

STANDARDS COMMITTEE

05 February 2025

REPORT OF THE MONITORING OFFICER

A.3 STANDARDS COMMITTEE – REVIEW OF STANDARDS HEARING PROCEDURE

(Report prepared by Lisa Hastings and Karen Hayes)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To present the Standards Committee with a report on the opportunity to reflect on the internal consultation recently undertaken on the Standards Hearing Procedure and to endorse further work from Officers on reviewing the associated Complaints Procedure and production of a flow chart to assist once a matter is referred for hearing.

EXECUTIVE SUMMARY

The Standards Committee framework is responsible for the function of Standards Hearing, be it whether held by the Standards Committee for District Councillor complaints or a Sub-Committee for Town and Parish Councillor complaints.

Matters reaching the Standards Hearing Procedure arise from complaints received under the Council's Members' Code of Conduct complaints procedure and follow a finding of a breach of the Members' Code of Conduct.

In April 2024 the Committee considered a proposed updated Hearing Procedure that reflected best practice and case law, and which would supplement the Council's Complaints Procedure for dealing with allegations that a Member had breached the Code of Conduct. Full Council had previously approved the Standards Framework with effect from November 2013, which included a Complaints Procedure. The Complaints Procedure made reference to the hearing in paragraph 7.1.2 and that it would follow the relevant procedures setting out how the hearing would be conducted. The purpose of the document was to ensure that all parties understood the process which would be followed at the hearing and to assist the Chairman to conduct a fair and proper hearing. When a hearing was convened, a copy of the procedures would be set out with the Report.

At its April 2024 meeting the Committee was also informed that the current Hearing Procedure had been approved by the Standards Committee in March 2014 and in consideration of the length of time since its adoption and with a Hearing that was due to be held in May 2024, it was felt important by the Monitoring Officer to ensure that the Council's procedures reflected best practice and were up to date. The Standards Committee subsequently approved the amended Hearing Procedure for immediate adoption for both the Standards Committee and the Town and Parish Councils' Sub-Committee.

The opportunity for further review of the Standards Hearing Procedure comes after a Standards Hearing was conducted in May 2024 where the procedure was utilised and put through a 'stress test', having been infrequently used as the necessity had not arisen. The Hearing Procedure did not fail and was robust in its application, however there were some

operation matters prior to the Hearing which could be addressed in the process, once a matter is referred for a hearing by the Monitoring Officer. Subsequently, informal discussion sessions have taken place with Members of the Standards Committee and Independent Persons, with their views and subsequent amendments reflected within this report and within the Standards Hearing Procedure as appropriate; whilst still reflecting the Standards Framework and Terms of Reference of the Standards Committee.

Once these proposals are considered by the Standards Committee through a formal decision, further work can be undertaken on the documentation for approval.

RECOMMENDATION(S)

It is recommended that the Standards Committee:

- a) notes the contents of this report and endorses the proposals as set out;**
- b) requests that Officers further review the Council's Complaints Procedure, proposes amendments as necessary and produces a flowchart detailing the process following an investigation being concluded to referral for a hearing, where evidence of a breach has been found; and**
- c) requests that Officers then present a revised Council's Complaints Procedure, Standards Hearing Procedure and flowchart to a future meeting of the Committee.**

REASON(S) FOR THE RECOMMENDATION(S)

To present to the Standards Committee the draft amendments from the review of the Standards Hearing Procedure to ensure the Council's procedures follow best practice and case law.

ALTERNATIVE OPTIONS CONSIDERED

Not to review the Standards Hearing Procedure and retain it in its current format. This is discounted, as it is considered that operational matters to assist the process are required to ensure what is expected is clear for all parties.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

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

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

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

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

LEGAL REQUIREMENTS (including legislation & constitutional powers)

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

Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the Council, before it takes a decision on an allegation against a Member, which it decided shall be investigated, and whose views can be sought by the District Council at any other stage. The Council has adopted an Independent Person Protocol which sets out some general principles.

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

7.1.2 Hearing

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

To conduct a hearing, the Standards Committee must be convened and a Committee Agenda and Report is published and made available for public and press inspection, however, the Investigator's 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 will give the Member an opportunity to make representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

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

FINANCE AND OTHER RESOURCE IMPLICATIONS

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

USE OF RESOURCES AND VALUE FOR MONEY

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

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

MILESTONES AND DELIVERY

If the Committee is minded to agree with the recommendations set out in this report, Officers will present the required actions to a future meeting of the Standards Committee.

ASSOCIATED RISKS AND MITIGATION

Not presenting this information or keeping procedures under review, could have a detrimental impact of the Council's reputation.

OUTCOME OF CONSULTATION AND ENGAGEMENT

The content of this report is as a result of internal consultation conducted with Members of the Standards Committee and the Council's Independent Persons. Discussions were in depth and extremely constructive, and the high level common themes are detailed as follows:

- A pre-hearing stage be included within the procedure in order to allow sufficient time to consider the report, pose any necessary clarification questions to witnesses and if required call witnesses to the hearing, whether in person or remotely if there are geographical challenges. However, it would not be for Committee Members to challenge or further question witnesses as their accounts had been previously given to the Investigator and included within the report.
- That hearings held by the Standards Committee should remain in the current format of being heard by the whole Committee and not a Sub-Committee.
- As part of the investigation report, the opportunity should be given to the Subject Member at that time whether they wish to agree/challenge any element of the report, rather than just the opportunity to comment on the draft report as is currently the process.
- The Investigator should provide comment within the report as to whether they consider Article 10 of the Human Rights Act 1988 has been invoked and to what extent.
- Consideration was given as to whether the Subject Member should answer for themselves during the hearing, or as to whether their case be delivered entirely by their representative/third party. Additionally, if a Subject Member would/could not attend a hearing (after reasonable steps had been taken to ensure availability), as to whether the hearing should go ahead in the Subject Member's absence. If a hearing were to go ahead in the Subject Member's absence, this should not disadvantage the Subject Member.
- A sanctions report should go to Full Council at the conclusion of a hearing as standard practice, rather than this just being an option to the Standards Committee.
- That Hearing Procedure training should form part of the mandatory training required from Members to sit on the Standards Committee, rather than just a requirement of sitting on a hearing.
- If a Subject Member is intending on providing written responses/representation to the Standards Committee, that a firm time frame be imposed and that the Subject Member must advise the Committee as to any representatives (along with their details). Additionally, that any request for an extension of time is given in writing to the Chairman of the Standards Committee for their consideration.
- That an adjournment be included within the procedure to allow the Independent Person to consider their view in respect of any sanction prior to delivering this to the hearing.
- That a de-brief session should be conducted as soon as practicable at the conclusion of the hearing.
- That an opening point in the procedure for the hearing should allow for the parties to raise any preliminary issues ahead of the remainder of the procedure. This would allow those points to be addressed, considered and determined by the Committee. Legal and jurisdictional questions could be raised then and ensure appropriate advice was received by the Committee. Likewise, if any apology is offered where it had previously not been forthcoming, the hearing could proceed with that knowledge. The arrangement at the hearing of the Monitoring Officer introducing the investigation report (and its subsequent steps in the procedure) and the Committee being supported by the Deputy Monitoring Officer and Executive Projects Officer should continue.
- The allocation of three of the Independent Persons to separately support the Subject Member, the Monitoring Officer and the Committee also should be continued at future hearings.

EQUALITIES

Equality considerations are taken into account for each decision made.

SOCIAL VALUE CONSIDERATIONS	
Social value considerations are taken into account for each decision made.	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050	
This is taken into account for each decision made.	
OTHER RELEVANT IMPLICATIONS	
Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.	
Crime and Disorder	Not applicable
Health Inequalities	Not applicable
Area or Ward affected	No Wards would be directly impacted by this decision.
ANY OTHER RELEVANT INFORMATION	
None	

PART 3 – SUPPORTING INFORMATION

BACKGROUND
<p>After the Standards Hearing held in May 2024, Members of the Standards Committee and the Council's Independent Persons have had the opportunity to review and discuss the Hearing Procedure. The feedback from the consultation was that the Hearing Procedure was 'fit for purpose', however certain elements could be amended/included to create further robustness of the procedure picking up operational matters following referral to a hearing once the investigation has concluded there is evidence of breach.</p>
PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.
<p>Minute no.11 Standards Committee 18 March 2014 – RESOLVED that Hearing Procedures, as set out in Appendix 1 to the report, for both the Standards Committee and the Town and Parish Councils' Standards Sub-Committee, be approved, subject to the following additional wording:</p> <p>That where District Councillors were required to make a decision in respect of a hearing, they have due regard to and take into account any views expressed by Town and Parish Councillors in reaching their decision.</p> <p>Council had approved the Standards Framework with effect from November 2013, which had included a Complaints Procedure. The Complaints Procedure made reference to the hearing in paragraph 7.1.2 and that it would follow the relevant procedures setting out how the hearing would be conducted. The purpose of the document was to ensure that all parties understood the process which would be followed at the hearing and to assist the Chairman to conduct a fair and proper hearing. When a hearing was convened, a copy of the procedures would be set out with the Report.</p> <p>At its meeting on 24 April 2024, the Standards Committee resolved to approve the amended</p>

Hearing Procedure for immediate adoption for both the Standards Committee and the Town and Parish Councils' Standards Sub-Committee.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Appendix A – Hearing Procedure (revised and approved April 2024)

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