



Stratford-on-Avon District Council

General Information Sheet for

Appointment of

Independent Person

Appointment of Independent Person – Background Information

Independent Persons

Stratford-on-Avon District Council (SDC) is required by law to appoint at least one Independent Person to help promote and maintain high standards of conduct. The main part of the role is to assist with complaints about the behaviour of elected and co-opted members of SDC and members of Town and Parish Councils within the District.

SDC has appointed two Independent Persons, and the current vacancy arises due to the expiry of the term of office of one of the Independent Persons on 30 June 2018. Your appointment would therefore start on 1 July 2018, for an initial term of four years.

Code of Conduct

Every local authority in England is required to adopt a code of conduct to regulate the behaviour of its own councillors. Until recently, SDC and most other local councils within the District operated a code promoted by the Department for Communities and Local Government (the DCLG Code).

However, on 16 October 2017 SDC adopted a new code of conduct (the SDC Code) for its 36 members, which will come into force on 1 May 2018. It is uncertain at the time of writing how many individual Town and Parish Councils will adopt the SDC Code, or how many are likely to retain the existing DCLG code.

Complaints Procedure

SDC is required by law to have arrangements in place to deal with complaints against its own members and those councillors in Parish and Town Councils in the District. On 16 October 2017 SDC adopted an updated version of the complaints procedure, which will also come into force on 1 May 2018.

The two Independent Persons deal with complaints on a case by case basis as notified by the Monitoring Officer. To assist applicants, the following documents are attached:-

- The SDC Code of Conduct
- The DCLG Code of Conduct
- The (updated) Complaints Procedure
- Independent Person-Role Description
- Protocol between Independent Persons and Monitoring Officer

Eligibility for Appointment

A person cannot be appointed as an Independent Person if they are or were within a period of five years prior to the appointment:-

- (a) a member, co-opted member or officer of the District Council (SDC),
- (b) a member, co-opted member or officer of a town or parish council within the area of the District Council;

or if they are a relative or close friend of a person in (a) or (b) above - see below

A relative is defined as:

- (a) The candidate's spouse or civil partner;
- (b) Any person with whom the candidate is living as if they were spouses or civil partners;
- (c) The candidate's grandparent;
- (d) Any person who is a lineal descendent of the candidate's grandparent;
- (e) A parent, brother, sister or child of anyone in paragraphs (a) or (b);
- (f) The spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
- (g) Any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

Information about the Role

The Independent Person will need to be contactable at all times during normal working hours by telephone or by email and to be available to attend hearings which may be held in the day time and at relatively short notice.

This is not a job vacancy and should you be appointed as an Independent Person you will not be an employee of the Council. However, the role does attract a small allowance, which is currently set at £383 per annum, together with reimbursement of necessary travel expenses.

Completion and Submission of Application Form

The selection criteria for the role are set out in the role description. Please ensure that you carefully demonstrate in your application form how you meet the criteria, as this will be used to assist in the short-listing process.

Applications will be assessed by reference to your completed application form and, if shortlisted, by interview. Short-listed candidates will be invited to attend for interview.

The successful applicant will receive specific training to enable him/her to undertake the new role effectively.

Applications must be received by Friday 1 December 2017



Stratford-on-Avon District Council

Application for position of Independent Person

Individuals who wish to be considered for appointment as an Independent Person are requested to provide the following information to support their application. All information provided will be treated in the strictest confidence and will only be used for the purposes of selection. Please feel free to use a separate continuation page if you wish to expand upon your answer to any question outlined below.

1. Personal details

Name:.....

Address:.....

.....

Postcode:.....

National Insurance Number:.....

Contact Details:

Home Telephone No:

Daytime Telephone No:.....

Mobile Telephone No.

Email Address:

2. Qualifications

(Please list in particular any qualifications which you think are relevant to the position of Independent Person)

3. Summary of experience

(Please give a brief account of your experience including career, public and voluntary work together with the nature of your current or most recent occupation)

4. Relevant expertise/skills

(Please outline briefly any knowledge or expertise which you believe would be particularly relevant to your role as an Independent Person having regard to the selection criteria and role description)

5. Please provide any additional information you may wish to give in support of your application

6. References : Please provide details of two referees who are not related to you and who are able to comment on your suitability for appointment.
(Your referees will be contacted without further notice to you, unless you indicate to the contrary)

1. Name:	2. Name:
.....
Address:	Address:
.....
.....
.....
.....
Telephone No.	Telephone No.

Additional Information

7. Please give details of any criminal convictions within the past five years, including date and sentence imposed

8. Please indicate whether there is any matter concerning your own conduct which, if it were generally known, might affect public confidence in your ability to carry out this role

9. Please indicate whether you have any commitments which would regularly prevent you from being available in the daytime and give the nature of that commitment

Declaration

I wish to apply to be an Independent Person.

In submitting this application, I declare that:

- I am not and have not during the past five years been a member, co-opted member or officer of the Council or a Parish/Town Council within the area of the District Council
- I am not related to, or a close friend of, any member, co-opted member or officer of the Council or a Parish/Town Council within the area of the District Council
- I am not actively engaged in local party political activity.

Signed

Date

Please return this application form to the Monitoring Officer by 1 December 2017 addressed to:

Phil Grafton
Head of Governance and Democracy
Stratford-on-Avon District Council
Elizabeth House
Church Street
Stratford-upon-Avon
Warwickshire
CV37 6HX

or e-mail the completed form to phil.grafton@stratford-dc.gov.uk



The Stratford-on-Avon District Council Code of Conduct

Introduction

Members of Stratford-on-Avon District Council are the elected representatives of the people within the District and they take decisions on their behalf. The purpose of this code of conduct is to set out the standards of conduct expected of members when carrying out their duties and to demonstrate to the public the standards of conduct they can expect from their elected representatives.

This code applies to members of the Council whenever they are carrying out their official duties as an elected representative of Stratford-on-Avon District Council. Although, in line with the Localism Act 2011 this code only applies to members when they are carrying out their official duties nevertheless the Council expects its members to uphold high standards of conduct at all times in order to uphold the reputation of the Council and the office to which they have been elected.

All holders of public office must uphold the seven principles of public life and these principles underpin and inform the Stratford-on-Avon District Council Code of Conduct. The seven principles are:

Selflessness – Holders of public office should act solely in terms of the public interest.

Integrity – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty – Holders of public office should be truthful.

Leadership – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Code of Conduct

A. Behaviour

1. Do not treat others with disrespect.
2. Do not use your position as a member of the Council for personal financial gain.
3. Do not use your position as a member of the Council improperly to confer an advantage or disadvantage on yourself or any other person.
4. Do not place yourself under any financial obligation to any person or organisation who might attempt to influence you.
5. Do not misuse Council resources.
6. Do not disclose confidential information.
7. Do not bring Stratford-on-Avon District Council or the role of Councillor into disrepute.

B. Interests

Registration of interests

8. Within 28 days of this Code being adopted by your authority or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Appendix A (Disclosable Pecuniary Interests) and Appendix B (Other Registerable Interests).
9. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Appendix A or B, or of any change to a registered interest, notify the Monitoring Officer.

Disclosable Pecuniary Interests

10. Where a matter arises at a meeting which relates to an interest in Appendix A, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Other registerable interests

11. Where a matter arises at a meeting which relates to an interest in Appendix B, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but must not take part in any vote on the matter unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Non-registerable interests

12. Where a matter arises at a meeting which relates to your financial interest (and is not a Disclosable Pecuniary Interest) or a financial interest of a relative or close associate, you must disclose the interest and not vote on the matter unless granted a dispensation. You may speak on the matter only if members of the public are also allowed to speak at the meeting. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
13. Where a matter arises at a meeting which affects your own financial interest or a financial interest of a friend, relative, close associate or body covered by Appendix B you must disclose the interest.
14. Where the matter affects the financial interest to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest you must not vote on the matter unless granted a dispensation. You may speak on the matter only if members of the public are also allowed to speak at the meeting.

If it is a 'sensitive interest', you do not have to declare the nature of the interest.

C. Related documents

The following documents also provide guidance on the standards of conduct expected of members and can assist in the interpretation of this code of conduct. These documents can be found in the Council's constitution.

- The Rules of Procedure that set out the arrangements for dealing with an alleged breach of this code.
- The Council's Planning Code of Good Practice seeks to ensure there are no grounds for suggesting that a planning decision has been biased, partial or not well founded
- The Council's Social Media Code sets out appropriate behaviour when undertaking Council business through social media.
- The Council's Member and Officer Protocol sets out principles relating to mutual respect and how members and officers should work together.
- The Council's code relating to the use of Council resources explains what resources are available and the limitations placed on use
- The Council's code relating to gifts and hospitality helps Members to decide whether to accept a gift or hospitality, and when to declare it in the register

Code Appendix A

Interests described in the table below.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made to the member during the previous 12 month period for expenses incurred by him/her in carrying out his/her duties as a member, or towards his/her election expenses.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the member or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the Council —
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the Council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the member or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the member's knowledge)—
	(a) the landlord is the Council; and
	(b) the tenant is a body that the member, or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.



THE "DCLG" CODE OF MEMBERS' CONDUCT

Illustrative text for Code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

- 1.** You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 2.** Accordingly, when acting in your capacity as a member or co-opted member:-
 - 2.1** You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
 - 2.2** You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
 - 2.3** When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
 - 2.4** You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
 - 2.5** You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
 - 2.6** You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.
 - 2.7** You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
 - 2.8** You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

- 3.1** You must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary interest as

defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

- 3.2 In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.
- 3.3 If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹
- 3.4 Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
- 3.5 Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.



STRATFORD-ON-AVON DISTRICT COUNCIL

Complaints Procedure

Arrangements for Dealing with Councillor Misconduct Complaints under the Localism Act 2011

1. Background

- 1.1 The Localism Act 2011 places a general duty on Local Authorities (including Parish/Town Councils within its area) to ensure that high standards of Member (councillor) and co-opted Member conduct are maintained and demonstrated to the public. As part of this, councils must have arrangements in place to investigate and settle allegations that a Member, or co-opted Member of a Committee or Sub-Committee of the authority (or of a Parish/Town Council within the authority's area), has broken the Council's Code of Members' Conduct.
- 1.2 This Procedure sets out how to make such a complaint and how the authority will deal with your allegations. The procedure for assessing, investigating and reaching a conclusion about alleged Member (councillor) misconduct is outlined in a separate flowchart which, like this document, is accessible on the Council's website or available in hard copy format on request.
- 1.3 The authority is required by law to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision whether or not to investigate an allegation, and whose views can be sought by the authority at any other stage of the complaints process, or by a Member or co-opted Member (or a Member or co-opted Member of a Parish/Town Council) against whom an allegation has been made.
- 1.4 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is then appointed by a positive vote from a majority of all the Members of Council. The job description and a protocol for the role are available on the Council's website.
- 1.5 Stratford-on-Avon District Council has appointed two Independent Persons. Each of the Independent Persons has an equal right to give his/her views when requested by the Monitoring Officer, the Audit and Standards Committee or a

subject Member (or a Member or co-opted Member of a Parish/Town Council) with respect to any particular complaint or hearing of a complaint, except where, for any reason, he/she are deemed by the Monitoring Officer to have a conflict of interest. In such a situation the Independent Person will withdraw from involvement.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on the authority's website and on request from reception at the Council's Offices.
- 2.2 Each Parish/Town Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish/Town Council's Code of Conduct you should inspect any website operated by the Parish Council or request the Parish Clerk to allow you to inspect its Code of Conduct.

3. Making a Complaint

- 3.1 If you wish to make a complaint, please write or email to:

Monitoring Officer
Stratford-on-Avon District Council
Elizabeth House
Church Street
Stratford-upon-Avon
CV37 6HX

Or monitoring.officer@stratford-dc.gov.uk

You can obtain a copy of the Complaint Form either by writing to the Monitoring Officer or from the Council's website.

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.
- 3.3. In the interests of fairness and natural justice, we believe Councillors who are complained about have a right to know who has made the complaint. We also believe that they have a right to be provided with a summary of the complaint. We are very unlikely to withhold your identity or the details of your complaint unless we have good reason to believe that if your identity is disclosed:-
 - 3.3.1 You have reasonable grounds to believe you will be at risk of physical harm or;
 - 3.3.2 You are an officer working closely with the Member in question and you fear the employment consequences or,
 - 3.3.3 It would create medical risks associated with a serious health condition.

Requests to keep your name and address confidential will not automatically be granted. However, if you have made such a request you will be contacted and advised of the decision and, if your request is not granted, we will allow you the option of requesting the withdrawal of your complaint.

- 3.4. Please complete the Complaint Form as fully as possible and return to the Monitoring Officer with any supporting evidence in writing. In completing the form, please ensure that you identify the particular provision(s) of the Code of Conduct that you allege has/have been breached. The Monitoring Officer will acknowledge receipt of your complaint, and will keep you informed of the progress of your complaint.

4. Stage 1: Initial Assessment of the Complaint

- 4.1. The Monitoring Officer will review your complaint and decide if it warrants a full investigation. This is done against a set of relevant questions and in consultation with the Independent Persons.
- 4.2. Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information. Where your complaint relates to a Parish/Town Councillor, The Monitoring Officer will also inform the Parish/Town Council of your complaint. If requested, the Parish/Town Council will provide any relevant documents or information to the Monitoring Officer to assist him/her with the initial assessment, before deciding whether the complaint merits full investigation.
- 4.3. The Monitoring Officer will inform the Member of the substance of the complaint, unless he/she thinks it is not appropriate to do so, for example if by doing so any investigation would be affected, or there might be a risk that evidence could be destroyed.
- 4.4. Where the Monitoring Officer informs the Member of the substance of the complaint he/she will also:
- 4.4.1. Tell the Member the paragraphs of the Code of Conduct that may have been breached
- 4.4.2. Provide an opportunity for the Member to comment on the complaint
- 4.5. In deciding whether the complaint merits full investigation the Monitoring Officer will apply criteria, which are designed to promote confidence that complaints will be taken seriously and dealt with properly. They also reflect the fact that any decision to investigate a complaint will cost public money and both officer and Member time. The criteria are designed to balance the need to promote confidence in local governance with the need to ensure that public resources are applied appropriately. The criteria are as follows:-
- 4.5.1. Public interest – The Monitoring Officer must be satisfied that an investigation would be in the public interest, taking into account the time and cost involved. If the Monitoring Officer is not satisfied, he/she will decide not to investigate:
- 4.5.2. Sufficient information – The complainant must specifically identify the part(s) of the Code which he/she feels have not been complied with, clearly explain why this is the case and provide sufficient information to warrant an investigation. If not the Monitoring Officer will take no further action unless additional information is provided by the complainant.
- 4.5.3. Previous action – If there has already been an investigation or some other action under the Code of Conduct or by another regulatory body in relation to the complaint, the Monitoring Officer will not normally decide to investigate, although

he/she may do so in certain circumstances (for example, if a criminal charge was dropped).

- 4.5.4 Repeated complaints –If the complaint is the same or substantially the same as one previously dealt with, the Monitoring Officer will normally decide not to investigate.
- 4.5.5 Timing – If there is a significant delay between the incident complained of and the submission of the complaint, the matter will not normally be investigated.
- 4.5.6 Trivial matters – If the Monitoring Officer takes the view that the matter is not sufficiently serious to warrant further action, no further action will be taken, unless there are compelling reasons to do so.
- 4.5.7 Ulterior motive - If it appears to the Monitoring Officer that the complaint is motivated by malice or retaliation, no further action will be taken unless it involves a serious allegation.
- 4.5.8 Special circumstances – There may be circumstances where the Monitoring Officer takes the view that an investigation should occur even though the application of these criteria would suggest otherwise. For example, if a very serious allegation was made after a long delay, it may be appropriate to investigate notwithstanding the delay.

These criteria are for general guidance, and will be applied in the light of particular circumstances of each case.

- 4.5.9 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or agreeing to other remedial action suggested by the authority. Where the Member or the authority makes a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.5.10 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.
- 4.5.11 Once the initial assessment is complete, the Monitoring Officer will write to you to inform you of his/her decision and give reasons for it.

5. Actions Available to the Monitoring Officer after Stage1

- 5.1. The complaint could be rejected with reasons as outlined above in paragraph 4.5 and its sub-sections.
- 5.2 The complaint could be judged to have merit. Once this decision has been made there are three further options available to the Monitoring Officer.
 - 5.2.1 If there appears to be criminal misconduct, the Monitoring Officer will refer the case to the Police.
 - 5.2.2 The Monitoring Officer can attempt to resolve the complaint informally by getting the Member to acknowledge that their conduct was unacceptable and apologise, or engage in other remedial actions on behalf of the authority.
 - 5.2.3 The Monitoring Officer can appoint an Investigating Officer to fully investigate the complaint.

Note: Although there is no internal right of appeal, the complainant or the subject of the complaint may refer the Monitoring Officer's decision to the Local Government Ombudsman if there is some fault in the way that he/she has considered the complaint and there is sufficient injustice to warrant his/her involvement.

6. Stage 2: Full Investigation

- 6.1 If the Monitoring Officer decides that a complaint merits a full investigation, he/she will appoint a suitably qualified Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.
- 6.2 Prior to appointing an Investigating Officer, the Monitoring Officer will require any such person to be able to demonstrate that he/she has the requisite skills, knowledge and experience to undertake the investigation to the required standards. In the case of a firm providing investigative services, the firm will be required to give assurance that the Investigating Officer will receive adequate levels and frequency of supervision.
- 6.3 Once instructed the Investigating Officer will be required to devise a suitable and robust investigation plan and a timetable for the investigation process. The investigation plan and timetable must be shared with and approved by the Monitoring Officer. The timetable will be shared with you and the Member, save for exceptional circumstances. The Investigating Officer will advise you and the Member if there are any changes to the timetable and the reasons for any delay.
- 6.4 The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and whom the Investigating Officer needs to interview.
- 6.5 The Investigating Officer will write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and whom he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer

can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

- 6.6 At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 6.7 Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 6.8 The Monitoring Officer will review the Investigating Officer's report after consulting with the Independent Person. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report. The Investigating Officer will give further careful consideration to the contents and status of his/her final report prior to sending it to the Monitoring Officer for approval and the Investigating Officer will also consider what supporting evidence is included with the report, taking into account such matters as its degree of relevance and its sensitivity, and advise the Monitoring Officer accordingly.

7. Actions Available to the Monitoring Officer after Stage 2

- 7.1. When the Monitoring Officer is satisfied with the Investigating Officer's report, he/she will write to you and to the Member concerned (and to the Parish/Town Council, where your complaint relates to a Parish Councillor), notifying you of his/her decision.
- 7.2 If the Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, he/she will inform you and the Member concerned (and to the Parish Council, where your complaint relates to a Parish/Town Councillor), that no further action is required, and give you both a copy of the Investigating Officer's final report.
- 7.3 If the Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct, he/she will then either send the matter for hearing before a panel of Members drawn from the Audit and Standards Committee or, after consulting the Independent Person, seek local resolution and inform both parties accordingly.
- 7.4 Local Resolution
 - 7.4.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee [and the Parish/Town Council] for information, but will take no further action.

Note: Although there is no internal right of appeal, the complainant or the subject of the complaint may refer the Monitoring Officer's decision to the Local

Government Ombudsman if there is seen to be some fault in the way that he/she has considered the complaint and there is sufficient injustice to warrant their involvement.

7.5. Hearing

- 7.5.1 If the Monitoring Officer considers that local resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will trigger the Determination Procedures, a copy of which is accessible on the Council's website. Under these procedures the Panel (see section 12 below) will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
- 7.5.2 The Monitoring Officer may conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Panel may issue directions as to the manner in which the hearing will be conducted.
- 7.5.3 At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Panel. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
- 7.5.4 The Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 7.5.5 If the Panel concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Panel will then consider what action, if any, the Panel should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Panel will give the Member an opportunity to make representations to it and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Panel take where a Member has failed to Comply with the Code of Conduct?

- 8.1 The Council has delegated to the Panel such powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Panel may:
 - 8.1.1 Censure or reprimand the Member;
 - 8.1.2 Publish its findings in respect of the Member's conduct;
 - 8.1.3 Report its findings to the Council [or to the Parish/Town Council] for information;
 - 8.1.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to the Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

- 8.1.5 Recommend to the Leader of the Council that the Member be removed from The Cabinet, or removed from particular Portfolio responsibilities;
- 8.1.6 Recommend to Council that the Member be replaced as Leader;
- 8.1.7 Instruct the Monitoring Officer to [or recommend that the Parish/Town Council] arrange training for the Member;
- 8.1.8 Recommend to Council or the Council Leader [or recommend to the Parish/Town Council] that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish/Town Council];
- 8.1.9 Withdraw [or recommend to the Parish/Town Council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
- 8.1.10 Exclude [or recommend that the Parish/Town Council exclude] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.

The Panel has no power to suspend or disqualify the Member or to withdraw Members' basic or special responsibility allowances.

9. **What happens at the end of the hearing?**

- 9.1 At the end of the hearing, the Chairman will state the decision of the Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Panel resolves to take.
- 9.1.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Panel Chairman, and send a copy to you, to the Member [and to the Parish/Town Council], make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10. **Who are the Panel?**

- 10.1 The Panel comprises three Members of the Audit and Standards Committee.
- 10.2 The Independent Person is invited to attend all meetings of the Panel and his/her views are sought and taken into consideration before it takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 **Appeals**

- 11.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer.



STRATFORD-ON-AVON DISTRICT COUNCIL

INDEPENDENT PERSON

ROLE DESCRIPTION

1. Primary Function

- 1.1. To undertake the statutory role of Independent Person appointed under Section 28 (7) of the Localism Act 2011 and to help the Council to discharge its duty to promote and maintain high standards of conduct among District, Town and Parish Councillors and co-opted Members in the Stratford-on-Avon District.

2. Specific tasks

- 2.1. Advising the Monitoring Officer in connection with the assessment and post investigation stages of complaints against Councillors and co-opted Members of District, Parish and Town Councils.
- 2.2. Reading and digesting complaints and investigation reports into complaints against Councillors and co-opted Members of the District, Parish and Town Councils.
- 2.3. Providing views to the Monitoring Officer and the Audit and Standards Committee when requested in accordance with the Council's adopted Arrangements for dealing with Complaints of Councillor Misconduct.
- 2.4. If requested providing assurance to Councillors who are the subject of complaints that a fair and just procedure is being followed.
- 2.5. Assisting Stratford-on-Avon District Council's Audit and Standards Committee and Monitoring Officer in discharging its duty to promote and maintain high standards of conduct by its Councillors and the Councillors and co-opted Members of the District's Parish and Town Councils.
- 2.6. Acting as a member of an Independent Panel established to provide views to the Council in the event that an Investigation and Disciplinary Panel recommends the dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer.

3. Required Attributes

- 3.1. Ability to reach a balanced and reasoned conclusion having considered complex material and applied an impartial and fair approach to all of the written and oral material provided.
- 3.2. Ability to demonstrate and promote a commitment to the Council's Equality and Diversity Policies.
- 3.3. Ability to attend daytime meetings at the Council's offices at Elizabeth House, sometimes at short notice.
- 3.4. Willingness to participate in training events to develop skills, knowledge and experience in the role.
- 3.5. Willingness to participate in networks developed for IP operating outside the Council's area.
- 3.6. A wish to serve the public interest and the local community and to uphold local democracy.
- 3.7. An understanding of ethical issues and dilemmas
- 3.8. Respect for others and high standards of personal honesty and integrity
- 3.9. An ability to take account of the views of others but able to reach his/her own conclusions on particular issues.

4. Desired Attributes

- 4.1. An ability to demonstrate an understanding of quasi-judicial proceeding and matters of sound ethical and governance practice.
- 4.2. Have experience with committee work.
- 4.3. Have questioning skills.
- 4.4. Be assertive.

5. Terms of Office

- 5.1. The Term of Office for Independent Persons is limited to four years, subject to any extension that may be agreed on individual cases arising from the needs of the service, including the induction and training needs of newly appointed persons in the role.



STRATFORD-ON-AVON DISTRICT COUNCIL

PROTOCOL RELATING TO INDEPENDENT PERSON

This Protocol sets out the relationships between the Independent Persons (IP's) and the various parts of the Council involved in the process of handling Code of Conduct complaints and the wider promotion of Standards. Its aim is to ensure that responsibility is clear at each stage of the process and to set out the expectations and rights of the IP's.

It is written with the following assumptions:

1. Each of the IP's has an equal right to give his/her views when requested by the Monitoring Officer (MO), the Audit and Standards Committee or a subject Councillor with respect to any particular complaint or hearing except where, for any reason, they are deemed by the MO to have a conflict of interest. In such a situation the IP will withdraw from involvement.
2. The MO is solely responsible for taking decisions on whether or not any further action should be taken with regard to a complaint or an investigation.
3. The MO will consult each IP on allegations which appear to show a potential breach of the Code of Conduct before reaching a decision. The relevant details will be sent by email and also by post. However, should one of the IP's be unavailable or fail to respond to the MO within 15 working days of the date of the email request the MO will be entitled to proceed once the views of the available IP have been given.
4. As required by the Localism Act 2011 the local arrangements permit the subject Councillor to have access to each of the IP's. Any such access is restricted to postal or email contact only and there is no right for the subject councillor to meet either of the IP's. If an IP is contacted by a subject councillor a written record of the discussion will be kept and this will be forwarded to the MO.

Considering written allegations

1. Save as otherwise referred to above the MO will seek the views of each IP before reaching a decision on the action to take on a written complaint that meets the criteria for consideration as a Code of Conduct complaint.
2. When issuing the decision letter the MO will record that he has consulted each of the IP's and that their views have been taken into account.

3. Where the views of the MO and the IP differ the MO will record the reasons for the difference of opinion and explain them in writing to the relevant IP. The letter to the complainant and subject Councillor will make clear that it is the MO, and not the IP, who is the decision maker.
4. As indicated above, a Councillor who is the subject of a complaint is entitled to seek the views of each of the IP's. For this purpose, the only contact details of the IP's that will be offered to the subject Councillor are their postal and email addresses. When the IP's views are sought in this way they will not advise the subject councillor on the merits of either the complaint or the alleged conduct and they will refer the subject councillor to the MO should any procedural queries be made. The IP's will inform the subject councillor that their role is a statutory one and that they are part of the overall process in order to ensure that it is fairly applied on both sides.
5. When an IP is approached by a subject Councillor for his/her views the IP will make clear that it is not his/her role to advise the subject councillor on either matters of procedure (which should be referred to the MO) or the likelihood of the Code of Conduct having been breached (which is a matter upon which the subject Councillor must seek their own advice). The IP should make a written record of any views which he/she gives to a subject Councillor and forward them to the MO to be kept on file.
6. Save in exceptional circumstances, which will be agreed between the MO and the IP's, meetings between the subject Councillor and either or both of the IP's shall not take place.

Matters under Investigation

1. The MO may consult each of the IP's at any stage during the process including on matters which relate to the procedures for handling complaints.
2. When an investigation has been concluded and a final report submitted to the MO by the Investigating Officer its contents will be shared with each of the IP's and their views sought on the appropriate course of action for the MO to take. Where the view of the MO and either of the IP's differ the MO will make a record of the reasons for the difference of opinion and notify them to the relevant IP. The letter to the subject Councillor and the complainant will make clear that the MO has taken the relevant decision but that the views of the IP's have been taken into account.
3. Where the MO has referred a matter to the Audit and Standards Committee for hearing and determination the Committee must seek the views of each of the IP's before reaching its conclusions. The IP's will be invited to the Committee as observers and invited to give their views prior to determination. Should either of the IP's be unavailable to attend the Committee meeting his/her views will be requested in writing and made available to members of the Committee at the appropriate time. The Clerk to the Committee will record each of the IP's views in the committee minutes and where the Committee's decision does not reflect the IP's viewpoint the decision notice will make this clear and give reasons for not doing so. It will also make clear that it is the Committee and not the IP who is the decision maker.
4. The IP's should not make any comments to the media. Any requests made to an IP for comments from the media shall be referred in the first instance to the MO who

may refer these to the Chairman of the Audit and Standards Committee and/or the Council's Communications officer as appropriate.

5. The IP may be requested by the MO or Audit and Standards Committee to assist in any training on code of conduct issues as appropriate.

Relationship with the Audit and Standards Committee

1. Each of the IP's shall receive agendas and minutes of all meetings of the Audit and Standards Committee and shall be entitled to request items to be included on the agenda with the agreement of the Chairman. The IP's can attend meetings as observers and, with the permission of the Chairman the IP may speak to the Committee.
2. The IP's are not members of the Audit and Standards Committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chairman.

Other Matters

1. An IP has the right to raise any concerns about Standards issues or implementation of the complaints process with the Council's Executive Directors or the MO. He/she also has the right to address a meeting of the Full Council about any concerns.
2. The Council, through the Audit and Standards Committee and MO, is responsible for ensuring that the Council meets its duty to promote and maintain high standards of conduct by Councillors. However, an IP has the right to be consulted on any proposed changes to the Code of Conduct or to the Arrangements for dealing with complaints of Councillor Misconduct.
3. An IP has the right of access to any confidential information which he/she requires to carry out his/her role effectively. The MO will agree with the IP how they can access such information and how it should be stored.
4. The MO will meet with the IP's to review relevant matters once a quarter and more frequently should the need arise. Each of the IP's will declare to the MO any relevant interests in relation to particular matters and the MO will decide whether the interest conflicts the IP out of involvement with that particular matter.
5. The IP is considered to be an office holder of the Authority in accordance with the duty under Section 28(7) of the Localism Act 2011 and is therefore entitled to be covered by the Council's Indemnity Insurance provided he/she acts reasonably and within the terms of this Protocol.