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## PROTOCOL FOR INDEPENDENT PERSONS

### 1 SUMMARY

- 1.1 This report provides information on the role of the Independent Person under the Localism Act 2011 and a protocol for undertaking their duties, see attached Appendix.

### 2 INTRODUCTION

- 2.1 Independent Persons are members of the public who have no political connections or associations with the Authority and are appointed through a process of public advertisement and application.
- 2.2 Local Authorities are required to appoint at least one Independent Person to advise and consult with. The Council has appointed four Independent Persons to ensure availability and avoid conflicts of interest.
- 2.3 The role of the Independent Person has changed significantly under the Localism Act, with the ability of all parties to a complaint to contact the Independent Person to seek advice and support.
- 2.4 This protocol seeks to manage that contact and establish general principles to maintain independence and impartiality.

### 3 THE ROLE

- 3.1 The Independent Person's views must be sought and taken into account by the Council before it makes a decision on an allegation that it has decided to investigate.
- 3.2 Their views may also be sought by the Council on an allegation that it has decided not to investigate.
- 3.3 A Member of the Council or Parish Council may also seek the Independent Person's view on an allegation made against them.
- 3.4 The Council has adopted a Complaints Procedure making provision for involvement of Independent Persons in dealing with complaints against a Member alleging a breach of the Code of Conduct.
- 3.5 It is important that the arrangements instil public confidence and support the Council in maintaining high standards of conduct as required by the Localism Act. The protocol defines the role of the Independent Persons and establishes how they will engage in the process.

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## **4      PROTOCOL**

- 4.1    The Independent Persons are required to be independent in the matter being determined and must not allow themselves to become swayed by the arguments of one party over another.
- 4.2    To assist in this role all contact with the Independent Persons should be through the Monitoring Officer to ensure that contact remains within the bounds of professional relationships and under no circumstances should they discuss matters with the press or other parties.
- 4.3    In carrying out this role Independent Persons are required to make themselves available through email/telephone contact in order to receive such queries and respond accordingly.
- 4.4    It is important that the Independent Person does not form a final opinion on a matter to be determined until they are formerly consulted and their views are requested on an investigation and its outcome by the Standards Committee. Until that stage their role is to merely advise and assist parties with the process to be followed.
- 4.5    The Independent Person is subject to the Code of Conduct for Members while undertaking their role in this process which imposes a duty of equality, fairness, objectivity and open mindedness.
- 4.6    Any investigation into Member conduct must be undertaken in a manner compliant with the rules of natural justice and be transparent in its proceedings. Therefore any advice given to one party will be shared with others that are party to the proceedings.
- 4.7    The function of the Independent Persons may alter depending upon the role they have in any complaint but in doing so they must work in accordance with the general overarching principles as set out in the appended Protocol.
- 4.8    This is a new and developing area and as further guidance is available these protocols will be reviewed and updated.

## **5      THE PROCESS**

### **Complaint**

- 5.1    The first stage of an allegation of a breach of the code is the receipt of a complaint. On receiving the complaint the Monitoring Officer, in conjunction with the Independent Person if required, will take a view as to the severity of the allegation and its suitability for informal resolution.
- 5.2    Where a matter is suitable for informal resolution, the complainant and the subject member will be encouraged to meet to identify what the difference is, where the complainant is a member of the public they will

be invited to meet with the monitoring officer to discuss the complaint, followed by an informal resolution meeting with both persons present and the Independent Person.

- 5.3 If informal resolution is not appropriate or is unsuccessful, the Monitoring Officer will conduct a fact-finding exercise and may, in consultation with the Independent Person, determine whether the initial tests, as set out in the protocol, are satisfied.
- 5.4 If the complaint does not satisfy the initial tests or is deemed to be frivolous or without merit the Monitoring Officer may in consultation with the Independent Person determine that the matter will not be progressed and the parties will be notified accordingly.
- 5.5 If the Monitoring Officer believes the complaint does have substance a report will be made to the Standards Sub-Committee.

#### **Assessment**

- 5.6 The second stage is an assessment of the complaint by the Standards Sub-Committee and a decision as to how the matter should be progressed.
- 5.7 If the Standards Sub-Committee determines that the matter warrants further investigation, an investigator may be appointed by the Monitoring Officer. The Independent Person has no involvement at this stage.

#### **Determination**

- 5.8 Once the Investigation has been completed the Standards Sub-Committee will consider the evidence and hear representations from the parties. This may be either by oral evidence or written representations. The Localism Act requires the Council to take into account the views of the Independent Person before it determines the matter.
- 5.9 The Independent Person may be co-opted on to the Sub-Committee or may sit as independent advisor. An Independent Person will have no voting rights.
- 5.10 Where an Independent Person has a conflict in a matter either through personal relationships, personal knowledge or are appearing to show a predisposition/predetermination on a matter, they cannot remain involved and must notify the Monitoring Officer immediately.

### **6 LEGAL IMPLICATIONS**

- 6.1 Under Section 27 of the Localism Act 2011 the Council has a duty to promote and maintain high standards of conduct by Members and co-opted Members of the Authority. In discharging its duty the Council must

adopt a Code dealing with the conduct that is expected of Members when they are acting in that capacity.

**7 PARISH IMPLICATIONS**

- 7 The Council's Code which came into effect on 1 July 2012 has been adopted by all Parish and Town Councils in the District.

**8 RECOMMENDATION**

- 8.1 It is proposed that the Committee **RESOLVES:-**

To **RECOMMEND** to Full Council that the Independent Persons Protocol be approved and adopted.

Albert Bugeja

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**Background Papers:-**

None

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INDEPENDENT PERSON PROTOCOL

This protocol relates to the discharge of the Independent Person's functions in relation to the assessment of an allegation that a Member of Rochford District Council or a Member of a Parish or Town Council in the District has failed to comply with the Council's Code of Conduct.

Overarching Principles:-

- (1) The Independent Person is a statutory appointment under s.28 of the Localism Act 2011.
- (2) This Protocol applies to all Independent Persons equally.
- (3) The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended as necessary.
- (4) The Independent Person will discharge their responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council, in particular:-
  - (i) Instilling public confidence in the process and how complaints are considered by the Standards Committee and officers.
  - (ii) Complying with the law, the Members' Code of Conduct and any guidance issued.
  - (iii) Complying with the procedures adopted by the Standards Committee.
  - (iv) Complying with the Council's Constitution and standing orders.
  - (v) Preserving confidentiality at all time.
  - (vi) Acting impartially in the interests of fair and natural justice, without prejudice or political bias.
- (5) The Monitoring Officer is the principal adviser to the Standards Committee.
- (6) All Independent Persons are non-voting members of the Standards Committee and are permitted to attend for consultative purposes. However, if considering a complaint the attendance may be altered from sitting with the Committee to observer or alternative capacity due to the involvement of the Independent Person through the complaints process.

- (7) The Monitoring Officer, in consultation with the Chairman of the Standards Committee, will make the final decision on the type of attendance after considering the specific circumstances of the matter under consideration.
- (8) The Monitoring Officer may consult with at least one Independent Person on complaints received as appropriate and throughout the process in accordance with the Complaints Procedure.
- (9) In circumstances where either the Independent Person witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not arise.
- (10) If the Independent Person has any prior or on going personal relationship with the complainant or the Member who is the subject of the complaint they should advise the Monitoring Officer at the earliest opportunity.
- (11) The Monitoring Officer will facilitate contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified by the Independent Person of any direct contact that has been made.
- (12) Under no circumstances should the Independent Person discuss matters relating to a complaint with the press or any third party.
- (13) Independent Persons will notify the Council's Monitoring Officer of the most suitable times to be available for contact.
- (14) When discussing the complaint with the complainant or the Member the subject of the complaint, the Independent Person's role is not to give views on the merit of the complaint or the evidence in support but to give advice and assistance on the process.
- (15) The Independent Person'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 Committee to make an informed decision.
- (16) The Independent Person must not form a final opinion on a matter to be determined until their opinion on an investigation and its outcome is requested by the Standards Committee until this time their role is to advise.
- (17) An Independent Person may be consulted on an allegation before the Monitoring Officer takes a decision as to whether it merits further action.

- (18) The Monitoring Officer will have regard to the Independent Person's view but is not bound to accept it.
- (19) The Independent Person should consider that, in reaching a decision in respect of how to progress the complaint, the Monitoring Officer will take into account the following factors where appropriate:-
- Was the Member acting in their official capacity?
  - Was the Member in office at the time of alleged misconduct?
  - Is the complaint of a very minor or trivial matter?
  - Is the complaint vexatious or malicious?
  - Is the complaint time expired?
  - Is there a potential breach of the Code?
  - Assessment of public interest?
  - Is additional information required prior to making a decision?