

Protocol on the role of the Independent Person - meeting with Elected Members.

Purpose of this paper

This short paper aims to set out the arrangements to be followed in the event that an Elected Member whom it is alleged has committed a breach of the Code of Conduct for Councillors seeks a meeting with the Independent Person (I.P.)

Background

Section 28(7) Localism Act 2011 states:

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

(a) 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

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation,

The new “Arrangements” for dealing with complaints about the conduct of Councillors was established on 1 July 2012 and the principles of the new arrangements included:

- simplicity and transparency
- involvement of the I.P. at key stages of the process
- greater powers for the Monitoring Officer to deal with complaints relating to the Code of Conduct.

The right to “seek the views” of the IP therefore applies to any Elected Member who is the subject of a complaint. They may do this at any stage of the process except where a matter is referred to the police.

This right is separate to the right of the complainant to seek a “Review” of their complaint in the following circumstances as set out in our “Arrangements”:

- *rejection on grounds that complaint is not related to Code of Conduct, or is covered by another process*
- *rejection on grounds of being (i) trivial or (ii) not in the public interest to pursue or (iii) vexatious) OR*
- *recommendation of informal resolution*

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Such requests must be lodged with the Monitoring Officer within 5 working days of receipt of the outcome letter. Any Review will be undertaken by the Monitoring Officer, this time in consultation with a different Independent Person

The Reason for this paper

The experience gained during the first year of the new Standards regime shows that Elected Members have in most cases been willing to accept the views of the Monitoring Officer (M.O.) and I.P. where informal resolution is the outcome. This outcome often involves offering to explain more fully the reason for adopting a course of action, offering an apology and/or offering a way forward.

However in any matter, whether it is (*one that is dismissed?*); is proposed to be dealt with by informal resolution; is being “reviewed” or is one that proceeds to full investigation, the subject Member has a right to “*seek the views*” of the I.P. It is important that this engagement is defined and moderated so as to guard against:

- the Subject Member attempting to unduly influence the progress of the investigation by, for example, trying to explain “off the record” to the I.P. what they think of the complaint or how it should be resolved
- the Subject Member trying to compromise the independence of the I.P. by, for example trying to tell them things “in confidence” which are highly material to the investigation
- the Subject Member having false expectations of the purpose of exercising their right to seek the I.P.’s views
- the complainant being disadvantaged by the Subject Member’s exercise of their statutory right to seek the views of the I.P.

This Protocol therefore sets out the terms of engagement of such interaction, such as to promote transparency and preserve confidence in the Standards regime.

Arrangements for a meeting between the duly appointed IP and an Elected Member subject of a complaint:

- i. A Subject Member shall only be entitled to “seek the views” of the I.P. allocated to their complaint.

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- ii. The right to speak with the I.P. will not apply where a decision has already been taken (and communicated) to dismiss the complaint
- iii.
- iv. The right to speak with the I.P. will not apply where a complaint has been referred to the Police
- v. The Subject Member shall make any request to “seek the views” of the I.P. through, and only through, the M.O. Where a Subject Member directly approaches the I.P., the I.P. will refer them back to the M.O. without further engagement
- vi. The M.O. will arrange the meeting between the Subject Member and the I.P. at a date and time convenient to both, and on Council premises
- vii. The meeting shall be between the Subject Member and the I.P. only. No other attendees shall be permitted.
- viii. The I.P. will explain, at the outset, the nature of their role which is to listen to the Subject Member, explain the thinking that the I.P. and M.O. have undertaken (or, where no outcome has yet been reached, the questions that they will be addressing before reaching an outcome) and reiterate that they will NOT at that meeting express a concluded or tentative view on any of those matters
- ix. The purpose of the meeting will be for the Subject Member to better understand why the I.P. and M.O. have reached a particular outcome. It is NOT an opportunity for the Subject Member to attempt to exhort the I.P. to change their mind or to present “evidence” to them. I.P.s do not conduct “investigations” or “fact finding” exercises. These are done by the M.O. in cases that are not referred for formal investigation, or by the independent Investigator in cases referred for investigation.
- x. The I.P. will report back to the M.O. after the meeting a summary of the discussion.

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- xi. If the I.P. takes notes of the meeting these will be as an aide memoir for the I.P. only and will not act as a formal minute. The Subject member is free to make their own notes

- xii. If the Subject member, contrary to this Protocol, submits information or evidence that is material to the handling of the complaint, this information or evidence will be shared by the I.P. with the M.O. (and an Investigator where one is appointed) and acted upon appropriately.