

Audit and Standards Committee

7 February 2023

Title: The Localism Act 2011- Appointment of Independent Persons	
Report of the Monitoring Officer	
Open Report	For Decision
Wards Affected: None	Key Decision: No
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Accountable Head of Service: Alison Stuart, Chief Legal Officer and Interim Monitoring Officer	
Accountable Director: Fiona Taylor, Acting Chief Executive	
Summary: This report relates to the requirement that the Council must have at least one Independent Person 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 Sections 28(6) (a) & (b) and 28(7) the Localism Act 2011(the Act).	
Recommendation(s) The Audit and Standards Committee agrees to recommend to Assembly that it shall support the continuance of the current Independent Persons being Michael Carpenter; Dr.Gurpreet Singh Bhatia and Pastor Thomas Adeyemi Aderounmu from the next Assembly meeting following the Annual Assembly in 2023 and that a limited recruitment cycle be carried out for a reserve independent Person with the aim of increasing diversity and inclusion.	
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 1 July 2012, the Localism Act 2011 (the Act) required 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 the LBBB Code of Conduct in

accordance with the Act, together with procedures for investigating and deciding on allegations of breaches of the 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 Council before it makes its decision on an allegation that it has decided to investigate; and
 - (b) whose views may be sought—
 - (i) by the Council in relation to an allegation in circumstances not within paragraph (a),
 - (ii) by a member, or co-opted member, of the Council if that person's behaviour is the subject of an allegation
- 1.3 To ensure 'independence', this person is not to have links to the Council, Councillors or officers or been a Member for the last five years. Initially two Independent Persons were appointed.
- 1.4 The Assembly in 2014 agreed that the Council make an additional appointment of an Independent Person to provide resilience in the event of potential issues of conflict of interest or general unavailability of one of the Council's IP's. The Assembly followed the recommendation of appointment and identified the need to have three IP's.
- 1.5 In accordance with the Act, to meet the risks identified, the then Monitoring Officer working with the Lead Member carried out a recruitment exercise with the original Independent person Mike Carpenter retained. Mr Carpenter had been a deputy Chief Officer with the Council with much valuable experience. The recruitment was conducted with local and web based advertisements. Two expressions of interest were received from Dr.Gurpreet Singh Bhatia and Pastor Thomas Adeyemi Aderounmu. The quality of the performance of the candidates under interview and their experience was high. Both candidates had experience in dealing with ethical issues and neither have any connection with any political parties or been elected members.

Independent Persons role in Statutory Chief Officers Disciplinary Process

- 1.6 In 2015, the Government changed the disciplinary procedure for statutory chief officers being the Head of Paid Service (Chief Executive), Chief Finance Officer and the Monitoring Officer. The change requires two Localism Act Independent Persons to take part in the process of statutory Chief Officer disciplinaries by amending the Statutory Standing Orders Regulations to make their involvement mandatory. The Councils Independent persons terms of engagement were so amended.
- 1.7 So, in the event that the Councils statutory Chief Officer Investigation and Disciplinary Panel considers that dismissal is the appropriate reasonable recommendation to make to the Assembly with regard to statutory Chief Officer conduct, it must first refer the matter for consideration to an Independent Persons Committee, as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and section 102(4) of the Local Government Act 1972. This Independent Persons Committee shall consist of at least two

Independent Persons appointed under the Localism Act 2011 with priority to an Independent Person(s) appointed by the Council who is a local elector, followed by an Independent Person(s) appointed by the Council who is not a local elector and finally an Independent Person(s) appointed by another Authority. As can be seen it is helpful to the process to have an Independent Person with awareness of staffing matters.

2. Review

- 2.1 A desk top review has been carried out to look at the matters which required a formal Members Complaints hearings Sub-Committee requiring the involvement of the Independent Person. The first being in February 2016 and the second in October 2018. While it is difficult to be certain about future complaints the picture is that standards and code of conduct matters are held in high regard by Members and Officers and serious transgressions are rare.
- 2.2 On 27 July 2022 the Assembly agreed that Mike Carpenter, Dr.Gurpreet Singh Bhatia and Pastor Thomas Adeyemi Aderounmu are retained as the Council's independent persons for the purposes of section 28 of the Localism Act 2011 (Note: under Section 28(8)(c)(iii) of the Localism Act 2011, until the Assembly meeting after Annual Assembly 2023. The Monitoring Officer contacted the three Independent Persons and they have agreed to continue with the current arrangements.

2.4 Terms of engagement

- 2.4.1 The proposal is that appointments will run until after the Annual Assembly meeting in 2025.
- 2.4.2 The appointment attracts an annual allowance of £500. The IP's may also claim reasonable expenses for attendance, travel and subsistence. The IP's are not Co-opted Members and therefore the inclusion of such an allowance provision will not engage any need to have it approved / reviewed by the LBBB Members Remuneration Panel.

3. Options Appraisal

- 3.1 The appointment of at least one Independent Person is a statutory requirement of the Act. Experience has shown that this is unworkable. The reason is that as a Member facing a complaint is entitled to be able to consult with an Independent Person and that same IP cannot go on to be consulted by the Council in the same matter as there will be a conflict of interest. Further as an Independent Person is required to sit on the Hearings Sub-Committee, that person cannot be either the Independent Person consulted by either the Member or the Monitoring Officer and will again be conflicted.
- 3.2 When Barking and Dagenham Council's scheme was established in late 2012 a minimum number of two was proposed principally because of the risk of conflict of interest this was raised to three since 2014 to provide the necessary level of resilience at minimal cost to the potential risk. Since that decision the 2015 change in the mandatory standing orders means that two Independent Persons have to be utilised in the disciplinary process for statutory officers. While it may be possible to

'borrow' another authority's Independent person(s) it is hardly ideal as they will have to be trained and would need to be available, and in any event the Secretary of State has set a required preference that in a statutory officer disciplinary process priority be accorded to an Independent person who is a resident.

3.3 In terms of options as to the future there is:

Option A Carry out fresh recruitment cycle of all Independent persons

Option B Retain the existing Independent Persons

Option C Retain the existing Independent Persons and carry out a limited cyclical recruitment cycle for a reserve Independent Person

Option A

It is difficult to justify the cost of an automatic fresh recruitment round for Independent Persons and the induction and training requirements needs when the current Independent Persons are presently skilled. This is not recommended.

Option B

Retain the existing Independent Persons and recommend their reappointment to the Assembly. This would be the cheapest option however this would not reflect diversity and inclusion aspirations.

Option C

While carrying out a limited cyclical recruitment cycle presents similar challenges as Option A in terms of the expense of advertising and resources there could be a benefit from a diversity and inclusion aspirations in that all three Independent persons are male and it maybe that that an exercise in recruitment of a reserve could present greater diversity of choice, that a fourth Independent person be retained. The actual cost in terms of remediation is £500 per year which has not changed since the Council has retained Independent Persons since 2012. If this option were selected the Monitoring Officer would invite the Committee to nominate Members to take part in the interview stage. This is the recommended option.

4. Consultation

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

5. Financial Implications

Implications completed by: Katherine Heffernan, Finance Manager

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

6. Legal Implications

Implications completed by: Alison Stuart, Chief Legal Officer and Interim Monitoring Officer

- 6.1 The body of this report sets out the legal framework. As explained, by virtue of the Act, the Council is required to have a minimum of one IP, although, this is widely

considered to be unsatisfactory as there are circumstances where statutory obligations, such as the right for a Member to consult with an IP, the need for consultation by the Monitoring Officer and the Standards Sub-Committee, coupled with the Statutory Officer disciplinary requirement dictates that two IPs are the bare minimum. An arrangement of a minimum of one IP does not provide sufficient resilience, e.g., if the IP is not available or a member wishes to consult with an IP. Members are recommended to agree the continuation appointments of the three IP members as set out in this report.

7. Other Implications

- 7.1 **Risk Management** - The Council has a duty to promote and maintain high standards of conduct. Failure to appoint IP's puts the Council at risk of not being able to fulfil these duties in accordance with the Act
- 7.2 **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

Background Papers Used in the Preparation of the Report: None

List of Appendices: None