

## THE ROLE OF THE INDEPENDENT PERSON – CONCLUSIONS FROM WORKSHOPS

### Background

**Hoey Ainscough Associates** held a series of seven regional workshops on the role of the Independent Person (IP), supported by **Wilkin Chapman Goolden Solicitors**.

These notes are a summary of the main discussion points, together with a series of recommendations from Hoey Ainscough Associates Ltd, endorsed by Jonathan Goolden of Wilkin Chapman Goolden, about how the role may be made to work effectively.

Events were held at seven venues – Basingstoke, Lincoln, Burnley, Warwick, Norwich (Broadlands DC), London (LB Camden) and Sidmouth (East Devon DC).

148 delegates attended, representing 86 authorities. Of these delegates, 115 were IPs and 33 were officers. Of the IPs who attended, there was a general split of around 50/50 between those who were new and those who had been independent standards committee members under the old framework.

### General observations

While some authorities had given considerable thought to the new arrangements and some had already been handling cases successfully, most authorities were still developing their processes and a significant minority of IPs had had either had no or minimal contact with the authority since appointment and/or were unaware of their council process and had no role description in place beyond the initial advert or appointment letter.

### IP Role in cases

#### *Filtering initial allegations*

In most councils the decision whether or not an allegation should progress had been delegated to the monitoring officer, though a few councils had retained an 'assessment committee' to which the MO made recommendations.

In both models, the IP was generally involved in giving views on the initial allegation. However, in some cases, it was at the discretion of the MO as to whether the IP was consulted. In those cases, there seemed unclear criteria as to when this discretion was exercised.

*We recommend that, where the MO is operating discretion, there needs to be transparency about the circumstances under which such discretion is exercised to protect the MO and IP and avoid accusations of inequitable treatment.*

Where decision letters were sent out, they generally said something along the lines of 'the views of the IP have been considered in reaching this decision'. We were not given an example of where an IP's views had differed from the decision.

In a minority of cases, the IP was a co-signatory of the letter alongside either the MO or committee chair.

In a minority of cases it was not made explicit that the IP had been consulted.

*We recommend that, where the IP's views have been sought, this is stated explicitly (and any different view recorded), but they do not sign the letter as that risks at best blurring the decision-maker's accountability and at worst invalidating the decision as the IP is not a decision-maker.*

### ***Role post-filtering***

Very few IPs saw themselves as having a role in cases which were being dealt with other than through investigation (such as by informal resolution or mediation) though a few were involved and some felt they had specific skills they could use to help the MO in this process.

### ***Multiple roles or one per case?***

There was considerable discussion as to whether, where there was more than one IP in an authority, there should be involvement of more than one in each case. There were two angles to this:

- a) Whether the law actually obliged an authority to seek the views of all IPs or, if not, if they should anyway work as a team on each case; and
- b) Whether a different IP should be given a different role for each case – for example, one to support the MO on the filtering, one to support the subject member and one to support the standards committee.

There was general agreement that the ‘multiple role’ approach was more fraught as it risked IPs ‘being played off each other’, becoming associated with a particular side or being seen not to be independent.

With regard to the legal requirement, it is clear that the law allows for appointment of more than 1 IP but we think it is reasonable to interpret the law as allowing council discretion as to which IPs it consults in any one case, provided it has made reasonable arrangements. The legislation tends to talk in the singular about an independent person whose views must be sought.

Where there is more than 1 IP such arrangements could be:

- a) To have a designated ‘lead IP’ who deals with all cases, with other IPs (reserves) only becoming involved where the lead IP is unavailable or has a conflict of interest;
- b) To have more than 1 IP, all of whose views are sought on each case. This can become difficult if there is more than 2 or 3 IPs as there may be confusion over differing views and the council or monitoring officer may risk being accused of ‘cherry-picking’ views;
- c) To select which IPs to use on a case-by-case basis. If the criteria for selecting a particular IP are not clear this can also run the risk of accusations of ‘cherry picking’ . For this to work, it needs to be set out clearly how an IP is selected (e.g. on the ‘cab-rank principle’ or because of particular specialisms, such as an IP who is a parish council expert, or is designated to be involved in cases of bullying etc).

*We recommend that there should only be one IP per case for clarity and efficiency. However, where a different process is used locally there needs to be very detailed guidance about how the different IPs operate within that framework.*

### **Giving views**

There was limited experience of IPs having given views on a case. However, it was generally agreed that there needed to be an agreed process for how this was done, how an IP was to be contacted and that the views should be expressed in writing, at least as a follow-up to any

meeting. This would protect the IP against misrepresentation and would allow there to be a transparent record in place.

### ***Giving views to the Council***

There were various stages in the process at which an IP might be approached to give views to the council (in practice, this meant to the monitoring officer or standards committee dealing with a particular case). There did need to be a formal mechanism whereby views were sought and given. These views would be subject to FOI and DPA requirements.

It was important that there was a clear distinction between the IP and the decision-maker. The IP should not therefore risk being seen as putting themselves in the place of an investigator or adjudicator by becoming too heavily involved in a case.

There was a general consensus that views would cover broadly two different aspects - as a sounding board for the investigator and/or adjudicator along the lines of 'do you agree or not that these facts constitute a breach' and as a quality assurance that the process had been fair, transparent and proportionate.

### ***Giving views to the subject member***

Little thought had been given in many cases as to how the subject member would seek the views of the IP and what views the IP should be giving (or declining to give).

There should be an agreed mechanism for the subject member contacting the IP – for example, through an appointment made by the monitoring officer or democratic services officer – and it should be avoided allowing the subject member free access to the IP by, for example, having their telephone numbers readily available.

This would allow the IP time to prepare for any discussion rather than being cornered into giving 'off the cuff' opinions and avoid the IP being seen as the advocate for the subject member.

Thought needs to be given as to whether any views expressed by the IP are made available to other parties to aid transparency and protect independence.

When dealing with a subject member, an IP's views could be sought but did not need to be given. The IP's role may most usefully be to listen to any concerns being expressed by the member and then reflect on whether these concerns are valid and if so are they being addressed in the process

*We recommend that IPs should only have contact with the subject member where it has been arranged in advance, and that any views expressed should be made available in writing to all relevant parties in the process.*

### ***Giving views to the complainant***

The legislation gives no specific right to a complainant to seek the views of an IP. Nevertheless, there may be times when the IP could usefully have contact with the complainant, in a similar managed way to the way that they deal with the subject member. This can be particularly

valuable where the complainant is the 'wronged party' or complaining on behalf of somebody else rather than simply a disinterested reporter of a perceived misdemeanour.

Again, the IP's role may be most usefully to listen to the complainant but should avoid being drawn into becoming an advocate.

If doubt is raised about whether a complainant is entitled to seek views, the council can always ask the IP to give its views to the council based on a discussion with the complainant.

*We recommend that your process should allow some access to the IP for the complainant, but that the scope of that contact is properly defined.*

### **Maintaining independence and ensuring fairness**

We talked with IPs about what they would do if they felt the process was unfair, that their concerns weren't being listened to or they saw cases being dealt with in a partisan way. We also discussed strategy for handling media enquiries should the press want to know the IP views, particularly in high-profile or contentious cases, and how the IP could ensure they were perceived to be independent, rather than becoming (or being perceived as becoming) too close to a standards committee, monitoring officer or one side in a case.

Few IPs or officers had thought these issues through, but it was agreed that there needed to be a clear process to allow an IP to escalate concerns through a council. This could be through the right to raise concerns with the chief executive, with group leaders or at full council.

The general view was that media contact would be dealt with by the authority rather than the IP commenting on cases, and that use of the media to raise concerns in the absence of a national regulator was a last-resort 'nuclear option' only where genuine concerns about the way the process was being run were being persistently ignored by senior politicians and officers.

IPs needed therefore to understand how their council was run and worked but needed to avoid becoming too close to individuals if they wanted to maintain their independence. They also needed to understand some of the history of the council (and where appropriate its parishes) if there had been particular governance issues in the past to help them understand the context of their role.

They had to be particularly careful to avoid becoming too closely linked with the monitoring officer, as they needed to be able to give independent dispassionate views.

*We recommend that councils have clear procedures set out which enable an IP to raise concerns within the authority about the way a case, or the framework as a whole, is being handled if their views are being consistently ignored.*

## **Promoting and Maintaining high standards**

Few IPs felt they had any role in helping the council more widely in promoting and maintaining high standards, rather than simply supporting them on cases, though there were one or two who had explicitly been given such a wider role. Some had been involved in drafting the Code or case handling procedures and would expect to be consulted on revisions. Only a few had more explicit wider roles written into their terms of reference.

Few IPs had had any discussion about a wider role supporting the authority and the consensus was that this was a matter either for the monitoring officer or standards committee, though clearly they would raise issues if they thought they could see wider lessons emerging from cases they were involved with.

There was also a lack of clarity in many cases about the relationship between the IP and the standards committee. A minority of IPs had been seconded on to the standards committee and most (but not all) would expect to attend as observers. However, in some cases no specific discussion had taken place about how the roles supported each other.

*We recommend that, where there is a standards committee, the independent person should not be a co-opted member as this can blur the roles and risks compromising independence when they are asked to give views. However, IPs should be sent papers in advance, have the right to ask for items to be placed on the agenda and the right to address meetings if they so wish.*

## **Other issues**

We discussed some more general issues about the role. This included the need to consider how the IP was granted access to confidential documents which might be relevant to a case and access to council buildings and contact with officers; their role and visibility to the parishes; whether the IP should be on the council website; what their legal status was and whether they were covered by indemnities and insurance; and how they would deal with any conflicts of interest.

It was agreed that there needed to be detailed formal protocols between the IP in the authority about both what their role was and how they were to discharge it. This would ensure clarity for all concerned, help define the role and its limits and relationships and would mean that an IP would be covered by the council indemnity, provided they acted with good faith within their agreed role.

IPs should also be asked to sign up to a code of conduct and, as a minimum, register and declare interests so that any conflict they might have within a case can be identified at an early stage.

## **Conclusions**

The role of the IP remains somewhat under-defined in most councils. This is not surprising given the newness of the role, but it is clear that it is rightly seen as very different from the role of the independent standards committee chair.

There are a number of different approaches to the role as you would expect and there can be no one template for how the job should be done as it will depend on local circumstances and skill sets.

Nevertheless, there is a desire for shared practice and ways in which IPs can share experience across authorities. It was felt that councils should be reviewing their procedures in the light of experience some time next year. This could be combined with repeat sessions to see what lessons had been learnt in six to nine months' time.

In addition to the recommendations on good practice in these notes we concluded five more general points:

**1. Ensure there is a written contract and description of the role.**

Many IPs are unclear of what it is they are supposed to do or not supposed to do, as they only have limited job descriptions. The role can be very narrow – sticking to the bare statutory minimum – or go much wider to look at standards issues generally, but whatever the intention, this should be clear and in writing for all concerned.

Similarly there is a need to have an understanding about what access they have to confidential council papers, IT equipment and officer support and also how they should be contacted and how they can contact the authority.

**2. Giving of views should be part of a formal process**

The key role is to give views. These views are not binding but will carry weight. IPS will want to ensure their views are not misrepresented or ignored unreasonably.

They should therefore always put their views in writing, even if it is a follow-up note later. They should avoid being drawn into 'off the record' discussions and will therefore need to ensure that their access to members or the public involved in cases is formally controlled and properly recorded.

When giving views to one party, they should always make clear those views will be formal, in writing and shared with the authority and, if appropriate, other parties in the case.

There should therefore be an agreed format for recording views and all parties should be clear about the role at the start of a case.

**3. There should not be a separation of roles within a case**

Some authorities have adopted an approach of having a division of roles for IPs within an individual case – for example, one to support the MO in reaching decisions, one to give views to the council, one who is the contact point for the subject member, and one who may be a contact point for the complainant.

We do not think this is good practice as it risks the IP losing the perception of independence and impartiality and also risks IPs being played off one another or views not being presented in a transparent manner.

We believe that there should only be one IP designated for each case (or if more than one that they work as a team) to ensure a consistent, independent approach.

#### **4. Understand your council(s) and your relationship with them**

Each council has a unique culture and way of working. It is important IPs understand some of that context, for example by attending some meetings as an observer (including at parish level if appropriate).

IPs should understand some of the history and previous standards issues at their authority and parishes as background to the role.

They should be known to the senior managerial and political leadership, not least so that they know how to raise concerns if they see matters being dealt with inappropriately.

But...

#### **5. Don't lose your independence**

Independence is their key attribute. They must therefore avoid being seen as 'part of the authority' and they should not become too close to individuals. They are there to ensure the fairness of the processes for all concerned, and to act as a guarantor to both the council and the public that standards matters are being dealt with effectively, efficiently and proportionately. This has to be seen to be an independent role.

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