

Croydon Council

For General Release

REPORT TO:	ETHICS COMMITTEE 18 November 2020
SUBJECT:	UPDATE: 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:	
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON: 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. Corporate Plan for Croydon 2018-2022	
FINANCIAL IMPACT The financial implications arising from the recommendations will be contained within existing budgets.	

1. RECOMMENDATIONS

Committee is recommended to:

1.1 Appoint two named Members to sit on the Selection Panel alongside the Chair and to appoint a named Independent Member to advise the Committee alongside the Monitoring Officer.

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 Committee previously agreed (minute reference 4/20) to delegate authority to the Monitoring Officer to commence a recruitment process for purposes of increasing the number of Independent Persons appointed to a pool of Independent Members. The Committee also agreed to set up a Selection Panel, comprising the Chair and two further Members (such Panel to be advised by the Monitoring Officer and one of the existing Independent Persons) for the purposes of selection and recommendation back to Ethics Committee of up to three further Independent Persons in addition to the current Independent Persons.
- 2.3 The purpose of this report is to seek appointment of the two Members to sit alongside the Chair on the Panel and to appoint the Independent Person who will advise the Panel alongside the Monitoring Officer.

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 previous meetings, 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 in January 2020.

3.9 In January 2020 and as a result of this further consideration the Committee agreed to delegate authority to the Monitoring Officer to commence a recruitment process for purposes of increasing the number of Independent Persons appointed to a pool of up to five Independent Members, including current Independent Persons. The Committee also agreed to set up a Selection Panel, comprising the Chair and two further Members (to be advised by the Monitoring Officer and one of the existing Independent Persons) for the purposes of selection and recommendation back to Ethics Committee of up to three further Independent Persons for appointment to that pool.

3.10 The role was duly advertised and applications received in response prior to Covid. With the onset of the pandemic the setting up and convening of the Selection Panel was delayed. In addition, in the intervening period there has been a change to membership of the Committee.

3.11 In order to undertake the selection of appropriate candidates for recommendation to Full Council it is necessary to convene the Selection Panel for this purpose as previously approved by Committee. To this end, Committee

is asked to appoint two Members, in addition to the Chair, to sit on the Selection Panel and to appoint the Independent Person who will, alongside the Monitoring Officer, advise the Selection Panel.

3.12 It is anticipated that the shortlisting of applicants will take place during week commencing 23 November 2020 with interviews happening during week commencing 7 December 2020.

3.13 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.

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 and adheres to the previous decisions and recommendations from the Committee.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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: Matthew Davis, Deputy 151 Officer

5. OTHER OPTIONS CONSIDERED

No other options have been considered at this stage

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

The Independent person is not a direct employee of the council, however the role they fulfil is crucial to the effective governance and procedural oversight as it applies to statutory officers.

Approved by: Sue Moorman, Director of Human Resources

8. EQUALITIES IMPACT

- 8.1 The Equality Act 2011 (section 149) places a public sector equality 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.

Approved by: Yvonne Okiyo, Equalities Manager

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 Interim Executive Director of Resources and Monitoring Officer.

APPENDICES TO THIS REPORT

None

BACKGROUND DOCUMENTS: *None*