



TENDRING DISTRICT COUNCIL

**STANDARDS COMMITTEE
INDEPENDENT
PERSONS**

**INFORMATION AND
APPLICATION PACK**

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Thank you very much for expressing an interest in this role of an Independent Person on Tendring District Council's Standards Committee.

In this information and application pack you will find out more about the Standards Committee and what might be expected of you should you become an Independent Person. You will also find a short application form, if you wish to apply for the role.

The promotion and maintenance of the highest possible standards of behaviour in the work of the Council is of the greatest importance. Similarly, independent people being part of these arrangements helps to build confidence within the community that the Council is doing its best in this areas. The strong working relationship between officers and Councillors has been a feature of the Council for many years irrespective of the groups forming the administration. The cultivation of an inclusive approach across the Council Chamber with Group Leaders and those involved in Overview and Scrutiny and in Audit has meant that constructive challenge and review have been integral to the governance of the Council for the benefit of residents.

We are looking for persons who have an independent and **analytical mind**, are tactful and have good interpersonal skills, and can give clear and reasoned advice. It is important that the selected people have the profile and experience that the community would respect in bringing an independent and informed perspective to the standards processes.

Thank you once again for your interest.

Ian Davidson

Chief Executive

DRAFTING NOTE:

Discuss at Committee whether to include a Message from the Chair of the Standards Committee and/or Monitoring Officer?

APPOINTMENT OF INDEPENDENT PERSON AND INDEPENDENT REMUNERATION PANEL MEMBER

SELECTION TIMETABLE AND HOW TO APPLY

The timetable

The closing date for receipt of applications is **[insert date 2024]**.

Short-listing is scheduled for later that week and interviews will take place on **[insert date 2024]**.

Candidates will be interviewed by a Panel of three Councillors from the Council's Standards Committee and three officers. The final appointments will be made by full Council at its meeting on **[insert date 2024]**. The term of office for the current Independent Persons was extended until May 2025.

All applications will be assessed against the selection criteria outlined in the application form and person specification. Candidates who are invited for interview will be notified after the short-listing process has taken place. Contact is likely to be by email if an email address is provided by the applicant.

If you have any questions about becoming an Independent Person, please contact Lisa Hastings, the Council's Monitoring Officer, on 01255 686561 or email lhastings@tendringdc.gov.uk

How to apply

Should you wish to apply for this position, please complete the application form and include a statement that you feel demonstrates how you meet the criteria and would be suitable for the role.

You should then either post the completed form to:

Karen Hayes
Executive Projects Manager - Governance
Tendring District Council
Town Hall
Station Road
Clacton-on-Sea
Essex
CO15 1SE

or email to standards@tendringdc.gov.uk

TENDRING DISTRICT COUNCIL

Tendring District Council is a Local Authority within Essex, named after the peninsula of Tendring that the Council's administrative area covers. Within the district there is a population of 148,100, with 67,500 households and 4,740 businesses.

Tendring is represented by 48 elected Councillors and its administration is comprised of two groups of Independent Councillors as well as Labour and Liberal Democrat Councillors. 769 staff members are employed to ensure residents, businesses and visitors can depend upon the indispensable services delivered by the Council.

The Council's Corporate Plan 2024 - 2028 (Our Vision) sets out the key areas of focus for the authority and works as a guide to continue improving and developing the Council and the District alongside its partners. Community Leadership is core to our ethos. As a community leader, our Council is a deliverer, facilitator and influencer in delivering outcomes for our residents.

Councillors are democratically accountable to the residents of their District Ward and have an overriding duty to the whole community, including those persons who did not vote for them at election time.

There are also twenty seven Town and Parish Councils within the District.

Further information can be found on the Council's website at www.tendringdc.gov.uk

THE STANDARDS COMMITTEE

The Council agreed at its meeting on 26 November 2013 to create a Standards Committee and a Town and Parish Councils' Sub-Committee, which comprise of District Councillors and representatives from the Tendring District Association of Local Council (TDALC).

Composition

The Standards Committee (the Committee) shall consist of seven Members of Tendring District Council;

No more than one Member shall be a Member of its Cabinet;

No Leaders of Political Groups will be Members of the Committee;

The only Members permitted to be substitutes on the Committee will be those named at the beginning of the Municipal Year by the Political Group Leaders;

No Member will be permitted to participate in meetings of the Standards Committee or its Sub-Committee unless they have undertaken specific Standards Committee training;

No substitute Members will be permitted, unless they have undertaken specific Standards Committee training;

The Committee is politically balanced in accordance with Section 15 of the Housing and Local Government Act 1989;

The Committee will have a standing Chairman and Vice Chairman appointed by the Full Council. However, when the Committee is convened to conduct a hearing the meeting will be chaired by one of the Members of the Committee who is not from the same Political Group as the Member who is the subject of the complaint (nor of the same Group as the Complainant if a Member of the Council); and

A Member of the Standards Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

The terms of reference for Standards Committee are as follows:

Terms of Reference

The Standards Committee will have the following roles and functions:

1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;

2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels in the Council.
3. To advise the Council on the adoption or revision of the Members' Code of Conduct;
4. To advise, train or arrange training on matters relating to and assisting Members, Co-Opted Members and Town and Parish Councillors on observing the Members' Code of Conduct;
5. To approve procedures for the conduct of hearings into complaints against Members;
6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;
7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members' Code of Conduct and the other elements of the Standards Framework;
8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;
9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and
10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.

Proceedings

1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;
2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;
3. In accordance with the Hearings Procedure, to hear and determine complaints about Tendring District Council Members and Co-Opted Members referred to it by the Monitoring Officer; and
4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.

TOWN AND PARISH COUNCILS' STANDARDS SUB-COMMITTEE

Composition

Three Members of the Standards Committee and three non-voting co-opted Town and Parish Council Members to be nominated by the Tendring District Association of Local Councils;

The nominated Town and Parish Council Members will be of independent standing and will not have served as District or County Councillors for a period of four years prior to their nomination;

A Member (or non-voting Co-Opted Member) of the Town and Parish Councils' Standards Sub-Committee will not be permitted to sit in that capacity for a hearing if that Member is the subject of the complaint or the complainant. A substitute will be permitted, if they have undertaken specific Standards Committee training.

Terms of Reference

To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with its Code of Conduct.

Proceedings

1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;
2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;
3. In accordance with the Hearings Procedure, to hear and determine complaints about Tendring District Council Members and Co-Opted Members referred to it by the Monitoring Officer; and
4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council.

The Standards Committee will usually have four quarterly meetings and also additional meetings as necessary for the purpose of progressing allegations of misconduct.

THE INDEPENDENT PERSON: SPECIFICATION

How has this role come about?

LOCALISM ACT 2011

Under section 27(1) of the Localism Act 2011 (“the Act”) a “relevant authority” (which includes a local council) is placed under a statutory duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”.

Under section 27(2) of the Act a relevant authority must “adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity”.

Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with the prescribed Principles of Standards in Public Life – the so-called “Nolan principles”. The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level, which endangers public confidence in democracy.

Under section 28(6) of the Act, principal authorities must have in place - (a) arrangements under which allegations can be investigated; and (b) arrangements under which decisions on allegations can be made.

By section 27(7), arrangements put in place under subsection (6)(b) must include provision for the appointment by the principal authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

In accordance with the Act, Tendring District Council has adopted the Local Government Association’s Model Members’ Code of Conduct, formal Complaints Procedure (as its ‘arrangements’) and an Independent Person Protocol.

Tendring District Council has decided to appoint **[INSERT NO.]** Independent Persons.

What is the role of an Independent Person?

The Independent Person’s role is to work with the Council’s Standards Committee and Monitoring Officer to help to ensure high standards of conduct in the Council and amongst elected Councillors within the District. One or all of the Independent Persons may be consulted at various stages of the complaints process in respect of any allegation that a Councillor has breached their Code of Conduct and on other Code of Conduct matters. The Independent Person’s role is set out in more detail in the Protocol.

Who is eligible?

Under the legislation, a person is not considered independent and is therefore ineligible if he/she:

- Is, or has been within the past 5 years, a member, co-opted member with voting rights, or someone who has stood for office within the last 5 years, or officer of the Council or of one of the Town or Parish Councils in the District; or
- Is, or has been within the past 5 years, a relative, or close friend, of a member, co-opted member with voting rights, or someone who has stood for office within the last 5 years, or officer of the Council or of one of the Town or Parish Councils in the District. For this purpose, “relative” means –
 - a. A spouse or civil partner;
 - b. Living with the person as husband and wife or as if they were civil partners;
 - c. A grandparent of the person;
 - d. A lineal descendent of a grandparent of the person;
 - e. A parent, sibling or child of the person;
 - f. A spouse or civil partner of c., d. or e. above;
 - g. Living with a person defined at c., d. or e. above as husband and wife or as if they were civil partners

How long is the appointment?

This will be confirmed on appointment, but it is likely that the Council will appoint to the role of Independent Persons for a maximum four-year term, which reflects the ordinary term of office of a councillor.

Do I have to live or work in the District?

Not necessarily, but a connection to the District will add to the merits of your application.

How will the successful candidate be appointed?

The positions are being advertised through a Press release, using local and regional media and via the Council's website. The Council may only appoint someone who makes a formal application and the appointment must be approved by a majority of the members of the Council.

A Panel of the Council's Standards Committee, which comprises 3 Members of the Committee and three Officers will be convened to conduct interviews. The Panel will recommend those applicants that it feels should be appointed to the Council.

What sort of person is the Council looking to appoint?

The applicant would ideally live or work in the Counties of Essex or Suffolk to have an understanding of the area and some of the issues facing it. Applicant will want to have a desire to serve the public interest, and the local community, to uphold local democracy and

be ambassadors for impartiality; supporting the Council's goals of being accountable, open, principled and committed to equal opportunities.

No particular professional background is specified, but the person should be able to demonstrate probity and high ethical standards and abide by the Council's Independent Persons' Protocol. It is important that the Independent Persons have the profile and experience that the community would recognise and respect as bringing an independent and informed perspective to the process.

Training and support will be provided.

Is the position paid?

An allowance of **£600** per annum will be paid for the role of Independent Person.

How much time does it involve?

The workload of the Independent Persons will vary, according to the number of allegations of misconduct that are received. There are usually four ordinary meetings of the Standards Committee each year and additional meetings will be held to progress complaints. Committee meetings are generally held during the day. Also, the Independent Persons will be consulted by the Monitoring Officer on various occasions, as set out in the Independent Person role description. This may be by telephone, email or meeting.

INDEPENDENT PERSON PROTOCOL

TENDRING DISTRICT COUNCIL INDEPENDENT PERSON PROTOCOL

This Protocol sets out the expected conduct of Tendring District Council's Independent Persons (IP) when carrying out their consultation functions in relation to an allegation that a Member, or Co-Opted Member, of the District Council, or a Member, or Co-Opted Member, of a Town or Parish Council within the District, has failed to comply with the relevant Council's Code of Conduct.

Principles

1. The role of the IP is set down in legislation (section 28 of the Localism Act 2011). *Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate.*
2. The purpose of the IP role is to enable the public to have confidence in how the District Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for Members, ensuring they are adequately trained and understand the Code of Conduct.
3. This Protocol applies to all IPs equally and complements the Monitoring Officer Protocol. If the Council is in a position where less than two IPs are appointed due to a vacancy, this Protocol still applies in its entirety, so long as one IP is in place (as required by the legislation)
4. The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
5. In carrying out the role, the IP will ensure that they:
 - (a) Act in accordance with –
 - (i) any relevant legislation or guidance and the respective Council's Members' Code of Conduct in force at that time; and
 - (ii) the agreed processes/procedures approved by the District Council's Standards Committee and Constitution;
 - (b) Act impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice;
 - (c) Maintain confidentiality at all times; and

- (d) Conduct themselves in accordance with the principles of high standards of conduct expected when acting in public life.
- 6. The IP role is consultative at various stages of the process, in accordance with the Complaints Procedure and the Monitoring Officer's (MO) role is to give advice to the Standards Committee or Sub-Committee.
- 7. The IP is not a member of the Council's Standards Committee or Sub-Committee but is able to attend meetings of the Committee, as a member of the public. The Committee or Sub-Committee may invite comments from the IP on any reports before them, at the discretion of the Chairman.
- 8. If the Standards Committee or Sub-Committee invites the IP to attend any meeting, the IP does not have any voting rights when doing so.
- 9. The outcome of any prior consultation with the IP undertaken by the MO will be included within any written report presented to the Standards Committee or Sub-Committee for their consideration. The IP's views must be sought before a decision is made after a complaint has been investigated. This will be undertaken by the MO in the first instance, but in some circumstances, it may be appropriate for the Committee or Sub-Committee to do this directly.
- 10. Whilst conducting hearings, if the Standards Committee or Sub-Committee meetings are adjourned for Members' deliberations, an IP may be invited into these deliberations and invited to comment.
- 11. The MO will consult the IP on complaints received in accordance with the Council's procedure and requests for dispensations received in accordance with the Localism Act 2011.
- 12. Whilst the MO will have regard to the views expressed by the IP, they are not bound to accept their views on the matter.
- 13. When deciding on how to progress with a complaint, the MO and IP should consider the conduct complaints assessment criteria contained within the procedure.
- 14. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved with the matter.
- 15. If both of the IPs are conflicted out from dealing with the issue, the MO will consider making a request to use the services of an IP from another principal authority.
- 16. All contact with the IP should be made through the MO and should the IP be contacted directly by a complainant or Member, they should inform the MO immediately.
- 17. In terms of confidentiality, the IP must not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken.

18. The IP must provide the MO with appropriate methods of contact e.g. email and telephone numbers, and must make themselves available at all reasonable times.
19. On those occasions when the IP knows that they will not be contactable, they must inform the MO with as much reasonable notice as possible.
20. The IP should be prepared to give the Standards Committee or Sub-Committee, through the written report, an independent view on the complaint and the merit of the evidence put forward as required to assist the Committee in coming to a decision on the matter.
21. When discussing the complaint with the complainant or the Member subject of the complaint, the IP's role is not to give views on the merits of the complaint or the evidence in support but to give advice and reassurance on the process.
22. In each complaint, when necessary;
 - (a) one IP will be selected by the MO for initial consultation and if required, available to the Standards Committee or Sub-Committee for consultation as part of the Complaints Procedure and in accordance with the Localism Act 2011; and
 - (b) if requested by a party, the other IP will be made available to the Complainant or to the Member subject of the complaint – see paragraph 20 above.
23. The MO will allocate the roles between the IPs on a case by case basis. Should less than 2 IPs be appointed at any time, so long as 1 IP is in place the IP will be expected to be available for the respective parties set out in 22 (a & b).
24. The MO will ensure that the IPs are kept up to date with changes in legislation, national guidance or good practice.
25. The MO will update the IPs on progress of the cases on a bi-monthly basis.

(Note: "Member" is an alternative reference to "Councillor")

TENDRING DISTRICT COUNCIL COMPLAINTS PROCEDURE

1. Context

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

2. The Member Code of Conduct

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

3. Making a Complaint

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

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

standards@tendringdc.gov.uk

The Complaints Form can be downloaded from the website.

3.2 The Monitoring Officer is a senior officer of the authority who has a statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. This information will be retained by the Council for a period of two years in accordance with its Retention and Destruction Policy. The Council has adopted a Monitoring Officer Protocol which sets out some general principles.

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

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

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

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

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

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

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

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

4. Will your complaint be investigated?

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

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation

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

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

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

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

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

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

- 4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally through informal resolution, without the need for a formal investigation. Such informal resolution may involve notifying the Group Leader and the Member accepting that his/her conduct was unacceptable and/or offering an apology, and/or agreeing to mediation and/or other remedial action by the authority. Where the Member or the Authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

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

- 4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power and obligation to notify or refer to the Police or other regulatory agencies, subject to the necessary Legal Jurisdiction Criteria Test being applied.

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

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

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

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

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

When deciding that a complaint merits further investigation, the Monitoring Officer may, in exceptional circumstances, refer the matter to the Council's Standards Committee or Sub-Committee, with a recommendation together with any information

received from either the complainant or member who is the subject of the complaint. The Committee or Sub-Committee, upon consideration of this recommendation and information, may decide that the complaint merits no further action, conciliation or similar resolution.

- 5.3 The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet you or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed. Any information supplied to the Monitoring Officer or Investigating Officer will be kept confidential within the remit of the investigation and therefore, may be shared with the parties. It is important to note that if a hearing is required at a later date, and the Standards Committee is convened the information disclosed will be available to the public in accordance with the Access to Information legislation, which the Council has to abide by when conducting meetings.
- 5.4 As referred to in section 3.5, upon receipt of your complaint the member that is the subject of the complaint will ordinarily be informed that you have made a complaint about them and will be provided with details of the complaint. If an investigation is to be undertaken, the Investigating Officer or Monitoring Officer will normally write to the Member against whom you have complained and provide him/her with full details of your complaint, (including your name and address but excluding any additional or sensitive personal information) and formally ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is felt appropriate to continue to keep your identity confidential or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay providing full details of the complaint to the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will, in all cases, send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you, or the Member that is the subject of the complaint, may make on the draft Investigation Report, the report will be finalised. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer together with a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct.
- 6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**
- 6.1 If an Investigating Officer has been appointed, the Monitoring Officer will review the Investigating Officer's report and may consult with the Independent Person(s). If he/she is satisfied that the Investigating Officer's report is sufficient, subject to 6.3 below, the Monitoring Officer will write to you and to the member concerned (*and, if*

appropriate, to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor), notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report. The Monitoring Officer will also notify the Standards Committee or Sub-Committee and the relevant Independent Person.

- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.3 The Monitoring Officer, may at their own discretion and only in exceptional cases, following consultation with the Chief Executive, decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.
Exceptional cases may include but not be limited to matters where the evidence is so finely balanced or is in the public interest to do so.

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

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

7.1.1 Informal Resolution

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

7.1.2 Hearing

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

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and made available for public and

press inspection, however, the Investigators Report will be kept confidential and will remain in Part B, until the day of the hearing to protect the parties.

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

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

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

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

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

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

8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;

8.1.2 Report its findings to Council (*or to the Town or Parish Council*) for information;

- 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.5 Instruct the Monitoring Officer to *(or recommend that the Town or Parish Council)* arrange training for the member;
- 8.1.6 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) that the Member be removed *(or recommend to the Town or Parish Council that the Member be removed)* from all outside appointments to which he/she has been appointed or nominated by the authority *(or by the Town or Parish Council)*;
- 8.1.7 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or to Committee) the withdrawal of *(or recommend to the Town or Parish Council that it withdraws)* facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 8.1.8 Recommend to the relevant Group Leader (or in the case of un-grouped members, recommend to Council or Committee) the exclusion of *(or recommend that the Town or Parish Council exclude)* the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required, this will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

9. What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chairman will state the decision of the Standards Committee or Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee or Sub-Committee resolves to take.
- 9.2 Within 5 days, the Monitoring Officer shall prepare a formal Decision Notice in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, and send a copy to you and to the Member *(and to the Town or Parish Council if appropriate)*, make that Decision Notice available for public inspection and, report the decision to the next convenient meeting of the Council for information.

9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer in consultation with an Independent Person will determine whether it is in the public interest for the matter to be reported to Council for information. In such circumstances the Group Leader will also be consulted and notified of the decision accordingly.

10. Who forms the Standard Committee or Sub-Committee?

10.1 The Standards Committee will comprise of 7 District Councillors;

10.2 The Standards Town and Parish Sub-Committee will comprise of 3 District Councillors and 3 Town and Parish Councillors (nominated by the Tendring District Association of Local Councils);

10.3 At least one of the two Independent Persons must have been consulted on their views and taken into consideration before the Standards Committee or Sub-Committee takes any decision on whether a member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who are the Independent Persons?

11.1 The Council has appointed two Independent Persons to support the Standards Committee and Sub-Committee.

11.2 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

11.3 Section 28 (8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person protocol which sets out some general principles.

12. Revision of these Arrangements

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

13. Appeals

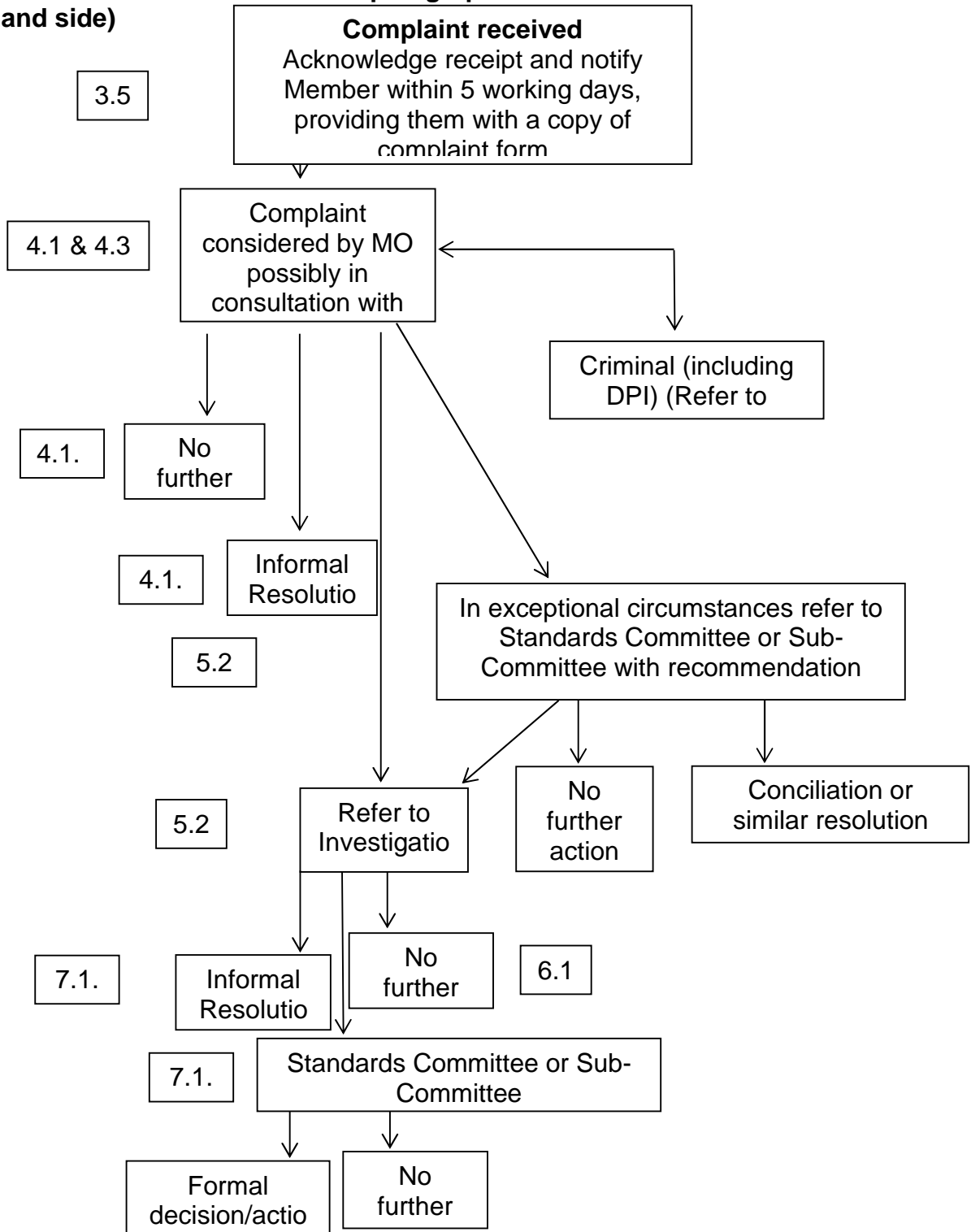
13.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee.

13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

ANNEX B

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

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



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

Committee	Functions and Terms of Reference	Delegated Functions
Standards Committee	<ol style="list-style-type: none"> 1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority; 2. To develop a culture of openness, transparency, trust and confidence between Members and in Member and Officer relationships and to embed a culture of strong ethical and corporate governance at all levels of the Council; 3. To advise the Council on the adoption or revision of the Members’ Code of Conduct; 4. To advise, train or arrange training on matters relating to and assisting Members, Co-opted Members and Town and Parish Councillors on observing the Members’ Code of Conduct; 5. To approve procedures for the conduct of hearings into complaints against Members; 6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council; 7. To receive reports from the Monitoring Officer and assess the operation and effectiveness of the Members’ Code of Conduct and the other elements of the Standards Framework; 8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints; 9. To hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Section 33 of the Localism Act 2011; and 10. To maintain oversight of the Council’s 	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members’ Code of Conduct of the Council/Town or Parish Council (“Code”) in accordance with the Complaints Procedure. 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether the complaint: <ul style="list-style-type: none"> • Merits no further action • Merits early informal conciliation • Merits further investigation • Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.

	<p>arrangements for dealing with complaints delegated to Standards Town and Parish Sub- Committee.</p>	<p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</p>
	<p>Proceedings:</p> <p>1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise;</p> <p>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</p> <p>3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and</p> <p>4. Any determination by the Committee which is contrary to the recommendation of the Monitoring Officer will include detailed reasons. The decision of the Committee will also be reported to the next meeting of full Council.</p>	<p>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct.</p> <p>5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011.</p> <p>6. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>

Committee	Functions and Terms of Reference	Delegated Functions
<p>Town and Parish Councils' Standards Sub-Committee</p>	<p>To advise and assist Town and Parish Councils and Councillors to maintain high standards of conduct and to make recommendations to Parish and Town Councils on improving standards or actions following a finding of a failure by a Town or Parish Councillor to comply with its Code of Conduct.</p> <p>Proceedings:</p> <ol style="list-style-type: none"> 1. To conduct proceedings in accordance with the Complaints Procedure, giving due consideration to the Monitoring Officer's advice and guidance, and following the principles of natural justice and innocent until proven otherwise; 2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure; 3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and; 	<p>Delegation to Monitoring Officer:</p> <ol style="list-style-type: none"> 1. Deal with complaints against Members and co-opted Members of the Council and/or any Town or Parish Council in the Tendring District alleging a breach of the Members' Code of Conduct of the Council/Town or Parish Council ("Code") in accordance with the Complaints Procedure. 2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether
	<ol style="list-style-type: none"> 4. Any determination by the Sub-Committee which is contrary to the recommendations of the Monitoring Officer will include detailed reasons. The decision of the Sub-Committee will also be reported to the next meeting of full Council. 	<p>the complaint:</p> <ul style="list-style-type: none"> •Merits no further action •Merits early informal conciliation •Merits further investigation •Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation. <ol style="list-style-type: none"> 3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary. 4. Commission external resources to investigate,

		<p>undertake consultation with an Independent Person and report on any complaints relating to Member Conduct.</p> <p>5. Submit reports to the Standards Committee or Sub-Committee on the actions taken under these delegated powers and to provide advice and support making recommendations to the relevant Committee on any matters relating to the promotion and maintenance of high standards of conduct.</p>
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ANNEX D CONDUCT COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation or to the Standards Committee or Sub-Committee

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

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

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

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

ANNEX E STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

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

1. Planning Stage:

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

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

2. Evidence Gathering Stage:

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

3. Interview Stage:

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

4. Report Stage:

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

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

Tendring District Council



APPLICATION FORM FOR ROLE OF INDEPENDENT PERSON

PERSONAL DETAILS

TITLE	MR/MRS/MISS/MS/OTHER* * Please specify
NAME	
ADDRESS	
TELEPHONE NUMBER (daytime)	
TELEPHONE NUMBER (mobile)	
EMAIL ADDRESS	

REFERENCES

REFERENCES - Please give the details of two people* who are not related to you and who are able to provide references, relating to your suitability for the role.

NAME		NAME	
ADDRESS		ADDRESS	
TEL.NO.		TEL.NO.	
EMAIL		EMAIL	
POSITION		POSITION	
Note that references may be taken up prior to interview unless you indicate otherwise			

ADDITIONAL INFORMATION

Please use the space on the next page to give details of why you would like to become one of the Council's Independent Persons and why you believe you are suitable for the position, taking into account the person specification and selection criteria. You may wish to tell us about your personal qualities and skills and work experience including voluntary activities and leisure interests.

The selection criteria include:

- A keen interest in standards in public life
- A wish to serve the local community and uphold local democracy
- High standards of personal integrity
- An ability to be objective, independent and impartial
- Sound analytical skills
- Leadership qualities, particularly in respect of exercising sound judgment
- Tact and diplomacy in handling sensitive situations
- A broad range of experience
- Good interpersonal skills

- Some knowledge of local government and an understanding of the political process

Additional Information contd ...

Please continue on a separate sheet of paper if necessary ...

PLEASE SIGN AND DATE THIS DECLARATION

- I confirm that to the best of my knowledge and belief the information given in this application is accurate.
- I confirm that I am not, nor have I been within the past 5 years, a member, co-opted member with voting rights or officer of Tendring District Council or of one of the Town or Parish Councils in the District of Tendring.
- I confirm that I am not a relative or close friend of a member, co-opted member with voting rights or officer of Tendring District Council or of one of the Town or Parish, Councils in the District of Tendring.

Signature: _____ **Date:** _____

When completed, please return to:

**Karen Hayes
Executive Projects Manager - Governance
Tendring District Council
Town Hall
Station Road
Clacton-on-Sea
Essex
CO15 1SE**