

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

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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 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 ("Subject Member"). In exceptional cases, we may agree to withhold your name and address from the Subject Member 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 Subject Member 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 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. Any determination by the Standards Committee is on a balance of probabilities.
- 3.8 Both Parties are encouraged to keep the matter of the complaint confidential whilst it is progressing in accordance with this complaint's 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 deciding 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 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 **Subject 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 **Clerk** 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 **Subject Member** ~~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 **authority** 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 **standards 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 **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 the councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice (R (Greenslade) v Devon County Council 2019). That means that the councillor must know what they are accused of and be given the opportunity to comment on the allegations.**

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 **can only** ~~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 **Subject** 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 **Subject** Member to provide his/her explanation of events, and to identify what documents **they** need to see and who **should be** ~~he needs to be interviewed~~. 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. **At this stage, the Subject Member should clearly identify any matters of contention within the draft Investigation Report and for these to then be included within the final Investigation Report. Any highlighted matters of contention will in turn be made known to the Standards Committee, if (and only if) the matter is to proceed to a Standards Hearing, should the evidence as set out in the Investigation Report support a finding of failure to comply with the Code of Conduct and informal resolution is not appropriate (see section 7 below).**
- 5.6 Having received and taken account of any comments which you, or the **Subject Member** ~~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.
- 5.7 **It is important to highlight that the Investigation Report follows the format, or similar, as agreed with the Monitoring Officer, as set out in Annex E. The Investigation Report is the outcome of a thorough investigation, and should the matter proceed to a hearing, it is expected that no new information will be produced by the Parties or the Investigator. The Report must be clear to follow, and demonstrate the robustness of the investigation undertaken.**
- 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 **Subject Member** ~~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 **formally** 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.

Procedure following Investigation to referral for a Standards Committee hearing:

The Council has produced a summary of the procedure following investigation to referral for a Standards Committee hearing for ease of reference and is included as Annex F.

At the hearing, will following the Council's **formally adopted Hearing Procedure, as set out in Annex G** and a copy of which will be provided in advance of the Standards Committee.

For reasons of fairness and proportionality a hearing should wherever possible take place within three months of the date on which the investigator's report was completed. Where that is not possible, for example because the matter is awaiting the outcome of other matters being dealt with by outside bodies or other investigations into the Subject Member, the Monitoring Officer should notify the relevant parties of the reason for the delay and provide an estimated timescale.

However, the hearing should not take place sooner than 14 days after the Investigation Report has been issued unless the Subject Member agrees. This is to allow them sufficient time to prepare their defence and consider any witnesses they may wish to call.

Notification of Hearing Date:

Once a date has been set for a Hearing the Monitoring Officer should notify:

- (i) the Subject Member;
- (ii) the Investigator;
- (iii) the relevant Independent Person(s);

- (iv) the Complainant (if appropriate);
- (v) the Clerk of any relevant Town or Parish Council.

The Monitoring Officer should also outline the Hearing Procedure; the Subject Member's rights and additionally request for a written response from the Subject Member within a set time. This is to find out whether the Subject Member:

- (a) intends to be represented at the hearing
- (b) disagrees with any of the findings of fact in the Investigation Report, including reasons for any of these disagreements
- (c) wishes to give evidence to the hearing, either verbally or in writing
- (d) would like to call relevant witnesses to give evidence to the Standards Committee

Note - should the Subject Member wish witnesses to attend the Hearing, either in person or virtually, sufficient reasoning should be given as to why the evidence as set out in the Investigation Report needs to be demonstrated further. Witnesses may be called but clear, timely reasons should be given, and it should be noted that no cross-examination is permitted.

- (e) request any part of the hearing to be held in private
- (f) request any part of the Investigation Report or other relevant documents to be withheld from the public.

The investigator should also be asked if they wish to call any witnesses.

Availability:

If the Subject Member is unable to make the specified date the Standards Committee may arrange for the hearing to be held on a different date, if they are satisfied that the Subject Member has given an acceptable reason. Where the Subject Member does not give an acceptable reason or does not reply within a specified time, the Standards Committee should proceed with the date and may consider the report in the Subject Member's absence if the Subject Member does not go to the hearing. The Subject Member should not be able to evade having the case heard simply by refusing to cooperate and the Code of Conduct makes failure to cooperate a potential breach. However, the Standards Committee should make clear at the start of the hearing that they have considered whether they can proceed in the absence of the Subject Member and should record their reasons.

If one or more witnesses are unavailable on the given date the Monitoring Officer, in consultation with the Standards Committee chairman, should decide how the material they would bring to the hearing could be presented and whether another date needs to be looked for. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect although it may be that their views were already sought as part of the investigation so the Standards Committee would need to evaluate how they could proceed without them. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Holding a pre-hearing

As soon as a date has been set for a hearing the Standards Committee should hold a private pre-hearing. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

At the pre-hearing the Standards Committee should:

- Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing. For example, if the dispute is about the time of a particular conversation but that time is not relevant to whether the Code has been breached or not, there would be little point focussing on that. On the other hand, if that alleged discrepancy were material the Standards Committee needs to satisfy itself how it would resolve that difference at the hearing.
- Consider any additional evidence it considers is required at the hearing.
- Identify any witnesses it thinks it would want to hear from.
- Decide if witnesses which the Subject Member or Investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality. For example, if an incident has occurred at full council there would be no need to call every member as a witness but equally the Standards Committee may feel it needs to hear from a couple of witnesses representing different sides. Similarly, if the Subject Member decides to call a number of character witnesses the Standards Committee should take a view as to how relevant that is and how many would suffice.
- Consider whether there are any parts of the hearing that are likely to be held in private on the grounds that they contain 'exempt' material (see section on confidentiality below) though the final decision will rest with the Standards Committee on the day. The presumption should be to hold a public hearing unless there is specific exempt or confidential information as defined by Part VA of the Local Government Act 1972.
- Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses. The Monitoring Officer will advise if any conflicts mean that a councillor should stand down from the Standards Committee.

It is important that at the pre-hearing Standards Committee members do not debate the merits of the case.

Note: the pre-hearing would not of itself be a formal meeting so would not be open and often these matters can be dealt with through correspondence. Once the pre-hearing has been held the Monitoring Officer should write to everyone involved in the complaint at least two weeks before the hearing. This should confirm the date, time and place for the hearing, note whether the Subject Member or Investigator will be represented at the hearing. It should also list those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the hearing.

Hearing:

Roles and Responsibilities at the Hearing:

Officer roles:

Monitoring Officer – commissioned the investigation and determined that a Standards Hearing was an appropriate course of action.

Investigator – presents the content and findings of their investigation report to the Committee

Deputy Monitoring Officer – provides procedural advice to the Standards Committee throughout the Standards Hearing (including within deliberations).

The Council's Legal Services are to be available to provide legal advice to the Standards Committee throughout the Hearing. Should a Subject Member wish to be legally represented at a Standards Committee Hearing, the Legal Advisor shall be seated with the Standards Committee in order to provide legal advice throughout the Hearing.

Committee's role:

The Standards Committee conducts a hearing in accordance with the formally adopted procedures, 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.

Subject Member and their representative:

Subject Member should answer questions posed to them by the Standards Committee; however, this cannot be forced upon them. If they do not wish to answer themselves, they may choose to do so through their representative. The Standards Committee will take into consideration the fact that the Subject Member would not directly answer any questions.

Hearing Procedure:

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 Subject 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.

At the conclusion of the presentation of the material from the Investigator and Subject Member, the Chairman of the Standards Committee should call a short adjournment in order for the Council's Independent Person to consider and prepare their view prior to presenting it to the Standards Committee. This period will also allow the Standards Committee a private recess in order to consult with the Council's Legal Advisor.

The Members of the Standards or Sub-Committee, after hearing all the evidence and information, and comments from the Independent Person, will ~~may adjourn the meeting for a short period and~~ adjourn the meeting 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 **Subject** Member of this finding. The Committee or Sub-Committee will then consider what action, if any, the Committee or Sub-Committee should take as a result of the **Subject** Member's failure to comply with the Code of Conduct. In doing this, the Committee or Sub-Committee will give the **Subject** 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.

Due to the importance of consultation with the Council's Independent Person, they are entitled to request a short adjournment to consider and prepare their view prior to presenting it to the Standards Committee.

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 **Subject** 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 **The Subject Member will be reminded that paragraph 8.4 of the Members' Code of Conduct states that they will comply with any sanction imposed on them following a finding that they had breached the Code of Conduct. Should the Subject Member fail to comply with any sanction, due to the existence of an ongoing breach, the matter will be reported back to the Standards Committee, to determine what action to take.**

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

- 9.3 Should a police investigation result in a Member being convicted of a criminal offence the Monitoring Officer consulting 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 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

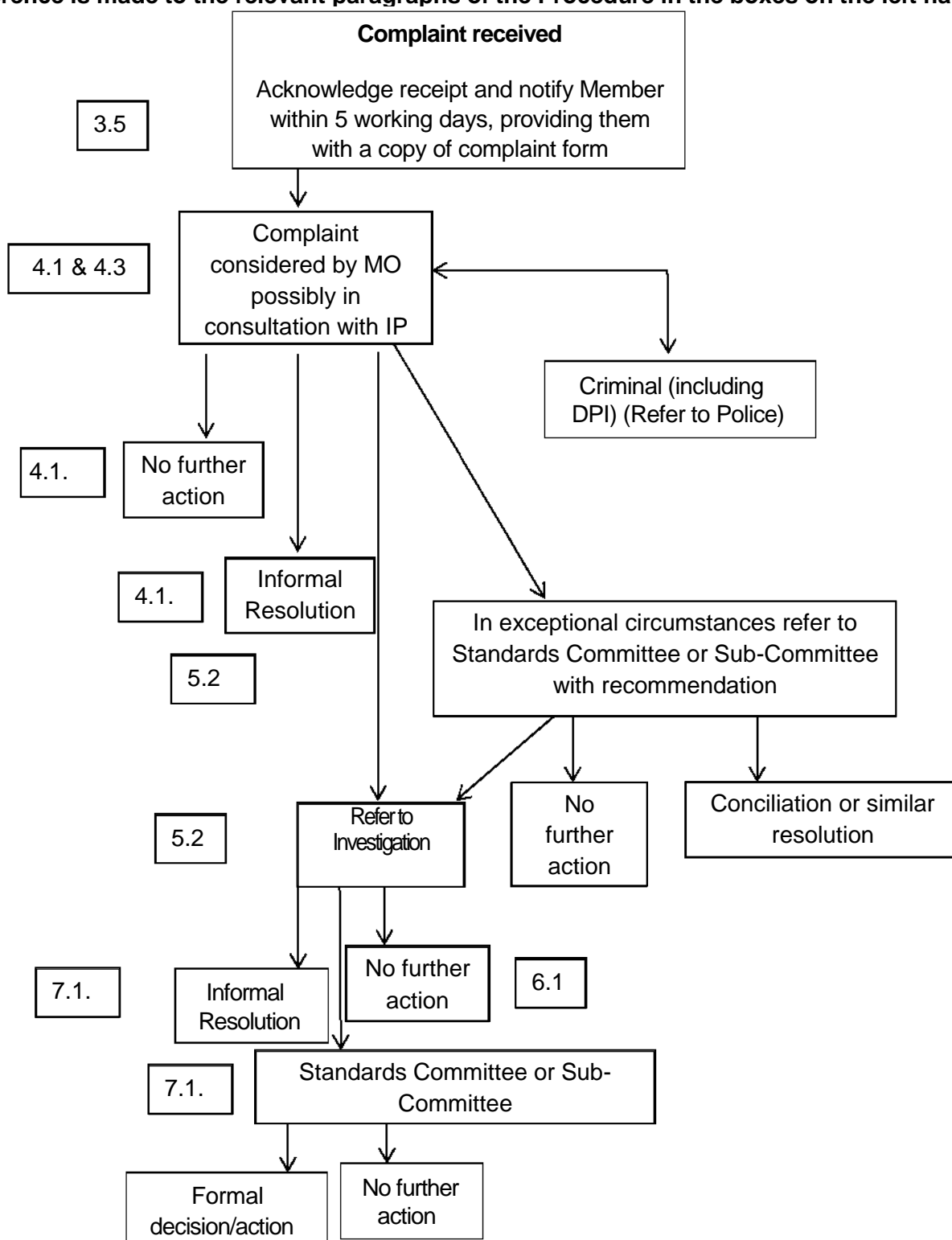
The Council may by resolution agree to amend these arrangements, upon the advice of the Monitoring Officer where it is necessary, fair, proportionate and expedient to do so.

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.

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)



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 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; 	<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>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</p> <p>10. To maintain oversight of the Council's 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
Town and Parish Councils' Standards Sub-Committee	<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.

		<p>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</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. 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

Subject 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.

Any investigation should therefore bear in mind some Key Principles:

- **Proportionality.** That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up. Equally not all of the steps in this procedure need be followed in every instance of a formal investigation – a judgment must be made, in consultation with the Monitoring Officer, in each case based on its complexity and contentiousness.
- **Fairness.** The investigation should make sure that the Subject Member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report. Again, this may depend on the nature of the complaint – for example, an alleged failure to declare an interest may be largely a factual matter which needs little or no investigation rather than one that needs to involve evidence from other parties. A councillor quickly admitting to an error may not need further detail to be probed.
- **Transparency.** As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case.
- **Impartiality.** An investigator should not approach an investigation with pre-conceived ideas and should avoid being involved where they have a conflict of interest.

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.
- Tending 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:

Purpose of the report

The report should be treated as an explanation of all the essential elements of the case and a justification for why the Investigator has concluded there has been a breach or not.

The report should cover:

- agreed facts;
- any disputed facts together with the Investigator's view, if appropriate, as to which version is more likely;
- whether those facts amount to a breach of the code or not; and
- the reasons for reaching that conclusion.

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct;
- that there has not been a failure to comply with the Code.

~~• Review evidence from interviews and any documentary evidence provided.~~

• Draft the report to contain:

○ An Executive Summary:

The beginning of the Investigation Report should contain the salient points from the investigation, whether or not the Subject Member was acting in official capacity, identify what the alleged breaches of the Members' Code of Conduct are and whether on the balance of probabilities they have been breached, supporting evidence and the role of the Standards Committee in deciding whether there has been a breach.

○ The Interview Process

Details of who was interviewed, who supplied information and whether through written documentation or verbally

○ Agreed facts:

○ Facts not agreed and matters in dispute;

○ Article 10, Freedom of Expression:

Consideration given to be given as to whether relevant to the circumstances of the complaint;

- Subject Member's length of service and Code of Conduct training
- An assessment on **each** of the alleged breaches of the Code of Conduct
 - (i) forming the complaint and
 - (ii) 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.

ANNEX F – insert the final flowchart – Appendix B to the Standards Committee Report

ANNEX G – insert formally adopted hearing procedure.