

## **INDEPENDENT PERSONS PROTOCOL**

### **1. Introduction**

1.1 Somerset Council has appointed an Independent Person (IP) who will be consulted at various stages during Member Conduct reviews. A Reserve Independent Person (RIP) has been appointed to cover the situation when the IP is unable to act either through non availability or conflict issues.

1.2 The role of IP as described in the legislation is complex with the ability of all parties in a complaint to contact the IP during the course of the matter to seek advice and support.

This protocol seeks to set out the IP's duties and responsibilities, provide clarity on the IP's role and ensure that the 'advice and support' responsibility does not affect the IP's independence and impartiality at the point when their role is most crucial.

1.3 For the avoidance of doubt all references to:

- IP in this protocol also cover the RIP
- The Monitoring Officer include any nominated Deputy Monitoring Officer
- Members include Co-opted Members of the Council's Committees.

### **2. Duties and Responsibilities of the Independent Person**

2.1 To consider any member misconduct complaint referred by the Monitoring Officer (MO) and provide advice to the MO in connection with the determination of the complaint. The final decision on the future treatment of individual complaints rests with the MO.

2.2 To advise any Hearings Panel in connection with the determination of member misconduct complaints in accordance with the Council's arrangements. The final decision in respect of the complaint rests with the Panel.

2.3 To liaise with Members and officers of Somerset Council as required although the primary contact with the Council will be with the MO.

2.4 To attend and participate in meetings of the Standard Committee and any associated meetings in an advisory capacity.

2.5 To provide, as requested, advice to Members about whom a conduct complaint has been received and specifically to discharge the functions detailed in Section 28(7) of the Localism Act 2011.

2.6 To support the promotion and maintenance of high standards of conduct by Members.

2.7 To develop and apply knowledge of the Code of Conduct in relation to any and all matters relating to standards, including the assessment and determination of allegations of member misconduct under the Code of Conduct.

2.8 To analyse and exercise fair and impartial judgement when providing advice on conduct issues.

2.9 To consult, liaise and maintain a professional working relationship with the Council's MO, and other officers of the Council.

2.10 To provide a view on the governance of the Council from an external perspective that will better enable the Council to assess conduct and standards issues.

2.11 To develop a firm understanding of the standards and wider governance framework within which the Council operates.

2.12 To participate in training events relevant to the work of standards within the Council.

2.13 To attend meetings of the Council when required and other meetings as necessary in order to raise the profile of standards within Somerset.

2.14 To participate in any national and / or regional forum established for Independent Persons.

2.15 To undertake such other responsibilities as the MO considers reasonably commensurate with the role.

### **3. Role of the Independent Person**

3.1 It is acknowledged that the IP's skills and experience will assist the ongoing review of the complaint handling process and as such will be a useful resource in undertaking preventative work and/or mediation. However it is essential that the role of the IP is, and is seen to be, independent in any matter to be determined so the IP must not do anything or act in any way that will compromise that independence or be swayed by the arguments of one party over another.

3.2 To assist the IP in maintaining this independence, **all contact** to the IP from any party, whether Members of the public or Members of the Council, should be through the MO or his designated deputy. This is to ensure that contact remains within the bounds of professional relationships. If however direct contact is made with the IP and issues other than procedural issues of the complaint are discussed then the IP will be excluded from being involved in the determination of that particular complaint and the RIP will be substituted.

3.3 In addition the IP

- Should not discuss matters with the press or public.

- Should not form a final opinion on a matter to be determined until the final stage when their opinion on the investigation and its outcomes is presented; until that stage their role is to advise and assist parties.
- Is subject to the Code of Conduct for Members whilst undertaking their role in this process, which imposes a duty of Equality, fairness, objectivity and open mindedness.
- Should ensure that any advice given to one party is shared with all to ensure that any Member Conduct Review is compliant with the rules of natural justice and transparency in its process. The exception to this is where in the opinion of the IP the advice is specific to one party's circumstances. In that case the IP has the discretion not to share the advice with others.
- Should comply with the all relevant Council policies particularly Confidentiality and Data protection.

3.4 Whilst the detailed nature of any discussions that the IP may have with parties can and should be kept confidential, the independent person should keep a record of what views were expressed in a particular case, by them, including being date specific, as such views could change/vary as a case is progressed. These records to be available to the MO and/or Hearing Panel or/and interested party to ensure clarity and avoid any possible misunderstanding or misinterpretation of the views made by the IP in respect of a particular case.

3.5 It is good practice that only one IP should have his/her views sought on each specific case. Therefore the Council should only use the RIP when the IP is either unavailable or consider that they have a conflict of interest in a particular case.

## 4. **Procedural Matters**

### 4.1 **The First Stage**

4.1.1 The first stage of an allegation of breach of Member conduct is the receipt of the complaint. On receiving the complaint the MO will inform the IP of the complaint, send him/her copies of the documentation and, within a reasonable timescale will, in conjunction with the IP, take a view as to the severity of the allegation/s and process for the treatment of the complaint.

4.1.2 If the complaint identifies criminal conduct, including failure to declare a Disclosable Pecuniary Interest, (DPI) the MO will consult the IP before referring the matter to the police.

4.1.3 Where the matter is suitable for informal resolution, the complainant and the subject member will be asked to meet with the MO. The MO has the discretion to invite the IP to attend this meeting. This will normally be at separate sessions but, in the case where the complainant is another Member, the MO has the discretion to conduct this meeting with both the complainant and the subject member present at the same time. The MO will then consult the IP (if they were not present at the meeting(s)) to discuss the outcome of the meeting(s) and whether or not informal resolution is still possible. It is for the MO and the IP to agree how they will discuss the outcomes; be it e-mail, telephone or face to face contact. The MO will take notes of all discussions and ensure

that all those attending receive a copy. The IP will also be given a copy if they were not present at any meeting. To ensure that the IP is kept fully informed the MO will also provide the IP with copies of any notes taken of telephone and/or e-mail contact with any party/ies to the complaint.

4.1.4 If the complaint is deemed too frivolous or without merit, the MO will make this recommendation to the IP. If the IP agrees the matter should not be progressed the MO will confirm the recommendation and notify all parties in writing.

4.1.5 If the complaint justifies investigation but informal resolution is not appropriate, the MO will conduct a fact finding exercise to satisfy himself that;

- a) The complaint is against a Member of the Authority,
- b) The Member was acting in that capacity and,
- c) The complaint if proven would amount to a breach of the Code of Conduct.

On collating that information the MO will discuss the complaint with the IP prior to deciding if the complaint merits a full investigation. The IP may provide comments to the MO but must do so if they disagree with the MO's recommendation(s). The MO will then decide whether an investigation is necessary.

## 4.2 The Second Stage

4.2.1 Once the matter has proceeded to investigation the IP may again be consulted by the MO if the investigation report concludes that there is evidence of a failure to comply with the Code of Conduct and it is considered that the matter can be dealt with by local resolution rather than the need for a hearing. In this case the procedure for informal resolution will be the same as above.

## 4.3 The Third Stage

4.3.1 If a local hearing is to take place advice will be sought from the IP by the Hearing Panel where;

- a. The Panel are minded to conclude that the Member did not fail to comply with the Code of Conduct.
- b. The Panel are minded to conclude that the Member did breach the Code of Conduct, and
- c. In the case of b above any action to be taken as a result of that breach.

4.3.2 In all of the above scenarios, the Hearings Panel has the decision making responsibility.