

LONDON BOROUGH OF CROYDON

REPORT:	ETHICS COMMITTEE	
DATE OF DECISION	19 April 2023	
REPORT TITLE:	SUCESSION PLANNING FOR INDEPENDENT PERSONS	
DIRECTOR:	Stephen Lawrence-Orumwense Director of Legal & Governance	
LEAD OFFICER:	Adrian May, Interim Head of Democratic Services adrian.may@croydon.gov.uk	
CONTAINS EXEMPT INFORMATION?	NO	Public
WARDS AFFECTED:	N/A	

1 SUMMARY OF REPORT

- 1.1 The report provides a succession planning outline to ensure 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
- 1.2 The report recommends authorising the Monitoring Officer to commence a recruitment process under the provisions of the Localism Act 2011 to ensure the pool of Independent Persons and should this first recommendation be approved and undertaken, recommends the composition of a panel for the Independent Person interview and selection process.

2 RECOMMENDATIONS

For the reasons given in this report, the Ethics Committee is recommended to:

- 2.1 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 Independent Person/s to maintain a pool of five Independent Persons (currently there is one vacancy).
- 2.2 Agree the establishment of a Selection Panel of the Ethics Committee for the purposes of interviewing and shortlisting applicants for the role of Independent Person and making subsequent recommendations to this Committee for consideration and onward recommendation to Full Council for appointment. .

- 2.3 Agree the Selection Panel comprises three members of this Committee: the Chair and two further Members to be nominated and agreed by the Committee with advisory support to be provided by the Monitoring Officer, Democratic Services and a current Independent Person
- 2.4 Subject to agreeing recommendation 2.3 above, to nominate and agree the membership of the Selection Panel
- 2.5 Note the proposed time frame of the recruitment and subsequent reporting back to this Committee prior to onward recommendations to Full Council.
- 2.6 Subject to his agreement, to recommend the re-appointment of Ashok Kumar as Independent Person for a further term of 2 years from May 2023, which term shall be subject to appointment by Full Council annually.
- 2.7 Thank Anne Smith for her exemplary and invaluable service as Independent Person and to note her resignation as Independent Person.
- 2.8 Note that Independent Persons Don Axcell, Jennifer Gordan and Alan Malarkey remain Independent Persons who have been appointed for a term up to May 2025 but that this appointment is subject to re-appointment by Full Council annually.
- 2.9 Subject to appointment at Full Council, to authorise the Monitoring Officer to confirm those appointments to the Independent Persons and re-confirm to the Independent Persons the terms of appointment and standards of conduct expected.

3 REASONS FOR RECOMMENDATIONS

- 3.1 The recommendations ensure that the Council has sufficient Independent Persons to continue to perform its statutory functions under the Localism Act 2011 in respect of the Ethics Functions of the Authority and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules) in respect of disciplinary matters pertaining to Head of Paid Service, Section 151 Officer or Monitoring Officer .
- 3.2 In order to support the recruitment process proposed to be initiated by the Monitoring Officer, it is recommended that a panel of Members of this Committee be established to undertake interviews and shortlisting of appropriately qualified applicants to enable recommendations as to appointment of future Independent persons to be made.
- 3.3 The recommended re-appointment of Ashok Kumar provides for continuation of an experienced Independent Person for a further two years.

4 BACKGROUND AND DETAILS

- 4.1 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. For Members' information, the arrangements as adopted by Full Council, can be accessed [here](#) ¹.

- 4.2 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.
- 4.3 In addition, the Council's arrangements provide that the Monitoring Officer may consult an Independent Person when considering, at assessment stage, whether or not an allegation ought to be referred for investigation. In other words to avoid the potential conflict of the same Independent Person having to advise different persons/bodies on the same matter, up to four Independent Persons might be involved in providing advice at different stages of and to different parties in the Ethics Process – one to advise the Member complained about, one who may advise the Monitoring Officer at Assessment Stage, one who might be consulted by the Authority at any other stage in the process and one whose views must be sought by the Council before it takes any final decision on an allegation of breach of the Code which is the subject of investigation.
- 4.4 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 and act in an advisory capacity at Committee and at other stages of the process as detailed above.
- 4.5 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") which amend the earlier 2001 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.
- 4.6 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 and Disciplinary Committee. In addition, an

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Independent Panel constituting at least two Independent Persons (who are appointed pursuant to the Localism Act 2011) will advise the Council on any recommendation from Appointments and Disciplinary Committee to dismiss Head of Paid Service, the Chief Finance Officer or the Monitoring Officer. Following any disciplinary hearing the outcome of which is a proposal to dismiss, the Independent Panel's views must be reflected specifically in the Report to full Council setting out the Appointments and Disciplinary Committee's recommendations. The full Council shall have regard to the recommendations of Appointments and Disciplinary Committee and the Independent Panel in reaching its decision on the matter.

- 4.7 The Council currently has 4 Independent Persons appointed by Full Council in May 2021 - Donald Axcell, Alan Malarkey and Jennifer Gordon having been appointed for 4 years and Ashok Kumar having been re-appointed for 2 years .
- 4.8 Anne Smith, who was first appointed by the Council as an Independent Person in 2012, resigned in November 2022. This Committee gives thanks to Anne Smith on behalf of the Council for her work as an Independent Person and contributions made to improving the council's governance including providing essential advice to inform the Council's governance reviews.
- 4.9 There is currently no requirement for a set term of office for the Independent Person role in law, nor is there a statutory maximum number of Independent Persons which a Council may appoint. However, the 2019 Committee on Standard in Public Life (CSPL) report on Local Government Ethical Standards recommended that it was best practice to have at least two Independent persons for purposes of running the Ethics process and as detailed above, the Council's disciplinary processes in relation to statutory officers also require the involvement of an Independent Panel of Independent Persons. This increases the need to ensure an adequate number of Independent Persons above to support the Council's functions especially as the Council continues to work on improved governance processes as part of it's improvement journey.
- 4.10 In addition, CSPL considered 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 could 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.
- 4.11 Whilst CSPL recommended to the Government in that 2019 report that the *Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once*, no such amendment has as yet been made by Government and is therefore not a legal requirement or barrier to term of appointment.
- 4.12 Having regard to the above, it is recommended that that Independent Persons appointed by Council, as a result of this selection process, are appointed for a term of 4 years. This can be reviewed if and when the Government considers making legislative amendments to the Act. .

Ashok Kumar has been appointed as an Independent Person since 2012. Mr Kumar has significant knowledge and expertise in the area of ethical standards and has provided valuable advice to Monitoring Officers and this Committee in relation to member standards during this time. Mr Kumar has advised that he is willing to remain as an Independent Person. It is recommended that the Committee, subject to full Council approval, seek his re-appointment for a further two years from May 2023, as this will support the induction of any new Independent Person/s appointed by this proposed recruitment and selection process and provide continuity of the support which Independent Persons provide to the Council.

- 4.13 It is therefore recommended to commence a recruitment and selection process to ensure a sufficient pool of Independent Persons to carry out statutory duties including in relation to any disciplinary matters described in the body of this report above. The maximum pool of Independent Persons is currently five.
- 4.14 Subject to agreement of the recommendations within this report, the outcome of the Selection Panel shall be reported to this Committee for onward recommendation to Full Council for a proposed term of appointment of 4 years, whilst noting that appointment within that term does ordinarily take place annually by Full Council.
- 4.15 With regards to likely timescales, the advert will be published in local press and online through the Council's website end of May/early June 2023 with the selection process taking place late June/early July (and thereafter the recommendation/s back to this Committee and onto Council).

5 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The Council could seek to appoint fewer Independent Persons or not to undertake a recruitment process at this stage, however maintaining a pool of five members is considered the optimal number for operational effectiveness (availability of IP members for panels, if and when required), ensuring that there are not conflicts if an Independent Person is consulted as part of the Ethics process as detailed more fully in paragraphs 4.2 and 4.3 above and also allows the retention of more experienced Independent Persons.

6 CONSULTATION

- 6.1 No formal consultation has been undertaken in relation to this proposal. In the event that a recruitment process is agreed the Localism Act requires that this would involve a public advertisement and formal application process.

7. CONTRIBUTION TO COUNCIL PRIORITIES

- 7.1 Mayor's Business Plan - Priority 4 : Ensure good governance is embedded and adopt best practice

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

8.1.1 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.

8.1.2 Please note, these are draft implications submitted by the author, and may be subject to change by Finance (any update will be given at meeting).

8.2 LEGAL IMPLICATIONS

8.2.1 The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority and in discharging this duty, the Council must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.

8.2.2 The Council must also have in place arrangements under which allegations of breaches of the Code can be investigated, and under which decisions on allegations can be made.

8.2.3 These arrangements must include provision for the appointment by the Council of at least one independent person—

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
 - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation.

8.2.4 For these purposes a person is not independent if the person is a Member, co-opted Member or officer of the authority or a relative, or close friend, of a person who is a Member, co-opted Member or officer of the authority.

8.2.5 A person may not be appointed as an Independent Person if at any time during the 5 years ending with the appointment the person was a Member, co-opted Member or officer of the authority.

- 8.2.6 Finally, a person may not be appointed unless the vacancy for an independent person has been advertised in such manner as the authority considers is likely to bring it to the attention of the public, the person has submitted an application to fill the vacancy to the authority, and the person's appointment has been approved by a majority of the members of the authority.
- 8.2.7 Remaining legal requirements and matters are set out within the body of this report.
- 8.2.8 *Approved by:* Sandra Herbert on behalf of the Director of Legal Services and Monitoring Officer (11/04/23).

8.3 EQUALITIES IMPLICATIONS

- 8.3.1 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.
- 8.3.2 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.
- 8.3.3 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.
- 8.3.4 Please note, these are draft implications submitted by the author, and may be subject to change by the Equalities team (any update will be given at meeting).

9. APPENDICES

None

10 BACKGROUND DOCUMENTS

None