

## **Extract from the report to Full Council on 17 July 2012 concerning the new Standards Regime**

### **Independent Persons**

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

#### **“Independence”**

The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Borough Council.

A person is considered not to be “independent” if –

- (a) He/she is, or has been within the last 5 years, an elected or co-opted member or an officer of the Borough Council or of any of the Parish Councils within its area;
- (b) He/she is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Borough Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or
- (c) He/she is a relative or close friend of a current elected or co-opted member or officer of the Borough Council or any Parish Council within its area, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- (i) the candidate’s spouse or civil partner;
- (ii) any person with whom the candidate is living as if they are spouses or civil partners;
- (iii) the candidate’s grandparent;
- (iv) any person who is a lineal descendent of the candidate’s grandparent; parent, brother, sister or child of anyone in Paragraphs (i) or (ii);
- (v) the spouse or civil partner of anyone within Paragraphs (iii) (iv) or (vi); or
- (vi) any person living with a person within Paragraphs (iii) (iv) (vi) as if they were spouse or civil partner to that person.

### **Functions of the Independent Person**

The functions of the Independent Person(s) are –

- They must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

### **How many Independent Persons?**

The Act gives discretion to appoint one or more Independent Persons, but Provides that the Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

Following discussions with the other Somerset Monitoring Officers we have all suggested that at this stage the Council should appoint 1 Independent Person and 1 reserve until the 1<sup>st</sup> July 2013 in order to give each authority time to work through the implications and arrangements that need to be put in place for a sharing arrangement to work effectively.