

REPORT TO:	ETHICS COMMITTEE 7 JANUARY 2020
SUBJECT:	SUCCESSION PLANNING FOR AND RECRUITMENT AND APPOINTMENT OF FURTHER INDEPENDENT PERSONS
LEAD OFFICER:	JACQUELINE HARRIS-BAKER MONITORING OFFICER AND EXECUTIVE DIRECTOR FOR RESOURCES
CABINET MEMBER:	COUNCILLOR SIMON HALL
WARDS:	ALL
<p>CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:</p> <p>The proposal will ensure good governance within the Council and by councillors and supports all strategic priorities. Good governance underpins the Council's Corporate Plan.</p> <p>Corporate Plan for Croydon 2018-2022</p>	
<p>FINANCIAL IMPACT</p> <p>The financial implications arising from the recommendations will be contained within existing budgets.</p>	

<p>1. RECOMMENDATIONS</p> <p>Committee is recommended to:</p> <p>1.1 Delegate to the Monitoring Officer authority to commence a recruitment process in line with section 28 of the Localism Act 2011 for the appointment of additional Independent Persons to a pool comprising up to five Independent Persons.</p> <p>1.2 Subject to their agreement to recommend to Full Council the re-appointment of Anne Smith and Ashok Kumar as Independent Persons for a further term of four years from May 2020.</p> <p>1.3 Agree the establishment of a Selection Panel for the purposes of selection and recommendation back to this committee of up to three further Independent Persons for appointment as detailed within the report.</p> <p>1.4 Agree that the Selection Panel shall comprise three members of this Committee: the Chair and two further Members to be nominated by the Committee with advisory support to be provided by the Monitoring Officer and a current Independent Person</p>
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2. EXECUTIVE SUMMARY

- 2.1 The report provides an update regarding the succession planning proposed in relation to ensuring that the Council has sufficient Independent Persons to continue to perform its statutory functions under the Localism Act 2011 and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules) as detailed below.
- 2.2 The report recommends authorising the Monitoring Officer to commence a recruitment process to increase the number of Independent Persons appointed to this pool and the composition of Selection Panel for this purpose.

3. DETAIL

- 3.1 Section 28 of the Localism Act 2011 ("the Act") imposes a duty upon the Council to 'promote and maintain high standards of conduct by Members and Co-opted Members of the Council'. The Council is required to adopt a Code dealing with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity. In addition, under Section 28(6) and (7) of the Act, the Council must have in place "arrangements" under which allegations that a Member or co-opted Member of the authority, or of a Committee or Sub-Committee of the authority, has failed to comply with the Council's Code of Conduct can be investigated and decisions made on such allegations.
- 3.2 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member or co-opted Member against whom an allegation has been made.
- 3.2 The Council has delegated to the Ethics Committee the function of investigating and determining any allegations of a breach of the Code of Conduct. The Committee comprises five elected Members of the Council and the Independent Persons who are non-voting advisory members of the Committee.
- 3.3 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") make specific provision for the involvement of Independent Persons in relation to Disciplinary Action taken against Head of Paid Service, Section 151 Officer or Monitoring Officer. Part 4J of the Constitution which incorporates the requirements of the Regulations provides that consideration of disciplinary action which could result in dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer will be the responsibility of the Appointments Committee. The Appointments Committee shall, for this purpose, include at least one Member of the Cabinet and at least two Independent Persons when consideration is being given to dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer. Any such Appointments Committee shall consider the matter in accordance with the processes and procedures approved by Ethics Committee for this purpose and make a report and recommendations to full Council for consideration and final determination. Any such report shall specifically include the Independent Persons' views on the recommendations and appropriate action.

3.5 The Council's Independent Persons therefore fulfil a statutory role both in relation to Member conduct issues and also disciplinary decisions involving the Council's statutory officers.

3.6 Members of the Committee will recall the recommendations contained in the Committee on Standard in Public Life (CSPL) report which was considered at its meetings on March and May 2019. Attached is the link to the full report of the CSPL which was considered by the Committee.
<https://www.gov.uk/government/collections/local-government-ethical-standards>

In particular with regard to Independent Persons the CSPL felt that the role of the Independent Person should be strengthened. They considered that security of tenure was important to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, they considered that restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority although no evidence was provided in the report to support this view.

3.8 There is currently no requirement for a set term of office for the Independent Person role in law.

Recommendation 8 of the CSPL report provides that:
The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

In order to become a legal requirement this recommendation would require a change in the law. However, Members discussed, at their last meeting, how long they considered an Independent Person should remain in post to ensure their independence and it was agreed that the matter should return to the Committee for consideration.

3.9 Following the introduction of the new standards regime in 2012 and after a successful recruitment and selection process the Council at its meeting on 2 July 2012 appointed a pool of 3 Independent Persons. Of these, Anne Smith, and Ashok Kumar have remained as Independent Persons since this time and the Council has renewed their appointments on an annual basis. They have significant knowledge and expertise in the area of ethical standards and have provided valuable advice to the Monitoring Officer and this Committee in relation to member standards. More recently Anne Smith has been lending her expertise to and providing essential independent advice in connection with the Council's governance review, which is underway.

3.10 Mindful of the vital role played by the Council's Independent Persons and the valuable contribution which they continue to make, and with a view to planning for future changes which may arise both from an increased role for Independent Persons and a legislative change in terms of the term of office for such persons, it is considered advisable to seek to appoint additional Independent Persons to the pool of Independent Persons to bring the total number of Independent Persons to a maximum of five.

- 3.11 Anne and Ashok are currently appointed until the end of the municipal year in 2020 and it is proposed, subject to their willingness to continue on in this role and full Council approval, to seek their re-appointment for a further four year term from May 2020.
- 3.12 In order to action the proposals, it is recommended to delegate to the Monitoring Officer authority to commence a recruitment process in line with section 28 of the Localism Act 2011 for the appointment of up to three additional Independent Persons to a pool comprising up to five Independent Persons in time for the commencement of the new municipal year in 2020.
- 3.13 In order to undertake the selection of appropriate candidates for recommendation to Full Council it is proposed to establish a Selection Panel for this purpose. It is proposed that the Selection Panel be provided with advisory support by the Monitoring Officer and a current Independent Person and that the Panel itself comprises three members of this Committee: the Chair and two further members to be nominated by this meeting.
- 3.14 The Selection panel shall report their findings back to this Committee for onward recommendation to Full Council with a view to appointing up to three additional Independent Persons from May 2020.

4. CONSULTATION

- 4.1 No formal consultation has been undertaken in relation to this proposal. However, the Committee have considered the findings of the CSPL report. In the event that a recruitment process is agreed the Localism Act requires that this would involve a public advertisement and formal application.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

Revenue and Capital consequences of report recommendations

- 5.1 No allowance is payable for the role of Independent Person. There are no employee costs arising from these appointments, and recruitment costs are minimal and can be funded from operational budgets.

Approved by: Ian Geary, Head of Finance, Resources.

5. OTHER OPTIONS CONSIDERED

It was considered whether it would be appropriate, in light of the CSPL recommendations to commence a recruitment process seeking appointment of a pool of entirely new Independent Persons. This approach was not considered to be optimal on the basis of the ongoing essential work which the current Independent Persons provide and mindful of the fact that the CSPL recommendation is not a legal requirement at this point in time. It is however considered appropriate to commence succession planning to provide for the possibility that there may be a future change to the term of office which Independent Persons may legally serve. In the intervening period, it is not considered appropriate

6. LEGAL CONSIDERATIONS

6.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the role of Independent Persons is a statutory requirement through the Localism Act 2011. The law provides that a person may not be an Independent Person if he or she is a Member, a Co-opted Member or an officer of the Council or a relative or close friend thereof. It also provides that a person may not be appointed if they were a Member or Co-opted Member during the past five years.

6.2 All other legal requirements are as set out within the body of this report.

Approved by: Sandra Herbert Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer.

7. HUMAN RESOURCES IMPACT

There are no human resource implications arising from this report.

Approved by: Sue Moorman Director of Human Resources.

8. EQUALITIES IMPACT

8.1 The Equality Act 2011(section 149) places a public sectorequality duty (section 146) on the Council. The duty requires the Council to have due regard to *the need to advance equality of opportunity* between persons who share a relevant protected characteristic and persons who do not share it.

8.2 Having “due regard” to the need to advance equality of opportunity involves having due regard, in particular, to the need to *encourage persons* who share a relevant protected characteristic *to participate in public life* or in any other activity in which participation by such persons is disproportionately low.

8.3 Co-option is a way of ensuring that under represented voices are represented on Council committees.

8.4 The law requires that the vacancy for an independent Person is advertised in such a manner as the Council consider is likely to bring it to the attention of the public. Subject to the statutory restrictions around applicant’s demonstrating ‘independence’ the vacancy would be available to all.

9. ENVIRONMENTAL IMPACT

There are not considered to be any environmental impacts of the proposal.

10. CRIME AND DISORDER REDUCTION IMPACT

The proposal supports the requirement to maintain good governance within the Council.

CONTACT OFFICER: Jacqueline Harris-Baker Executive Director of Resources and Monitoring Officer.

APPENDICES TO THIS REPORT
None

BACKGROUND DOCUMENTS: *None*