

This Report will be made public on 22 July 2019



Report Number **AuG/19/02**

To: Audit and Governance Committee
Date: 30 July 2019
Status: Non-executive decision
Responsible Officer: Amandeep Khroud, Assistant Director,
Governance, Law and Regulatory Services

SUBJECT: APPOINTMENT 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 the appointment of two Independent Persons and the person specification for the posts.

RECOMMENDATIONS:

1. To receive and note report AuG/19/02.
2. To appoint two Independent Persons under the provisions of the S 27 (7) Localism Act 2011 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and to advertise vacancies.
3. To approve the person specification for the Independent Person contained in appendix 1 to this report.

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 Person has expired the report makes recommendations on the process to appoint his successor.

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 offices 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 Person has now come to an end.

4.2 The regulations state that there must be two (at least) 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 receipt of an application by a candidate

4.4 Accordingly it is recommended that an advertisement be placed seeking applications for two Independent Persons. A draft person specification is attached, (appendix 1) again for approval.

4.5 Candidates will be interviewed by this committee. The Committee's recommendations on the appointment will then be considered by full council.

5. RISK MANAGEMENT ISSUES

5.1 There is not a great deal of risk management involved in this issue

Perceived risk	Seriousness	Likelihood	Preventative action
Failure to appoint Independent Persons	Medium	Low	Undertake comprehensive selection process

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 (CS)

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

6.3 Diversities and Equalities Implications

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.

Appendices:

Appendix 1:- Person Specification for Independent Person

INDEPENDENT PERSON - SPECIFICATION

Article I. Introduction

In accordance with Section 28(7) of the Localism Act 2011 and the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 the Council is required to appoint up at least one Independent Person.

The Council has decided to appoint three Independent Persons

Article II. Descriptions of Duties and Functions

The role of the Independent Person(s) appointed by the Council will be:

1. To assist the Council generally in discharging its duty to promote and maintain high standards of conduct by Elected Members and Co-opted Members of the District Council and the Town and Parish Councils in its area.
2. To advise the Monitoring Officer in connection with the assessment and post investigation stage of complaints against elected and Co-opted members.
3. To advise the Audit and Governance Committee in connection with complaints and potential sanctions where a failure to comply with a code of conduct has been established.
4. To advise their view, where sought, to an Elected or Co-Opted Member of the District Council or a Town and Parish Council partially or wholly within its area who is the subject of an allegation that their behaviour has breached a Code of Conduct.
5. To advise the Council on any future adoption/revision of a Members' Code of Conduct.
6. To undertake any training arranged by the Monitoring Officer (or authorised representative) to enable the Independent Person(s) to perform their role effectively.
7. It is envisaged that the views of the Independent Person will normally be sought by the Council (through the Monitoring Officer or authorised representative) in writing, either by letter or email, or at a meeting organised for the purpose of seeking such views. Where the Independent Person's views have been sought in writing, either by letter or email, it is expected that the response will be provided in the same way. However, advice may be sought by telephone from time to time.
8. In reference to paragraph 4, the Independent Person(s) should not give advice to Members of the Council, or of the Town and Parish Councils, in circumstances where no complaint about a Member's conduct has been received. Where such

advice is required, it should be sought by the Members of the Council, or of the Parish Councils, from, or via, the Monitoring Officer or his/her authorised representative.

9. To be part of an Independent Panel if required to advising the District Council on matters relating to the dismissal of its statutory officers*;

10. In all cases to reach balanced and reasoned conclusions having considered complex material and applied an impartial and fair approach to all of the written and oral material provided

11. The Independent Person will be selected from a list of appointees prepared following public advertisement; those persons will be expected to add the necessary element of independence and objectivity to the Committee's functions.

11. The person appointed as an Independent Person must:

- be committed to the need for high standards in public life
- demonstrate that they can remain independent in their thinking and decision making
- be able to make judgements based on evidence or information presented
- have questioning skills
- be assertive
- be able to work within an area of public life which is open and transparent

12. The Independent Person will be expected to undertake some training by the Council in procedures and processes, especially monitoring and ensuring compliance with Codes of Conduct, Complaints Procedures, etc. and where appropriate including case studies.

13. It is envisaged that meetings will normally be held in the daytime.

(a) The Council will meet travel and subsistence expenses in accordance with its set rates.

(b) The Independent Person MUST NOT.

(i) Be, or have been during the last 5 years, a member, co-opted member or officer

of the District Council or a Town or Parish Council within the district; or

(ii) A relative or a close friend of a member, co-opted member or officer of Shepway

District Council or a Town or Parish Council within the district.

(iii) A person is defined by the Localism Act 2011 as a relative if they are:

The spouse or civil partner or living as if they were a spouse or civil partner;

- A grandparent;
- A lineal descendant of a grandparent;
- A parent, sibling or child;
- The spouse or civil partner of a grandparent, lineal descendant of a grandparent, or a parent, sibling or child; or

- Living with a grandparent, lineal descendant of a grandparent, or a parent,
- sibling or child as if they were a spouse or civil partner of a member, co-opted member or officer of District Council or a Town or Parish Council within the district.

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