

Hoey Ainscough Associates Ltd

Supporting Local Governance

THE ROLE OF THE INDEPENDENT PERSON- ONE YEAR ON

Summary notes

HAA pre-workshop views	Workshop feedback	HAA recommendations
Most councils have only one or two IPs – usually a lead and substitute - with one IP allocated per case. A minority of councils have several and either work on a rotating principle or allocate them different roles in the process. A few councils have a pool of IPs who work collectively.	This mix and proportion was reflected in the workshops.	The ‘lead and substitute’ model is our preferred option. Having several IPs allocated different roles in the process risks the perception that the IP assigned to the subject member is their advocate, it also allows the possibility of the IPs being played off against each other. A pool of IPs working collectively could be overly bureaucratic and it is unclear what happens if their views differ.
Most IPs are not on the standards committee but work closely with it, attending meetings and commenting on items where appropriate.	This was reflected by the IPs at the workshops.	We wouldn’t advise that the IP sits on the standards committee as they perform different roles and it risks the IP compromising their ability to provide independent views to the committee.
Most councils have delegated the initial decision about what to do		Delegating initial assessment to the MO is sensible as it allows for

with a complaint to the monitoring officer, though a small minority have retained a sub-committee to make the decision. Most MOs who have had the power delegated to them have the power to refer sensitive/high profile cases to a committee.		much swifter and more low-key resolution of most of the low-level complaints. Convening a committee for each complaint seems over-bureaucratic and can raise the publicity around vexatious or politically-motivate complaints. It is sensible to build in the ability to refer cases to a committee if required.
Despite it not being a legal requirement most MOs consult the IP before reaching a decision on how to deal with the complaint.	There are a significant minority of IPs who aren't involved at the initial assessment stage and they feel underutilised and out of touch with standards issues within their authorities.	The IP should be involved at the initial assessment stage. Where this is happening, the MO is finding it helpful, the IPs tend to be a source of valuable support, are more engaged with the process and can offer a level of reassurance to the complainant that the matter has been looked at independently of the council. But even if the council chooses not to, they should provide the IP with regular updates about the volume and nature of complaints received as a minimum.
Some MOs share their draft decision with the IP and ask for their thoughts, some provide the IP with the complaint and		We think it is best practice to let the IP have the complaint and background papers so that they can form their own view and

background information and others just provide the IP with the complaint.		provide genuine challenge to MO conclusions where they feel it necessary.
<p>Most councils have built in three possible outcomes – no further action; investigate; or ‘informal resolution’.</p> <p>Informal resolution is the preferred route for most authorities and many councils have it twice in their procedures – once at the initial decision-making stage and then again, after investigation, if it seems a better route than holding a hearing</p>		<p>Informal resolution can be very effective but careful thought needs to be given as to whether it’s appropriate in each particular case. It should not be seen as a panacea and there will always be some cases where investigation is the only reasonable decision.</p>
<p>In some councils, the complainant is given a say on whether informal action is acceptable. This is particularly so when it is considered as an option post-investigation.</p> <p>In most councils, the IP’s views are sought on the acceptability of this route.</p>		<p>It can be helpful to understand what outcome the complainant is seeking but councils should avoid providing complainants with the ability to veto a particular course of action. Care should be taken to manage complainants’ expectations and to ensure that they are aware of the extent of the sanctions available.</p> <p>It is helpful to get the IP’s views.</p>
Fewer cases are going for formal investigation, due to costs and the lack of		In some cases a formal investigation is the only sensible option. This is

sanctions available should the member be found to have breached their code.		particularly so where the allegations are of a serious nature, there are disputed facts or it is a high profile case. Members themselves will often want an investigation to clear their name and are unwilling to 'apologise' if they feel they have done nothing wrong. Relying too much on group discipline or 'having a word' can lead to rough justice.
Some processes have two forms of investigation – a quick 'desktop' investigation where views are simply sought from the complainant and subject member and a conclusion reached on that basis; or a more in-depth investigation.		Both of these approaches have their merits but neither approach will be appropriate in all circumstances so councils need to scope their investigations before going down a particular route.
There are few cases of the police looking at failure by members to register or declare Disclosable Pecuniary Interests (DPIs), none seem to have led to a councillor being formally charged and interpretation of what is and isn't a DPI seems to vary widely from authority to authority.		Our narrow interpretation of DPIs (see Paul Hoey's article on the Local Government Lawyer website) seems to have attracted widespread support but until there is a definitive court ruling there will always be doubt over the exact meaning of the statute. However councils may wish to speak to their local

		police force about how they may be interpreted and how any local cases would be dealt with.
IPs are generally struggling to know what views they are expected to give to the subject member without being seen to become their advocate or get drawn into the dispute or else simply duplicating the role of the MO.	IPs would find it helpful if they were provided with a protocol setting out what they can and can't express a view on.	<p>It is very important for the IP to establish the ground rules up front. These rules should cover as a minimum what the IP can and can't give a view on and the confidentiality status of the information provided.</p> <p>HAA is working on a protocol for IPs to be shared through The Standards Exchange subscription website.</p>
Some councils allow the complainant equal access as the subject member to the views of the IP, a few explicitly rule it out, but most haven't considered the issue.	The majority of councils haven't considered this option.	It isn't appropriate in all cases but can be helpful in some. But it needs to be something considered by the MO and IP on a case-by-case basis as to whether it would help in that particular case.
Most IPs provide their views in writing.		<p>IPs should produce a written record of their views and they should be available to all parties. Where they have given views to a subject member, this written record should be agreed with the subject member to avoid future challenge.</p>

Where views are sought by the subject member the IP tends to meet them face to face.	Face to face meetings are the most common option but some IPs have held meetings with subject members over the phone.	The IP should not give instant views to the subject member but do so at a prearranged time. Meetings should be arranged by the MO or Democratic Services Officers and it can be helpful to take a note-taker along, particularly where the meeting is with a group of people.
Most IPs are provided with a copy of the draft investigation report and are asked to comment.		<p>It is good practice to invite the IP to comment before any report is finalised. IPs are not there to second-guess the conclusions. However, they should be checking that the report covers all the relevant points, is clear and provides the evidence necessary to reach a conclusion. Questions they should have in mind are what are the key issues to be resolved, have they been addressed adequately and whether the issues have been given the correct weight.</p> <p>It is, however, important for the IP to remember that they are not the investigator or decision maker.</p>
Nearly all councils refer		Assuming a breach has

<p>matters to a committee for hearing where a breach of the Code has been found.</p>		<p>been found and the matter has not been resolved informally at an earlier stage, or is inappropriate for such action, a hearing in front of a committee is the most sensible route. Other options do not provide the appropriate fairness or transparency.</p>
<p>Where there is a standards committee, it is a mixed picture as to whether the committee conforms with political proportionality rules – that is, it has seats allocated according to the political control of the council, or whether the political proportionality rules have been waived by council to ensure all-party representation</p>	<p>Most councils have not considered the option of waiving the political proportionality rules.</p>	<p>It is sensible to waive the political proportionality rules in relation to the standards committee as there is a real risk of politicisation of the committee or at least public perception of politicisation. Our experience shows that councils have encountered most media difficulty about their procedures and most member concern about perceived lack of fairness where the committee is politically controlled. The East Staffordshire case currently under judicial review will clearly have a bearing on this issue.</p>
<p>Some standards committees have kept ‘independent members’ although this is not true for the majority of</p>		<p>Parish representatives, even though they are non-voting, should be encouraged as they can play an important role in</p>

committees. Similarly some have kept parish representatives on.		helping the committee to understand the parish context and to reassure parish councils that their issues are understood. Retaining some independent members may help if there are difficult political relations on the council and they are seen to be truly above the party fray. However, simply having independent representation for the sake of it seems to serve little purpose.
Standards committees have struggled with access to information provisions and some have resorted to having closed hearings due to concerns about releasing papers in advance which has led to difficulties with the media.	<p>This wasn't an issue that many delegates had considered.</p> <p>However, the general view was that ensuring that the process is transparent, fair and impartial is an important part of the role.</p>	If an IP thinks that a hearing is being held in private wrongly, or they are more generally concerned at the political nature of the process, they should raise the issue with the MO initially and be prepared to exert their independence if required.
Parishes are struggling to understand that the standards committee is making the finding of fact but then simply making recommendations to them as to sanction and it is for the parish council to sanction.		Principal councils should ensure that their parishes understand the process and their powers. They may need greater support than at present when cases are passed back to them. Having parish representatives may help, and the county association

		of parish councils should be kept informed of cases.
<p>Most councils have the same range of sanctions in their provisions – apology, censure, removal from committee or outside appointments, withdrawal of resources or access to premises or contact with certain officers. In nearly all cases all sanctions are subject to ratification by full council and/or the political group.</p> <p>There has been a big increase in media and/or public campaigns to get councils to ‘sack’ members or force members to resign following a finding of censure or an apology, given that there are no longer any formal powers to suspend or disqualify members.</p>	IPs share the general concern that the sanctions available are too limited.	Councils need to ensure that expectations are managed as to what is achievable through the framework and that any sanctions that they do impose are within their power. Otherwise, they risk being criticised in the media as being weak on wrongdoing if the framework hasn’t been properly explained.
Few councils have reached the hearings stage. In the hearings that have taken place IPs have tended to provide their views during the hearing in open session.		The IP should give their views during the hearing in open session or in writing in advance of the meeting, with the caveat that they have formed their views based on the information provided. IPs should never retire with the committee

		and provide their views in private. - A case involving the General Medical Council sets out clearly the problems with an independent person retiring to give views in private – see below for reference.
IPs are giving their views on the process, finding and the potential sanction.	IPs tended not to be making their views known about an appropriate sanction in advance. Comments were often restricted to a general view that the process had been fair and thorough and tended to concentrate on the substance of the investigation	While it is appropriate only to be commenting in general terms on the fairness of the process in any given case and concentrating on giving views on the actual facts in dispute or weight of evidence, IPs should consider giving views on 'lessons learned' after the event so that they can help with refinements to the process for future cases.

General conclusions

While the cases we used to illustrate the workshops were designed to raise difficult issues and reflect the more serious behaviour, most cases will of course be less significant and will not progress as far. If an IP is to add real value to a council's handling of complaints, and offer the public reassurance, they therefore need to be involved from the outset of allegations, given that most cases are now not progressing beyond the initial stage. IPs who are not involved at this stage feel less able to contribute at later stages and do not have an accurate understanding of what is happening in their area.

There is still a need for greater clarity about the parameters of the role and how they fit into the process. A lot of IPs simply accept the process but could be more challenging if they think the procedure could be refined or they feel excluded from carrying out their role effectively.

The role is on the whole more difficult than the previous role of being an independent member of a standards committee. The most challenging part of the role is engaging with individual members who are under investigation. IPs can no longer remain judicious and above the day-to-day workings of the process. Instead, they need to roll their sleeves up more and have more direct contact with political groups and individual members if they are to do the role effectively.

There are clear concerns about confidentiality of any views given by the IPs as well as with the transparency of the whole process. These issues need to be dealt with up front – IPs need to be clear to members what they will/won't give views on and how the discussions will be recorded. They also need to be more willing to challenge the process if they believe it is unfair, partial or lacks transparency. Above all, they must be prepared to assert independence

The lack of effective sanctions is the single biggest criticism of the system. There are concerns that it makes the system useless for dealing with serious misconduct, that there is therefore no need to have proper processes in place and often no need to deal with cases at all. However, it remains important that councils have robust and fair arrangements in place and do treat public concerns about misconduct seriously and IPs are key in ensuring that happens.

There are a number of reasons why effective arrangements are needed. The first reason quite simply is that having some arrangements, no matter how imperfect, is better than having none at all. The example of 'Plebgate' where matters have still not really been resolved due to the lack of any formal independent arrangements being put in place, highlights this. The recent cases involving Lord Rennard and Mike Hancock MP also raise concerns about unclear processes or perceptions that matters are being dealt with privately rather than openly.

Also, members themselves want a fair process and hearing. There are increasing concerns from members about political committees making decisions about them behind closed doors without the full facts or for politically expedient reasons. Similarly most members feel their own reputation and that of their council is damaged when poor behaviour is left undealt with. And the public rightly demands a clear and fair process for dealing with their complaints.

The role of the IP is therefore crucial both in ensuring that individual cases are dealt with fairly and effectively and protecting the reputation of the council and local democracy by showing that the council does take concerns seriously, and in ensuring more generally that councils themselves are held to account for having fair, impartial, transparent and effective processes. IPs will continue to need support and wider access to shared good practice and learning but the role is developing into one which, at its best, can ensure standards are maintained and enhanced and sufficient independent challenge is applied.

Useful reading

These are some useful documents which may help IPs understand the wider national context:

The Committee on Standards in Public Life's annual report for 2012/13 which sets out their thoughts so far on the local framework - [CSPL annual report](#)

The standards section of a recent survey of monitoring officers carried out by the Local Government Lawyer website, in association with the law firm Freeth Cartwright LLP which gives some national perspective on how MOs view the new arrangements - [Raising the standard](#)

The GMC case relating to independent views being given in private - [Watson v GMC](#)