

## **PROTOCOL FOR THE INDEPENDENT PERSONS**

### **INTRODUCTION**

1. 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 in relation to the assessment of an allegation that a Member of the District Council or a Member of Parish Council within the District, has failed to comply with the Council's Code of Conduct.
2. Any reference in this Protocol to the Independent Persons applies to however many Independent Persons the Council has and Independent Persons could also include an Independent Person from a neighbouring authority.
3. The Localism Act 2011 requires the Council to appoint at least one Independent Person to assist the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process.
4. The Council has appointed one Independent Person to act in this role. If required, the Council can request for an Independent Person appointed by another Surrey Authority to act as their Independent Persons.
5. The role of the Independent Person is set down in legislation (section 28(7) of the Localism Act 2011) - 'Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate'.
6. The Independent Persons will be considered an office-holder of the Council in accordance with the duty under s28(7) of the Localism Act 2011 and will therefore be entitled to be covered by the Council's indemnity insurance provided they act reasonably and within the terms of this Protocol.
7. The Council has adopted a Code of Conduct for Members and has agreed arrangements for dealing with any allegation that a Member of the District Council or a Member of Parish Council within the District, has failed to comply with the Council's Code of Conduct.

### **ROLE OF INDEPENDENT PERSON**

8. The purpose of the Independent Persons role is to enable the public to have confidence in how the District Council deals with allegations of misconduct.
9. In carrying out the role, the Independent Persons will ensure s/he will be available for consultation at various points in the arrangements for dealing with complaints concerning District Councillors and or Parish Councillors.

10. If the Independent Persons have any prior dealing or ongoing personal relationship with the complainant or the Member who is the subject of the complaint, they should advise the Monitoring Officer at the earliest opportunity and the Monitoring Officer will consider making a request to use the services of an Independent Person from another authority.
11. The Monitoring Officer function (including the Deputy Monitoring Officer) will review every complaint received. If it is the initial view of the Monitoring Officer function that the complaint would not amount to a breach of the Member Code of Conduct and the Monitoring Officer will not progress the matter further.
12. Where an initial fact-finding investigation has been undertaken, a report will be submitted by the Investigator (usually the Deputy Monitoring Officer) to the Monitoring Officer. The Monitoring Officer, having consulted with the Independent Persons, will consider and decide if any action should be taken and whether there is evidence of a failure to comply with the Code of Conduct.
13. The Independent Persons shall provide an objective and impartial opinion which the Monitoring Officer will consider in making the decision.
14. The Monitoring Officer in conjunction with the Independent Persons may consider may consider resolution of the complaint by one of the following means:
  - The Member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the Council
  - Referring the matter to Group Leaders
  - The Member being required to attend training
  - The member being required to meet with the Monitoring Officer and/or other Chief Officers
  - Such other action as is considered appropriate by the Monitoring Officer and Independent Person
15. Where a complaint is the subject of a Hearing Panel, the Independent Person must attend. After all the evidence has been presented the Committee will seek the views of the Independent Person before determining whether the Member breached the Code of Conduct. The Independent Person does not take part in the decision-making process of the Committee nor do they vote upon whether the complaint is upheld.
16. The Hearing Panels will seek the views of the Independent Persons upon any sanction to be imposed.
17. Where the Independent Persons are not available to deal with a particular matter or where Independent Persons have 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.

## **RELATIONSHIP WITH THE STANDARDS COMMITTEE**

18. The Monitoring Officer is the principal advisor to the Standards Committee supported by the Deputy Monitoring Officer(s) and Officers within Democratic Services.
19. The Independent Persons are not members of the Standards Committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting.
20. The Independent Persons shall receive agendas and minutes of all meetings of the Standards Committee and shall be entitled to attend the Committee as an observer.

#### **RIGHT OF ACCESS TO DOCUMENTATION**

21. 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.

#### **DUTY TO DECLARE INTEREST**

22. The Independent Persons 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.

#### **REGISTER OF MEMBERS' INTERESTS AND THE SEVEN PRINCIPLES OF PUBLIC LIFE**

23. The Independent Persons are not Members, so they are not required to notify and register any interests in the Register of Members' interests. The Independent Persons are however required to abide by the Seven Principles of Public Life ('the Nolan Principles').

#### **PROTECTING THE INDEPENDENCE OF THE INDEPENDENT PERSON**

24. No Member or Officer shall do anything which does or is likely to compromise the independence of the Independent Persons or to otherwise inappropriately interfere in the discharge of the Independent Persons lawful duties.

#### **MISCELLANEOUS**

25. The Monitoring Officer will ensure that the Independent Persons are kept up to date with changes to the Code of Conduct, procedures for handling allegations, in legislation, national guidance and/or good practice.
26. A further role of the Independent Persons arises from the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended). By amending regulations in 2015, there is a prescribed statutory process for disciplining or dismissing an authority's Head

of Paid Service, Monitoring Officer or Chief Finance Officer. A decision to discipline or dismiss must be taken by Full Council which must consider, amongst other things, advice, views or recommendations from an independent panel. That panel must include at least two Independent Persons appointed under Section 28(7) of the Localism Act 2011 by the Council or by another local authority

27. The Independent Persons together with the Monitoring Officer will meet at least once a year to discuss Member behaviour in a general context.
28. This Protocol will be kept under review by the Monitoring Officer and amended where necessary, considering legislation, guidance, good practice etc.