

This Report will be made public on 5 September 2023



Report Number **AuG/23/12**

To: Audit and Governance Committee
Date: 13 September 2023
Status: Non-executive decision
Responsible Officer: Amandeep Khroud, Assistant Director, Governance, Law and Regulatory Services

SUBJECT: EXTENSION OF TERM OF INDEPENDENT PERSONS

SUMMARY: Under S 28(7) Localism Act 2011 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 the council must appoint an Independent Person to fulfil the functions set out in the Act and regulation. This report recommends that the term of present independent persons (Chris Harman, David Carter and Ken London) be extended for a further four year period to 18 December 2027.

RECOMMENDATIONS:

1. To receive and note report AuG/23/12..
2. That the term of the three Independent Persons be extended until 18 December 2027 under the provisions of the S 27 (7) Localism Act 2011 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

1. BACKGROUND

- 1.1 Under S 28(7) Localism Act 2011 the council must appoint an Independent Person to fulfil certain duties under the council's standards regime. In addition the Independent Person(s) were under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 given an additional role.
- 1.2 This report sets out the roles of the Independent Person(s) under the Act and Regulations.
- 1.3 As the term of office of the Council's current Independent Persons is due to expire on 18 December 2023, the report makes recommendations to extend the term by a further four years. The three current Independent Persons (Chris Harman, David Carter and Ken London) have all agreed to continue in the role.

2. THE LOCALISM ACT

- 2.1 The council has, in accordance with the Localism Act 2011 adopted a code of conduct for members together with arrangements for investigating and making decisions on alleged breaches of the code. The code and arrangements can be found in part 9 of the constitution.
- 2.2 The scheme of the Act aims to secure independent input into the standards regime through the requirement placed upon the council to appoint an 'Independent Person'. The requirements of the Act in this connection are quite specific. The Act provides that the arrangements put in place for the investigation of allegations concerning breaches of the code of conduct and making decisions on them must include provision for the appointment of at least one Independent Person. The role of the Independent Person is prescribed by section 28(7) of the Act. This provides:

“(7) Arrangements put in placeby a relevant authority must include provision for the appointment by the authority 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 view 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, and
 - (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation

and the authority is the parish council's principal authority.

2.3 Thus, the Independent Person's functions under the Localism Act are all related to 'allegations' .

2.4 The Act contains detailed provisions as to who may and may not be regarded as an Independent Person.

3. THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015 – DISMISSAL OF STATUTORY OFFICERS

3.1 The 2015 Regulations provide that the decision whether or not to dismiss a statutory officer* (other than from redundancy, permanent ill- health or expiry of a fixed term contract) must be made by full council and that before deciding on this the council must take into account: -

- a) the advice, views or recommendations of the Independent Panel (see below),
- b) the conclusions of any investigation into the proposed dismissal and
- c) any representations from the officer concerned.

3.2 The Independent Panel referred to above must be an advisory committee (i.e. a committee without decision making powers) and the membership of the Panel must include at least two Independent Persons be made up of council's Independent Person/s or Independent Persons appointed by another authority.

*The Council's statutory officers are, the Head of Paid Service, the Chief Finance Officer (often referred to as the S151 Officer and the Monitoring Officer.

4. APPOINTMENT OF INDEPENDENT PERSONS

4.1 The term of office of the Council's Independent Persons are due to come to an end on 18 December 2023.

4.2 The regulations state that there must be two Independent Persons on the Independent Panel. One of these could be an Independent Person of another authority. It is however considered that rather than rely on another authority's appointee two Independent Persons be appointed.

4.3 The appointment must be approved by the majority of members of the council. It is within the terms of reference of this Committee to make recommendations to Full Council on the appointment of an Independent Person. The Localism Act provides that an appointment as an Independent Person can only be made after public advertisement of a vacancy, and

5. RISK MANAGEMENT ISSUES

5.1.

Perceived risk	Seriousness	Likelihood	Preventative action
Failure to appoint an Independent Panel, which is a requirement of the Localism Act 2011	High	Low	Extending the term of current members ensures a Panel is in place.

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments (NE)

The Council is required to fulfil its statutory duty under section 28(7) of the Localism Act 2011. Section 28 of the Act requires a relevant authority to make provision for the appointment of at least one Independent Person "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.

6.2 Finance Officer's Comments (TM)

There are no direct financial implications of the recommendations contained within this report.

6.3 Diversities and Equalities Implications (GE)

The recruitment will be carried out in such a way as not to discriminate against those with protected characteristics as defined in the Equality Act 2010.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report:

None.