

INDEPENDENT PERSON PROTOCOL

This protocol relates to the discharge of the Independent Person functions in relation to the assessment of an allegation that a Member of the Borough or Local Councils has failed to comply with the Council's Code of Conduct.

1. Overarching Principles:

- (a) The Independent Person is a statutory appointment under s.28 of the Localism Act 2011.
- (b) This Protocol applies to all Independent Persons equally and complements the Monitoring Officer Protocol.
- (c) 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.
- (d) The Independent Person will discharge their responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council, in particular:
 - (i) Instilling public confidence in the process and how complaints are considered by the Joint Standards Committee and Officers in support;
 - (ii) Complying with the law (including any relevant Codes of Conduct);
 - (iii) Complying with any general Guidance issued including consideration of Best Practice;
 - (iv) Complying with the procedures adopted by the Joint Standards Committee following such guidance;
 - (v) Complying with the Council's Constitution and standing orders;
 - (vi) Preserving confidentiality at all times; and
 - (vii) Acting impartially in the interests of fair and natural justice, without prejudice or political bias.
- (e) The Borough Council's Code of Conduct and Complaints Procedure were adopted by Full Council and took effect on 1 July 2012, this followed the Task and Finish Review and this Protocol operates within those recommendations.
- (f) The Monitoring Officer is the principal adviser to the Joint Standards Committee. Additional advice and support is provided by two Deputy Monitoring Officers and Officers within Democratic Services.
- (g) All Independent Persons are non-voting members of the Joint Standards Committee and are permitted to attend for consultative purposes. However, if considering a complaint the attendance may be altered from sitting with the Committee to observer or similar due to the involvement of the Independent Person through the complaints process.

- (h) The Monitoring Officer, in consultation with the Chair of the Joint Standards Committee, will make the final decision on the type of attendance after considering the specific circumstances of the matter under consideration.
- (i) The Monitoring Officer will consult with at least 1 Independent Person on all complaints received and throughout the process in accordance with the Complaints Procedure.
- (j) In circumstances where either the Independent Person 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'.
- (k) If the Independent Person has any prior or on-going personal relationship with the complainant or the Member the subject of the complaint they should advise the Monitoring Officer at the earliest opportunity.
- (l) The Council's official complaints form must be used for complaints against Councillors alleging breach of the Code of Conduct. This form is annexed to this Protocol.
- (m) 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.
- (n) Independent Persons will notify the Council's Monitoring Officer of the most suitable times to be available for contact.
- (o) The Council will not disclose the Independent Persons' personal contact details and the Council will issue Independent Persons with a Council email address or similar. The Independent Person will make the initial contact with the complainant or the subject Member.
- (p) When discussing the complaint with the complainant or the Member the subject of the complaint, the Independent Person's role is not to give views on the merit of the complaint or the evidence in support but to give advice and reassurance on the process.
- (q) The Independent Person's role is to provide an independent view on the substance of the complaint and/or the quality of the evidence being considered in order to help the Committee to make an informed decision.

- (r) The Independent Person must not discuss the substance of the complaint with any other third party.
- (s) The Monitoring Officer will collect any such approved information as is readily available and would assist the Joint Standards Committee in its function of assessing the allegation and attach to the Report.
- (t) In providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 should be considered, as reflected in the Council's Constitution.

2. Receipt of Allegations:

- (a) The Monitoring Officer shall set up arrangements within the Council to secure that any allegation made in writing that a Member of the Council has or may have failed to comply with the Council's Code of Conduct is referred to one or more Independent Person for consultation.
- (b) In each complaint, the Monitoring Officer will, wherever possible:
 - (i) Consult with 1 Independent Person;
 - (ii) Appoint 1 Independent Person to each party, where necessary and desired by the parties; and
 - (iii) Appoint 1 Independent Person to the Joint Standards Committee.
- (c) Each Independent Person could be appointed to any of roles for each complaint, to ensure fairness and impartiality for all parties concerned. It is possible the Independent Person may not be required for either the Complainant or the Member, the subject of the complaint, as this will be a personal decision.
- (d) Wherever possible the roles will be allocated to the Independent Persons on a rota basis.
- (e) All Independent Persons will be informed of the roles allocated in each complaint.
- (f) Independent Persons will record in writing a note of the general discussions and this will be maintained through a central email address maintained by the Council, with limited access being given.

3. Consultation with the Independent Person:

- (i) An Independent Person will be consulted upon receipt of an allegation before the Monitoring Officer takes a decision as to whether it:

- a. Merits no further action
 - b. Merits early informal conciliation
 - c. Should be referred to the Joint Standards Committee to consider whether the complaint merits further investigation.
- (ii) The Independent Person should consider that, in reaching a decision in respect of how to progress the complaint, the Monitoring Officer will take into account the following factors where appropriate
- Was the Member acting in their official capacity?
 - Was the Member in office at time of alleged misconduct?
 - Is the complaint of a very minor or trivial matter?
 - 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?
- (iii) The Monitoring Officer does not have to agree with the Independent Person.