

PROTOCOL RELATING TO THE INDEPENDENT PERSON

This Protocol is to clarify the relationships between the Independent Person (IP) and the various parts of the local authority involved in the process of handling Councillor complaints and wider promotion of good Councillor conduct. Its aim is to ensure that responsibility is clear at each stage of the process and set out the expectations and rights of the IP.

It is written with the following assumptions:

- i. There is a 'Lead' IP (with a reserve Deputy).
- ii. The Monitoring Officer/ Deputy Monitoring Officer takes the initial decision (Stage 1) on preliminary tests applied as to whether or not the complaint is one that can or should be handled by the authority at this stage.
- iii. The Monitoring Officer/ Deputy Monitoring Officer will liaise with the Lead IP (or Deputy where appropriate) from Stage 2 onwards and the Lead IP (or Deputy where appropriate) will be involved in a Stage 6 Panel hearing if one is required.
- iv. The local procedure allows complainants to have access to the IP or Deputy by email if the matter is referred to investigation (namely after Stage 3 of the process). This is to reflect the legal obligation to allow access to the IP under the Localism Act 2011.¹

Considering written allegations

1. The Flow chart of complaint handling is attached to this Protocol (Appendix 1).
2. The Monitoring Officer/ Deputy Monitoring Officer will undertake an initial pre-assessment and consideration as to whether this complaint satisfies initial tests (Stage 1).
3. At Stage 2 the Monitoring Officer/ Deputy Monitoring Officer will consider a complaint and consult on the decision with the IP. The Monitoring Officer/ Deputy Monitoring Officer will submit an assessment form, with any relevant evidence for consideration. A secure confidential mailbox has been/ will be provided by the District Council to the IP and Deputy IP for use in relation to Code of Conduct complaints matters, and the IP and Deputy IP should check this mailbox regularly. The IP should respond to the assessment within 5 working days. If the IP is likely to be unavailable for any period, then notification should be provided to the Monitoring Officer/ Deputy Monitoring Officer, so that the Deputy IP may be consulted if necessary.
4. When issuing the decision letter, the Monitoring Officer/ Deputy Monitoring Officer will record that the IP has been consulted. Where the view of the Monitoring Officer/ Deputy Monitoring Officer and IP differ, the Monitoring Officer/ Deputy Monitoring Officer will record the reasons for following a particular course on the summary

¹ Section 28(7)(b)(ii)(iii) Localism Act 2011

PROTOCOL RELATING TO THE INDEPENDENT PERSON

assessment form. The letter will make clear that it is the Monitoring Officer/ Deputy Monitoring Officer and not the IP who is the decision-maker.

Matters under investigation

5. A Councillor who is the subject of a complaint may seek the views of the IP (Lead or Deputy how is being consulted on the matter).
6. This contact will usually be made via the secure confidential mailbox provided by the District Council. A Councillor wishing to contact the IP in any other way should do so via the Monitoring Officer/ Deputy Monitoring Officer who will arrange for a meeting to take place or for the IP to telephone the Councillor who is subject to the complaint. This would allow the IP to prepare for the discussion rather than giving 'off the cuff' opinions. The IP should prepare a note of any meeting or telephone conversation. These arrangements will be communicated to the Councillor who is subject to the complaint by the Monitoring Officer/ Deputy Monitoring Officer in the decision notice letter. The preference, however, shall be written communication.
7. Where the IP has given views to the subject Councillor, those views shall be put in writing and will be made available to all relevant parties in the case. This is to ensure transparency and protect independence.
8. In any contact with the Councillor that is subject to the complaint, it is important for the IP to maintain their independence. The IP's role may most usefully be to listen to any concerns being expressed and then reflect on whether these concerns are valid and, if so, whether they are being addressed in the process. The IP should avoid being drawn into becoming an advocate for a party. If the IP believes that they have become conflicted during this process, the IP should let the Monitoring Officer/ Deputy Monitoring Officer know and Deputy (or Lead) will be contacted to act as the official IP on the matter.
9. The Monitoring Officer/ Deputy Monitoring Officer may consult the IP at any stage during the process, particularly on matters, which relate to the procedures for handling complaints. Once an investigation has been concluded and a report received, the Monitoring Officer/ Deputy Monitoring Officer will consult the IP before making arrangements for the convening of a Finance and Governance Hearings Sub-Committee Panel in the event that the report discloses a potential breach of the Code of Conduct. If the report discloses no breach of the Code of Conduct, the Monitoring Officer/ Deputy Monitoring Officer will consult the IP before confirming the outcome to the complainant and Councillor that is subject to the complaint. Under Stage 5 of the process a finding of no breach will mean that no further action is taken (namely that this is the end of the matter as far as the Council is concerned).
10. Where a matter has been referred to a Finance and Governance Hearings Sub-Committee Panel for determination, the Panel must seek the views of the IP before reaching its conclusions. The IP should refer to the Hearing Procedure for the



PROTOCOL RELATING TO THE INDEPENDENT PERSON

Finance and Governance Hearings Sub-Committee Panel with regard to the conduct of Hearings.

11. The Lead IP or Deputy IP shall not make any comments to the media on any matter without prior agreement of the Monitoring Officer/ Deputy Monitoring Officer. Any requests for comments from the media shall be referred in the first instance to the Monitoring Officer/ Deputy Monitoring Officer.
12. Where the Lead IP is unable to act because of a conflict of interest or because they are otherwise unavailable the Deputy IP will carry out the role.

Wider Role of IP in Promoting and Maintaining High Standards of Conduct

13. The Lead IP and Deputy IP may be requested by the Monitoring Officer/ Deputy Monitoring Officer to assist in any training on conduct issues, as appropriate.
14. The Lead IP and Deputy IP shall receive agendas and minutes of any meetings of the Finance and Governance Hearings Sub-Committee convened to assist with good governance and shall be entitled to request items to be added to the agenda and to attend and may speak at the Sub-Committee.
15. The Lead IP and Deputy IP are not members of the Finance and Governance Hearings Sub-committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chair.

Miscellaneous

16. The Lead IP and Deputy IP has the right to raise any concerns about standards / Councillor conduct issues or implementation of the process with the authority's Monitoring Officer/ Deputy Monitoring Officer or Chief Executive.
17. The Council, through its Monitoring Officer, is responsible for assisting the Council to meet its duty to promote and maintain high standards. However, the Lead IP and Deputy IP shall be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.
18. The Lead IP and Deputy IP has the right of access to any confidential information required to carry out their role. Access to such information and its storage and destruction arrangements shall be agreed with the Monitoring Officer/ Deputy Monitoring Officer.
19. The Lead IP and Deputy IP has the right of access to Council buildings in order to carry out their role and they will be provided with an access card for the Grange building and car park. When attending for meetings with the Monitoring Officer/ Deputy Monitoring Officer or of the Finance and Governance Hearings Sub-Committee Panel, a designated parking space will normally be provided. Other



PROTOCOL RELATING TO THE INDEPENDENT PERSON

access arrangements should be agreed with the Monitoring Officer/ Deputy Monitoring Officer.

20. Whilst the Lead IP and Deputy IP are not District Councillors, they will abide by the Council's Member Code of Conduct when conducting their duties, including completing a register of interests form to be held by the Monitoring Officer/ Deputy Monitoring Officer and will declare any relevant interests in relation to cases to the Monitoring Officer/ Deputy Monitoring Officer, who will decide whether the interest conflicts them out of involvement in the matter.
21. The Lead IP is to be considered an office-holder of the authority in accordance with the duty under s28(7) of the Localism Act 2011 and is therefore entitled to be covered by the Council's indemnity insurance provided they act reasonably and within the terms of this Protocol.

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Appendix 1 – Flowchart.

