

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> 11 February 2021
<b>SUBJECT:</b>	<b>UPDATE: SUCCESSION PLANNING FOR AND RECRUITMENT AND APPOINTMENT OF FURTHER INDEPENDENT PERSONS</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS-BAKER</b> <b>MONITORING OFFICER AND EXECUTIVE DIRECTOR FOR RESOURCES</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR CALLTON YOUNG</b> <b>CABINET MEMBER FOR RESOURCES AND FINANCIAL GOVERNANCE</b>
<b>WARDS:</b>	<b>ALL</b>
<p><b>CORPORATE PRIORITIES 2021-2024/POLICY CONTEXT.</b></p> <p>The proposal will ensure good governance within the Council and by councillors. Good governance underpins the Council’s Core Priorities and Ways of Working:</p> <ul style="list-style-type: none"> <li>• we will live within our means, balance the books and provide value for money for our residents.</li> <li>• we will focus on tackling ingrained inequality and poverty in the borough.</li> <li>• we will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe.</li> <li>• to ensure we get full benefit from every pound we spend, other services in these areas will only be provided where they can be shown to have a direct benefit in keeping people safe and reducing demand.</li> </ul>	
<p><b>FINANCIAL IMPACT</b></p> <p>There are no direct costs arising from the proposals within this report.</p>	

<p><b>1. RECOMMENDATIONS</b></p> <p>The Committee is recommended to:</p> <p>1.1 Agree the recommendation of the Selection Panel for the following candidates:</p> <ul style="list-style-type: none"> <li>• Donald Axcell</li> <li>• Alan Malarkey</li> <li>• Jennifer Gordon</li> </ul> <p>to be appointed to the pool of Independent Persons and delegate to the Monitoring Officer the selection of an Independent Person from the pool for specific purposes.</p> <p>1.2 Recommend to Full Council that their appointment as Independent Persons should be confirmed for a term of 4 years, subject to annual appointment at</p>
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Full Council, and that such appointment be subject to the Council's Scheme of Co-option set out in Part 6D of the Constitution.

- 1.3 Invite Anne Smith and Ashok Kumar, the Council's current Independent Persons, to serve for a further term of 2 years expiring at the end of the municipal year in 2023, subject to annual appointment at Full Council and the Council's Scheme of Co-option set out in Part 6D of the Constitution.
- 1.4 Recommend to Full Council that the continued appointment of Anne Smith and Ashok Kumar be confirmed on this basis.

## 2. EXECUTIVE SUMMARY

- 2.1 The report identifies recommended candidates for appointment to a pool of Independent Persons to perform the Council's statutory functions under the Localism Act 2011 and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules) as detailed below. Interviews had originally been planned to take place in the Spring of 2020 but were postponed due to the Covid-19 pandemic. The report follows interviews conducted by the Selection Panel on 10 and 16 December 2020 which were held remotely.

## 3. DETAIL

- 3.1 **Background.** Section 28 of the Localism Act 2011 ("the Act") imposes a duty upon the Council to 'promote and maintain high standards of conduct by Members and Co-opted Members of the Council'. The Council is required to adopt a Code dealing with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity. In addition, under Section 28(6) and (7) of the Act, the Council must have in place "arrangements" under which allegations that a Member or co-opted Member of the authority, or of a Committee or Sub-Committee of the authority, has failed to comply with the Council's Code of Conduct can be investigated and decisions made on such allegations.
- 3.2 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member or co-opted Member against whom an allegation has been made.
- 3.3 The Council has delegated to the Ethics Committee the function of investigating and determining any allegations of a breach of the Code of Conduct. The Committee comprises five elected Members of the Council and the Independent Persons who are non-voting advisory members of the Committee.
- 3.4 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") make specific provision for the involvement of Independent Persons in relation to Disciplinary Action taken against Head of Paid Service, Section 151 Officer or Monitoring Officer. Part 4J of the Constitution which incorporates the requirements of the Regulations provides that consideration of disciplinary action which could result in dismissal of the Head of

Paid Service, the Chief Finance Officer or the Monitoring Officer will be the responsibility of the Appointments Committee. The Appointments Committee shall, for this purpose, include at least one Member of the Cabinet and at least two Independent Persons when consideration is being given to dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer. Any such Appointments Committee shall consider the matter in accordance with the processes and procedures approved by Ethics Committee for this purpose and make a report and recommendations to full Council for consideration and final determination. Any such report shall specifically include the Independent Persons' views on the recommendations and appropriate action.

3.5 The Council's Independent Persons therefore fulfil a statutory role both in relation to Member conduct issues and also disciplinary decisions involving the Council's statutory officers.

3.6 Members of the Committee will recall the recommendations contained in the Committee on Standard in Public Life (CSPL) report which was considered at its meetings in March and May 2019. Attached is the link to the full report of the CSPL which was considered by the Committee.

<https://www.gov.uk/government/collections/local-government-ethical-standards>

In particular with regard to Independent Persons the CSPL felt that the role of the Independent Person should be strengthened. They considered that security of tenure was important to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, they considered that restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority although no evidence was provided in the report to support this view.

3.7 There is currently no requirement for a set term of office for the Independent Person role in law.

**Recommendation 8** of the CSPL report provides that:

*The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.*

In order to become a legal requirement this recommendation would require a change in the law. However, Members discussed, at their previous meetings, how long they considered an Independent Person should remain in post to ensure their independence and it was agreed that the matter should return to the Committee for consideration in January 2020.

3.8 **The recruitment process.** In January 2020 the Committee agreed to delegate authority to the Monitoring Officer to commence a recruitment process for purposes of increasing the number of Independent Persons appointed to a pool of up to five Independent Members, including current Independent Persons. The Committee also agreed to set up a Selection Panel, comprising the Chair and two further Members. In November 2021 the Committee agreed that Councillor Clouder and Councillor Creatura would support the Chair on the panel with advice from the current Independent Person Anne Smith and also Jacqueline Harris-Baker the Monitoring Officer.

- 3.9 Applicants were initially shortlisted on the basis of their application having regard to the Job Description and Role Profile and essential criteria. Following a shortlisting process the Selection Panel met on 10 and again on 16 December 2020 to interview shortlisted candidates remotely. Candidates were assessed by way of interview with competency based questions.
- 3.10 The Selection Panel can now report that 3 candidates scored highly when assessed and therefore recommend to the Committee that the following candidates be appointed by full Council as Independent Persons.
- Donald Axcell. Donald is a resident of the borough. Donald served for 30 years as a police officer. He is also a non-denominational Chaplain to the Police Rehabilitation Centre and has worked both as a chair and executive director of a charity. Donald is also trustee and company secretary of Pointman Leadership UK providing character based leadership and anti-corruption seminars to 70 countries world-wide.
  - Alan Malarkey. Alan is a resident of the borough. Prior to retirement Alan worked in Education Services at Croydon Council at Director level. He was also an Ofsted school inspector for many years and worked for the predecessor to the Local Government Association supporting the development of policy initiatives.
  - Jennifer Gordon. Jennifer has previously worked both at the Home Office as a chief immigration officer and at a London authority in the adoption and fostering unit. She has served on the Equality and Diversity Action Committee for the Home Office and currently serves as a volunteer on the Windrush Committee and on the Ladies Board of a local church.

- 3.11 It is proposed that these appointments are made for a term of 4 years and subject to the Scheme of Co-option set out in Part 6D of the Constitution.  
<https://democracy.croydon.gov.uk/documents/s22425/31%20Part%206D%20-%20Scheme%20of%20Co-option%20as%20amended%20Jan%202020.pdf>

Whilst no term is currently prescribed in legislation for Independent Persons it is recommended that a term of 4 years strikes a balance between security of tenure and maintaining independence. In addition, the Council's Constitution provides in Part 6D paragraph 12 with regard to terms of office that for co-opted members "subject to the requirements of the Committee in question, co-opted members will usually be invited to serve for a term of office of four years but be appointed annually at Full Council".

- 3.12 **Current Independent Persons.** Separately the Committee is recommended to invite the current Independent Persons Anne Smith and Ashok Kumar to continue their support for the Council by agreeing a further term of 2 years until the end of the municipal year in May 2023. As indicated above there is currently no legal restriction on the term of office for an Independent Person although the CSPL suggests a term of 2 years with a 2 year renewal. Both Anne and Ashok have provided valuable support to the Committee and the Council and their experience would be a loss to the Council. In addition Anne has supported the Council with a number of additional projects such as the Governance Review and also the interviews for new recruits to the role. In the circumstances, it is proposed that their appointments be renewed for a further term of 2 years to provide continuity

and enable the new Independent Persons an opportunity to settle into their new responsibilities.

#### **4. CONSULTATION**

- 4.1 No formal consultation has been undertaken in relation to this proposal. However, the recruitment was subject to a public advertisement. In addition, the Committee have considered the findings of the CSPL report and adhered to the previous decisions and recommendations from the Committee.

#### **5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 5.1 There are no direct financial implications from these appointments as the Scheme of Members' Allowances does not contain provision for allowances to be paid to co-opted members.

*Approved by:* Lisa Taylor, Director of Finance Investment and Risk.

#### **6. LEGAL CONSIDERATIONS**

- 6.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the role of Independent Persons is a statutory requirement through the Localism Act 2011. The law provides that a person may not be an Independent Person if he or she is a Member, a Co-opted Member or an officer of the Council or a relative or close friend thereof. It also provides that a person may not be appointed if they were a Member or Co-opted Member during the past five years.

- 6.2 All other legal requirements are as set out within the body of this report.

*Approved by:* Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer.

#### **7. HUMAN RESOURCES IMPACT**

There are no HR implications arising from this report. If any should arise these will be managed under the Council's policies and procedures.

*Approved by:* Jennifer Sankar, Head of HR Place, for and on behalf of Sue Moorman, the Director of Human Resources, January 2021

#### **8. EQUALITIES IMPACT**

- 8.1 The Equality Act 2011(section 149) places a public sector equality duty (section 146) on the Council. The duty requires the Council to have due regard to *the need to advance equality of opportunity* between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2 Having “due regard” to the need to advance equality of opportunity involves having due regard, in particular, to the need to *encourage persons* who share a relevant protected characteristic *to participate in public life* or in any other activity in which participation by such persons is disproportionately low.
- 8.3 Co-option is a way of ensuring that under represented voices are represented on Council committees.
- 8.4 The law requires that the vacancy for an independent Person is advertised in such a manner as the Council consider is likely to bring it to the attention of the public. Subject to the statutory restrictions around applicants demonstrating ‘independence’ the vacancy would be available to all.

*Approved by:* Yvonne Okiyo, Equalities Manager on behalf of the Director of Policy and Partnerships.

## **9. ENVIRONMENTAL IMPACT**

There are not considered to be any environmental impacts of the proposal.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

The proposal supports the requirement to maintain good governance within the Council.

## **11. DATA PROTECTION IMPLICATIONS.**

Personal data stored in connection with the recruitment process will be processed in accordance with the Data Protection Act 2018.

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### **CONTACT OFFICER:**

Jacqueline Harris-Baker  
Executive Director of Resources and Monitoring Officer

### **APPENDICES TO THIS REPORT**

None

### **BACKGROUND DOCUMENTS:**

None