

# BUCKINGHAMSHIRE COUNCIL

## PROTOCOL ON THE ROLE OF THE INDEPENDENT PERSON

### 1. Introduction

This protocol is to make clear the relationships between the Independent Person (IP) and the various parts of the Council involved in the process of handling standards complaints and wider promotion of ethical 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 IPs.

### 2. Appointment

- a. To be eligible for appointment as an Independent Person, a person must not be or have been within the previous five years a member, co-opted member or officer of the Council or of a Parish Council of which the Council is the principal authority, nor a relative or close friend of such member or officer.
- b. The Independent person should not be involved actively in party politics and should be independent of local government.
- c. It is essential that the Independent Person demonstrates a keen interest and commitment to maintaining and promoting high ethical standards in local government.
- d. An Independent person must have a general understanding of the principles behind the members' Code of Conduct and must be a person of good standing in whose impartiality and integrity elected members and the general public can have confidence. It is essential that an Independent Person can demonstrate personal integrity and honesty.
- e. The Independent Person must also have good communication and interpersonal skills, be able to operate with tact and diplomacy, must be able to use logical reasoning and bring qualities of open-mindedness and impartiality. It is vital that the Independent Person understands and complies with confidentiality requirements.
- f. It would be beneficial for a candidate to demonstrate experience of managing or advising upon misconduct issues in another context, understanding the pressures and constraints of serving as a member of an accountable public body and knowledge of public sector governance issues.

- g. The Independent Person may only be appointed pursuant to a formal recruitment process requiring a public advertisement, submission of applications and selection by interview. A person's appointment must be approved by Full Council. The term of office for each Independent Person will be 4 years and re-appointment will be for no more than 2 consecutive terms.
- h. The Independent Person is to be considered 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 provided they act reasonably and within the terms of this Protocol.
- i. The Independent Person is not an employee of the Council. The Council will pay the Independent Person's expenses by way of an allowance or otherwise with the amount to be determined by the Full Council.

### 3. Considering written allegations

- a. Complaints will be allocated to an IP by the monitoring officer (MO) or deputy monitoring officer (DMO) having regard to availability and any conflicts of interest, by rotation.
- b. If the IP has had any prior dealing or on-going personal relationship with the complainant or the Member the subject of the complaint, they should advise the MO at the earliest opportunity
- c. The IP should familiarise themselves with the Council's code of conduct and complaints procedures
- d. The MO or DMO dealing with a complaint may seek the views of the allocated IP at any point during Stage 2 of the complaints procedure but the allocated IP will be consulted where an investigation is or may be proposed.
- e. The IP's role is to provide an independent view on the substance of the complaint and/or the quality of the evidence being considered in order to help the MO or DMO make an informed decision.
- f. When issuing a Stage 2 decision letter, the MO/DMO will record that the allocated IP has been consulted and that their views have been taken into account. Where the view of the MO/DMO and IP differ, the MO/DMO will record the reasons for following a particular course. The decision letter will make clear that it is the MO/DMO and not the IP who is the decision-maker.

### 4. Matters under investigation

- a. A member of Buckinghamshire Council or of a town or parish council who is the subject of a complaint is entitled to seek the views of an IP. The MO/DMO will allocate a different IP ("the Member IP") to undertake this role. A subject member

wishing to contact the Member IP should do so via the MO/DMO. These arrangements will be communicated to the subject member by the MO/DMO in the decision notice.

- b. When discussing the complaint with the subject member the Member IPs role is not to give views on the merit of the complaint or the evidence in support, or to act as an advocate or represent /defend the subject members but to give advice and reassurance on the Council's complaints process and procedures. Where the Member IP has given advice to the subject member, this shall be put in writing and made available to all relevant parties in the case.
- c. The Member IP will need to 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.
- d. The MO/DMO may consult the IP allocated to consider the complaint at any stage during the process, particularly on matters which relate to the procedures for handling the complaint.
- e. Where a matter has been referred to a Hearings Sub-Committee for determination, the committee must seek the views of the allocated IP before reaching its conclusions. 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 Hearings Sub-committee and not the IP who is the decision-maker.
- f. The IP must not disclose discuss the substance of the complaint with any other third party
- g. The IPs shall not make any comments to the media on any of the Council's standards matter without prior agreement of the MO/DMO or the council's communications team. Any requests for comments from media shall be referred in the first instance to the MO/DMO who may refer these to the Chairman of the Standards and General Purposes Committee as appropriate.
- h. The IPs may be requested by the MO/DMO or Standards and General Purposes Committee to assist in mediation or conciliation in order to resolve complaints where that is considered the most appropriate course of action.
- i. The IPs may be requested by the MO/DMO or Standards and General Purposes Committee to assist in any training on conduct issues as appropriate.

## 5. Relationship with the Standards and General Purposes Committee

- a. The Monitoring Officer is the principal advisor to the Standards and General Purposes Committee supported by the Deputy Monitoring officer (s) and officers within Democratic Services
- b. Up to 2 IPs are non-voting members of the Standards and General Purposes Committee and are permitted to attend for consultative purposes. Attendance at meetings will be alternated between IPs subject to their availability.
- c. All IPs will receive agendas and minutes of the Hearings Sub-Committee and the agenda and minutes of the Standards and General Purposes Committee in so far as they relate to standards issues. They shall be entitled to ask for items on standards issues to be added to the agenda of the Standards and General Purposes Committee with the agreement of the chairman and to speak at the committee.
- d. The IPs are not members of the Hearings Sub-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 standards matters with the agreement of the chairman.

## 6. Panel considering dismissal of statutory officers

- a. IPs will be members of any Panel set up to consider the dismissal of the Head of Paid Service, Chief Finance Officer or Monitoring Officer (all statutory officers of the Council) and together with the other members of the panel, will make recommendations on this to full Council.
- b. IPs will be included in consultation about the dates for Panel meetings and receive the relevant papers at least 5 clear working days before the date of the meeting.

## 7. Training

Training for the role of the IP with particular reference to local government governance and practice will be provided in-house by the MO or DMOs and where appropriate through external courses. Training for disciplinary and/or dismissal proceedings against a statutory officer will provide by the senior officers in the HR service.

## 8. Other matters

- a. The MO/DMO may consult an IP before deciding whether to grant a dispensation to a member of Buckinghamshire Council under section 33 of the Localism Act 2011
- b. The MO/DMO may consult an IP before deciding whether a member of Buckinghamshire Council or a parish or town council has a sensitive interest under section 32 of the Localism Act 2011
- c. The MO/DMO may consult an IP before deciding whether to grant a complainant's request for their identity to be kept confidential
- d. The IPs have the right to raise any concerns about standards issues or implementation of the process with the council's chief executive and have the right to address a meeting of the full council about any concerns.
- e. The council, through its Standards and General Purposes Committee and MO, is responsible for ensuring that the council meets its duty to promote and maintain high ethical standards. However, the IPs have the right to be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.
- f. The IPs have 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/DMO.
- g. The IPs have the right of access to council buildings in order to carry out their role. Access should be agreed in advance with the MO/DMO.
- h. The MO/DMOs will meet at least annually with the IPs to review relevant matters. An officer from the Buckinghamshire and Milton Keynes Association of Local Councils will also be invited to attend these meetings.
- i. The IPs will agree to 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.