

**TENDRING DISTRICT COUNCIL**



**MEMBERS' CODE OF CONDUCT**

(Adopted by the Council on 23 January 2018)

(Code as regards the conduct which is expected of all elected Councillors, voting co-opted members and appointed members)

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**TENDRING DISTRICT COUNCIL**  
**MEMBERS' CODE OF CONDUCT**

**1. INTRODUCTION TO THE CODE OF CONDUCT**

- 1.1 Trust and confidence in public office-holders and institutions are important for the functioning of local authorities. This is particularly true in the case of elected office-holders. The Council has therefore adopted this Code of Conduct for elected Members (also referred to as “Councillors”) to promote and maintain high standards of conduct in public life. It is each Member’s responsibility to comply with the provisions of this Code.
- 1.2 The Code of Conduct applies to all elected Members, voting co-opted Members and appointed Members.
- 1.3 The Code covers three main areas:
- **Part 1** sets out some general obligations regarding the behaviour of elected and co-opted Members (“**Rules of Conduct**”)
  - **Part 2** explains how Members should behave if they have a personal/code interest in an item of Council business (“**Members’ Interests**”)
  - **Part 3** sets out rules requiring registration of interests for public inspection (“**Register of Members’ Interests**”)

The Principles of Public Life are set out in the Appendix.

**2. Interpretation of when the Code of Conduct applies?**

- 2.1 In this Code “meeting” means any meeting of
- (a) Tendring District Council (“the Authority”);
  - (b) the Cabinet (also known as the Executive) of the Authority
  - (c) any of the Authority’s or Cabinet’s committees, sub committees joint committees, joint sub-committees, or area committees (including working parties and panels); or
  - (d) informal meetings with other Members and/or Officers relating to the discharge of the Authority’s functions.
- 2.2 The Code of Conduct applies—
- (a) whenever a Member conducts the business, or are present at a meeting, of the Authority; or
  - (b) whenever a Member acts, claims to act or gives the impression they are acting in the role of Member to which they were elected or appointed; or

- (c) whenever a Member acts, claims to act or give the impression they are acting as a representative of the Authority (including representation on outside bodies); or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 3.4(a) and 3.5; or
- (e) in respect of any criminal offence for which they have been convicted during their term of office.

- 2.3 Where a Member is elected, appointed or nominated by the Authority to serve on any other authority or body they must, when acting for that other authority or body, comply with the code of conduct of that other authority or body.
- 2.4 Where a Member is elected, appointed or nominated by the Authority to serve on any other body which does not have a code relating to the conduct of its members, they must, when acting for that other body, comply with this Code of Conduct, unless it conflicts with any other lawful obligations to which that other body may be subject.

### **3. Principles of Public Life**

- 3.1 The Localism Act 2011 requires the Authority to have a code of conduct which is consistent with the 'Nolan Principles' determined by the Committee on Standards in Public Life. These Principles are set out in the Appendix A to this Code. The Code is consistent with the Nolan Principles but any breach of the principles is not by itself a breach of the Code.

Members of Tendring District Council shall have regard to the Seven Principles of Public Life as it is these principles which underpin the Rules of Conduct set out below.

## **PART 1**

### **RULES OF CONDUCT**

#### **3.2 In fulfilling Duties and Responsibilities**

Members must not:

- (a) breach their duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) disrespect others;
- (c) bully or harass any person; or
- (d) do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the Authority.

### 3.3 Information

Members must not:

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

### 3.4 Conduct

Members must:

- (a) not conduct them self in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute;
- (b) not make vexatious, malicious or frivolous complaints against other Members or anyone who works for, or on behalf of, the Authority.
- (c) comply with any request of the Authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.

### 3.5 Use of the Position

Members must not:

- (a) in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for them self, or any other person, an advantage or create or avoid for them self, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of the Authority—
  - (i) imprudently;
  - (ii) in breach of the Authority's requirements;
  - (iii) unlawfully;
  - (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the Authority or of the office to which they have been elected or appointed;
  - (v) improperly for political purposes; or
  - (vi) improperly for private purposes.

### 3.6 Registration of Interests

In accordance with and subject to Part 2 of the Code, Members are required to register details of their Disclosable Pecuniary Interests and their Personal Interests within 28 days of

becoming a Member (or being re-elected or reappointed) or a change in those details, in the Authority's Register of Interests.

### 3.7 **Decision Making**

Members must:

- (a) when participating in meetings or reaching decisions regarding the business of the Authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the Authority's officers, in particular by—
  - (i) the Authority's Head of Paid Service;
  - (ii) the Authority's s.151 Officer/ Chief Finance Officer;
  - (iii) the Authority's Monitoring Officer/ Chief Legal Officer;
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Authority.

### 3.8 **Compliance with the Law and the Authority's Rules and Policies**

Members must:

- (a) observe the law and the Authority's rules governing the claiming of expenses and allowances in connection with their duties as a Member;
- (b) comply with the Local Authority Code of Publicity made under the Local Government Act 1986 and any relevant guidance issued;
- (c) comply with the provisions of the Bribery Act 2010 or similar;
- (d) comply with the Authority's Gifts and Hospitality Policy;
- (e) comply with any other policy (or part of policy) which sets out required conduct from Members, for example the Member/Officer Working Protocol and Planning Code for Members, or similar.

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**PART 2****MEMBERS' INTERESTS**

**Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.**

**4. Disclosable Pecuniary Interests**

- 4.1 Disclosable Pecuniary Interests (DPIs) are defined by *The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and are set out in Appendix B to this Code. It is important that Members understand what amounts to a DPI, that they identify carefully all DPIs relevant to them and that they take the necessary action required by law. Breach of the requirements related to DPIs is a criminal offence and are referred to the Police.
- 4.2 A Member will have a Disclosable Pecuniary Interest in any business of their Authority if it is of a description set out in Appendix B and is either:
- (a) their own interest, or that of a Relevant Person being:
  - (b) an interest of their spouse,
  - (c) an interest of their civil partner, or
  - (d) an interest of a person with whom they are living with as a spouse or civil partner,

and in the case of paragraphs 4.2(b) – (d) the Member is aware that the Relevant Person has the interest.

**5. Personal Interests**

- 5.1 A Member will have a Personal Interest in any item of business of the Authority where it relates to or is likely to affect –
- (a) any person or body who employs or has appointed them;
  - (b) any existing contract for goods, services or works, which has not been fully discharged or has expired within the last 2 years, and made between the Authority and
    - (i) the Member,
    - (ii) a Related Person;
    - (iii) a body in which the Member has a Disclosable Pecuniary Interest; or
    - (iv) a person or body of the description specified in paragraphs 5.1 (c)-(d) below;

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- (c) any body of which the Councillor is a member or in which they hold a position of general control or management and to which they are appointed or nominated by the Authority;
- (d) any other body of which the Councillor is a member and in which they hold a position of general control or management –
- (i) exercising functions of a public nature;
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
- (e) the interests of any person from whom the Member has received a gift or hospitality with an estimated value of at least £50;
- (f) a decision in relation to that business which might reasonably be regarded as affecting the financial position or wellbeing of:
- (i) the Member or
  - (ii) a Related Person (if the Member is aware of its existence)
- to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, affected by the decision;

5.2 Related Person is defined as:

- a member of the Councillor's family; or
- any person with whom the Councillor has a close business or personal association.

In the case of a Related Person, a Councillor is only required to declare those interests which they are aware or ought reasonably to be aware of the existence.

## 6. Declaration of Members' Interests

6.1 Subject to sub-paragraphs 6.2 to 6.3, where a Member has a Disclosable

Pecuniary or Personal Interest in any business of the Authority and they are present at a meeting of the Authority at which the business is considered, they must declare to that meeting the existence and nature of that interest whether or not such interest is registered on their Register of Interests or for which they have made a pending notification.

6.2 Sub-paragraph 6.1 only applies where a Member is aware or ought reasonably to be aware of the existence of the Relevant Person's (as defined in 4.2 above) Interest or the Related Person's (as defined in 5.2 above) Interest.

- 6.3 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 but by virtue of paragraph 11 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary or Personal Interest they do not need to declare the nature of the interest to the meeting.
- 6.4 Where a Member has an interest in any business of the Authority which would be declarable by virtue of paragraph 6.1 and they are acting as a Cabinet Member, making an executive decision in relation to that business they must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## **7. Declaration of Personal Interests generally**

- 7.1 Subject to sub-paragraphs 7.2 & 7.3 below, a Member has a duty to declare any Personal Interest, as set out in paragraph 5 above, in considering any business of the Authority, where that interest is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest.
- 7.2 Holding the position of a District Councillor is NOT an interest which is required to be declared at any Council, Committee, Sub-Committee or Cabinet meetings, unless the Member is involved in the decision making affecting the ward they were elected to.
- 7.3 A Member does not have a declarable interest in any business of the Authority where that business relates to the functions of the Authority in respect of:
- i. housing, where the Member is a tenant of the Authority provided that those functions do not relate particularly to their tenancy or lease;
  - ii. school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
  - iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or are entitled to the receipt of, such pay;
  - iv. an allowance, payment or indemnity given to Members;
  - v. any ceremonial honour given to Members; and
  - vi. setting Council Tax or a Precept under the Local Government Finance Act 1992

**8. Effect of Disclosable Pecuniary Interests on participation**

- (a) If a Member is present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and they have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and they are aware of that Interest:
  - (i) the Member must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
  - (ii) the Member must withdraw from the room or chamber where the meeting considering the business is being held unless they have received a dispensation from the Authority's Monitoring Officer.
- (b) If a Member has a Disclosable Pecuniary Interest in any business of the Authority they must not:
  - (i) exercise executive functions in relation to that business; and
  - (ii) seek improperly to influence a decision about that business
- (c) If a function of the Authority may be discharged by a Member acting alone and they have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function they may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by them self).

**9. Effect of Personal Interests on participation**

- 9.1 If a Member has a Personal interest (not a Disclosable Pecuniary Interest) in any business of the Authority which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and they are present at a meeting of the Authority at which such business is to be considered or is being considered the Member must:-
- (a) Declare the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)
  - (b) Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making representations or in any other case when the business is under consideration, unless they have obtained a dispensation from the Authority's Monitoring Officer.

**PART 3****REGISTER OF MEMBERS' INTERESTS****Registration of Members' Interests**

- 10.1 Subject to paragraph 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
  - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of Disclosable Pecuniary Interests as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner in so far as they are aware of their interests at that time.
- 10.2 Subject to paragraph 11, Members must, within 28 days of becoming aware of any new or amended Disclosable Pecuniary Interest as referred to in paragraph 4, and defined in Appendix B, that they, their spouse, civil partner or person with whom they live as if they were their spouse or civil partner or change to any interest registered under paragraph 4 above by providing written notification to the Authority's Monitoring Officer.
- 10.3 Subject to paragraphs 10.5 and 11, Members must, within 28 days of—
- a. this Code being adopted by or applied to the Authority; or
  - b. their election, re-election or appointment or re-appointment to office (where that is later), or co-option onto the Authority,
- register in the Authority's Register of Members' Personal Interests details of Personal Interests as referred to in paragraph 5, that the Member is aware of at that time.
- 10.4 Subject to paragraphs 10.5 and 11, Members must, within 28 days of becoming aware of any new or amended Personal Interest as referred to in paragraph 5 or change to any interest registered under paragraph 5 above by providing written notification to the Authority's Monitoring Officer.
- 10.5 The provisions of paragraphs 10.3 and 10.4 above, do not apply to any Personal Interest which concerns a Related Person, as these interests are not required to be registered in advance and only declared at a meeting of the Authority at which the business is considered and the Member is present.
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**11. Sensitive Information**

- 11.1 Where a Member has an interest referred to in paragraphs 4 or 5, and the nature of the interest is such that the Member and the Authority's Monitoring Officer consider that disclosure of details of the interest could lead to the Member or a person connected with them being subject to violence or intimidation if the interest is entered in the Authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that the Member has an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 11.2 Members must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's Monitoring Officer.
- 11.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that the Member or a person who lives with them may be subject to violence or intimidation.

## **APPENDIX A**

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, non-departmental public bodies, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

### **The Nolan Principles**

<b><i>Selflessness</i></b>	Holders of public office should act solely in terms of the public interest.
<b><i>Integrity</i></b>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<b><i>Objectivity</i></b>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<b><i>Accountability</i></b>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<b><i>Openness</i></b>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<b><i>Honesty</i></b>	Holders of public office should be truthful.
<b><i>Leadership</i></b>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**APPENDIX B**

“Disclosable Pecuniary Interests” are defined by *The Relevant Authorities*

*(Disclosable Pecuniary Interests) Regulations 2012* and are:-

**Employment, office, trade, profession or vacation**

Any employment, office, trade, profession or vocation carried on for profit or gain.

**Sponsorship**

Any payment or provision of any other financial benefit (other than from the relevant Authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a Member, or towards the election expenses of the Member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

**Contracts**

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant Authority—

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

**Land**

Any beneficial interest in land which is within the area of the relevant Authority.

**Licences**

Any licence (alone or jointly with others) to occupy land in the area of the relevant Authority for a month or longer.

**Corporate tenancies**

Any tenancy where (to the Member’s knowledge)—

- (a) the landlord is the relevant Authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

**Securities**

Any beneficial interest in securities of a body where—

- (a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant Authority; and
- (b) either—
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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**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](mailto: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

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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.
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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.

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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
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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.

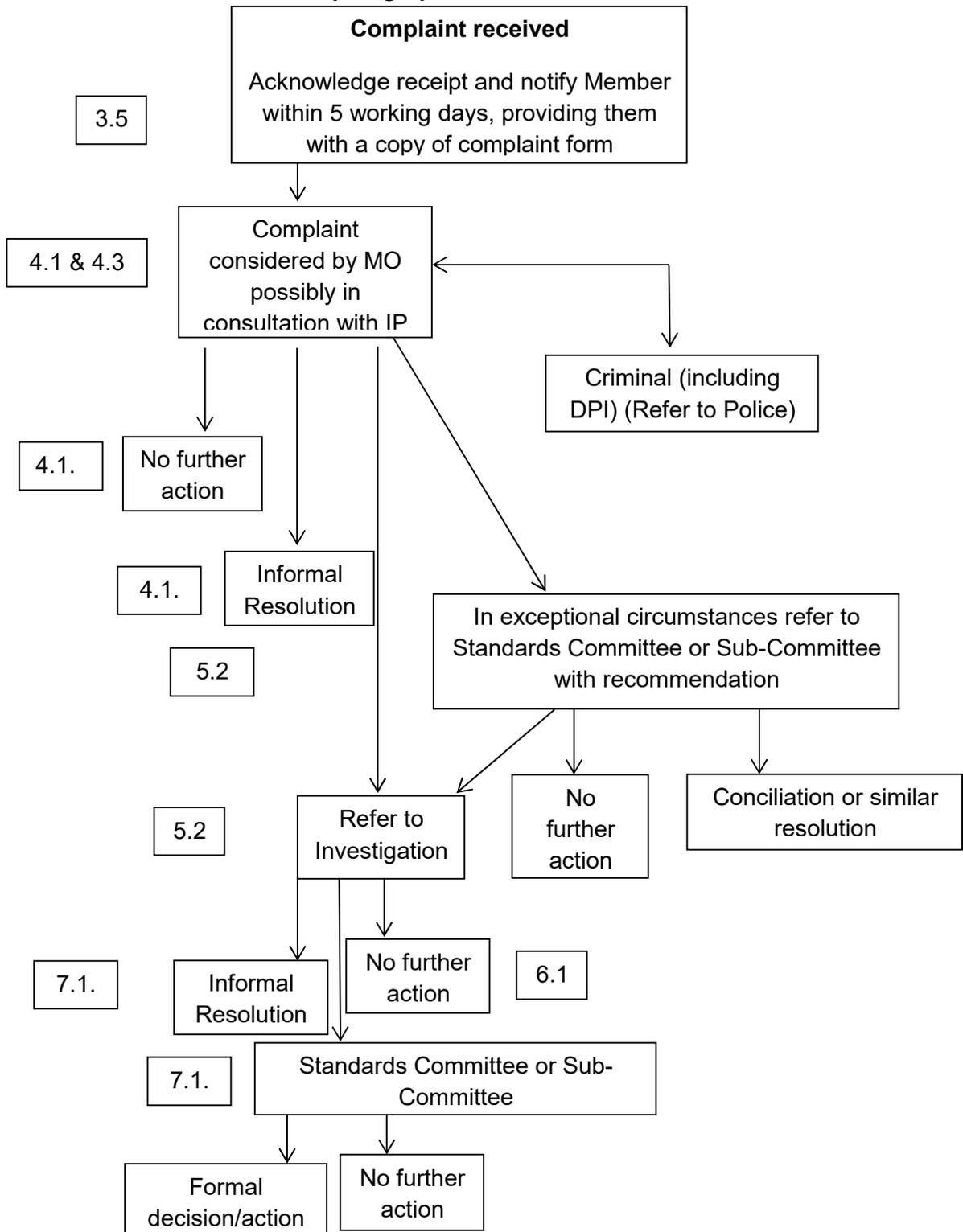
**13. Appeals**

- 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**

<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<b>Standards Committee</b>	<ol style="list-style-type: none"> <li>1. To promote and maintain high standards of conduct by Members and Co-opted Members of the authority;</li> <li>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;</li> <li>3. To advise the Council on the adoption or revision of the Members' Code of Conduct;</li> <li>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;</li> <li>5. To approve procedures for the conduct of hearings into complaints against Members;</li> <li>6. To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;</li> <li>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;</li> <li>8. To inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints;</li> <li>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</li> <li>10. To maintain oversight of the Council's arrangements for dealing with complaints delegated to Standards Town and Parish Sub-Committee.</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>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"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> </li> <li>3. Determine the format of the Complaints Form, Decision Notices and Procedure Flowchart and review where necessary.</li> </ol>

(Grey)

	<p><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>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;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> <li>3. To hear and determine complaints about Tendring District Council Members and Co-opted Members referred to it by the Monitoring Officer; and</li> <li>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.</li> </ol>	<ol style="list-style-type: none"> <li>4. Commission external resources to investigate, undertake consultation with an Independent Person and report on any complaints relating to Member conduct.</li> <li>5. Grant dispensations in compliance with Section 33(a) to (e) of the Localism Act 2011.</li> <li>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.</li> </ol>
<b>Committee</b>	<b>Functions and Terms of Reference</b>	<b>Delegated Functions</b>
<p><b>Town and Parish Councils' Standards Sub-Committee</b></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><b>Proceedings:</b></p> <ol style="list-style-type: none"> <li>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;</li> <li>2. To receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the assessment criteria and Complaints Procedure;</li> <li>3. To hear and determine complaints about Town and Parish Council Members and Co-opted Members referred to it by the Monitoring Officer ; and;</li> </ol>	<p><b>Delegation to Monitoring Officer:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Assess complaints in accordance with the Assessment Criteria and may consult with a duly appointed Independent Person and determine whether</li> </ol>

(Grey)

	<p>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>	<p>the complaint:</p> <ul style="list-style-type: none"> <li>• Merits no further action</li> <li>• Merits early informal conciliation</li> <li>• Merits further investigation</li> <li>• Should due to exceptional circumstances be referred to the Standards Committee or Sub-Committee for consideration for further investigation.</li> </ul> <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.**

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**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.

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**TENDRING DISTRICT COUNCIL  
MONITORING OFFICER PROTOCOL**

This Protocol relates to the discharge of the Monitoring Officer functions in relation to the assessment of an allegation that a Member of the District, Town or Parish Council has failed to comply with the Council's Members' Code of Conduct.

**1. Overarching Principles:**

- (a) The Monitoring Officer is a statutory appointment under s.5 of the Local Government and Housing Act 1989.
- (b) This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
- (c) The Monitoring Officer will discharge their statutory responsibilities with a positive determination contributing to promotion and maintenance of high standards of conduct, in a manner that enhances the overall reputation of the Council, in particular:
  - Complying with the law (including any relevant Codes of Conduct);
  - Complying with any general Guidance issued including consideration of Best Practice;
  - Complying with the procedures adopted by the Standards Committee following such guidance;
  - Complying with the Council's Constitution and standing orders; and
  - Acting impartially in the interests of fair and natural justice.
- (d) The Monitoring Officer must establish and maintain a Register of Interests of Members and co-opted Members of the Authority.
- (e) The Monitoring Officer is employed by Tendring District Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members. Accordingly, when they are of the opinion that providing advice to a Member or group of Members on a matter is incompatible with their role as adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority.
- (f) Where the advice or recommendation of the Monitoring Officer is departed from by the Standards Committee or Sub-Committee, in accordance with administrative law, full reasons will be provided by the relevant Committee in making its decision.
- (g) This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure and Independent Person's Protocol.
- (h) The Monitoring Officer is the principal adviser to the Standards Committee and Sub-Committee. Additional advice and support is provided by Officers within the Legal and Democratic Services teams.

- (i) The Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends in relation to the promotion and maintenance of high standards of conduct at these Authorities.
- (j) The Monitoring Officer will consult with one of the Independent Persons on complaints received and throughout the process in accordance with the Complaints Procedure.
- (k) In circumstances where either the Monitoring Officer or one of the Officers has made a complaint, witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not exist. These procedures will consist of maintaining an information barrier and restricted access to the matter in consideration; this is referred to as “conflicted out”.

In practical terms, in these circumstances, the Monitoring Officer or Officer will take no part in the process unless called upon either as the complainant or as a witness.

- (l) In instances (exceptional circumstances) where the Monitoring Officer decides to refer a complaint to the Standards Committee or Sub-Committee for initial assessment or further investigation, in accordance with the Complaints Procedure (see flowchart), any approved information as is readily available, which would assist the Standards Committee or Sub-Committee in its function of considering the allegation will be attached to their Report.
- (m) In providing information, in any manner at any stage in the process, the Monitoring Officer must satisfy that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.
- (n) It is recognised that, where a complaint is referred for investigation, this may not be personally conducted by the Monitoring Officer. The investigator instructed will be suitably qualified with the requisite experience and may include another senior officer of the Council, a senior officer of another Authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained. Wherever possible and if appropriate to do so, the Monitoring Officer will seek external resources from outside of the County of Essex.

## **2. Receipt of Allegations:**

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints Procedure. The Monitoring Officer will treat this as a general complaint and forward it to be dealt with under the Council’s general formal complaints process, as appropriate.
- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

**3. Consultation with the Independent Persons:**

- (a) The Monitoring Officer and supporting Officers will facilitate the contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the Complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the parties.
- (b) The Monitoring Officer will allocate roles for the Independent Persons in accordance with their Protocol and each party will be notified who the relevant Independent Person is and that they will be in contact shortly.
- (c) The Monitoring Officer does not have to agree with the Independent Person but if a different view is taken the Monitoring Officer will consult with another Independent Person in the first instance, before making a final decision.

**4. Standards Committee and Sub-Committee:**

- (a) The Monitoring Officer, in consultation with the relevant Chairman of the Standards Committee or Sub-Committee will decide on the type of attendance permitted for an Independent Person when considering complaints.
- (b) All meetings of the Standards Committee or Sub-Committee are considered to be open to the public and press unless (c) and (d) below apply.
- (c) The Monitoring Officer will advise the Standards Committee or Sub-Committee when to go into private session and exclude public access to the meeting in accordance with the Access to Information Procedure Rules, as set out in the Council's Constitution.
- (d) In accordance with Access to Information Procedure Rules, if the Monitoring Officer or Deputy Chief Executive considers it appropriate, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with the meeting at which those reports are to be discussed is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.
- (e) Any decision departing from the Monitoring Officer's recommendation or advice will be supported with full reasons and recorded within the public part of the minutes for the meeting.

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**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 IPs 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.

**PROTOCOL ON MEMBER & OFFICER RELATIONS****INTRODUCTION:**

The success of the Council is greatly dependent upon the positive nature of the working relationship between Members and Officers. Mutual trust and respect between both Members and Officers is essential to good local government.

The purpose of this protocol is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship.

The protocol also builds on the respective Codes of Conduct for both Members and Officers and through this promotes the maintenance of integrity, both real and perceived, of the Council as well as very high standards of personal conduct.

**1. THE ROLES OF MEMBERS AND OFFICERS:**

- 1.1 In fulfilling their roles, the elected Members and Officers are both jointly responsible for:
  - (a) acting honestly, with integrity and in the public interest; and
  - (b) open and transparent objective decision making;
- 1.2 In addition, as set out in Article 2 of the Council's Constitution, the elected Members' role is to:
  - (a) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (b) Represent their communities and bring their views into the Council's decision-making process, i.e. become an advocate for their communities;
  - (c) Effectively represent the interests of their ward and of individual residents;
  - (d) Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances;
  - (e) Be involved in decision-making for the people of the District as a whole;
  - (f) Be available to represent the Council on other bodies; and

- (g) Contribute to the governance and effective management of the Council's business at meetings of the Council, Cabinet and other Committees and Sub-Committees, maintaining the highest standards of conduct and ethics.

1.3 In addition, the Officers are responsible for:

- (a) providing professional and technical advice that Members must have before them when formulating policy and when taking decisions;
- (b) lawfully implementing Members' decisions;
- (c) day-to-day administration, including staffing matters;
- (d) taking managerial and operational decisions in accordance with the Council's Scheme of Delegation;
- (e) the provision of information regarding Council services; and
- (f) undertaking public consultation.

## **2. WORKING RELATIONSHIPS – UNDERPINNING PRINCIPLES:**

To be followed by **both Members and Officers** in fulfilling their duties:

- Mutual respect and courtesy between Officers and Members;
- An awareness of each other's responsibilities and duties;
- No inappropriate criticism, intimidating behaviour or the creation of a threatening work environment of any kind from either Members or Officers;
- Any appropriate challenges are to be conducted in a professional and respectful manner;
- Equal treatment, regardless of personal or political opinion (actual or perceived);
- An adherence to the law and the lawful instructions and advice of others; and
- An avoidance of close personal familiarity.

The above principles are designed to foster the good working relationships between Officers and Members that are essential to effective decision making and the delivery of services.

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Alleged breaches of the Members' Code of Conduct are dealt with through the Council's Standards Committee and in relation to the Officer Code, by the Head of Paid Service, in accordance with the Council's Human Resources Policies and Procedures.

If an Officer is concerned about the conduct of a Member, they should report this to their senior manager, who will notify both the Head of Paid Service and the Monitoring Officer. These concerns could include public criticism of an Officer by a Member or unreasonable, frivolous or vexatious requests for information.

### **3. OFFICER APPOINTMENTS, PERFORMANCE AND POLITICAL NEUTRALITY:**

- 3.1 The appointment of the Chief Executive (Head of Paid Service), the Monitoring Officer, the Chief Financial Officer, the Corporate Directors, Assistant Directors and Heads of Service will be made in accordance with the Officer Employment Procedure Rules. All other appointments are made at the appropriate Officer level.
- 3.2 The **Main Functions and Areas of Responsibility of Officers** are set out in Article 12 of the Council's Constitution. The position of the Chief Executive (Head of Paid Service) is to have overall corporate management and operational responsibility (including overall management responsibility for all officers).
- 3.3 Staffing matters (including discipline, training, setting and monitoring targets) are dealt with by the relevant managers, although the relevant Portfolio Holders/Cabinet Members will agree to targets in the case of the Chief Executive. All other targets are set at Officer level.
- 3.4 Members wishing to comment on an individual Officer's performance and/or deficiencies are usually expected to raise the matter with the relevant Corporate Director in the first instance. Thereafter to the Chief Executive if unresolved.
- 3.5 Officers are politically neutral, serve the whole Council and must avoid being identified with any political group. In order to safeguard this neutrality, Officers must avoid involvement in party political matters, such as campaigns in the political arena. This assumes particular significance in the run up to Elections. In their lives outside work, all politically restricted posts, which includes the Chief Executive, the Corporate Directors, Assistant Directors and many Senior Officers are prevented from active political involvement.

### **3.6 OFFICER ATTENDANCE AND ADVICE TO PARTY GROUPS**

- 3.6.1 The political parties represented on the Council hold regular group meetings. Officers do not usually advise at these meetings, but may be invited to give information. All invitations should be routed through the Chief Executive.

- 3.6.2 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such items being considered by the relevant Council decision-making body. The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member, Chairman or spokesperson (either jointly or individually) prior to a meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be most in demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.6.3 The parameters for support to party groups and individuals must be clearly understood, and to assist in this the following applies:-
- (i) The Chief Executive will inform all party groups of the facility for an Officer to attend a party group meeting for a specific purpose and will decide, on request, which Officer may attend.
  - (ii) Support must not extend beyond providing information and advice in relation to Council business. Officers must not be involved in advising on matters of party business and should not, therefore, be present at group meetings when such matters are being discussed.
  - (iii) Party group meetings are not empowered to make decisions on behalf of the Council and therefore any conclusions reached at group meetings do not rank as a Council decision and cannot be interpreted or acted upon as such.
  - (iv) Advice provided to party groups on an issue does not act as a substitute for providing all the necessary information and advice to Members at meetings when that issue is being considered.
  - (v) The attendance of Officers at a party group meeting does not confer any official standing to that meeting.
  - (vi) Special care will be exercised when non-Members are in attendance at a group meeting.
  - (vii) The provisions of the Code of Conduct do not apply to non-Members and therefore the nature of advice, guidance and information given by Officers may not be the same as that given to a Members-only meeting.
  - (viii) Officers must respect the confidentiality of discussions at party group meetings and must not relay the content of these discussions to any other party group.

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#### 4. DECISION MAKING – PROVIDING AND CONSIDERING ADVICE

- 4.1 Decision-making by local authorities is closely regulated by law. The taking of a decision by the wrong person/body or in the wrong way can invalidate the decision from the beginning or leave it vulnerable to being challenged and overturned by a court.
- 4.2 In the event of challenge, attention may also be focussed on the information, professional advice and options made available to the decision-making body or individual prior to that decision being made. Reports and/or other papers placed before decision-making bodies or individuals must therefore contain the relevant facts, correct and complete professional advice and alternative options that may be open to the Council. Officers have the duty to ensure that all of the information on an issue for decision by Members is available, subject to the provisions in this protocol and the Constitution on access to information.
- 4.3 The Officers are responsible for providing those reports and/or papers, and the Monitoring Officer and Chief Financial Officer are required to ensure that their proper advice is placed before decision-makers.
- 4.4 Officers preparing reports for consideration by Council or its Committees do so in the best interests of the Council and not to promote the viewpoint of a particular Member or group of Members.
- 4.5 Reports to Cabinet are drafted by Officers but submitted in the name of the relevant Cabinet Member and will be prepared with their input. Members must recognise that Officers drafting reports on behalf of the Cabinet, delivering the administration's policies, must include all the relevant information, various options and highlighting financial considerations and legal powers, ensuring informed decisions are made, as a whole through the Head of Paid Service.
- 4.6 Officers have a duty to give advice to the Council and its Members using their professional technical knowledge and experience. This will be provided within the report and/or papers and at the meeting, if required.
- 4.7 Members are entitled to expect Officer attendance at meetings at an appropriate level of expertise to ensure adequate knowledge and advice on the subject matter under discussion. Officers in attendance at meetings will always be fully briefed as far as is practical on the issues under discussion on an Agenda.
- 4.8 Such advice is given in good faith and will be in line with and reflect legislation, good practice, Council procedures, experience, professional and technical knowledge, and the Council's formally adopted policies.

- 4.9 Members are entitled to expect clear, concise and unambiguous information from Officers at all times to assist them in the decision making process. An Officer's advice must be given in accordance with the Council's instructions through the decision making and review process set out in the Council's Constitution and should be taken into account by Members when considering an action or making a decision.
- 4.10 Officers are also expected to faithfully and conscientiously implement the lawful decisions of Councillors and properly take decisions delegated to them.
- 4.11 Officers and Members must ensure that the Council's responsibilities regarding notification of and publication of decisions are complied with, as set out in the Access to Information Rules of Procedure in Part 5 of the Council's Constitution.
- 4.12 In addition to legal challenges and implications, failure to follow the decision making principles may amount to breaches of both the Members' and Officers' Code of Conduct and lead respectively to action under the Standards Framework or to disciplinary proceedings.

## 5. ACCESS TO INFORMATION

- 5.1 Both Members and Officers must adhere to the Access to Information provisions concerning all information, including confidential information set out in Part 5 of the Council's Constitution.
- 5.2 Disclosure of confidential information by either a Member or Officer will constitute a breach of their relevant Code of Conduct and the appropriate action will be taken. In addition, the Council could be exposed to a damages or compensation claim as a result of the disclosure.
- 5.3 Members are entitled to receive information from Officers in a timely manner to reasonable requests for the purposes of undertaking their role as Ward Councillors, decision makers and performing functions, such as overview and scrutiny (**this is referred to as the common law 'need to know' principle**). Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the Member to properly perform their duties as a councillor.

However, if the Member's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go off on a 'fishing expedition' through their council's documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See *R v. Clerk to Lancashire Police Committee ex parte Hook* [1980] Q.B. 603).

In such instances, the Chief Executive, Management Team, Section 151 or Monitoring Officers may request a Member to demonstrate their 'need to know'.

## 6. SCRUTINY

The rules and procedures governing Officer and Member responsibilities in support of the Council's overview and scrutiny function are set out in Part 5 of the Constitution.

## 7. WORKING WITH THE MEDIA

7.1 Information provided to the media is governed by the Local Government Act 1986 and the Code of Practice on Local Authority Publicity. In particular:

Information should be:-

- Objective, factual and informative
- Non-party political or designed to affect public support for a political party

7.2 The functions of the Council are discharged corporately and it is not, therefore, appropriate for public resources to be used to promote the views of individual Members. This does not preclude, in the interests of public accountability, publicity of the views of individual Members when they are representing the Council.

7.3 Press releases containing comments by individual Members are similarly acceptable practice. The Communications Manager will provide the press with factual information but comment will only be provided by Officers with the prior consent of the Chief Executive and/or the relevant Portfolio Holder/Cabinet Member or the relevant Committee Chairman.

7.4 The principle that the Council cannot use public resources at any time to promote the views or policies of a particular party is heightened during **election periods**. During the period just before elections there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, the so-called "purdah" period, is defined as beginning with the last date for publication of notice of the election. Prior to this period, guidance will be issued to both Members and Officers setting out the Council's own version of the convention in the period leading up to the elections.

# Tendring District Council



## MEMBERS' PLANNING CODE & PROTOCOL Updated February 2021

### **Background:**

The Members' Planning Code of Good Practice as originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interest. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

The drafting of the model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

This update takes into account the update to the Seven Principles of Public Life (the "Nolan principles") and commentary from the Committee on Standards in Public Life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on "Openness and Transparency on Personal Interests" published by the Department for Communities and Local Government in 2013.

For further reading please refer to "Probity in Planning" issued by the Local Government Association.

### **Introduction:**

**The aim of this Protocol: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.** One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Committee** is to make planning decisions openly, impartially, with sound judgment and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Protocol applies** this Protocol applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.**

## 1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules and obligations giving effect to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- **Do** then apply the rules in this Members' Planning Protocol, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members Planning Protocol, you may put:
  - the Council at risk of proceedings on the legality of the related decision or maladministration; and
  - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

## 2. Development Proposals and Interests (as defined by the Code of Conduct)

- **Do** disclose the existence and nature of your interest as required by the Members' Code of Conduct.
- **Do take into account when approaching a decision** that the principle of Integrity is defined in terms that

"Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. **They must declare and resolve any interests and relationships**".

It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other

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- personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
  - **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
  - **Do** notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest or other personal conflict of interest and note that:
    - you should send the notification no later than submission of that application where you can;
    - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
    - you must not get involved in the processing of the application; and
    - it is advisable (but not mandatory) that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

### 3. **Fettering Discretion in the Planning Process**

(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind, when you come to make the decision, you
  - are entitled to have and to express your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. This is more than a matter of membership of both the proposing and planning

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(Grey)

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determination committees, but that through your significant personal involvement in preparing or advocating that proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal on its planning merits.

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or both a District and County Councillor), provided:
  - the proposal does not substantially affect the well-being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
  - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the seating area for members of the Committee for the duration of that item; and
  - ensure that your actions are recorded.

#### 4. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meetings with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Head of Planning or Planning Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any

particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee

- **Do** otherwise:
  - follow the Authority's rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Assistant Director (Planning) any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file [a proforma has been supplied to you for this purpose].

**In addition in respect of presentations by applicants/developers:**

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Committee of the Planning Authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

**5. Lobbying of Councillors**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward/division and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the Assistant Director (Planning) at the earliest opportunity.
- **Do** promptly refer to the Assistant Director (Planning) any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** declare that you have been lobbied on any particular matter at the Planning Committee when the application is being considered under the Declaration of Interests item of the agenda.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Protocol through:
  - Listening or receiving viewpoints from residents or other interested parties;
  - Making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision)
  - Seeking information through appropriate channels; or
  - Being a vehicle for the expression of opinion of others in your role as a ward/division Member.

## 6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby or promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.
- **Do** join general interest groups which reflect your area of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never indicate how Members should vote on a planning issue.

## 7. Site Visits/Inspections

- **Do** attend site visits organised by the Council, otherwise you will NOT be permitted to sit on the Committee for those items.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.

- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- The Chairman will open the formal site visit and invite Officers to point out relevant features of the site and its surroundings. The Chairman will then invite one at a time, from those present, in the following order:
  - the applicant;
  - local Ward Members; and
  - Town and Parish Councillors

to point out any relevant features of the site and its surroundings and raise any site-related issues that they wish to draw to the attention of the Councillors. Councillors will be able to see the physical features of the site and ask questions of any speaker. There will be no discussion of the merits of the case, and all questions from Councillors and other speakers must be put through the Chairman.

- The Planning Committee party will stay together as a group. No lobbying by applicants or objectors will be allowed at the site visit. If an applicant or objector(s) persist(s) in attempting to lobby, all Councillors and Officers will leave the site.
- **Don't** express opinions or views
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit.
  - you have first spoken to the Assistant Director (Planning) about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

#### **Exception to the Council's Local Practice of Undertaking Site Visits**

- Whilst it is the Council's standard local practice to undertake site visits, there will be exceptional circumstances, where an organised site visit is not possible.
- Site visits are not legally required for the determination of planning applications but forms part of local practice, which protocols must clearly set out. If a site visit cannot be organised, due to exceptional circumstances, a planning application can still be determined by the Committee, so long as the guidance issued by the Council is adhered to.

- Should circumstances prevail where the Council has had to determine it is not possible to organise a site visit, Members of the Committee will be issued with guidance by the Monitoring Officer, which is relevant to the particular situation arising. Such guidance will take into account health and safety risk assessments, current legislation and central government guidance, including that issued by the Planning Inspectorate and/or the Chief Planning Officer.
- Although this Protocol will not set out the guidance to be issued, being dependent upon the circumstances at the time, alternative arrangements will ensure the Principles of Planning in Probity are maintained and observed so as not to prejudice the Council's decision making."

#### 8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

#### 9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Assistant Director (Planning), which may be incorporated into any committee report.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Corporate Director or Assistant Director (Planning) or those officers who are authorised by their Corporate Director or Assistant Director (Planning) to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present at the entire debate, including the officer's introduction to the matter.
- **Do** have recorded the reasons for the Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to

the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## 11. Training

- Members that have been nominated by their Group Leaders can act as a designated substitute member of the Planning or Planning Policy and Local Plan Committees. Any member of a political group is eligible to be a designated substitute member providing that they have received training in relation to planning matters under a continuing programme arranged by the Council.
- The Council provides training for Councillors on development control, local plan making and/or other planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover particular copies or to look at matters in greater depth. Training events are open to all Councillors and where places are limited, current members and named substitutes of the Planning and Local Plan Committees will take priority.
- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the organised training, reviewing a sample of planning decisions to ensure that Members judgements have been based on proper planning considerations.

**Adapted from the Guidance Produced by Lawyers in Local Government (LLG) and adopted by the Standards Committee December 2014 (amended pursuant to a delegation from the Standards Committee in September 2016).**

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**Members' Referral Scheme for Planning Applications****Guidance Note January 2019**

The Terms of Reference of the Planning Committee as set out in the Constitution (Green Part 3.14) delegates all planning and conservation matters to the Assistant Director (Planning) except in relation to certain planning applications, which are for determination by the Committee. One of the exceptions listed is where members request that an application should be referred to the Planning Committee. The wording (Part 3.15) is as follows:

- (vi) *Within 28 days of the commencement of formal consultation, a written request is received from a Tendring District Councillor in accordance with the Member Referral Scheme requesting that the application should be brought before the Planning Committee for determination giving material planning reasons for that request.*

**The MEMBER REFERRAL SCHEME is based on the following principles:**

- Elected Members represent their communities and the interests of their ward or of individual residents (in accordance with Article 2 of the Constitution);
- Planning Committee Members are involved in decision-making for the people of the district as a whole (in accordance with Article 2 of the Constitution – 2.03 (a) (v));
- The interests of a ward or individual residents can extend to consideration of planning applications submitted in adjacent wards and those where applications have been made which have a direct impact on other wards;
- A member of the Council's Cabinet may also be permitted to make representations and speak on any application but only if the proposed development has a direct impact on the portfolio for which the Cabinet member is responsible. The Leader of the Council must approve the Cabinet Member making representations to the Planning Committee and requesting the matter to be determined at Committee;
- If an elected Member requests an application to be referred to the Planning Committee for determination, they will be required to personally attend the meeting of the Committee to speak on the item. Planning Services will ensure that the Member is notified when the application is scheduled for determination;
- The Members' Referral Scheme does not apply to a householder application, which is defined as follows:

*"A 'householder' application is an application to enlarge, expand, improve or alter an existing dwelling, to put up a boundary wall or fence for an existing dwelling or carry out an operation in the curtilage of an existing dwelling that is ancillary to the dwelling-house".*

- Members are requested to use the attached letter when referring an application to the Planning Committee to be determined, for ease of reference;

Date: 28<sup>th</sup> January 2019

Chairman of the Planning Committee

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(Grey)

**LETTER TO THE ASSISTANT DIRECTOR (PLANNING)**

Date:

Dear Assistant Director (Planning),

**MEMBER REFERRAL SCHEME: PLANNING APPLICATION REF: .....**

(\* ) I am the Ward Councillor for **[insert the Ward]** and in representing the community\*/the interests of the ward\* or of individual residents\* request the above-mentioned application is referred to the Planning Committee for determination. The planning application is located within:

- (a) the Ward to which I am elected to(\*); or
- (b) is adjacent to the Ward to which I am elected to(\*); or
- (c) directly impacts the Ward to which I am elected to because (\*)

.....  
in respect of (b) and (c), I can confirm that I have notified the relevant Ward Councillor(s) of my intention to refer this application to the Committee for determination.

(\* ) I am the Cabinet Member for [insert responsibility] and the proposed development has a direct impact on the portfolio for which I am responsible. The Leader of the Council has approved representations being made to the Planning Committee.

(\* ) I am a current serving member of the Planning Committee and the proposed development could be considered of significant importance to the wider district or policy because ..... The Planning Committee Chairman has been consulted and approves this matter being determined by the Planning Committee. By making this request I confirm that I am not predetermined and will approach the decision making with an open mind and therefore have not highlighted any relevant material considerations below.

The referral is because of the following material planning considerations:-

- In line with/potentially contrary to\* the development plan (Local Plan/LDF) or Government Guidance (please state relevant policies if known)**
- Negative/Positive\* impact on urban design/street scene**
- Highways impact and/or other traffic issues**
- Good/Poor\* layout and/or density issues**
- Flood Risk**

**Positive/Negative\* Impact on neighbours**

**Other material considerations as follows.....**

.....  
.....  
.....

If officers are minded to approve/refuse\* then there is no need for this application to be referred.

Please ensure that I am notified of the date of the committee meeting at which this application will be considered so that I am able to attend and speak on the item.

Yours faithfully,

**Councillor .....**

\* Delete as appropriate.

**TENDRING DISTRICT COUNCIL'S PROTOCOL  
FOR CABINET AND OVERVIEW & SCRUTINY ROLES**

**1. Introduction**

- 1.1 The counterpart to operating Cabinet arrangements within a Council is the provision of Overview & Scrutiny functions. You cannot have Cabinet arrangements without its counterpart.
- 1.2 Overview & Scrutiny has the following powers in law:
- (a) to scrutinise any decision made by the Cabinet,
  - (b) to make recommendations to the Council/Cabinet with respect to functions/responsibility of the Cabinet,
  - (c) to scrutinise decisions made by non-executive functions of the Council
  - (d) to make recommendations to the Council/Cabinet with respect to the non-executive functions/responsibilities,
  - (e) to make recommendations to the Council/Cabinet on matters which affect the Council's area or the those living there.
- 1.3 The Council's Constitution sets out how those powers are to be managed and the standards Members and Officers will adhere to. The purpose of this Protocol is not to repeat the Constitutional Articles, Rules and Procedures but to focus on how the relationship between the roles of Cabinet and Overview & Scrutiny will be exercised.
- 1.4 Officers must act with political impartiality, serving the whole council rather than particular groups or members; as such they serve the Members of the Cabinet and of the Overview & Scrutiny Committees equally.
- 1.5 In operating its Overview & Scrutiny functions, the Council will have regard to the statutory guidance for this function. This Protocol is one of the measures the Council has adopted to address the following statement in the statutory guidance:

*“Effective scrutiny involves looking at issues that can be politically contentious. It is therefore inevitable that, at times, an executive will disagree with the findings or recommendations of a scrutiny committee.”*

**2. Application of the Protocol**

- 2.1 In utilising its powers in 1.2, Overview & Scrutiny will act as a 'critical friend' to the Leader and Cabinet.
- 2.2 This Protocol applies to all members of Overview & Scrutiny Committees, any Member who may sit on a Scrutiny Task and Finish Group, the Leader of the Council and all Members of the Cabinet.
- 2.3 All Members will promote the legitimate role of Overview & Scrutiny as outlined in 1.2 above.
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- 2.4 All Members must have regard to the Corporate Plan adopted by Council and its capacity and resources to deliver services efficiently, effectively, to achieve value for money and outcomes. Overview & Scrutiny Committees will be mindful of this in its work planning.

### 3. Trust

- 3.1 All Members should promote an atmosphere of openness at Overview & Scrutiny Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust.
- 3.2 Overview & Scrutiny Members need to trust that Cabinet Members are being open, honest and fulsome when participating in the enquiries being undertaken.
- 3.3 Cabinet Members need to trust Overview & Scrutiny Members with information and to trust in their views.
- 3.4 While Members on the Overview & Scrutiny Committees will come from different political groups including those not aligned with a registered political party, the public must trust that they will act with an independence in determining the work programme of the Committees and in undertaking enquiries identified in the work programmes.

### 4. Policy Development and Pre-Decision Scrutiny

- 4.1 The value of early input from Overview & Scrutiny into policy development is recognised. Through early consultation, Overview & Scrutiny can act as a sounding board and a think tank in enquiring into issues coming up on the horizon, bringing in added value. The Leader and Cabinet Members (as well as Officers) will draw to the attention of the relevant Overview & Scrutiny committee, policies and strategies that are being developed or are due for review to enable Overview & Scrutiny to build this into their work programme and thereby have a timely input.
- 4.2 All policy development will be carried out in a way to promote inclusive dialogue and to capture views of Members' with a report submitted to the relevant Overview & Scrutiny Committee for consideration by the appropriate Member of Cabinet. The Cabinet and relevant (Assistant) Director will consider the views of Overview & Scrutiny members in the development of the policy and provide a response to the Overview & Scrutiny Committee on the recommendations. The detail of the Overview & Scrutiny involvement shall also be included within the body of the report to Cabinet. The Cabinet/Full Council will continue to be responsible for approving and adopting policy whether this accepts all, some or none of the recommendations from Overview & Scrutiny.
- 4.3 Cabinet Members may wish to request views from Overview & Scrutiny Members on an individual decision before it is taken. The Cabinet Member will be responsible for circulating the details to the relevant Committee Members, through the designated Scrutiny Officer. Utilising this as an option does not exclude the decision from being subject to call-in, however, it will give the Cabinet Member the ability to consider different views and perspectives of a decision to be taken before it is taken.

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- 4.4 Like all parts of the Council, Overview & Scrutiny only has a certain capacity and cannot scrutinise everything. It is for Overview & Scrutiny to determine its work programme, in an informed way, and the views of Cabinet are always welcome. Just as Cabinet is not required to accept all recommendations from Overview & Scrutiny on enquiries undertaken, Overview & Scrutiny is not required to accept recommendations from Cabinet concerning the work programme of the Committee. Both should actively consider the other's recommendations and set out reasons for its decision. Both share the ambition of quality public services for residents in, businesses of and visitors to the Council's area.

## 5. Holding the Cabinet to Account

- 5.1 A key role of Overview & Scrutiny is in holding the Cabinet to account for decisions taken and performance of services. In holding the Cabinet to account Overview & Scrutiny Members will:
- Consider decisions taken by the Cabinet, individually and collectively and items on the Notice of Forthcoming Decisions through formal Overview & Scrutiny Committee meetings;
  - Review service performance and performance against policy and targets;
  - Respect the 'safe space' required by Cabinet Members and senior officers to think freely and offer frank advice to each other (and to receive the same) as they formulate substantial changes to services, responses to important pressing issues or pursue intense negotiations to resolve disputes.
  - Be prepared to ask searching questions that provide a constructive challenge for the purposes of undertaking the Overview & Scrutiny function and not solely for individual information gathering purposes;
  - Be positive and respectful in their interactions with Cabinet Members. This will include being clear whether the Cabinet Member is specifically invited, sending invitations in a timely way, acknowledging the attendance of the Cabinet Member at the meeting and allowing the Cabinet Member to address the Committee and respond to questions;
  - Respond positively to a Cabinet Member if that Member wishes to attend a particular meeting for a given item and they have not been formally invited to confirm whether an invitation is to be extended to them to attend.
  - Represent (and amplify) the voices of the public;
  - Listen to the responses provided and to assist the Cabinet in identifying areas for further consideration and improvement, where necessary;
  - Recognise that not all reviews require recommendations back to Cabinet, if the Overview & Scrutiny Committee were satisfied with the subject matter under consideration
- 5.2 In return, Cabinet Members will:
- Be willing to be open, honest and engaged in providing responses to constructive challenge and, where 'safe space' to give/receive frank advice is required, what time frame that will be needed for that 'safe space', subject to resources and Officers time;
  - Value the importance of Overview & Scrutiny;
  - Be supportive of the Overview & Scrutiny process and invite and seek opinion from Overview & Scrutiny Members on decisions to be taken, where appropriate;
  - Provide a positive contribution to scrutiny meetings;
  - Attend meetings when invited to do so to answer questions and present information:
    - ✓ By way of a direct answer
    - ✓ By reference to published publications

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- ✓ By referring a matter to an officer in attendance, if they are not able to respond
  - ✓ If an answer cannot immediately be given, by providing a written answer within five working days unless it is not reasonable to do so. If considered unreasonable, an explanation as to why will be given.
  - ✓ A combination of the above options.
- Depart the Overview & Scrutiny Committee meeting when that Committee expresses a wish to deliberate on a matter after hearing from the Cabinet Member.
- 5.3 Continuing dialogue should underpin Overview & Scrutiny enquiries. As such, pre-meetings (or other communication) between Cabinet Members and the Overview & Scrutiny Committee Chairman is encouraged about a forthcoming enquiry. Where possible, Overview & Scrutiny Committee Members will be encouraged to pass questions on the subject of the enquiry to the Cabinet Member/relevant Officer or outside representative in advance of a Committee meeting. As identified elsewhere, after the meeting and where recommendations are made to the Cabinet there should be a discussion between the Cabinet Member and the Chairman of the Overview & Scrutiny Committee.
- 5.4 The purpose of any pre-meeting (or other communication) referred to above involving a Cabinet Member is not to replace consideration of any agenda item at the published formal meeting, as it is only this setting which the formal business of the Committee can be undertaken.

## **6. Budget setting and monitoring - The importance of scrutiny**

- 6.1 Budget scrutiny must also be carried out on a rolling programme. Quarterly throughout the year proactive scrutiny assists to inform the next financial year's budget and long term forecast, work can involve:
- Challenging how the budget has been constructed before it is agreed. In particular, probing any assumptions that lie behind the executive's budget strategy, i.e. is the approach incremental or is it starting from a base budget, what are the main savings proposals, how will any growth be funded, are the financial implications of proposals from departments or committees built into the overall budget and has an appropriate level of reserves been set?
  - Carrying out budget monitoring activity, for example in areas where expenditure against budget looks to be well above or below forecasts and where growth/savings targets and revised forecasts are involved.
  - Undertaking some evaluation of performance and value for money including how it aligns to the Council's Corporate Plan and Priorities.
  - Maintaining a 'big picture' view of the financial pressures affecting the council and continuously challenging how these might impact on existing budgets and budget setting in subsequent years.
- 6.2 It is important to ensure that this work is undertaken throughout the year and not left until the last Budget Report to Overview and Scrutiny Committee, which is for the final consultation purposes prior to Cabinet's recommendations to Full Council. There is insufficient time to properly respond to the proposals or matters raised, due to the statutory timetable to set a budget. The Overview & Scrutiny function in this important process must be timely and add value, at the point Cabinet recommends its detailed budget proposals including the setting the level of Council Tax increase, the comments received from Overview and Scrutiny during the

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year will be regarded. The Council's Budget & Policy Framework Procedure Rules sets out the Process for Developing the Budget.

## **7. Performance Measurement and Reporting**

7.1 Measures of performance provide insight into whether value is being achieved and whether improvements are necessary, feasible and affordable. An open sharing of performance data will take place across the Council; including between Cabinet and Overview & Scrutiny. The purpose of reporting general performance data to the Overview & Scrutiny Committee is so that it can undertake scrutiny of it in so far as:

- (a) Is the performance monitoring system capturing the right level of data to support delivery of services – and to make recommendations thereon; and
- (b) Is there performance as identified in the monitoring data that warrants further enquiry of an activity – and to determine whether and how that enquiry should take place; including it as appropriate in the work programme for that enquiry.

7.2 When enquiring into an individual service or subject, Overview & Scrutiny Committee Members will consider the performance measurements available. They will naturally assess whether this aligns with your own research; particularly the experience of service-users.

7.3 When considering the performance against the Cabinet's approved annual priority list of actions against the Corporate Plan Themes, Overview & Scrutiny will not normally seek to use the process to question that approved list of actions during the year. There are other Council procedures that can and should be used if there is a compelling need to review those actions. Overview & Scrutiny may legitimately have a view on what the annual priority list of actions should be the following year and these can be set out in recommendations to Cabinet.

7.4 Where a service of the Council is being delivered by a third party/outside company or where the matter under enquiry is the responsibility of a partner organisation, they will be encouraged to respond to enquiries from Overview & Scrutiny Committees relevant to the service/enquiry. This will include their own performance data.

## **8. The Inter-relationship between Cabinet, Audit and Overview & Scrutiny**

8.1 It is important that Cabinet receives clear advice within the respective responsibilities of the Overview & Scrutiny Committees and the Audit Committee. It is therefore equally important that the formal audit role of the Audit Committee is left to that Committee. Areas in which financial scrutiny can add value, complementary to the work of the Audit Committee, including the following according to the Local Government Association:

- Reviewing draft (medium-term) financial plans
- Monitoring internal and external audit reports, in order to identify areas where further scrutiny may be beneficial
- Responding to requests from the public for greater clarity on the council's finance and spending plans
- Periodically carrying out post-implementation reviews of large (in terms of revenue or capital) projects
- Challenging decisions related to new service commitments, investments, and previously unbudgeted demands

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- Scrutinising the financial implications of greater partnership working
  - Keeping a regular 'watching brief' on important matters affecting general resource management.

8.2 The above matters will inform the work planning of Overview & Scrutiny of Council functions and those of partners.

8.3 Cabinet, Audit and Overview & Scrutiny Committees will be guided by advice from the Council's Section 151 Officer on the boundary of responsibility between Audit and Overview & Scrutiny.

### **9. Overview & Scrutiny Work planning**

9.1 Around the start of each Municipal Year, the Overview & Scrutiny committees will hold a work planning workshop. As part of this workshop the views of the relevant Cabinet Member(s) will be inputted alongside the views received from others. The Cabinet's adopted priorities in support of the Corporate Plan will be considered, areas of planned policy development over the relevant Municipal Year (and the next) will be provided and they will be asked to highlight any areas where overview & scrutiny may be specifically invited to assist in work (including Community Leadership areas).

9.2 The Chairmen and Vice-Chairmen of the Overview & Scrutiny Committees will meet quarterly with representatives of the Cabinet in order to ensure ongoing opportunities for Cabinet input into Overview & Scrutiny Committee work plans, ongoing opportunities for Overview & Scrutiny to input into Cabinet policy development or to address performance issues and to build on the positive working relationship between the two functions.

9.3 Overview & Scrutiny Committees may legitimately expect to receive a written report with relevant details for each item on its work programme and, where possible, this report should always be circulated with the agenda for the meeting.

### **10. Overview & Scrutiny Recommendations to the Cabinet**

10.1 Overview & Scrutiny Committees may make recommendations to the Cabinet on functions the Council is responsible for through a formal committee meeting or, say, by way of a Task & Finish Group's Final Report.

10.2 Upon receipt of a recommendation from Overview & Scrutiny, Cabinet Members will:

- Give due consideration to any recommendations or views expressed;
- Provide an explanation for the reasons why recommendations made by Overview & Scrutiny have or have not been pursued.

10.3 Once approved by the relevant Overview & Scrutiny Committee, the views of the Cabinet Member on any recommendations will be sought and included within the report. The Chairman of the Overview & Scrutiny Committee/Task & Finish Group will have the opportunity to meet with the relevant Cabinet Member(s) to discuss the recommendations and the response to those recommendations. The Final Report will then be submitted to the Cabinet for consideration. Should any of the recommendations not be approved or be only partially supported, the Cabinet will provide details of the reason why. The response of

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Cabinet to recommendations will be reported to the next available meeting of the Overview & Scrutiny Committee.

### **11. Urgent Items of Cabinet Business**

- 11.1 The Chairman of the appropriate Overview and Scrutiny Committee may be requested to consent to certain decision being taken by the Cabinet/a Cabinet Member if there is an urgent decision needing to be taken and, due to that urgency, the required notice cannot be given and/or the normal call-in procedures of a decision cannot be applied. The Committee Chairman will consider each request and will not unreasonably withhold consent where the purpose of granting consent is in accordance with the legislative provisions and thereby permit the urgent decision to be made. Notice of the urgency reasons and the consent of the Committee Chairman will then follow.

### **12. Scrutiny Consideration of Confidential Decisions**

- 12.1 Overview & Scrutiny Committee Members have a right to access exempt information supporting decisions that have been taken in order to allow an effective enquiry of the decision. Should an Overview & Scrutiny Member wish to ask questions at a public Committee meeting around an decision that itself is exempt from publication or is based on information that is so exempt, the press and public may be excluded in accordance with the Council's Constitution and the Cabinet Member will be expected to answer in an open and transparent manner. The exempt information will remain confidential and all elected members and officers who receive that information shall maintain that confidentiality in line with the codes of conduct for Elected Members and Officers.

### **13. Call-in**

- 13.1 Following the mediation process provided for in the Constitution, and on the basis of a continuing call-in situation, Cabinet Members will be expected to attend any meetings of Overview & Scrutiny committees at which a call-in request in relation to their area of responsibility is being considered. Summarising the requirements of the relevant Procedure Rules in the Constitution, if the relevant Cabinet Member cannot attend, the Leader, should attend in their absence or designate another Cabinet Member to do so. The purpose of their attendance will be to present the decision and the basis for it and to answer questions of fact. The following procedure will take place where call-ins are being considered:
- i. One of the Members who called in the decision will speak first.
  - ii. The Chair will invite the Cabinet Member (decision maker) to respond.
  - iii. The Committee will then ask questions of the decision maker, who may ask a relevant officer to supply further information if necessary.
  - iv. The Committee debates the issue and votes on the outcome.

### **14. Councillor Call to Action**

- 14.1 Cabinet Members will be invited and expected to attend any meetings of Overview & Scrutiny Committees at which a call to action request in relation to their area of responsibility is being considered. A similar process will apply as outlined for Call-In decisions referred to earlier.

- 14.2 Overview & Scrutiny Committee members are not entitled to draft materials while policy is being developed unless the Cabinet consults the relevant Overview and Resources Committee through the formulation of policy. This is to ensure resources are used in an efficient manner. Cabinet Members and Officers are expected to ensure the Schedule of Forthcoming Decisions is up to date and accurate to assist with this for work programming purposes.

### **15. Ensuring Compliance with the Protocol**

- 15.1 The Head of Democratic Services & Elections (in his role as the designated Scrutiny Officer) and the Assistant Director of Governance (in their role as Monitoring Officer) will be responsible for overseeing compliance with the Cabinet/Overview & Scrutiny Protocol which should be used by Members to support the wider aim of supporting and promoting a culture of overview & scrutiny. The success of the protocol will be determined by:
- Recognition of the value of overview & scrutiny;
  - A clear record of constructive challenge;
  - Valuable Overview & Scrutiny reviews that achieve outcomes;
  - An open and accountable decision making process.
- 15.2 With due regard to the Council's Statement on Council development, training will be made available for those on Overview & Scrutiny Committees and those in the Cabinet on this protocol and elements referenced in it including work planning, budget scrutiny, using performance data and key lines of enquiry.
- 15.3 In the Overview & Scrutiny Annual Report submitted to Full Council each year there will be a section demonstrating the impact of Overview & Scrutiny and effectiveness of the Protocol.
- 15.4 All Members have agreed to adhere to the Council's Policies and Procedures through the Members' Code of Conduct. Any Member who considers the principles of this Protocol had been compromised will raise the issue with the Leader or relevant Chairman of the Overview & Scrutiny to seek resolution in the first instance. Where appropriate, the Group Leader will be notified. In circumstances, where a suitable resolution has not been reached between Members, the matter can be raised with the Monitoring Officer.
- 15.5 Any concerns regarding the behaviours between Members and Officers will be dealt with in accordance with the Member Officer Relationship Protocol.

**Tendring**  
District Council



**PROTOCOL FOR WEBCASTING OF FORMAL  
COUNCIL MEETINGS AND FOR PUBLIC  
FILMING AND RECORDING OF MEETINGS**

This protocol is provided to assist the conduct of webcasting and other filming/recording of meetings and to ensure compliance with its obligations under the Openness of Local Government Bodies Regulations 2014, Data Protection Act 2018 and the Human Rights Act 1998.

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## Webcasting of public council and committee meetings

### Introduction

Tendring District Council is committed to being open and transparent in the way it conducts its business. Most formal meetings of the public are open to the public to attend and there are schemes covering the submission of petitions and questions to the Council meetings as well as schemes for public speaking at meetings of the Planning Committee. However, some residents may not be able to attend the meetings they are interested in. To ensure that those residents can still engage in the democratic process, the Council films and streams, live, many of its meetings ('webcasting'). These can then be watched online as the meeting happens or up to 24 months after the meeting (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). In addition to the webcasting service provided by the Council, there are additional legal rights for the public to attend all of our formal public meetings and film, photograph, audio record or report from the meeting using social media or any other means (subject to it not being disruptive). These rights are explained below.

### Which meetings are webcast?

The Council aims to webcast all its formal meetings to which the public have a right to attend. This includes meetings of its Council, Cabinet, Planning Committee and other committees.

### How do we webcast and how long will the recording be available?

Cameras will be located in the Council's Committee Room at the Town Hall/Princes Theatre to provide the webcasting facility. The Council may also hold hybrid meetings, where some participants join the meeting remotely through a video link. The webcast of meetings will be available on the Council's website for a period of up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year) and, after that, the recordings will be deleted.

In so far as individuals can be identified visually on a webcast or they can be heard in a recording, Tendring District Council will use that personal information as part of its official authority/public task and in order to promote engagement, service delivery and democratic responsibilities.

When individuals partake in a meeting that is webcast, the Council may share their information with Elected Members, other Tendring District Council Services, other individuals involved in the meeting and the public through its webcast service. We may also provide your information to our suppliers to enable us to deliver this service.

Anyone who does not give their consent to be filmed/recorded as part of a meeting to which this protocol applies must specifically request the Council's Monitoring Officer for an exception to be made in advance of the meeting. The Monitoring Officer will take a view on a case-by-case basis on whether there is sufficient justification for making an exemption.

In relation to these matters, the Council will normally not show camera footage of members of the public who address the formal meeting of Council, Cabinet or a Committee when presenting petitions, asking questions or as part of a public speaking scheme of the Council.

Audio of their contributions will be webcast and recorded. However, the camera will, during such public involvement in meetings record either a wide angle view of the Councillors attending or of the Chairman of the meeting. A statement to the effect that a member of the public is speaking shall be displayed on the webcast/recording where this is possible by way of explanation of the audio and video element of the webcast/recording at that time.

In addition to the above, the webcast/recording shall normally not show camera footage of the press and public gallery and those there. It cannot be guaranteed that no footage will be webcast or recorded, however, efforts will be made to minimise or avoid entirely that footage.

### **Are there any meetings or parts of meetings which the Council may not webcast?**

Tendring District Council wants to make sure meetings are webcast as far as possible to ensure full engagement with the public. However there are instances where it may not be appropriate to webcast a meeting or parts thereof, for example:

- **When an individual, who is presenting at a public meeting, specifically requests not to appear on the public webcast, and we agree with the request.** We will always seek to accommodate such requests and work with that individual to agree an approach that is satisfactory to all parties. Any such part of a meeting that has not been broadcast will not appear online or be available following the meeting. If you are watching from home you will see a notice appearing on the screen to let viewers know what is happening. If you object to appearing in the webcast, you should make this known in writing prior to the meeting by emailing [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk) and we will contact you to discuss further.
- **In considering whether or not to record contributions by children at meetings** the Council will, for those aged 16 or over check with the young people themselves that they are content to be filmed and, subject to that, record and broadcast them. For children younger than 16, or those who are otherwise thought vulnerable, we will record only with the consent of the appropriate parent or guardian. If we are in any doubt we will stop the webcast whilst children are speaking. If the children are attending as part of an event involving stakeholder(s) (for example, a school or schools), the Council will expect the stakeholder(s) to have procured the necessary parents' consents.
- **When Councillors at a meeting pass a resolution to exclude the press and public because there is likely to be disclosure of exempt or confidential information.** The Council will always try to conduct its business in public, however from time to time the press and public may be excluded from meetings in accordance with the rules set out in legislation and the Council's Constitution. You will be notified if watching from home that the webcasting has ceased for this part of the meeting and why. The Chairman of the meeting will be asked to confirm that webcasting has stopped before starting to discuss exempt or confidential information.
- **Rights of the public to film, record and photograph at any meeting**

In addition to the webcasting of meetings hosted by the Council, by law the public also has a right to (subject to it not being disruptive):

- Film, photograph or audio record a meeting or any part thereof
- Use any other means (e.g. tweeting, blogging etc.) to enable those not present to see or hear proceedings as they happen or later
- Report or provide commentary of the proceedings so that the reporting or commentary is available as the meeting takes place or later

### **Why does the Council allow the public and press to film, record and photograph its meetings?**

In 2014, the Openness of Local Government Regulations came into force. This enabled the public to report from all local authority public meetings, in a bid to increase transparency and openness in local decision making.

The provisions only apply to meetings of the Council held in public. You may not film, record or use social media to report from any of the Council's meetings which are private or not open to the public.

Full details of the right of the public to film, record and use social media to report from a meeting, including the exemptions mentioned above, can be found in the [guide](#) issued to accompany these regulations.

### **Are there any other restrictions if I want to report from a meeting?**

You do not have to ask us permission in advance to film, record, photograph or report from the meeting using social media. However, we do ask that you respect the following when recording and otherwise reporting from a meeting of the Council:

- Please do not film, photograph or report the views of children, young people, vulnerable people and other members of the public who actively object to being filmed or photographed
- Beware that the common law applies – for example laws on public order offences and defamation
- Please exercise your right to freedom of speech with responsibility – this means respecting the views of others when reporting from a meeting and not disrupting the proceedings
- Please do not edit your filming or recording of the proceedings in a way which may lead to misinterpretation
- Please show respect for those that you are filming or reporting on
- Remember you are only permitted to film, record, photograph or report from the public meeting itself (i.e. from the time it is called to order to the time it concludes). Activity and discussion before or afterwards does not fall within the scope of the regulations
- Filming, recording, photographing or reporting is only permitted of the meeting, not of the public gallery

### **Signage of webcasting and other filming and recording at meetings**

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Agendas relating to meetings that may be webcast will include a statement to alert the public to the webcast as well as the rights of the public generally to film, record, photograph and use social media to report from the proceedings, as follows:

**WEBCASTING NOTICE**

**This meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be filmed, except where there are confidential or exempt items, and the footage will be on the website for up to 24 months (the Council retains one full year of recordings and the relevant proportion of the current Municipal Year). A copy of it will also be retained in accordance with the Council's data retention policy.**

**The Council will seek to avoid/minimise footage of members of the public in attendance at, or participating in the meeting.**

**In addition, the Council is obliged by law to allow members of the public to take photographs, film, audio-record, and report on the proceedings at public meetings. The Council will only seek to prevent this should it be undertaken in a disruptive or otherwise inappropriate manner.**

**If you have any queries regarding webcasting or the recording of meetings by the public, please contact Democratic Services on [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk)**

The Chairman of the meeting will also make an announcement at the beginning of the meeting to make sure everyone understands that the meeting will be webcast and that they may also be filmed by others in the Chamber.

**Social Media comments during webcasting**

The Council may use generally available platforms to show its webcast footage. When it does so, and if the platform allows for comments to be made by viewers, the Council will provide a message to make it clear that it does not monitor comments and there is no facility to pass those comments on to the attendees of the meeting.

**Other provisions****Webcasting**

The Chairman of the meeting has the discretion to request the termination or suspension of the webcast if continuing to webcast would prejudice the proceedings of the meeting.

This would include:

- (i) Public disturbance or other suspension of the meeting;
- (ii) Exclusion of public and press being moved and supported;
- (iii) Any other reason supported by the Council/Committee.

Archived webcasts or parts of webcasts shall only be removed from the Council's website if the Monitoring Officer considers that it is necessary because all or part of the content of the webcast is, or is likely to be, in breach of any statutory provision or common law rule, for example Data Protection and/or Human Rights legislation or provisions relating to confidential or exempt information. There may also need to be a temporary removal of webcasts while allegations of breaches are investigated. It is anticipated, however, that meetings will be conducted lawfully and that the need to exercise this power will occur only on an exceptional basis.

ny elected Member who is concerned about any webcast should raise their concerns with the Head of Democratic Services and Elections.

**Other filming, recording, photographing or the use of social media for reporting from the meeting**

The Chairman of the meeting has the absolute discretion to terminate or suspend filming, recording and use of social media by members of the public during a meeting if, in their opinion, the activity:

- is disrupting the meeting and impeding good decision making;
- is infringing the rights of any members of the public;
- is in danger of repeating a defamatory statement that has been made.