity. Councillor Turner has agreed that he was acting in capacity and without wishing to put words into his mouth he would be somewhat disappointed if the contribution he had made over the years he wasn't actually attending as a representative of the Council and wasn't actually there in the capacity of a Councillor. I put forward the evidence in Section 7.3.1 of my report as to why Cllr. Turner was 'in capacity'. In this instance I am convinced that he was doing the business of the Council and things that the Council did like pay his subscription fees, like pay his expenses are a recognition that, at some level, he was recognised as a representative of the Council in the eyes of the Authority.</p>
<p>[Cllr. Land] Was this a very formally recognised outside panel that this Council had put someone on and was very aware that someone was attending regularly and was contributing at?</p>	<p>I've used the evidence available to me. It's certain to me as I said at the beginning, it's influential, nationally recognised, it's attended by the Environment Agency, the RNLI, the Marine Management Organisation and other bodies, so it is not a "tuppenny, ha'penny" organisation. It's a national organisation, which reaches right into Government.</p>

12. THE RESPONDENT COUNCILLOR'S CASE

The Respondent Councillor (or their representative) then had the opportunity to:-

- (i) present their case;
- (ii) call any witnesses as required by the Councillor or their representative; and
- (iii) make representations as why they consider that they did not fail to comply with the Code of Conduct.

The Investigating Officer then had the opportunity to question (but not cross-examine) through the Chairman, the Respondent Councillor and/or any of their witnesses.

Members of the Committee then had the opportunity to question (but not cross-examine) through the Chairman the Respondent Councillor and/or any of their witnesses.

In all instances, only questions would be permitted relating to the allegation(s) and the Respondent Councillor's case and no statements could be made.

The Committee had had circulated to it in the days leading up to the Hearing the recorded text of Mr. Kenyon's interview with Councillor Turner, together with a copy of Councillor Turner's detailed defence submission.

Mr. Cannon presented the case on behalf of Councillor Turner as follows:-

"I would like to draw a couple of observations at the start. One is an extract from the Guidance on the Local Government Association Councillor Code of Conduct, which states under Respect – "You will engage in robust debate at times and you are expected to express, challenge and disagree with views, ideas, opinions and policies." I'm sure that you are all aware of that and it is important that we recognise that Councillor Turner has devoted a lot of time and energy to studying his subjects especially in this area which is very close to his heart and he is very able to challenge the experts. The second observation that I would like to make concerns the witnesses having declined to attend especially the Complainant himself. We did request that all the witnesses who gave statements attended but as you have already informed none of them have. This could be seen as depriving Councillor Turner of a fair opportunity of questioning those accusing him.

You will all have received a copy of Councillor Turner's defence submission. You will be pleased to know that I am not intending to read that to you. I am just going to summarise the main points.

I think it's very important to take into account Councillor Turner's 25 years of dedicated service. He has done a tremendous job for his community over the years.

He has consistently demonstrated professionalism even in the most heated debates. His responses though strong were in line with the robust nature of Council discussions. He has shown a willingness to engage and rectify any perceived breaches of conduct reinforcing his respect for the Council's standards, demonstrating his integrity Councillor Turner has actively sought to mend fences whenever his actions were seen as

disrespectful. His apologies and his willingness to engage in dialogue with effected parties underscore his commitment to fostering a harmonious working environment.

Councillor Turner has been misrepresented in his commitment to equality. His proven track record of actively participating in initiatives aimed at enhancing inclusivity starkly contrast with the accusations of discriminatory behaviour. Notably, he has experienced 'ageism', a protected characteristic that was conspicuously absent from the Investigating Officer's final report. Moreover, the discussions perceived as discriminatory were, in reality, valid and necessary engagements in policy advocacy designed to promote community safety and equality. Addressing sensitive issues surrounding Afro-Caribbean and Muslim communities, though challenging, is essential for the comprehensive dialogue needed to improve. Councillor Turner should be commended for his bravery for bringing these crucial topics to the forefront, fostering a necessary discourse that many might avoid due to its complexity and sensitivity. The Defence strongly contests the idea that Councillor Turner's actions have brought disrepute to the Council. His conduct has consistently aimed at advancing the community's interests, often being misunderstood in the complex situations that are part and parcel of his remit.

The Defence has pointed out significant procedural differences that impact the credibility of the allegations. Lack of attendance records at key meetings shows an unprofessional approach to the proceedings. The absence of a definitive recording of the meetings, a function which is available, in both Zoom and MS Teams means that the Investigating Officer's findings, on a balance of probabilities, are based on subjective rather than objective information.

The substantial delay in filing the complaint (72 days from the first meeting and 48 days from the second meeting) suggest a lack of urgency or severity, which questions the motions behind the allegations, especially as one of the SIG Officers who was party to the discussion between Ross McLeod and Beck Macdonald-Lofts, namely Bethany Hanson after the 29th June meeting had ended has refused to give a statement or appear as a witness despite multiple requests.

At the 5th June meeting there are no minutes or attendance records available. At the 29th June meeting of the 49 attendees confirmed in the minutes only nine, including Councillor Turner provided statements. Others either refused or stated that they had nothing to report.

Councillor Turner has actively engaged in critical discussions about safety and policy particularly concerning coastal management reflecting his commitment to public welfare. His remarks have, sometimes, been taken out of context or misunderstood detracting from the substantive issues he aimed to address. The Defence asserts that any controversial remarks made by Councillor Turner were aimed at improving community safety and were not intended to offend. His immediate apologies for any unintended offence highlight his responsiveness and accountability.

Considering Councillor Turner's long-standing dedication, procedural gaps in the investigation and his efforts to address the concerns raised, we urge a reassessment of the charges. It is crucial that the Committee's judgement reflects a balanced view of his intentions and the factual context of his actions, and also, his capacity at these meetings remains a point of contention at this time.

Councillor Turner's robust and challenging contributions to debate are a fundamental aspect of his role as an elected official but are also protected under UK Law specifically under the principles of freedom of speech as enshrined in the Human Rights Act 1998, which upholds the right to express opinions freely, without interference, a crucial element of effective democracy and governance. Thank you for your attention to this matter."

<u>Questions from the Independent Investigator (Mr Kenyon) to Councillor Turner/ his representatives</u>	<u>Responses thereto from Councillor Turner/ his representatives</u>
<i>You referred a few moments ago about, and I quote "procedural gaps in the investigation", can you explain to me what the procedural gaps in the investigation were please?</i>	<i>[Mr. Cannon} Yes, the procedural gaps relate to the lack of definitive records, the lack of attendance records, the lack of minutes which don't seem to have been given due weight in our opinion.</i>
<i>How do you think that Cllr. Turner's expertise and his undoubted commitment to his role as a Councillor and to his community are relevant to the complaint and relevant to whether he breached the Code as one would hope that he wasn't the only Member who was committed to his community and had a certain amount of expertise? How would you think that they were relevant to the Committee's consideration of the complaint please?</i>	<i>[Mr. Cannon] I think that the point here is that in the presentation by the RNL, which would seem to be a substantial part of this case, it is alleged that there was a dispute on fact between Councillor Turner and Ross McLeod. So you have to consider whether Councillor Turner was in actual fact correct in what he was saying which if that had been accepted by Ross McLeod would not have led to this dispute and that does not seem to have been considered.</i>
<i>Can you please point to where there is evidence of a dispute between Ross McLeod and Councillor Turner? Until I read Councillor Turner's defence submission yesterday I hadn't encountered any suggestion that there was a dispute between them, rather that it was Councillor Turner that launched a personal attack on Ross McLeod so can you please point me to where in the evidence that I have put forward that there is evidence of a dispute between them?</i>	<i>[Ian Taylor] There clearly was a dispute on that occasion in that meeting. Ross McLeod stated "that he did not go so far as to attack me personally". He's made that statement very clear. There was most definitely a difference of opinion at that meeting involving them on the Walton Lifeboat and the Black Swimming Association. I quote Mr. McLeod verbatim - "He didn't appear to take any of that on board. He was in transmit mode. He said that the materials did not reflect those who were drowning in his area though he didn't go so far as to attack me personally." So that's a clear statement from Mr McLeod that he didn't feel attacked at any stage though there was clearly a difference of opinion.</i>
<i>A dispute would suggest that there was some kind of argument but I've not heard anyone before today suggest that there had been some kind of argument?</i>	<i>[Ian Taylor] Wouldn't you accept that the words "He didn't appear to take any of that on board" implies that there was a difference of opinion going on?</i>
<i>How do you believe that the comment –</i>	<i>[Ian Taylor] Well, what does that</i>

<p><i>“Don’t get me started on the Germans” supports the view that he was not discriminatory during the 29th June meeting?</i></p>	<p><i>comment mean? How is that discriminatory? There is nothing intrinsically discriminatory in that comment. He could be referring to a time in a holiday camp, he could be referring to football, he could be referring to anything. On this occasion he was referring to something else in a jocular manner. I don’t think that this issue is to do with anything discriminatory against Germans or people of German descent. He had no idea that there was somebody there who was half-German. He did not intend to deliberately offend anybody. He just made a comment in relation to the coast where there are pillboxes and reminders of the Second World War and currently there is a large German company who are planning on bring cables and electricity onto the coast, which is unwanted because of the nature of that delivery which is by large above ground pylons which is a well-known dispute throughout the East of England at the moment and it was light-hearted remark. He had no idea there was a person there who was half-German. He wasn’t trying to offend and he was just making a reference and if we come to that then we are all in trouble.</i></p>
<p><u>Questions from members of the Committee to Councillor Turner/ his representatives</u></p>	<p><u>Responses thereto from Councillor Turner/ his representatives</u></p>
<p><i>[Cllr. Alexander] Did you at any time during the long time that you served on the SIG have any knowledge that you were not there in an official capacity?</i></p>	<p><i>[Ian Taylor] I don’t think it’s in dispute that Cllr. Turner did think that he was acting on behalf of the Council. Councillor Turner did believe that he was a member of the SIG. It’s whether what he believes is actually correct. We have to delve a bit deeper into that and decide whether that capacity actually existed. This issue of capacity will have to be decided at some point perhaps at a higher level.</i></p>
<p><i>[Cllr. Alexander] At any time did you receive any training in respect of sitting on that committee or what the expectations of TDC of you would have been at that time?</i></p>	<p><i>[Ian Taylor] Councillor Turner did not receive any training in relation to this committee and he has not received any committee reports or policy statements or anything to guide him in his role on</i></p>

	<p><i>this committee, which is one of the reasons why the capacity issue is relevant. Usually when Councillors are appointed to outside bodies they have policies agreed by Cabinet or by Portfolio Holders or Officer decisions to support them. There's nothing in this case, which would indicate that Cllr Turner was alone in believing that he was representing the Council. He wasn't, in effect he was attending as a local person with an interest in coastal matters who had been invited to this committee a number of years ago and there it rested. There is no governance from the Council associated with this at all.</i></p>
<p><i>[Cllr. Alexander] With no training and with the undoubted enormous amount of knowledge you have within this whole sphere, how did you see your role there and what were you to bring to that committee?</i></p>	<p><i>[Ian Taylor] Cllr. Turner has always mastered his brief. In my experience of having known him over a number of years, it's one of the greatest respects that he shows all Officers is that he goes off and learns what he's talking about. He studies it. He was asked to attend this group over 13 years ago. Throughout that time he's listened, learnt, done his research and he's well aware of the issues at stake and the issue at stake at this particularly meeting on 5th June was the Shoreline Management Plan. What happened unfortunately was a bit of a mess up. He believed that he was there at a normal meeting to discuss the Shoreline Management Plan when, in actual fact, it was a training session designed to be shorter and more brief. That's why he got muddled, the meeting wasn't handled well, people spoke over each other to try and get their points across and that is the situation as it was.</i></p>

13. **SUMMING UP**

The Investigating Officer (Melvin Kenyon) summed up the Complaint as follows:-

"The matter of capacity for me, on the balance of probability and the evidence available is not in question. I think Councillor Turner himself believed that he was a representative of the Council. Everyone who attended those meetings of the SIG believed him to be a representative of the Council. The Council paid the subscription fees to the SIG and Councillor Turner claimed expenses from the Council for his attendance, on occasion, at SIG meetings. Now these two meetings were virtual but we know that he previously

claimed expenses. We could get into a semantic discussion about what “the Council” means, but it does seem to me that paying the subscription fees, sending Council Officers along with Councillor Turner when he attended meetings, paying his expenses when he claimed them, does indicate some kind of acceptance on behalf of “the Council” (whatever that means), of Councillor Turner being ‘in capacity’, quite apart from the fact that he agrees that he was in capacity.

I have set out the fact that based on the evidence available and the balance of probability there are four breaches of the Code, I won’t repeat them, we’ve heard them several times over. What I will say finally is this is not about Councillor Turner’s service as a Councillor over the years or his public service more generally. This is about issues more generally within those two SIG meetings that arose. Those are set out in my Report. I’ve drawn conclusions on the basis of the evidence available to me and I have concluded that Councillor Turner breached the Code of Conduct. Thank you.”

Mr. Ian Taylor then summed up the Respondent Councillor’s (Councillor Turner) case as follows:-

“We’ve heard the four allegations. I won’t repeat them again for brevity. I’ll go straight to the meeting on 5th June where the Investigating Officer’s conclusions were that in behaving as he did Councillor Turner breached the Tendring District Council Code of Conduct by showing a lack of respect by attacking in a personal way two of the persons attending that meeting and, more generally, by failing to respect those attending the meeting and, in behaving as he did, he brought his own role as a Councillor into disrepute.

So the dispute here is how did he behave? How was his behaviour so reprehensible as to meet the criteria for this allegation? He’s acknowledged himself that he’s enthusiastic about this subject. He’s acknowledged himself that he was not fully aware of the purpose of this meeting. But nobody at any stage claimed a personal attack. There were no records of the meeting or a recording. These are all just people’s personal remembrances given some considerable time later. I think it was three months or more before this complaint was officially made.

Nick Hardiman, who was the Environment Agency representative there, said that he ‘does not remember some of the things that were said, but at the time thought, well that’s just Councillor Turner. I know that he does not like or agree with and hasn’t signed up to the Shoreline Management Plans. He appears to be a Climate Change sceptic and dislikes some of the things that we are trying to do in the plans. His attacks have tended to be against the plans themselves.’ I think that’s a clear statement from this Officer that he didn’t feel personally attacked, it was about the Plans that he was representing. I know there are further comments from Mr. Hardiman in the Investigator’s Report that says that if there were a more junior officer there they may not have liked it but I’m robust enough to do so. Well that’s why, in my experience, you don’t send junior officers to attend meetings that are at a high level. The point is that there were senior officers there and they should be robust enough to engage in a discussion of serious importance.

The claim that Councillor Turner irritated other people as evidenced in the chat room use at that meeting is something that I’d like to dispute. The message that was conveyed in the chat room was basically just a reminder to Councillor Turner or anyone else that it was intended to be a training session. They did not say anything about how

rude or this is unacceptable or outrageous or offensive. It merely said this is a training session. This is where we are trying to get some perspective on what was actually said at this meeting and how offensive it was.

Councillor Turner has acknowledged that he is extremely concerned about the Environment Agency's Shoreline Management Plan. I would think it incumbent upon all of us from this area to be concerned about the Shoreline Management Plan, which essentially says 'we will wait and see what happens and we might do something if it occurs, which for those of us who have been involved in commemorations for those who have died in this area as a result of the Sea coming in, I think it's a bit more incumbent on us to take this a bit more seriously.

I don't believe for one second that there's evidence to support that Councillor Turner overstepped the mark at this meeting. He misunderstood its purpose. The people running the meeting handled it badly and they were frustrated because they'd arranged a one hour meeting for a training session, always risky in my experience but nevertheless. There were no complaints arising from this meeting at the time. It was done and dusted on the 5th June. No reference was made to it until three months later.

I'd like to move now to the 29th June meeting. Again, the Investigating Officer stated that based on the evidence Councillor Turner breached the Tendring District Council Code of Conduct by attacking a representative of an external organisation in a personal way. Well, there's no evidence to support this. As we discussed earlier in the questions, Ross McLeod representing that outside body specifically says: "he didn't go so far as to attack me personally". I'm not sure how you can reconcile those two things. Saying that Councillor Turner attacked someone personally when the very person he is supposed to have attacked specifically says that he wasn't attacked personally. I don't know where we go from there because it is just wrong.

World Drowning Day – this is where those who involved themselves in the investigation collectively went into 'shock, horror' and claimed what had been said was 'outrageous, I'm offended, I'm upset' and some of the people involved in this went as far as accusing Councillor Turner of being racist, and using racist language. I don't get it. It's not there is it. He didn't attack anyone personally. Attendees don't recall clearly what was said. But on a balance of probabilities supported by the facts here two statements did match and that was that Councillor Turner said "It's not that they [South Asian or Afro-Caribbean communities] can't swim but more that they don't want to." Which was then paraphrased as "can't float, won't float" kind of thing. That in itself is not a racist statement and to imply otherwise is deeply offensive to Councillor Turner and to everybody else. For clarity, Councillor Turner is not a racist. In fact, he supports minority groups a great deal and he did on this specific occasion. He was the only one advocating an urgent need for those communities to learn to swim in greater numbers because they die in greater numbers by drowning on the coast. There is nothing more unedifying than seeing a group of wholly white people playing the racial discrimination card to support their own ends rather than support the people they claim to be protecting. The Black and South Asian communities require protection, they need to be encouraged to learn to swim, their children and young people die disproportionately. The statistics are really alarming. In America 80% of black people don't swim. In this case Councillor Turner was very clear on this. There is absolutely no evidence to support the claim that racist comments were made by Councillor Turner.

In conclusion, the Investigation Officer's findings in relation to this is disputed in the strongest possible terms. It's a crucial fact that the personal remarks seem to be the ones that tip Councillor Turner's behaviour over the edge in terms of whether his behaviour was acceptable at these meetings. I don't think that there is any evidence to support that. I think that there is a collection of statements made by people who can't recall clearly or exactly what happened. There is no supporting of that. There is no recording or decent minutes of these meetings to support that. What Minutes there are have been made later to try and bolster the case. In fact, Councillor Turner is owed an apology. He should be congratulated for raising a difficult issue. Uncomfortable truths are never good to hear. You may not like it but they need to be said sometimes. It takes someone like Councillor Turner, a Councillor of great experience to have the courage to do that. I think that it's a shame that after all the years that he did spend attending this committee that nobody felt the need to have a quiet word with him or to instigate some mediation. Instead, he's been hung out to dry for something that he didn't actually say. He made no racist comments whatsoever and all he did was engage in decent debate. If anything we learn as a country it is if liberty is to mean anything or democracy is to mean anything then it is the right to say something that people might not want to hear. In this case that's all that Councillor Turner did. He frustrated people, he irritated people but he didn't do anything to breach the Members' Code of Conduct. There is no evidence in this investigation report to suggest that. I conclude my summing up. Thank you."

14. INDEPENDENT PERSON'S VIEWS AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

The Independent Person then had the opportunity to provide their views on this matter as to whether there had been a failure to comply with the Code of Conduct, which the Committee would take into account before it made its decision on the allegation.

Sue Gallone (Independent Person) made the following statement:-

"My views are on whether I consider there to have been a breach of the Code of Conduct. I've read all of the papers and I've listened very carefully to what we've heard here today. I'm very mindful that we're talking here about the balance of probabilities and therefore I've given some attention to the weight of the evidence in front of us which are the statements from those at the meetings, the complaint itself, Councillor Turner's account of these events, the small comment in the chat and the minutes of the meetings that have been available to the Investigator as well.

It seems to me that the events have taken place. Nobody really disagrees with that. It's the extent and strength of feeling that's at dispute here in my view. We've had representations that Councillor Turner is robust and passionate in his beliefs and he puts that over and that is understandable for a Councillor. The question I feel is how far have those comments gone, have they gone too far. In my view in going to those four alleged breaches of the Code, I would say that items 1 and 2 have been breached based on the behaviour at the meetings on the 5th June and 29th June.

On the 5th June there appears to have been a personal attack on the representative of the Environment Agency and the SIG themselves. On the 29th June there was certainly a verbal attack on the RNLi representative who was treated, as the witnesses have attested, disrespectfully.

I think that it is also important to take into account that both of those meetings were disrupted quite significantly in achieving their purpose. So in that way I do think that the Code of Conduct which requires Councillors to treat other Councillors with respect and also to treat other representatives and partner organisations with respect, has been breached in my view. I think that also leads to the fourth alleged breach namely bringing TDC into disrepute and I do think that has done that by treating others without respect.

The third item, about failing to promote equalities in a discriminatory matter I found more difficult to form a view on. I have looked at the headline of the Code, which is about saying that discrimination is unfair treatment towards particular groups. I don't see that in the accounts that we have of the meetings. I think those with protected characteristics haven't been subject to unfair treatment but when you look at the LGA guidance notes and indeed Mr. Kenyon has drawn attention to these in his report's conclusions, we also have to consider whether there were any comments, slurs, jokes, statements, questions or gestures that were derogatory or offensive to an individual's or group's characteristics and whether any of the comments promoted negative stereotypes relating to an individual's or group's characteristics and I think that the comments made could be seen in that particular light. I do believe these are very sensitive matters and as has been said Councillor Turner hasn't been afraid to raise these matters the language and perhaps the setting has been clumsy here but I do think it hasn't met the guidance about the Code of Conduct in that case.

So those are my views on the breach of the Code of Conduct for the Committee to consider."

In response to a question raised by the Head of Democratic Services (Keith Simmons) as to whether she had a view on the matter of Councillor Turner acting 'in capacity', Sue Gallone informed the Committee that her view was that Councillor Turner had been acting 'in capacity'.

15. THE COMMITTEE'S DELIBERATIONS AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

The Committee (accompanied by the Head of Democratic Services & Elections and the Executive Projects Manager – Governance) retired to consider and deliberate in private the complaint prior to reaching its decision.

16. THE COMMITTEE'S DECISION AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

Upon the Committee's return the Chairman was required to announce the Committee's decision in the following terms:-

- (i) the Councillor had failed to comply with the Code of Conduct; or
- (ii) the Councillor had not failed to comply with the Code of Conduct.

The Committee was also required to give detailed reasons for its decision, which would be included within the published Decision Notice.

Upon the resumption of the meeting, the Chairman (Councillor Wiggins) accordingly read out the proposed decision.

It was then moved by Councillor Alexander, seconded by Councillor Newton and:-

RESOLVED that the Committee's formal decision is as follows:-

Case: Concerns a complaint received in August 2023 from Cllr Ernest Gibson of South Tyneside Council. Cllr Gibson was (and is) the Chair of the Local Government Association's Coastal Special Interest Group (SIG) and presided at meetings of that Group's meetings on 5 and 23 June 2023. Those meetings were held online.

The complaint is set out in the Investigator's report at page 37 of the Report to this meeting as referenced at agenda item 7.

In addition to the Investigator's report, on behalf of this Council's Monitoring Officer, the Council received witness interview notes with the complainant, Sidonie Kenward of the Marine Management Organisation, Beccy MacDonald-Lofts as the lead officer for the SIG, Ross MacLeod of the RNLI, Rhys Hobbs of Cornwall Council, Cllr Derek Bastiman of North Yorkshire Council (who is also Deputy Chair of the relevant SIG), Alysha Stockman of East Suffolk Council, Cllr Noel Galer of Great Yarmouth Borough Council, Nick Hardiman of the Environment Agency and Cllr Nick Turner (the subject member of the complaint) from this Council.

The Committee also received two reports from the Council's Monitoring Officer, referenced at Agenda Items 5 and 7 respectively. The report at Agenda Item 5 provided the Committee with more generalized information around the complaint and the process to the meeting today. That report included the Code of Conduct, the Council's complaints procedure in respect of the code, the hearing procedure and the Local Government Association's Guidance on the Code of Conduct. The report at Agenda Item 7 included further detail of the specifics of the complaint and advice and guidance.

The defence submission from the subject member has been provided to the Committee together with questions posed by him to Beccy MacDonald-Lofts and her responses to those questions.

Through today's hearing the Committee has also received oral evidence through statements made to it, responses to questions and the views of its Independent Person.

The Committee has considered all of these documents and oral evidence as part of its role in reviewing whether the subject member was acting in an official capacity to which the Code applies and, if that was the case, whether there had been breaches of the Code as described in the material presented to the Committee.

Facts:

The crux of the complaint concerns interventions by the subject member at meetings of the Local Government Association's Special Interest Group (SIG) on 5 and on 23 June 2023. The SIG was attended by many representatives (Councillors and Officers) from a range of coastal authorities who, like this Council, were Members of the SIG. The meetings were also attended by representatives of other agencies, authorities and national organisations with an interest in/who contribute to the work of the SIG. Certain of the interventions from the subject member at the meetings were stated, in the

complaint and through the investigator's report, to have breached the Councillor Code of Conduct adopted by this Council.

The breaches of the Code were stated as being of the General Conduct paragraphs 1.1, 1.2, 2.3 and 5.1 of that Code.

At page 25 of the report to the Committee in support of Agenda Item 5, the Monitoring Officer confirmed that the Councillors Code of Conduct of Tendring District Council had been adopted on 22 November 2022 (with a commencement date of 23 May 2023). On page 25 of the report of the Monitoring Officer at agenda item 5, the Committee was informed that the subject Member had attended mandatory training on the Council's Code of Conduct on 21 June 2023.

Prior to this complaint being considered now by the Committee, there had been no complaint about the subject member and his language and behaviours at meetings of the SIG.

The subject member has stated that at the meeting on 5 June 2023 of the SIG, he apologized and left the meeting. He also states that he apologized unreservedly in respect of his interventions complained of at the 29 June meeting of the SIG. Following the complaint being received, the subject member resigned from the SIG and subject member apologised unreservedly for any offence given upon the complaint being passed to him.

View of the Independent Person

The Committee acknowledges the view provided to it of the Independent Person during this hearing.

Decision of the Committee

Based on the balance of probabilities and the evidence available, the Committee concludes and decides that:

The subject member was acting in official capacity in his attendance at the meetings of the SIG on 5 and 29 June 2023;

In reaching this conclusion, the Committee is satisfied that it has received evidence of:

- * This Council being a member of the SIG,
- * The Council paying the subscriptions required for membership of the SIG,
- * The sole Member of the Council in attendance at the meetings of the SIG being the subject member,
- * The subject member recognized membership of the SIG on his general interests form,
- * The subject member making a claim for travel expenses on official business to attend a SIG event (prior to the complained of meetings),
- * There was a general acceptance of representation by all concerned at SIG Meetings, and
- * That, in response to the complaint, the subject Member resigned from the SIG.

The Committee then found, as a matter of fact, that the subject member's conduct amounted to a relevant breach of the Code of Conduct as follows:

Code	5 June SIG Meeting	29 June SIG Meeting
1.1 I treat other Councillors and Members of the public with respect	Here the breach amounted to behaviours to particular individuals in front of others attending the meeting and wholly disrupting the meeting as arranged. The interventions by the subject member took up a significant portion of the meeting time allocated for the meeting. This was being disrespectful to those other attendees.	Here the breach amounted to behaviours to particular individuals in front of others. Here he failed generally to respect others who were in attendance.
1.2 I treat Local Authority employees, employees and representatives of partner organisations, and those volunteering for the local authority with respect and respect the role they play	Here the breach amounted to attacks in a personal way on two of those who attended the meeting. The two individuals were Mr Nick Hardiman representing The Environment Agency and Beccy MacDonald Lofts as the Lead Officer for the SIG)	Here the breach was the subject member's lack of respect by attacking a representative of an external organisation in a personal way. The representative here was Ross MacLeod of the RNLI.
2.3 I promote equalities and do not discriminate unlawfully against any person		Here the breach was the use by the subject member of inappropriate language referencing a number of groups characteristics that were taken to be offensive to those groups and this was not promoting equalities.
5.1 I do not bring my role or local authority into disrepute	By acting as he did, as set out above, the subject member also brought this Council into disrepute. It is noteworthy that there was evidence that certain representatives were considering leaving SIG.	By acting as he did, as set out above, the subject member also brought this Council into disrepute.

Each separate finding of a breach of the Code of Conduct was then assessed against Article 10 of the European Convention on Human Rights to determine whether the breach (on the face of it) constituted an infringement of the subject member's rights

under that Article. **The Committee concluded that there was no such contravention of Article 10.**

However, the Committee also considered that - if there was a breach of Article 10 in any one of the breach areas - the consequential restriction on the subject member from the finding involved one, which was justified by reason of the requirement of article 10 subparagraph 2.

The above constitutes the decision of the Committee, however, the Committee also would wish the following to be read into the record:

It is noted that the subject member offered an apology at the meeting of the SIG, upon receipt of the complaint and during the interview with investigator appointed by the Monitoring Officer.

The Committee recognises the years of public service undertaken by the subject member on this Council and in raising significant matters of public policy. Nothing in this hearing should seek to undermine that legacy. We do not consider that there was a conscious discriminatory intent by the words used at the meeting on 29 June of the SIG.

We believe the points being made, by the subject member, could have (and should have) been made in a different way and that alternative language and behaviours could have made the points the subject member states he wanted to make; whether that was around policies to permit coastal retreat, the safety of sea users as a consequence of the closing of RNLI boat stations and the safety of different groups when going swimming in the sea.

The Committee does not consider any alleged failings by the SIG chairmanship/secretariat should excuse breaches of this Council's Code of Conduct for Members.

17. ONLY REQUIRED IF COMMITTEE DECIDES THAT THE COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT - REPRESENTATIONS AS TO SANCTION(S)

If the Committee decided that the Councillor had failed to comply with the Code of Conduct it would then consider any representations from the Investigator and/or the Respondent Councillor as to the appropriate sanction, as set out in Section 8 of the Complaints Procedure, and based on relevance to the breach, being proportionate and necessary to promote and maintain high standards of conduct.

Section 8 set out the available sanctions as follows:-

- (1) *Publish its findings in respect of the Member's conduct on the Council's website;*
- (2) *Report its findings to Council for information;*
- (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;*

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- (4) *Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;*
 - (5) *Instruct the Monitoring Officer to arrange training for the Member;*
 - (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 from all outside appointments to which he/she has been appointed or nominated by the authority;*
 - (7) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or*
 - (8) *Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of 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.*

The Investigating Officer (Melvin Kenyon) declined to make any representations as to the sanctions to be applied, as he did not feel it would be appropriate to do so.

Ian Taylor, on behalf of Councillor Turner, requested that no further sanctions be imposed on Councillor Turner over and above those that he had already incurred i.e. the loss of his committee and outside body appointments and the loss of his Group membership.

18. INDEPENDENT PERSON'S VIEWS AS TO THE SANCTION(S) TO BE APPLIED (IF ANY)

The Independent Person then had the opportunity to provide their views on this matter as to the Sanction(s) to be applied (if any), which the Committee would take into account before it made its decision.

Sue Gallone, Independent Person, made the following statement:-

"My view on the sanctions are that it is necessary to publish the findings and to report the findings to Council in the interests of transparency and democracy. With regard to the Council appointments, I think the ongoing status of those is more a matter for the Party and Council rather than me to have a view and so I don't have a particular view on that. In terms of training I don't see the need for further standards training for the Code of Conduct. Councillor Turner has had plenty of training on that but I do wonder if there is some scope for some sort of one-to-one advisory section to reflect on this experience and how things might be done differently. But, I am applying experience from elsewhere here and I don't know if that would be possible within this Council.

Likewise, on the outside appointments I don't have a view on that. I think that's for the Council and the Leader. The resource sanctions numbers seven and eight are I think too draconian to restrict access in that way. And although this is a serious finding I don't think it's of a nature where that is necessary. So those are my views for the Committee to consider. Thank you."

19. THE COMMITTEE'S DELIBERATIONS AS TO SANCTION(S) TO BE APPLIED

The Committee (accompanied by the Head of Democratic Services and the Executive Projects Manager – Governance) then retired once more to consider and deliberate in private what action, if any, should be taken.

20. THE COMMITTEE'S DECISION AS TO SANCTION(S) TO BE APPLIED

On the Committee's return the Chairman was required to announce the Committee's decision as to what actions they had resolved to take, having regard to Section 8 of the Complaints Procedure.

The Committee would also consider whether it wanted to make any specific recommendations to the Council with a view to promoting and maintaining high standards of conduct among Members.

Upon the resumption of the meeting, the Chairman read out the proposed sanctions.

It was then moved by Councillor Baker, seconded by Councillor Newton and:-

RESOLVED that the Committee's formal decision as to the sanctions to be applied is as follows:-

"The Committee has considered the representations from the subject member and the views of the Independent Person. It also acknowledges that the Investigating Officer did not make representations on the sanctions.

It is the Committee's considered view that the following sanctions should be applied in response to the finding of the breach of the Code of Conduct for Members, announced already:

- (1) Publish its findings in respect of the Member's conduct on the Council's website;
- (2) Report its findings to Council for information;
- (3) Instruct the Monitoring Officer to arrange training for the Member;

The suggestion from the Independent Person for this style of training to be more of a 1:1 reflective session around learning from the complaint is one the Committee endorses.

In addition, the Committee finds that there should be an apology issued by the subject member to the Coastal SIG and to this Council recognising the finding of this Committee.

Further, while recognising that decisions around membership of Committees for a non-aligned Member (which the subject member currently is), is a matter for Full Council, the Committee considers that any decision to appoint the subject member to a Committee should be after the apologies requested have been issued and the training undertaken.

Likewise, while the decision of appointments to outside bodies is a matter for the Leader of the Council, the Committee considers that any decision to appoint the subject

member to an outside body should be after the apologies requested have been issued and the training undertaken.

We hope that the apologies and training can both be expedited and therefore not delay the appointments referenced.

The Committee considered that there was a breach of Article 10 in applying the sanctions concerned. However, and accepting that political debate has a higher protection under Article 10, the consequential restriction on the subject member from the sanctions applied are ones which are justified by reason of the requirement of article 10 subparagraph 2.”

The Chairman confirmed that a full written Decision Notice would be issued within seven working days following the hearing.

The meeting was declared closed at 5.51 pm

Chairman