

Council

17 October 2024

Appointment of Independent Persons

Report from: Bhupinder Gill, Assistant Director, Legal and Governance/Monitoring Officer

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Summary

The Localism Act 2011 requires the appointment of an Independent Person to investigate allegations that a Member is in breach of the Code of Conduct and the appointment of an Independent Person must be approved by the majority of the Members of the authority.

In addition, the Local Authorities (Standing Orders) (England) Regulations 2015 (SI 2015/881) provide that a local authority must include at least two independent persons to a panel hearing the dismissal of a senior officer (Chief Executive, S151 Officer or Monitoring Officer).

This report provides an update on progress made in recruitment to the Independent Person positions and recommends the appointment of one Independent Person.

1. Recommendations

- 1.1. The Council is asked to agree the appointment of John Greenhill as an Independent Person under section 28(7) of the Localism Act 2011 with effect from 18 October 2024 for a period of 4 years, to carry out the functions required by section 28(7) of the Localism Act 2011 and where necessary, the Local Authorities (Standing Orders) (England) Regulations 2015 (SI 2015/881).
- 1.2. That the fee for an Independent Person be set at £350 (£175 per half day).
- 1.3. That Council delegates to the Monitoring Officer to agree the fee with the Independent Person on a case by case basis.

2. Budget and policy framework

- 2.1. The Council has complied with a statutory duty to adopt a code dealing with the conduct expected of Members and co-opted Members and has in place a process for considering complaints about Councillors' conduct under the Localism Act 2011. The Council also has common law powers to take action

after considering any concerns about the conduct of Councillors which can be delegated.

3. Background

- 3.1. Pursuant to the Localism Act 2011, each local authority is required to adopt a code of conduct that members (co-optees) elected/appointed to that authority must comply with when undertaking duties associated with holding public office. The code is derived from the Nolan principles of holding public office together with statutory defined elements that every code must contain.
- 3.2. S28(7) of the Localism Act 2011 requires authorities to appoint at least one Independent Person whose views must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate and whose views should be sought by a member if that person's behaviour is the subject of an allegation. The appointment of an Independent Person under s28(7) of the Localism Act 2011 must be approved by a majority of the Members of the Council.
- 3.3. The Local Authorities (Standing Orders) (England) Regulations 2015 (SI 2015/881) provide that a local authority must include at least two independent persons to a panel hearing the dismissal of a senior officer (Chief Executive, S151 Officer or Monitoring Officer).
- 3.4. At present there is no provision in the Localism Act 2019 that limits the number of times a person can be appointed as an Independent Person and the term of appointment.
- 3.5. The two previous appointments end on 12 October 2024 and need to be replaced. A report regarding this issue was considered by the Councillor Conduct Committee at its meeting on 10 July 2024, which detailed the options around recruitment to the forthcoming vacancies. The Committee was advised that both the current Independent Persons had been contacted to ascertain if they would like to be considered for reappointment to this role and one (Mr Greenhill) had confirmed he would like to be considered whereas to date no communication has been received from the other (Mr Teckhandani).
- 3.6. The Committee recognised the benefits and requirements to have at least two Independent Persons and recommended Full Council to appoint Mr Greenhill for a further four year term and agreed that the Monitoring Officer draft and publicise an advert to invite applicants to the second Independent Person position.
- 3.7. The recruitment process for the second Independent Person is ongoing and once concluded a recommended appointment will be brought to a future meeting of Full Council for determination.

4. Advice and analysis

- 4.1. The Council is mandated to have at least one independent person for the purposes of the Localism Act 2011. The Monitoring Officer considers it would be beneficial to have a minimum of two to overcome potential issues that may arise due to unavailability or potential conflict of interest/ bias where an independent person is consulted by a Member subject to an investigation which proceeds to a determination hearing.
- 4.2. In addition, the Council is mandated to have two independent persons to meet the requirements of the Local Authorities (Standing Orders) (England) Regulations 2015.
- 4.3. It is therefore recommended to appoint Mr John Greenhill for a further four year term, commencing with immediate effect, in order to meet the requirements of the Localism Act 2011. The Monitoring Officer will continue to pursue a selection process for a second Independent Person and will present a recommended candidate to a future meeting of Full Council.
- 4.4. In relation to the selection of the second Independent Person, ahead of presenting the candidate to Full Council, the Councillor Conduct Committee agreed the following process:
 - 4.4.1. The Monitoring Officer (MO), in consultation with the Chairperson of the Councillor Conduct Committee, draft an advert and publicise the same on the Council's website inviting applications from suitably qualified individuals.
 - 4.4.2. The MO screens all applications received to make sure that applicants meet the statutory qualification criteria.
 - 4.4.3. Details of those applications which pass the initial screening process (para 4.4.2 above) are then shared with all group whips. Only those applicants who are unanimously supported are taken forward to an interview process (if required). The interview panel to consist of the Chairperson of the Councillor Conduct Committee, the three group whips (or their nominees) and the Monitoring Officer.
 - 4.4.4. The selected applicant is recommended to Council for appointment.
- 4.5. Once the Council has appointed at least two Independent Persons it will have met the best practice requirements and will be able to provide for any conflicts of interest that could arise, as well as meeting the requirements under the Local Authorities (Standing Orders) (England) Regulations 2015 in relation to the dismissal process of statutory officers.

5. Risk management

- 5.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Using the following table this section should therefore consider any significant risks arising from your report.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Loss of confidence in the ethics regime	The public and others lose confidence in the complaints process	1. Appointment of Independent persons 2. All groups on the Council are involved in the selection process. 3. Only those applicants unanimously agreed upon are recommend for appointment	CIII
Unlawful decision making	Failure to consult with Independent person before determining a complaint would be a breach of the Localism Act 2011	Appointment of independent person	CIII

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

6. Consultation and process of selection

6.1. As set out in section 4.4, there will be member level consultation in the determination of selecting a candidate to put forward to Full Council for approval.

7. Climate change implications

7.1. There are no direct climate change implications arising from this report.

8. Financial implications

8.1. Payments to the Independent Persons would be covered from existing budgets. The report to Council, when appointing Independent persons in 2020, referenced the payment of an allowance of £350 per full day but no explicit recommendation was considered. To resolve the ambiguity it is recommended that the fee be set at £350 (£175 per half day), to be negotiated by the Monitoring Officer on a case-by-case basis.

9. Legal implications

- 9.1. Section 28(7) of the Localism Act 2011 requires authorities to appoint at least one Independent Person and the appointment must be approved by a majority of the Members of the Council.
- 9.2. The Local Authorities (Standing Orders) (England) Regulations 2015 (SI 2015/881) provide that a local authority must include at least two independent persons to a panel hearing the dismissal of a senior officer (Chief Executive, S151 Officer or Monitoring Officer).

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Appendices

None

Background papers

None