

ASSEMBLY

19 FEBUARY 2014

Title: INDEPENDENT PERSONS – THE LOCALISM ACT	
Report of: The Monitoring Officer	
Open	For Decision
Wards Affected: All	Key Decision: No
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Accountable Head of Service:	Fiona Taylor, Head of Legal and Democratic Services
Accountable Director:	The Chief Executive
Summary: This report relates to the requirement to appoint Independent Persons to carry out an advisory role as part of arrangements the Council must have in place to investigate and determine complaints regarding the Councillors' Code of Conduct as required by Section 28(6) (a) & (b) and 28((7) the Localism Act 2011(the Act).	
Recommendation(s) The Assembly is asked to agree: 1. to confirm the retention of Mr Michael Carpenter and Mr Brian Little as Independent Persons in accordance with Section 28(7) of the Localism Act 2011until the next Assembly meeting following the Annual Assembly in 2016; 2. that the Monitoring Officer be authorised to engage an additional Independent Person to be retained on the same terms as the current Independent Persons, for subsequent appointment by the Assembly.	
Reason(s) Section 28(8) (c) (iii) of the Act states that decisions of appointment of Independent Persons must be agreed by a majority of the whole number of Councillors.	

1. Introduction and Background

- 1.1 From July 2012 The Localism Act introduced the principle that complaints against Councillors be dealt with at the local level and set the requirement that principal Councils such as district, county and London boroughs all adopt local codes of

conduct and establish the means to investigate and determine complaints. At the Assembly meeting on 11 July 2012, Members adopted a Code of Conduct in accordance with the Act, together also with procedures for investigating and deciding on allegations of breaches of that Code.

1.2 The Act further required that the Council appoints at least one Independent Person(IP):

(a) whose views are to be sought and taken into account by the Monitoring Officer on an allegation being considered for investigation, but before a decision to investigate is made; and

(b) whose views may be sought:

(i) by the Monitoring Officer on other matters relating to an allegation; and

(ii) by a member or co-opted member of the Council who has been complained about.

1.3 An external recruitment exercise for the position was undertaken and in due course a recommendation was made to the Assembly on 10 October 2012 to appoint Mr. Michael Carpenter and Mr. Brian Little as IPs for the Council as required by the new governance regime under the Localism Act 2011 with an allowance of £500 per annum. The Assembly agreed to the proposals and Mr. Carpenter and Mr. Little were duly appointed.

2. Proposals and issues

Extension of Engagement

2.1 In early 2014 it was considered timely to carry out a review of the role of the IPs and a training and consultation session with the IPs was conducted. The current IPs have held the role for just 18 months. All were advised that provisionally their initial period would terminate after Annual Assembly in 2014. During the review it was noted that the current picture is that the level of complaints against Members requiring the involvement of IPs has so far been at a low level.

2.2 Having reviewed the situation, the Monitoring Officer is of the opinion to recommend that to ensure a good return on the investment in austere times, rather than embark on a further recruitment exercise in summer 2014; that the engagement of the IPs is extended so as to continue to after the Annual Assembly meeting in 2016. This will afford time to provide further experience and enhance their skills and competencies.

Arrangements for Addition Support

2.3 Discussions with other authorities indicate that while there is a statutory minimum of one IP under the Localism Act, it is common agreement that one is not sufficient. For example last year when Thurrock Council lost an IP through an early death it took a number of months to recruit and place a replacement. During the vacant period it would not have been possible to manage complaints without conflicts of

interest arising. When Barking and Dagenham Council's scheme was established late 2012 a minimum number of two was proposed principally because of the risk of conflict of interest. Officers believe that recent experience indicates that to ensure resilience there needs to be an additional appointment.

Need to Avoid Conflicts of Interest

- 2.7 The conflict of interest arises because the legislation requires the IP to take on three specific tasks:
- *firstly* to give a view that must be taken into account before an authority makes a decision on an allegation that it has decided to investigate;
 - *secondly* to be available to give a view to a member whose behaviour is subject to an allegation; and
 - *finally* to give a view about allegations which have not yet reached the stage of determination such as at a subcommittee hearing.
- 2.8 While it may be possible for the IP to assist with giving a view on allegations, it would create a conflict if they were then consulted by the Member. For example if they took the view that the Member was probably guilty of the accusation because they had been consulted by the authority and told the facts so far then it would be difficult for them to give a view to the Member without disclosing at least in part what they might have been told by the authority. For the same reason if they were consulted by the Member and then were asked for a view by the authority they face the dilemma, for how do they put aside what they have learnt from the Member? This conflict means that the process cannot function satisfactorily unless there are at least two IPs readily available because one cannot give a view to Members and the authority at the same time.
- 2.9 Furthermore even with two IPs there is the risk of an absence of one effectively preventing the whole process from functioning, as the procedure creates an entitlement for the Member to have an IP to consult and an obligation for the authority to consult before it makes a decision. If a Member does not have an IP to consult it will mean that unless they waive their right, the process will come to a halt pending availability.

Need for Further Appointment

- 2.10 For the above reasons it is the Monitoring Officer's firm recommendation that further capacity be made to establishing a compliment to be maintained if required of three IPs. The allocation of roles in terms of the practices of the IPs would be in accordance with best practice utilising a rota arrangement ensuring that all had experience in the various stages of the complaints process.
- 2.4 Officers concern was reported to the Standards Committee as an information item in September 2013. The Committee endorsed the proposal to build more resilience and endorsed the recommendation.

3. Options Appraisal

- 3.1 The appointment of at least one IP is a statutory requirement of the Act.
- 3.2 It is recommended that the Council agrees to building more resilience to enable an additional IP to cover risk of absence or unavailability and to avoid a conflict of interest should the views of that person be sought by both the Monitoring Officer and a Member or co-opted Member, who may be the subject of an allegation.
- 3.3 As a potential cost effective option the use of additional support of an existing IP of another authority to be used as and when is necessary. This arrangement is not unique; a similar arrangement works well in Suffolk County Council between the County and its District Councils. If the Assembly agree to the additional IP proposal officers will explore this option further. The decision to appoint remains however for this Assembly to decide.

4. Consultation

It is a statutory requirement that Assembly is consulted and approves the appointments.

5. Financial Implications

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- 5.1 The allowance and expenses required to fund these posts will be funded from existing budgets within Democratic Services.

6. Legal Implications

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- 6.1 The body of this report sets out the legal framework and as explained the Council is required to have a minimum of one IP though this should be considered to be unsatisfactory as there are circumstances where statutory obligations such as the right for a Member to consult with an IP and the need for consultation by the Monitoring Officer and a Sub-Committee means that two IPs is the bare minimum but such an arrangement provides for no resilience if an IP is not available.

7. Other Implications

7.1 Risk Management

The Council has a duty to promote and maintain high standards of conduct. Failure to appoint IPs puts the Council at risk of not being able to fulfil these duties in accordance with the Act

7.2 **Contractual Issues** - none

7.3 **Staffing Issues** – none

7.4 **Customer Impact**

Residents of the borough must be confident that the Council will continue to promote and maintain high standards of conduct through the implementation of the statutory requirements of the Act

7.5 **Safeguarding Children** - none

7.6 **Health Issues** – none

7.7 **Crime and Disorder Issues** – none

7.8 **Property / Assets Issues** – none

Background Papers Used in the Preparation of the Report:

The Localism Act 2011