

**ARRANGEMENTS FOR THE APPOINTMENT OF INDEPENDENT PERSON(S)**

*To:* **Constitution and Ethics Committee**

*Meeting Date:* **4 April 2019**

*From:* **Director of Governance and Legal Services and  
Monitoring Officer**

*Electoral division(s):* **All**

*Purpose:* **To consider what arrangements for the appointment of an Independent Person or Persons should be recommended to Council in preparation for the expiry of the current appointments on 30 October 2019.**

*Recommendation:* **That the Committee recommends to Council that**

**(a) Council authorise the Monitoring Officer, in consultation with the Chairman/woman of the Constitution and Ethics Committee, to take all necessary steps towards the selection of suitable candidates to be recommended to Full Council for appointment as an Independent Person**

**(b) Council set the level of remuneration for each independent person so that it can be included in information supplied to applicants for the post of independent person**

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# **1. BACKGROUND**

## **1.1 Legal framework**

- 1.1.1 Chapter 7 of the Localism Act 2011 sets out the duty of a local authority to promote and maintain high standards of conduct by members and co-opted members of the authority.
- 1.1.2 Section 28 of the Act, on codes of conduct, requires an authority to provide for the appointment of at least one independent person whose views will be sought and taken into account in connection with the process for dealing with allegations that members have breached the code.
- 1.1.3 Section 28 sets out those persons who would not be considered to be independent, who include members, co-opted members and officers of the authority and their relatives and close friends. However, it provides that the person(s) appointed do not cease to be independent as a result of being paid allowances or expenses for performing the duties of the appointment.
- 1.1.4 Section 28 also sets out the conditions for the process of appointing such persons. These conditions are that
  - i. the vacancy has been advertised in such manner as the authority considers is likely to bring it to the attention of the public,
  - ii. the person has submitted an application to fill the vacancy to the authority, and
  - iii. the person's appointment has been approved by a majority of the members of the authority.
- 1.1.5 The requirements of the role of the independent person were added to by the Local Authorities (Standing Orders) (England) Regulations 2015, which changed the requirements relating to disciplinary action or dismissal of one of the specified chief officers and removes the requirement to procure a report from a designated independent person.
- 1.1.6 The Council is now required to have a procedure which instead provides:
  - (a) that the appointment of the Head of the Paid Service must be approved by a resolution of full council;
  - (b) a new process for dismissal of the Head of the Paid Service, Section 151 Officer or Monitoring Officer, who can now only be dismissed with the approval of a resolution of full Council;
  - (c) that when considering any such dismissal, full Council must consider the advice, view or recommendations of a panel;
  - (d) the panel must be an advisory committee (ie a committee without decision making powers) and the membership of the Panel must include at least two 'independent persons';
  - (e) the Council must appoint 'independent persons' to the panel. The only people who qualify are people who have been appointed by the Council (or another

council) for the purposes of advising in cases relating to the member code of conduct.

- (f) In selecting independent persons the Council is required to prioritise Cambridgeshire County Council appointed 'independent persons' who are local government electors in Cambridgeshire. If for any reason the Council's appointed 'independent persons' are unable to attend then it is entitled to use independent persons appointed by another local authority.

## **1.2 Local implementation**

- 1.2.1 At an early stage of making arrangements to implement the Localism Act 2011, the Standards Committee concluded that it would be sensible to appoint two independent persons, in case one was not available, or already had prior knowledge of a complaint or the parties to the complaint. Full Council in July 2012 authorised 'the Monitoring Officer, in consultation with the Chairman of the Constitution and Ethics Committee, to take all necessary steps towards the selection of a suitable candidate to be recommended to Full Council for appointment as an 'Independent Person'.
- 1.2.2 A panel composed of members of the Constitution and Ethics Committee conducted the recruitment exercise, advertising the posts in the local press and on the Council's website, shortlisting applications, and interviewing shortlisted candidates. The panel recommended to Constitution and Ethics Committee in September 2012 that Sean Brady and Gillian Holmes be appointed, and the Committee recommended their appointment to Council.
- 1.2.3 On 16 October 2012, Full Council agreed to appoint Sean Brady and Gillian Holmes to the role of Independent Person for Cambridgeshire County Council with immediate effect for a period of one year, and to delegate to the Constitution and Ethics Committee the power to extend these appointments for up to a further three years thereafter. The Committee exercised that power on 7 November 2013, extending the appointments to 15 October 2016, and on 19 April 2016 extending the appointments to 30 October 2019.
- 1.2.4 Because independent persons are not members or co-opted members of Council, their remuneration falls outside the Members' Allowances Scheme, and can be determined without reference to an Independent Remuneration Panel. The current independent persons receive an annual allowance of £500 each.
- 1.2.5 The 2012 recruitment exercise was conducted jointly with the Cambridgeshire and Peterborough Fire Authority, who also appointed Sean Brady and Gillian Holmes to the role of Independent Person in October 2012.
- 1.2.6 The Constitution and Ethics Committee considered, at its meeting on 19 April 2016, what arrangements for the appointment of an Independent Person or Persons should be recommended to Council in preparation for the expiry of the current appointments on 15 October 2016. At that meeting, it agreed to recommend to Council to extend the current appointment of Sean Brady and Gillian Holmes as Independent Persons to 30 October 2019, and that the level of remuneration to each independent person remain at £500 a year plus expenses.
- 1.2.7 Sean Brady resigned from the position of Independent Person on 11 October 2017.

## **Local Government Ethical Standards: A Review by the Committee on Standards in Public Life**

- 1.2.8 The Committee on Standards in Public Life published its report on Local Government Ethical Standards in January 2019. Chapter 3: Investigations and safeguards covers the role of the Independent Person.
- 1.2.9 It is recommending, as best practice, that local authorities should have access to at least two Independent Persons. It is also recommending that the role should be formalised. An Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:
- offer authoritative and impartial advice
  - maintain independent in a politically sensitive environment
  - gain the confidence of councillors, officers and the public
  - make decision on an impartial basis, grounded in the evidence
  - work constructively with the local authority and senior officers
- 1.2.10 The Review highlights the importance of security of tenure in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgement and independence is not compromised by a long period of involvement in a single authority. The Review recommends that the Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.
- 1.2.11 The Review also recommend that if the government made legislative changes to incorporate more serious sanctions for breaches of the code of conduct that the Independent Person should play a key role in considering whether suspension of a councillor was appropriate. Recommendation 10 of the Review report states: "A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction." Recommendation 11 of the report recommends that "Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed" following a request under the Freedom of Information Act.

## **2. CURRENT ISSUES**

- 2.1 Arrangements are needed for Full Council to appoint one or more independent persons beyond 30 October 2019. The remuneration of these appointees must also be agreed.
- 2.2 In addition to a flat annual fee of £500, the current independent persons have their travelling and other expenses reimbursed whenever they are required to conduct Council business. In view of the pressure on Council budgets and the low level of public sector pay increases, the Committee may take the view that there should be no change to this level of remuneration. Alternatively the Committee may take the view that in light of the increased responsibility of the independent persons in relation to disciplinary action/dismissal of chief officers procedures it would be appropriate to recognise this by increasing the annual fee.
- 2.3 Authority for agreeing all aspects of the appointment and remuneration of independent persons rests with Full Council. The Committee may wish to consider whether to

recommend to Council that any elements of the arrangements be delegated to the Constitution and Ethics Committee on a standing basis. Responsibility for appointing the independent person(s) rests with Council and cannot be delegated.

2.4 The present terms of reference for the Committee are attached as **Appendix A**.

### **3. TIMELINE**

3.1 Full Council meets on 14 May, 23 July and 15 October 2019. It is suggested that the recommendations of this report be presented to Council in May, if appropriate, and the recommended names for appointment be presented to Council in October.

<b>Source Documents</b>	<b>Location</b>
Chapter 7 of the Localism Act 2011	<a href="http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7">http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7</a>
Local Government Ethical Standards – A Review by the Committee on Standards in Public Life	<a href="https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life">https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life</a>

Extract from Constitution

## **8. CONSTITUTION AND ETHICS COMMITTEE**

### **Membership**

Eight members of the Council, including the Vice-Chairman/woman of Council, who shall chair the Committee. The Vice-Chairman/woman of the Committee shall be elected by the Committee.

### **Hearings Sub-Committees**

The Monitoring Officer in consultation with the Chairman/woman of Constitution and Ethics Committee shall appoint, as and when necessary, Hearings Sub-Committees to consider and determine complaints against County Councillors alleging that they have breached the Members' Code of Conduct.

Hearings Sub-Committees shall comprise three members of the Constitution and Ethics Committee including either the Chairman/woman or Vice-Chairman/woman. The membership of the committee shall, as far as practicable, be politically proportionate.

<b>Delegated Authority</b>	<b>Delegation/ Condition</b>
Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution, including the codes and protocols	Subject to the receipt and consideration of a report prepared by the Monitoring Officer
Authority to hear and determine complaints against members alleging breaches of the Members' Code of Conduct	Delegated to Hearings Sub-Committee
Authority to issue a sanction against a member found to be in breach	Delegated to Hearings Sub-Committee
Authority to oversee and approve the operation of the Council's functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the County Council including: <ul style="list-style-type: none"> <li>• Approving and issuing guidance to Members</li> <li>• Making recommendations to Full Council regarding the suggested amendment of the Members' Code of Conduct</li> <li>• Approving training to be provided to members in the Code of Conduct</li> <li>• Monitoring the operation of the Code of Conduct</li> </ul>	
Authority to approve the granting, to any County Council employee, of a dispensation in relation to disqualification from political activities	Local Government and Housing Act 1989
Authority to select and to appoint persons as members of the County Council's Independent Remuneration Panel	

Delegated Authority	Delegation/ Condition
Authority to receive and approve proposals regarding the Council's exercise of powers covered by the Regulation of Investigatory Powers Act	
Authority to issue dispensations to any member in respect of statutory and non-statutory disclosable interests	Delegated to Monitoring Officer