

## **DRAFT PROTOCOL RELATING TO THE INDEPENDENT PERSONS UNDER s28(7) LOCALISM ACT 2011.**

This protocol is to make clear the relationships between the Independent Person (IP) and the County Council in the process of handling complaints under the Members' Code of Conduct and the wider promotion of standards. 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 and in line with the [LGA Guidance on Member Model Code of Conduct Complaints Handling](#):

- The Monitoring Officer (MO) is taking the decisions whether or not any further action should be taken on an initial complaint.
- The IP is consulted on allegations by the MO before a decision is reached as to whether any further action is needed in line with the good practice recommendation of the Committee on Standards in Public Life.
- Matters where a breach of the Code are found following investigation may be referred to a Member Conduct Panel for determination.

### Considering complaints

The MO will seek the views of the IP before reaching a decision on whether any further action should be taken on a complaint.

Where the IP meets in person with the MO to discuss the case, they will nevertheless record their views in writing for the record after the meeting.

When issuing the decision letter, the MO will record that the IP has been consulted and that their views have been taken into account. Where the view of the MO and IP differ, the MO will record the reasons for following a particular course. The letter will make clear that it is the MO and not the IP who is the decision-maker.

### Informal resolution

The MO will seek the views of the IP before dealing with an allegation through informal resolution.

If the informal action which is part of the informal resolution has not been taken within the time limit set by the MO, or if they are not satisfied with the informal action taken the MO will consult with the IP before notifying the relevant parties of whether the matter is nevertheless closed or whether they intend to take further action.

When informal resolution has been completed the MO will notify the IP.

### Matters under investigation

Where the MO is considering commissioning an investigation through an external independent organisation or individual, the MO may consult the IP before reaching a decision.

An elected member who is the subject of a complaint may seek the views of the IP. A subject member wishing to contact the IP should do so via the MO who will provide contact details or arrange for a meeting to take place.

Where the IP has given views to the subject member, those views shall be put in writing following agreement with the subject member and made available to all relevant parties in the case.

The IP will agree in advance with the subject member rules of confidentiality but it will be up to the IP to decide whether matters should remain confidential and, even where there is confidential information disclosed to the IP, there should be a public statement that confidential matters were discussed.

During the course of the investigation, it may be necessary for the MO to reconsider if the investigation remains the right course of action. The MO will consult with the IP before deciding to defer or end an investigation. If a decision is taken to begin the investigation again the MO will notify the IP.

The MO should have agreed timelines for delivery of the investigation report. Where it is likely that the initial timeline cannot be met the MO should have a mechanism to agree and record any extension and may consult with the IP.

The investigator will share their draft report with IP before it is sent to the relevant parties. The IP should satisfy themselves that the investigation is of an acceptable standard and meets the scope of the complaint.

The MO should issue the final report to the IP.

The MO may consult the IP at any stage during the process, particularly on matters which relate to the procedures for handling complaints.

### Hearings and determinations

Where the conclusion of an investigation report is that there has been no breach of the Code of Conduct the MO may decide to take no further action. The MO must seek the views of the IP before making this decision.

If the MO considers that there has been a breach of the Code they will decide what action, if any, to take and notify the relevant parties. For example, they may decide to

seek an informal resolution at this stage or decide that the matter is merely a technical breach and in doing so the MO will consult with the IP.

Where a matter has been referred to a Member Conduct Panel for determination, the Panel must seek the views of the IP before reaching its decision. The IP's views should be recorded in any decision notice and, where those views do not reflect the final outcome reasons must be given for any differences. However, it must be clear that it is the Member Conduct Panel and not the IP who is the decision-maker. The IP's views may include views on any relevant sanctions where a breach of the Code has been found.

The IP will not retire with the committee when the committee is deliberating but must give their views to all parties.

The IP shall not make any comments to the media on any matter without prior agreement of the MO which will be informed by the Member Conduct panel. Any requests for comments from media shall be referred in the first instance to the MO who will refer these to the Chair of the Member Conduct Panel for discussion.

The IP may be requested by the MO or Member Conduct Panel to assist in mediation or conciliation in order to resolve complaints where that is considered the most appropriate course of action.

The IP may be requested by the MO or standards committee to assist in any training on conduct issues as appropriate.

#### Relationship with the Member Conduct Panel

The IP shall receive agendas and minutes of all meetings of the Member Conduct Panel in any case in which they are involved and shall be entitled to request for items to be added to the agenda with the agreement of the chair and to speak at the committee.

The IP is not a member of the Panel and therefore is not part of the formal decision - making and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the chair.

#### Other matters

The IP has the right to raise any concerns about standards issues or implementation of the process with the Council's Chief Executive if it is not possible to resolve these issues with the MO.

The Council, through its Corporate Governance Committee and MO, is responsible for ensuring that the council meets its duty to promote and maintain high standards of conduct by elected members. However, the IP has the right to be consulted on any proposed changes to the Code of Conduct.

The IP has the right of access to any confidential information required to carry out their role. Access to such information and its storage shall be agreed with the MO.

The IP has the right of access to council buildings in order to carry out their role. Access should be agreed in advance with the MO.

The MO will meet at least twice per year to review relevant matters.

The IP will agree to sign a code of conduct, including a register of interests to be held by the MO and will declare any relevant interests in relation to cases to the MO who will decide whether the interest conflicts them out of involvement in the matter.

The IP is considered to be an office-holder of the Council 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.