

# Taunton Deane Borough Council

## Standards Committee – 9 July 2013

### Independent Persons Protocol under the Standards regime

#### Report of the Legal and Democratic Services Manager

(This matter is the responsibility of the Leader of the Council)

#### 1. Executive summary

Members are asked to approve the Independent Persons Protocol as set out in Appendix 1.
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#### 2. Background

- 2.1 Under the Localism Act 2011 the Council must appoint an Independent Person to be consulted at various stages during Member conduct reviews.

A complainant may contact the Independent Person during the course of a matter to seek advice and support. The protocol attached at Appendix 1 seeks;

- (a) To prevent that contact from involving the Independent Person to the extent that it affects their independence and impartiality to the point where their role is not crucial.
- (b) To clarify the duties and responsibilities of the Independent Person, and
- (c) To clarify the procedural aspects of how liaison between the IP and the Reviewing Officer will be conducted.

- 2.2 The arrangements for dealing with complaints under the revised Standards regime was approved by Full Council in July 2012.

#### 3. Finance comments

- 3.1 The resource associated with this matter must be delivered within existing budgets to discharge statutory duties. However, the impact of the new ethical standards regime, the emerging statutory framework for local government and the need to redirect resources to draft specific guidance to ensure Members' compliance with these changes is having an impact on delivery of other corporate priorities.

#### 4. Legal comments

- 4.1 The legal implications are set out in this report.

#### 5. Links to Corporate Aims

- 5.1 There are no specific links to the corporate aims.

## **6. Environmental and Community Safety Implications**

6.1 There are no implications for the environment or community safety.

## **7. Equalities impact**

7.1 An impact assessment is not required in respect of this report.

## **8. Risk management**

8.1 The impact of the new ethical standards regime, the emerging statutory framework for local government and the need to produce appropriate guidance for Members' clarification may have an impact on delivery of other corporate priorities.

## **9. Recommendation**

9.1 Members are recommended to approve the protocol set out in Appendix 1.

### **Contact**

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# APPENDIX 1

## STANDARDS COMMITTEE – 9 JULY 2013

### INDEPENDENT PERSONS PROTOCOL

#### **Introduction**

Taunton Deane Borough Council has appointed an Independent Person (IP) who will be consulted at various stages during Member Conduct reviews. A Reserve Independent Person (RIP) has been appointed to cover the situation when the IP is unable to act either through non availability or conflict issues.

The role of IP has changed significantly under the Localism Act 2011, with the ability of all parties in a complaint to contact the IP during the course of the matter to seek advice and support.

This protocol seeks to set out the IP's duties and responsibilities, provide clarity on the IP's role and ensure that the 'advice and support' responsibility does not affect the IP's independence and impartiality at the point when their role is most crucial.

For the avoidance of doubt all references to IP in this protocol also cover the RIP.

#### **Duties and Responsibilities of the Independent Person**

1. To advise any Hearing Sub-Committee in connection with the determination of member misconduct complaints in accordance with the Council's arrangements.
2. To liaise with Members, co-opted Members, officers of Taunton Deane Borough Council and Town and Parish Councils within the District.

3. To attend and participate in meetings of Committees and any sub-committees or associated meetings in an advisory capacity.
4. To provide advice to members and Co-opted Members about whom a conduct complaint has been received and specifically to discharge the functions detailed in Section 28(7) of the Localism Act 2011.
5. To promote and maintain high standards of conduct by members.
6. To develop and apply knowledge of the Code of Conduct in relation to any and all matters relating to standards, including the assessment and determination of allegations of member misconduct under the Code of Conduct.
7. To analyse and exercise fair and impartial judgement and decision making on conduct issues.
8. To consult, liaise and maintain a professional working relationship with the Council's Monitoring Officer, her appointed deputies and other officers of the Council.
9. To provide a view on the governance of the Council and the Town and Parish Councils from an external perspective that will better enable the Council to assess conduct and standards issues.
10. To develop a firm understanding of the standards and wider governance framework within which the Council operates.
11. To participate in training events relevant to the work of standards within the Council.
12. To attend meetings of the Council when required and other functions in order to raise the profile of standards within Somerset.
13. To participate in any forum established for Independent Persons.
14. In relation to 3 and 4 above to assist neighbouring principal council on an ad hoc basis, if necessary.
15. To undertake such other responsibilities as the Monitoring Officer considers reasonably commensurate.

## **Role of the Independent Person**

It is acknowledged that the IP's skills and experience will assist the reviewing process in seeing complaints in context and as such will be a useful resource in undertaking preventative work and/or mediation.

However it is essential that the role of the IP is, and is seen to be, independent in any matter to be determined so the IP must not do anything or act in any way that will compromise that independence or be swayed by the arguments of one party over another.

To assist the IP in maintaining this independence all contact to the IP from any party, whether Members of the public or Members of the Council, should be through the Monitoring Officer or one of her designated deputies. This is to ensure that contact remains within the bounds of professional relationships. If however direct contact is made through the IP and issues other than procedural issues of the complaint are discussed then the IP will be excluded from being involved in the determination of that particular complaint and the Reserve IP will be substituted

**In addition** the IP

- Should not discuss matters with the press or public.
- Should not form a final opinion on a matter to be determined until the final stage when their opinion on the investigation and its outcomes is presented; until that stage their role is to advise and assist parties.
- Is subject to the Code of Conduct for Members whilst undertaking their role in this process, which imposes a duty of Equality, fairness, objectivity and open mindedness.
- Should ensure that any advice given to one party is shared with all to ensure that any Member Conduct Review is conducted in a manner

compliant with the rules of natural justice and transparency in its process. The exception to this is where in the opinion of the IP the advice is specific to one party's circumstances. In that case the IP has the discretion not to share the advice with others.

- Should comply with the all relevant Council policies particularly Confidentiality and Data protection.

## **Procedural Matters**

### **The First Stage**

The first stage of an allegation of breach of Member conduct is the receipt of the complaint.

On receiving the complaint the Monitoring Officer or one of her Deputies ( the 'reviewing officer') will inform the IP of the complaint, send him/her copies of the documentation and, within a reasonable timescale will, in conjunction with the IP, take a view as to the severity of the allegation/s and its suitability for informal resolution.

If the complaint identifies criminal conduct, including failure to declare a disclosable pecuniary interest, (DPI) the Monitoring Officer or one of her deputies, will consult the IP before referring the matter to the police.

Where the matter is suitable for informal resolution, the complainant and the subject member will be asked to meet with the reviewing officer. The MO/Reviewing Officer has the discretion to invite the IP to attend this meeting. This will normally be at separate sessions but, in the case where the complainant is another Member, the reviewing officer has the discretion to conduct this meeting with both the complainant and the subject member present at the same time. The reviewing officer will then consult the IP (if they were not present at the meeting) to discuss the outcome of the meeting and whether or not informal resolution is still possible. It is for the reviewing officer and the IP to agree how

they will consult; be it e-mail, telephone or face to face contact. The MO will take notes of the meeting and a copy passed to those attending. The IP will also be given a copy if they were not present at the meeting. To ensure that the IP is kept fully informed the Reviewing Officer will also provide the IP with copies of any attendance notes of telephone and/or e-mail contact with any party/ies to the complaint.

If the complaint is deemed too frivolous or without merit, the reviewing officer will make this recommendation to the IP. If the IP agrees the matter will not be progressed the Reviewing officer will notify all parties in writing.

If informal resolution is not appropriate the Reviewing Officer will conduct a fact finding exercise to satisfy himself that;

- a) the complaint is against a Member of the Authority,
- b) the Member was acting in that capacity and,
- c) The complaint if proven would amount to a breach of the Code of Conduct.

On collating that information the reviewing officer may discuss the complaint with the IP. The reviewing officer (if not the Monitoring Officer) will then prepare a short report for the Monitoring officer who will decide if the complaint merits a full investigation. The IP will also be given a copy of the report. They may provide comments to the Monitoring officer but must do so if they disagree with the Reviewing Officer's recommendation(s). The Monitoring Officer will then decide whether an investigation is necessary.

### **The Second Stage**

Once the matter has proceeded to investigation the IP may again be consulted by the Monitoring Officer if the investigation report concludes that there is evidence of a failure to comply with the Code of Conduct and it is considered that the matter can be dealt with by local resolution rather than the need for a

hearing. In this case the procedure for informal resolution will be the same as above.

### **The Third Stage**

If a local hearing is to take place advice will be sought from the IP by the Hearing Panel where;

- a. The Panel are minded to conclude that the Member did not fail to comply with the Code of Conduct.
- b. The Panel are minded to conclude that the Member did breach the Code of Conduct, and
- c. In b above any action to be taken as a result of that breach.