

# **Independent Persons Role Description and Protocol**

## **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 Stratford-on-Avon District Council (SDC) to discharge their duty to promote and maintain high standards of conduct among District, Town and Parish Councillors and co-opted Members in the 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 relevant 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 complainants or Councillors who are the subject of complaints that a fair and just procedure is being followed.
- 2.5. Assisting SDC and the Monitoring Officer in discharging their duty to promote and maintain high standards of conduct by its Councillors and the Councillors and co-opted Members of Parish and Town Councils in the District.
- 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 Section 151 Officer or the Monitoring Officer (Statutory Officer).
- 2.7. Acting as a potential first point of contact in the Council's Whistle-blowing Policy.

### **3. Qualifications**

3.1 There are no specific qualifications for the role. However, under the Localism Act 2011 any of the following prevent a person from being an Independent Person either at the time of appointment or during their time in the role:

- (a) a person is not independent if the person is—
  - (i) a member, co-opted member or officer of the authority,
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or
  - (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);
- (b) a person may not be appointed under the provision required by subsection if at any time during the 5 years ending with the appointment the person was—
  - (i) a member, co-opted member or officer of the authority, or
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;

For the purposes of the above a person is a relative of another person if they are—

- (a) the other person's spouse or civil partner,
- (b) living with the other person as husband and wife or as if they were civil partners,
- (c) a grandparent of the other person,
- (d) a lineal descendant of a grandparent of the other person,
- (e) a parent, sibling or child of a person within paragraph (a) or (b),
- (f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or
- (g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.

In addition, SDC has adopted criteria to reflect the statutory disqualifications for Councillors:

- (1) any bankrupt or person who has made a composition or arrangement with creditors which is extant
- (2) having, within five years of the appointment, a conviction for an offence resulting in a sentence of imprisonment (whether or not suspended) for a period of not less than three months without the option of a fine
- (3) a disqualification for being elected or being a member of an authority under the Representation of the People Act 1983 (corrupt electoral practices)
- (4) being an officer of another local authority.

### **4. Required Attributes**

4.1. 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.

- 4.2. Ability to demonstrate and promote a commitment to SDC's Equality and Diversity Policies.
- 4.3. Ability to attend daytime meetings, sometimes at short notice, at an agreed location with the District-normally at the Council's main office.
- 4.4. Willingness to participate in training events to develop skills, knowledge and experience in the role.
- 4.5. Willingness to participate in networks developed for IPs operating outside the Council's area.
- 4.6. A wish to serve the public interest and the local community and to uphold local democracy.
- 4.7. An understanding and interest in ethical issues and dilemmas
- 4.8. Respect for others and high standards of personal honesty and integrity
- 4.9. An ability to take account of the views of others but able to reach their own conclusions on particular issues
- 4.10. **Desired Attributes**
- 4.11. Understanding of quasi-judicial proceedings and sound ethical and governance practice.
- 4.12. Experience with committee work.
- 4.13. Questioning skills and assertiveness.

## **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 arising from the needs of the service, including the induction and training needs of newly appointed persons in the role.

## **Protocol**

This Protocol sets out the relationships between the Independent Persons (IPs) and the various parts of the Council involved in the process of handling Code of Conduct complaints and the wider promotion of Standards.

The aim is to ensure clear responsibility at each stage of the process and to set out the expectations and rights of the IPs. It is written with the following assumptions:

1. Each IP has an equal right to give their views when requested by the Monitoring Officer (MO) or the relevant Committee, 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 IPs 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 or by post. Should an IP be unavailable or fail to respond within 15 working days of the date of the request the MO will be entitled to proceed once the views of one available IP have been provided.
4. The Localism Act 2011 permits the subject Councillor to have access to an IP. The Councils have enhanced this by also permitting the complainant to have rights to contact the nominated IP. Any such access is restricted to postal or email contact only and there is no right for the subject councillor or complainant to meet the IP. If the nominated IP is contacted a written record of the discussion will be kept and this will be forwarded to the MO.

### **Considering written allegations**

1. On the receipt of a complaint the MO will nominate three IPs for the complaint. Two will be used to provide views on the complaint to the MO and if necessary, any hearing process. The other will be made available to provide clarification on procedure to either the complainant(s) or the Councillor(s) complained about.
2. The MO will seek the views of two IPs before reaching a decision at the end of Stage 1 and, as appropriate, Stage 2 of the Complaints Procedure.
3. When issuing the decision letter at the end of Stage 1 the MO will record which of the IPs they have consulted and that their views have been taken into account.
4. 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.
5. The IP advice will solely be around process and clarification of this. When the IPs views are sought, by the Complainant(s) or Councillor(s) complained about, they will not advise on the merits of either the complaint or the alleged conduct and they will refer them to the MO should any procedural queries be made. The IP will always remind those they speak with 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.

6. When an IP is approached by a subject Councillor for their views the IP will make clear that it is not their 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 they give to a subject Councillor and forward them to the MO to be kept on file.
7. Save in exceptional circumstances, which will be agreed between the MO and the IPs, meetings between the subject Councillor and either or both of the IPs shall not take place.

### **Matters under Investigation**

1. The MO may consult any of the IPs 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 two of the IPs 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 IPs 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 has been taken into account.
3. Where the MO has referred a matter to Committee for hearing and determination the Committee will seek the views of two IPs before reaching its conclusions. The IPs will be invited to the Committee as observers and invited to give their views prior to determination. Should the IPs be unavailable to attend the Committee meeting their 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 the IPs views in the committee minutes and where the Committee's decision does not reflect the IPs 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 IPs 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 Committee and/or the Council's media team as appropriate.
5. The IPs may be requested by the MO or Committee to assist in any training on code of conduct issues as appropriate.

### **Relationship with the Committee**

1. Each of the IPs shall receive agendas and minutes of all meetings of the Audit and Standards Committee (SDC) Standards Committee (WDC) and shall be entitled to request items to be included on the agenda with the agreement of the Chairman.

The IPs can attend meetings as observers and, with the permission of the Chairman the IP may speak at the Committee meeting.

- 2 The IPs are not members of the Audit and Standards Committee (SDC) Standards Committee (WDC) 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 MO. They also have the right, subject to consent of the Chairman, to address a meeting of the Full Council about any concerns.
2. The Council, through the Audit and Standards Committee (SDC) Standards Committee (WDC) and MO, is responsible for ensuring that each 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 Councillor Complaints Procedure.
3. An IP has the right of access to any confidential information which they require to carry out their 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 IPs to review relevant matters as necessary. Each of the IPs will be asked to declare their personal commitment to adhering to the code, complete the necessary declarations of interest under the code of Conduct for Councillors. On specific cases they will inform 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 and is therefore entitled to be covered by the Council's Indemnity Insurance provided they act reasonably and within the terms of this Protocol.
6. The IP will be paid an allowance in accordance with each Council's Allowances Scheme.

### **Document Control**

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