

DRAFT

Memorandum of Understanding Between Independent Persons and Appointing Authorities



BEDFORD BOROUGH COUNCIL



CENTRAL BEDFORDSHIRE COUNCIL



LUTON BOROUGH COUNCIL



MILTON KEYNES COUNCIL



**BEDFORDSHIRE & LUTON
COMBINED FIRE AUTHORITY**



**BUCKINGHAMSHIRE & MILTON
KEYNES COMBINED FIRE
AUTHORITY**

Introduction

An Independent Person is the holder of an office created by statute, the Localism Act 2011, and appointed by each principal local authority to exercise that role. He or she is neither an employee (officer) nor a Member of the Authority concerned but exists to fulfil a role, as the name suggests, as an independent person to provide public assurance that any complaint made about the conduct of a Member of an Authority is handled properly and fairly for all concerned.

Rather than appoint individual independent persons, that are seen to belong to one authority and one alone, these six authorities came together in the belief that a panel of independent persons shared amongst them will increase the level of independence, knowledge and experience and use of resources that will be available to best achieve the objects of the role.

The Role Description issued to applicants to become an Independent Person is attached, as is the relevant excerpt from the Statute and process maps explaining how complaints about Member conduct is to be handled at the Authorities.

What this Memorandum of Understanding does is set out, in greater detail, what the expectations on the Independent Person, Authority, elected or co-opted Members and the public are in exercising their respective duties or rights and in going through this process.

1. Overarching Principles

The key role of Independent Persons is to assist the Authority in promoting and maintaining high standards of conduct by elected and co-opted members of the appointing Authorities and of the parish, community and town councils in their administrative areas. These standards are expressed by the seven principles of public office, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership, and in particular by the Code of Conduct for Members required to be adopted by each and every local authority.

Independent Persons to be, and to be seen as, independent both from the Authorities and any political group and also from any other party who may be involved in any complaint or conduct matter they come to deal with.

Independent Persons will be given the opportunity to provide their views to the Appointing Authorities on both individual conduct matters and conduct matters generally.

Independent Persons views will be taken into account by the Authority when taking decisions about Conduct matters

2. Generally

Independent Persons will:

- Agree to act as one of the lead Independent Persons for at least one Authorities where invited to do so
- Endeavour to attend, observe and, where invited to do so, participate in the standards committee or other relevant meetings of the Authority for whom he or she is a lead Independent Persons
- Attend organised meetings of the Independent Persons wherever possible, initially intended to be once every 6 months
- Attend appropriate training organised for the Independent Persons wherever possible
- Provide up to date contact details to the Authorities
- Comply with the relevant provisions of the Data Protection Act and the relevant provisions of the data retention and security policies of the Authority concerned
- Maintain confidentiality at all times, complying with the relevant policies and procedures of the Authority concerned in respect of
 - Data security and data protection (that Authority being the recognised data controller under the provisions of the Data Protection Act for the purposes of the Independent Person's activities);
 - Freedom of information;
 - Contact with the media; and
 - Whistleblowing (concerning the activities of officers, Members, contractors and other relevant persons)

Independent Persons are asked to therefore store all information that they receive securely and at the closure of a case, return information to the Authority to be retained or destroyed in line with the Authority's storage and retention policy

- Adhere to other policies of the Authorities as are brought to the attention of the Independent Persons as being relevant to their role, such as the Authority's policies concerning equality and diversity, health and safety in the workplace and so forth
- Act in accordance with this Memorandum of Understanding and adhere to the general principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership
- Inform the Authorities of any issues with regard to the Memorandum of Understanding

The Authorities will:

- Agree with Independent Persons which Independent Persons will act as Lead IP's for which Appointing Authority
- Ensure that Independent Persons are made aware of the dates and times of committee meetings discussing conduct matters
- Invite Independent Persons to committees, as appropriate
- Provide Independent Persons with copies of committee agendas
- Provide appropriate training

- Provide details and, where appropriate, training in respect of policies and procedures that the Authority or Authorities require Independent Persons adhere to in fulfilling their role.
- Facilitate, on a 6 monthly basis, a meeting of the pool of Independent Persons to discuss any issues and to ensure that this Memorandum of Understanding is applied and updated consistently
- Provide updates as to any changes to the Code of Conduct for that Authority, or to the process for assessing, investigating or determining complaints
- Inform the Independent Person if they receive any request for information held by the Independent Person and provide assistance in dealing with the matter
- Ensure that the Authority's insurance scheme and indemnities cover the role provided by Independent Persons and inform Independent Persons of the terms of this insurance
- Make appropriate payment to Independent Persons in line with the scheme at xx
- If reasonable adjustments need to be made to help support the Independent Person in their role, these should be communicated to the Monitoring Officer of the Appointing Authorities in the first instance, who will organise appropriate support for the Independent Person.

3. Filtering of complaints

Independent Persons will:

- Accept the invitation to provide their views on a complaint on a 'cab rank' basis*
- Give their permission for a summary of their view to be shared with the Subject Member and made available publicly
- Complete a contact sheet, when they are contacted by a Subject Member and submit the contact sheet to the Monitoring Officer
- Inform the Monitoring Officer if they have any conflict of interest, as detailed below
- Cease to act where a conflict of interest arises, which in the view of the Monitoring Officer means that the Independent Person may be subject to a claim of bias/apparent bias
- Maintain confidentiality throughout the matter, disclosing personal information given in confidence in line with the Authority's policies or the law.

The Appointing Authorities will:

- Through the Monitoring Officer, invite one Independent Person to provide their views on a complaint. Dependent on the process adopted by the Authority concerned, this will either be through consultation by the Monitoring Officer or an appointed Standards Sub-Committee.
- Select the Independent Person to be invited on a 'cab rank' basis*
- Take account of the views of the Independent Person in coming to their decision

- Pay travelling expenses where the Independent Person needs to travel to somewhere other than the main offices of the nearest Authority to their home
- Inform the Subject Member of a summary of the views given by the Independent Person.
- Inform the Subject Member of the names of three Independent Persons (selected under the cab rank rule, but not to be the Independent Person who has given their views to the Authority on the matter) who they may choose to consult with.

4. During an Investigation into a complaint

Independent Persons will:

- Where possible, attend all appropriate meetings
- Complete a note of any contact with a Subject Member or any other dealings with the matter outside of contact with the Monitoring Officer or Sub-Committee
- Inform the Monitoring Officer of any reason for which they must cease to act, including a conflict of interest
- Cease to act where a conflict of interest arises, which in the view of the Monitoring Officer means that the Independent Person may be subject to a claim of bias/apparent bias
- Only disclose confidential information in line with the Appointing Authorities policies or the law.

The Authorities will:

- Inform the Independent Person, at appropriate points, of the status of the investigation
- Invite the Independent Person to all appropriate meetings
- Invite another Independent Person to act where the initial Independent Person ceases to act due to a conflict of interest or other reason
- Through the Monitoring Officer, inform the Subject Member if, for any reason, the Independent Person that they have chosen must cease to act, and provide further contact details of another Independent Person who the Subject Member may consult.

5. During other action

The Authorities will:

- Through the Monitoring Officer, involve the Independent Person as appropriate
- Take account of the views of the Independent Person in coming to their decision

6. Hearing

Independent Persons will:

- Familiarise themselves with the Hearing procedure and case papers
- Attend the Hearing in order to provide their views to the Committee and, as appropriate in the view of the Chair, any other persons attending the hearing, or, if this is not possible, make their views available by other means agreed by the Monitoring Officer
- Consent to a note of the views expressed being included within the Hearing Decision Notice for the matter
- Inform the Monitoring Officer of any reason for which they must cease to act, including a conflict of interest
- Cease to act where a conflict of interest arises, which in the view of the Monitoring Officer means that the Independent Person may be subject to a claim of bias/apparent bias

The Authorities will:

- Make arrangements for the Independent Person, who may be the Independent Person who has given their views on a complaint but must not be any Independent Person who has been consulted by the Subject Member to attend or supply their views on the matter to any hearing in accordance with that Authority's procedures
- Ensure that a note of the views of the Independent Person is included in the Hearing Decision Notice
- Take account of the views of the Independent Person in coming to their decision

7. Independence and Conduct

(a) Generally

The role of the Independent Person is an important one.

Independent Persons will be invited to give their views to and attend meetings of the Appointing Authorities, as part of which they expected to retain their independence at all times.

A person is not independent if the person is—

- A member, co-opted member or officer of the authority,
- A member, co-opted member or officer of a parish council of which the authority is the principal authority, or
- A relative or close friend, of a member, co-opted member or officer of the authority or of a parish council of which the authority is the principal authority.

If at any time the Independent Person becomes any of the above, they must inform the Monitoring Officer(s) of the appropriate authority(ies) as soon as possible.

They must take no further action on any cases for the authorities to whom the above relates until they have discussed the matter with the Monitoring Officer.

If appropriate, the Monitoring Officer will refer the matter to the Authority to remove the Independent Persons appointment to that authority.

(b) Equality Duties

All members of the local community, customers, Councillors and employees have a right to be treated with fairness and equity.

All Independent Persons have a duty, in discharging their role to;

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Independent Persons must not engage in any conduct which is prohibited under the Equality Act 2010. To do so may result in a report to the Authority and the removal of their appointment as an Independent Person.

(c) Personal Interests

If the Independent Person has any financial interests that could conflict with the Independence of their role, then they should declare this to the Monitoring Officer of the authority as soon as possible.

This might include involvement in a case which includes the award of a contract in which the Independent Person is involved.

If the Independent Person has any non-financial interests that they consider could conflict with the Independence of their role then they must declare this to the Monitoring Officer of the authority as soon as possible.

These might include a case concerned with the award of planning permission which would affect the Independent Person, or their family or close friend.

Failure to declare a Personal Interest may result in a report to the Authority and the removal of their appointment as an Independent Person.

(d) Gifts

Independent Persons should not accept personal gifts from Councillors, officers or external bodies who are connected to any of the authorities or involved in any conduct matter.

Independent Persons may not accept personal payments from Councillors, Officers or external bodies who are connected to any of the Appointing Authorities or involved in any conduct matter.

(e) Political Neutrality

The Independent Persons position means that they are closely involved with Councillors and may need to gain an understanding of political decision making processes.

They must not allow their own personal or political opinions to interfere with their role. They must ensure that they remain politically neutral at all times and must not show a preference for one political group above another.

(f) Disclosure of Information and confidential information

Independent Persons may find themselves in possession of confidential and sensitive information.

They must treat all information given to them in confidence in an appropriate manner and not disclose that information except where allowed by law or by virtue of this Protocol.

They must not use any information obtained in the course of their role for personal gain or benefit, nor should they pass it on to others who might use it in such a way.

Making unauthorised or improper use of confidential information is a serious offence. Any such unauthorised or improper use of information will be reported to the Monitoring Officer and may result in a report to the Authority regarding the removal of the Independent Persons appointment.

(g) Storage and disclosure of information

Independent Persons must ensure that where that information is given to them in hard copy or electronic media that the information is appropriately stored.

Information held by Independent Persons may be subject to Freedom of Information Act Requests and Data Protection Act provisions.

If any request is received, Independent Persons will be asked to liaise with the appropriate Monitoring Officer to discuss any request and how to deal with the information appropriately.

Once a case has been finalised (after receiving agreement from the appropriate committee that the case is closed) Independent Persons will be asked to return all of their paperwork to the appropriate authority for storage and destruction in line with the authority's retention and disposal protocols.

(h) Press Communication

Communication with the news media is limited. Due to the nature of their role Independent Persons may be approached by the press. If this is the case Independent Persons must direct the press to the appointing authority's media office and inform the Monitoring Officer.

(i) Bribery Act

An Independent Person is guilty of an offence where;

1. They request, agree to receive or accept a financial or other advantage intending that, in consequence, their role as Independent Person should be performed improperly
2. They request, agree to receive or accept a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by them of their role as Independent Person
3. They request, agree to receive or accept a financial or other advantage as a reward for the improper performance (whether by them or another person) of their role as Independent Person
4. In anticipation of or in consequence of them requesting, agreeing to receive or accepting a financial or other advantage, their role as Independent Person is performed improperly by them, or by another person at their request or with their assent or acquiescence.

It does not matter whether the Independent Person requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party; whether the advantage is (or is to be) for the benefit of the Independent Person or another person.

If any Independent Person is thought to have acted as above, the matter will be reported to the Police and the Monitoring Officer may submit a report to the Authority recommending that the Independent Persons appointment be terminated.

(j) Whistle blowing

If Independent Persons has concerns about any Appointing Authority and the way business is being carried out as a first step Independent Persons should normally raise concerns with the appropriate Monitoring Officer. If the Independent Person believes that the Monitoring Officer is involved, they should review the Authority's whistle blowing policy and contact the appropriate body.

(k) Adversarial Conduct

The Conduct process is investigative and not adversarial in its nature. The Independent Person acting for the Subject Member should only help to advise and discuss the matter with that Member, they should not take a representative role and do not have any right to represent the Subject Member at any hearings.

The Independent Person providing their views to the Authority should also not take an adversarial role in the matter. They should only supply their view of the matter in independent terms; they do not present the Authority's case.

(l) Termination of Appointment

Any Appointing Authority may, by resolution, end the appointment of an Independent Person.

Any Independent Person, may, in writing resign their appointment by giving notice to the Monitoring Officer of any Appointing Authority. role as Independent Person.

(m) Compliance with Laws and Authority Policies

If the Independent Person is required to enter the Appointing Authorities premises during the performance of their obligations under this Protocol they shall ensure that they;

1. carry any identity pass issued by the Appointing Authority at all times
2. comply with any requirements and instructions (including but not limited to health and safety and security issues) that may be given by an authorised representative of the Appointing Authority
3. comply with the Authority's equal opportunities policies and procedures and all statutory provisions concerning equal opportunities;
4. comply with the Authority's Financial Regulations;
5. comply with any request by an authorised representative of the Authority's to leave the Authority's premises immediately; and
6. notify the Appointing Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Consultancy Services.

(n) No Smoking Policy

The authorities operate a smoke free policy that incorporates all directly managed authority buildings and their associated enclosed land; all Authority's owned or leased vehicles, plant, machinery and equipment.

Please only smoke in the designated areas

Arrangements for remuneration

Reimbursement of Expenditure

Independent Persons necessarily incurring additional expense in discharging their role in respect of travel will be reimbursed approved expenses, subject to prior agreement by the Monitoring Officer and appropriate evidence of expenditure being produced, in accordance with local arrangements.

Independent Persons will be identified as lead Independent Persons for a particular Authority. That Authority's office is the what is known as the 'Normal Place of Work' for the purposes of this section.

Any travel to a venue other than the Independent Person's Normal Place of Work for discharge of their duties will be reimbursed in line with the below.

Mileage claims for a previous tax year, received after the May Payroll cut-off date will be accounted for in that current financial year and not the financial year travelled.

Any claims received more than 4 months later than the first expense date will be referred to Audit for authorisation. The claim forms have been designed for use on a monthly basis and there is no reason for not submitting a monthly claim no matter how small the amount.

Date	Per mile first 10,000	Per mile after 10,000
1.4.2011	45p	25p

Mileage amounts are paid as above.

Claim forms for each appointing authority will be provided.

Parking

Parking costs incurred whilst away from Normal Place of Work on business should be claimed together with the business mileage incurred.

Remuneration

Retainer

It has been agreed by each of the Appointing Authorities that a retainer fee of £400 per annum will be paid to the Independent Persons. This will be facilitated by Luton Borough Authority's payroll department.

Independent Persons will be paid on a monthly basis, starting from 1 September 2012 until the end of their term of appointment. The terms of appointment are included at annex 1.

Payments for case work

Further to this, payments shall be made by the Appointing Authority for whom a matter is being progressed by case.

Authority invitations to Independent Persons for their views

Once an Independent Person has accepted an invitation to provide their views in respect of a matter at a filtering stage, the Independent Member will be invited to provide their views, either to the Monitoring Officer (by phone or by email) or to a sub committee set up for the purpose.

The Independent Person is to complete a contact form in relation to the views that they have expressed. This must then be submitted to the Monitoring Officer of the Appointing Authority.

This will be considered a 'contact' and will trigger a payment of £50 to the Independent Person.

If the case progresses, either to 'Other Action' or to an Investigation, the same Independent Person will be expected to continue with the matter however no further payments will be made.

Where an Independent Person attends a sub committee which considers more than one complaint, this will be deemed to be one contact, unless more than one matter is referred for 'Other Action' or Investigation. Each additional matter referred for Investigation or Other Action will also be considered a 'contact'.

A contact sheet is required only for those matters for which to be completed for each matter discussed however only those matters that are referred for 'Other Action' or 'Investigation' will trigger the payment.

In the event that an Independent Person is required to cease acting on the matter due to a conflict of interest or for another reason, as agreed by the Monitoring Officer, a new Independent Person may be appointed to act.

The first view that the new Independent Person provides after they have been appointed will be considered to be a 'contact' and will trigger a payment. No further payments will be made.

Subject member

Where the Subject Member contacts the Independent Person, the Independent Person must complete a contact sheet. The submission of the first contact sheet to the Monitoring Officer will trigger a payment.

Subsequent contacts should be recorded but will not attract a payment.

If the Independent Person who has been contacted by a Subject Member ceases to act for any reason, the Authority will inform the Subject Member and provide them with contact details of another Independent Person.

The first contact that the new Independent Person provides to the Monitoring Officer will trigger a payment. No further payments will be made.

Role Profile of Independent Persons

1. To assist the Authority in promoting high standards of conduct by elected and co-opted members of Bedford Borough Council, Central Bedfordshire Council, Luton Borough Council, Milton Keynes Council, Bedfordshire & Luton Combined Fire Authority and Buckinghamshire & Milton Keynes Combined Fire Authority, town and parish councillors and in particular to uphold the Code of Conduct adopted by the Authorities and the seven principles of public office, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
2. To be consulted by the Authority through the Monitoring Officer and/or the Standards Committee before it makes a decision on an investigated allegation and to be available to attend meetings of the Hearing Panel of the Standards Committee for this purpose.
3. To be available for consultation by the Monitoring Officer and/or the Standards Committee before a decision is taken as to whether to investigate a complaint or to seek local resolution of the same.
4. To be available for consultation by any elected member, including town and parish councillors, who is the subject of a standards complaint.
5. To develop a sound understanding of the ethical framework as it operates within the authorities listed and its town and parish councils.
6. To participate in training events to develop skills, knowledge and experience and in networks developed for Independent Persons operating outside the Authority's area.
7. To attend training events organised and promoted by the Authority's Standards Committee.
8. To act as advocate and ambassador for the Authorities in promoting ethical behaviour.