

## **5.9 PART 5.9 - PROTOCOL RELATING TO THE INDEPENDENT PERSON**

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### **5.9 – 1 INTRODUCTION**

The Localism Act 2011 introduced a system of members' standards in local government. This included the duty under Section 27 of that Act to appoint an Independent Person or Persons. The Council has adopted a Role Description for the post holders. This role requires the persons appointed to relate to the Council's Standards and Appeals Committee and also to the Monitoring Officer.

The Independent Persons also have a role in the consideration of disciplinary matters relating to statutory officers which may result in their dismissal. However, the purpose of this protocol is to set out the principal ways in which the Council, the Monitoring Officer and the Independent Persons will interact within the Members' Code of Conduct system (which includes those relating to all town and parish councils in the Borough). The protocol is not seeking to be prescriptive but rather to set out the general principles which all parties will use their best endeavours to comply with.

The Council has appointed one Independent Person to act in this role. Where more than one is appointed, either may act independently of the other in a particular matter.

## **5.9 – 2 CONTACT WITH THE INDEPENDENT PERSON**

- (i) A Member of the Borough Council or of a Town or Parish Council who is the subject of a complaint should only contact the Independent Person if a formal complaint has been made in writing to the Council. The Monitoring Officer will notify the Independent Person of all formal complaints. If a Member contacts the Independent Person prior to a formal complaint being lodged, the Independent Person will refer them to the Monitoring Officer.
- (ii) The Independent Person should not discuss a potential or actual complaint directly with the potential complainant or complainant and shall refer the complainant to the Monitoring Officer to speak directly to any complainant.

## **5.9 – 3 CONSIDERING WRITTEN ALLEGATIONS**

- (i) Where the Monitoring Officer is acting under delegated powers in considering written allegations, the Monitoring Officer will seek the views of the Independent Person before reaching a decision on whether any further action should be taken on a written complaint.
- (ii) When issuing the decision letter, the Monitoring Officer will record that the Independent Person has been consulted and that their views have been taken into account.
- (iii) Where the Monitoring Officer refers a written allegation to Standards and Appeals Committee rather than determining whether any further action should be taken acting under delegated powers, the Committee shall have discretion as to whether or not to consult the Independent Person on the matter before reaching their decision.
- (iv) The Monitoring Officer may ask the Independent Persons to support the Monitoring Officer in efforts to try to resolve complaints informally where the basis of the complaint appears insubstantial or otherwise does not appear to warrant a formal investigation or where an alternative route to formal investigation would appear to offer a better means of resolving the matter e.g. where it appears that complaints have been made on a tit for tat basis or where a town or parish council appears to have become dysfunctional.

## **5.9 – 4 RELATIONSHIP WITH THE STANDARDS AND APPEALS COMMITTEE**

- (i) The Monitoring Officer may consult the Independent Persons where appropriate on recommendations to the Standards and Appeals Committee particularly where these relate to the procedures for handling complaints.

- (ii) The Independent Persons shall receive agendas and minutes of all meetings of the Standards and Appeals Committee in respect of standards matters and shall be entitled to attend the Committee as an observer.
  
- (iii) Where a matter has been referred to a Hearing Sub-Committee of the Standards and Appeals Committee for determination, the Sub-Committee must seek the views of either of the Independent Persons before reaching its conclusions. The Independent Person may attend the Sub-Committee to convey their views or may alternatively submit their views in writing to the Sub-Committee through the Monitoring Officer

#### **5.9 – 5 RIGHT OF ACCESS TO DOCUMENTATION**

The Independent Persons shall have a right of access to such files and other documents as are necessary to fulfil their duties and obligations as set out in this protocol, their role description and the arrangements adopted from time to time by the Council for dealing with standards complaints. The Independent Persons shall not have a right to undertake a roving commission. Normally access to files and other documents will be through the Monitoring Officer, Deputy Monitoring Officer or other officer appointed on their behalf.

#### **5.9 – 6 CONFIDENTIALITY**

- (i) The Independent Persons shall respect the confidentiality of any documents provided to them and shall be responsible for their safe custody.
  
- (ii) The Independent Persons should respect the general confidentiality of the Council's Members' Code of Conduct process and should not proactively make any comments to the media on any matter relating to the Council's Standards business. Any requests for comments from the media should be referred in the first instance to the Monitoring Officer who may refer these to the Chairman of the Standards Committee as appropriate.

#### **5.9 – 7 ROLE OF INDEPENDENT PERSON**

Where the Independent Person is not available to deal a particular matter or where that Independent Person has a potential conflict of interest, the Council shall appoint another Independent Person who shall act in the particular matter. Such Independent Person may be an Independent Person appointed by another Authority to act as their Independent Person.

#### **5.9 – 8 DUTY TO DECLARE CONFLICTS OF INTEREST**

The Independent Person shall promptly disclose in writing any actual or potential conflict of interest that they may have in a matter which has been referred to them.

**5.9 – 9 REGISTER OF MEMBERS’ INTERESTS AND THE SEVEN PRINCIPLES OF PUBLIC LIFE**

The Independent Person is not a Member so is not required to notify and register any interests in that Register. The Independent Person is however required to abide by the Seven Principles of Public Life (‘the Nolan Principles’).

**5.9 – 10 PAYMENTS TO THE INDEPENDENT PERSON**

The Independent Person shall only receive such sums as may from time to time be authorised by the Authority in respect of the proper discharge of their duties as an Independent Person.

**5.9 – 11 PROTECTING THE INDEPENDENCE OF THE INDEPENDENT PERSON**

No Member or Officer shall do anything which does or is likely to compromise the independence of the Independent Person or to otherwise inappropriately interfere in the discharge of the Independent Person’s lawful duties. Duly authorised payments under paragraph 5.9 – 10 above shall not be regarded as compromising such independence.