



## **PROTOCOL RELATING TO THE ROLE AND CONDUCT OF THE INDEPENDENT PERSON**

This protocol is to make clear the relationships between the Independent Person ('IP') and the various parts of Hertsmere Borough Council ('the Council') involved in the process of handling complaints alleging a failure by a member to comply with the requirements of the Members Code of Conduct as well as the wider promotion of high standards of ethical conduct by elected and co-opted members of the Council. The aim of the Protocol is to ensure that responsibility is clear at each stage of the process and set out the expectations and rights of the IP.

The Protocol assumes:

- There is a 'lead' IP with a nominated substitute to be known as the 'Substitute IP';
- The Substitute IP will perform the duties and discharge the responsibilities of the IP in circumstances where the IP has a conflict of interest or is unavailable to act for any reason. Accordingly any reference in this Protocol to the IP shall where the context so admits or required be interpreted as a reference to the Substitute IP;
- All complaints alleging a failure by a member to comply with the requirements of the Members Code of Conduct Complaints will be referred to the Standards Assessment Panel for initial consideration; and
- The IP (or in his or her absence, the Substitute IP), will attend all meetings of the Standards Assessment Panel as one of the three members of the Panel. (The Chair of the Standards Committee, or in his or her absence the Vice-Chair, and the Monitoring Officer, or in his or her absence, the Deputy Monitoring Officer will be the other two members of the Panel).

### **Considering written allegations that do not meet Initial Assessment Criteria**

1. If the Standards Assessment Panel considers that a complaint does not meet the initial assessment criteria, the Monitoring Officer will prepare a draft record of the decision of the Panel and consult the Chair and the IP before publishing the decision notice.

### **Complaints referred by the Panel for Investigation**

2. Any member of Hertsmere Borough Council or of a Town or Parish Council established in the Borough of Hertsmere who is the subject of a complaint that has been referred for investigation has the right to seek the views of the IP. Accordingly, in the case of any complaint that has been referred by the Panel for investigation, the right to seek the views of the IP will be communicated to the subject member in the decision notice. A member wishing to contact the IP should do so via the Monitoring Officer who will arrange for a meeting to take place at the Civic Offices.
3. Where the IP has given views to the subject member, those views shall be put in writing and made available to the Monitoring Officer and the complainant. In such cases the 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, but even where the subject member had disclosed confidential information to the IP which the IP has agreed to keep confidential, the IP should make a statement that confidential matters were discussed and disclose this to all the relevant parties in the case.
4. The complainant may also seek the views of the IP. As with the subject member, contact should be arranged through the Monitoring Officer and any views expressed should be disclosed to all the relevant parties.

#### **Receipt of Final Investigation Report**

5. The Monitoring Officer will consult with the IP on receipt of all final investigation reports, regardless of whether they are 'breach or 'no breach' reports.
6. Where the final investigation report is a 'no breach' report and the IP agrees with the opinion of the report author, a copy of the investigation report will be disclosed to the complainant and subject member and the parties will be informed that no further action will; be taken in respect of the complaint. If the IP does not agree with the opinion of the report author, the final investigation report will be referred to the Standards Committee for consideration and the IP will have the right to attend the meetings and address the Committee before the Committee determines whether it agrees with the opinion of the report author.
7. Where the final investigation report is a 'breach' report then, following consultation with the IP, the report will be referred to the Standards Committee to conduct a hearing in relation to the complaint. Before the Standards Committee determines whether or not the subject member has failed to comply with the requirements of the Members Code of Conduct, the Committee must first seek the views of the IP. If the Standards Committee then determines that the subject member has failed to comply with the requirements of the Members Code of Conduct, then the IP should be consulted again before the Committee determines whether or not to impose a sanction on the subject member. 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.

#### **Media Contact**

8. The IP shall not make give interviews or make any statements or comments to the media on any standards matter without prior agreement of the Monitoring Officer or the Council's Corporate Communications Team. The IP should refer any requests from the media for an interview or a statement to the Monitoring Officer who may refer these to the Chair of the Standards Committee or the Corporate Communications Team as appropriate.
9. The IP may be requested by the Monitoring Officer or the Standards Assessment Panel and/or the Standards Committee to assist in mediation or conciliation in order to resolve a complaint where that is considered the most appropriate course of action.
10. The IP may be requested by the Monitoring Officer or the Standards Assessment Panel and/or the Standards Committee to assist in any training on conduct issues as appropriate.
11. Where the IP is unable to act because of a conflict of interest or because they are otherwise unavailable, their role will be carried out by the Substitute IP.

#### **Relationship with the Standards Committee**

12. The IP and Substitute IP shall receive agendas and minutes of all meetings of the Standards Committee and shall be invited to attend all meetings of the Standards Committee and shall, with the agreement of the Chair, be entitled to request that an item of business be included on the agenda of a future meeting of the Standards Committee.
13. The IP and Substitute IP may also, with the consent of the Chair, speak on any item of business under consideration at a meeting if the Standards Committee. In addition, given the sensitive nature of their role it will also normally be appropriate for the Chair to exercise his or her discretion to allow the IP and Substitute IP to remain in the meeting during the consideration of exempt or confidential information. However, the IP and Substitute IP are not members of the Standards Committee and therefore cannot propose, second or vote on motions.

#### **Other Matters**

##### Changes to Code of Conduct and Member Complaints Procedure

14. The Council, through its Standards Committee and Monitoring Officer, is responsible for ensuring that the Council meets its duty to promote and maintain high standards of ethical conduct by elected and co-opted members. However, the IP and Substitute IP have the right to be consulted on any proposed changes to the Members Code of Conduct or the procedures for handling complaints against a member.

##### Application of Members Code of Conduct and Management of Conflicts of Interest

15. The IP and Substitute IP will as a condition of appointment by the Council, agree to be bound by the General Conduct provisions at paragraphs 3.1 and 3.2 of the Members Code of Conduct (save that where the context so admits or requires any reference to a 'Member' shall be construed as a reference to the IP or Substitute IP. In addition, the IP and Substitute IP shall declare any potential conflicts of interest in relation to a complaint to the Monitoring Officer who will decide whether the nature of such interest excludes them from any further involvement in the complaint.
16. In particular, the IP and Substitute IP must declare to the Monitoring Officer at the earliest opportunity any change in their personal or professional circumstances that could or would cause their independence and political impartiality to be called into question; for example, standing as a candidate for a registered political party at a local government or general election or election or appointment to the management committee and/or selection committee of the constituency association of a registered political party.

#### Access to Exempt and Confidential Information

17. The IP and Substitute IP have has 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 Monitoring Officer. However, the IP and Substitute IP shall at the conclusion of a complaint return any related confidential or exempt information to the Monitoring Officer.

#### Access to Resources

18. The IP and Substitute IP will be entitled to claim travel and subsistence allowances in connection with the discharge of their duties at the same rate and on the same terms as elected members of the Council. They will also have the right of access to Council meeting rooms in order to carry out their role. Access arrangements should be agreed in advance with the Monitoring Officer or the Democratic Services Manager.

#### Insurance and Indemnity

19. The IP and Substitute IP are to be considered office-holders of the authority in accordance with the duty under section 28(7) of the Localism Act 2011 will therefore be entitled to be covered by the Council's indemnity insurance provided they act reasonably and within the terms of this Protocol.

**Chair of Standards Committee  
Hertsmere Borough Council  
January 2020**