

LONDON BOROUGH OF CROYDON

REPORT:	ETHICS COMMITTEE	
DATE OF DECISION	5th July 2023	
REPORT TITLE:	Appointments to Independent Person Selection Panel	
DIRECTOR:	Stephen Lawrence-Orumwense Director of Legal & Governance	
LEAD OFFICER:	Adrian May, Interim Head of Democratic Services adrian.may@croydon.gov.uk	
CONTAINS EXEMPT INFORMATION?	NO	Public
WARDS AFFECTED:	N/A	

1 SUMMARY OF REPORT

- 1.1 The Ethics Committee, on the 19th April 2023, due to a vacancy which had arisen, agreed to commence a recruitment process under the provisions of the Localism Act 2011 to ensure a sufficient pool of Independent Persons.
- 1.2 The Committee appointed three Committee Members (Cllr Carserides, as Chair and Cllr Creatura and Cllr Fraser) to a selection panel, with advisory support from an Independent Person, Don Axcell, for the purpose of interviewing and shortlisting applicants for the role of Independent Person, which would subsequently make recommendations to this Committee for consideration and onward recommendation to Full Council for appointment.
- 1.3 Due to changes in the Committee's membership, the Committee is asked to appoint three Members to the Selection Panel, from the six committee Members appointed at the Annual Council Meeting, May 2023.

2 RECOMMENDATIONS

For the reasons given in this report, the Ethics Committee is recommended to:

- 2.1 Agree three Member nominations to sit on the Selection Panel: the Chair and two further Members to be nominated and agreed by the Committee.
- 2.2 To note, Don Axcell, was previously nominated as Independent Person advisory support to the Selection Panel.

- 2.3 Note the revised proposed time frame of the Independent Person/s recruitment and subsequent reporting back to this Committee prior to onward recommendations to Full Council.

3 REASONS FOR RECOMMENDATIONS

- 3.1 The recommendations ensure that the Council has sufficient Independent Persons to continue to perform its statutory functions under the Localism Act 2011 in respect of the Ethics Functions of the Authority and under Part 4J of the Council's Constitution (Staff Employment Procedure Rules) in respect of disciplinary matters pertaining to Head of Paid Service, Section 151 Officer or Monitoring Officer.

4 BACKGROUND AND DETAILS

- 4.1 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. For Members' information, the arrangements as adopted by Full Council, can be accessed [here](#)¹.
- 4.2 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.
- 4.3 In addition, the Council's arrangements provide that the Monitoring Officer may consult an Independent Person when considering, at assessment stage, whether or not an allegation ought to be referred for investigation. In other words to avoid the potential conflict of the same Independent Person having to advise different persons/bodies on the same matter, up to four Independent Persons might be involved in providing advice at different stages of and to different parties in the Ethics Process – one to advise the Member complained about, one who may advise the Monitoring Officer at Assessment Stage, one who might be consulted by the Authority at any other stage in the process and one whose views must be sought by the Council before it takes any final decision on an allegation of breach of the Code which is the subject of investigation.

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- 4.4 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 six elected Members of the Council and the Independent Persons who are not committee members but attend in a non-voting advisory capacity at Committee and are involved at other stages of the process as detailed above.
- 4.5 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”) which amend the earlier 2001 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.
- 4.6 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 and Disciplinary Committee. In addition, an Independent Panel constituting at least two Independent Persons (who are appointed pursuant to the Localism Act 2011) will advise the Council on any recommendation from Appointments and Disciplinary Committee to dismiss Head of Paid Service, the Chief Finance Officer or the Monitoring Officer. Following any disciplinary hearing the outcome of which is a proposal to dismiss, the Independent Panel’s views must be reflected specifically in the Report to full Council setting out the Appointments and Disciplinary Committee’s recommendations. The full Council shall have regard to the recommendations of Appointments and Disciplinary Committee and the Independent Panel in reaching its decision on the matter.
- 4.7 The Committee, 19th April 2023, agreed to commence a recruitment and selection process to ensure a sufficient pool of Independent Persons to carry out statutory duties including in relation to any disciplinary matters described in the body of this report above. A Selection Panel consisting of 3 Members (supported by an Independent Members in an advisory capacity) was agreed. The Committee appointed three Committee Members (Cllr Carserides, as Chair and Cllr Creatura and Cllr Fraser).
- 4.8 At the Annual Council Meeting (ACM), May 2023, membership of the Ethics Committee changed - Cllr Carserides is no longer a member of the Committee and Cllr Fraser changed from a Committee Member to a substitute/reserve Member. Cllr Creatura was reappointed to the Committee at Annual Council.
- 4.9 The Committee is asked to nominate and agree three Member appointments to the Selection Panel from the six current members of the Committee.
- 4.10 Donald Axcell was appointed to support the Selection Panel at the 19th April 2023 and was reappointed as an Independent Person at the last ACM.
- 4.11 The maximum pool of Independent Persons is currently five. The Council currently has 4 Independent Persons - Donald Axcell, Jennifer Gordon, Alan Malarkey, and Ashok Kumar.

- 4.12 Subject to agreement of the recommendations within this report, the outcome of the Selection Panel shall be reported to this Committee for onward recommendation to Full Council for a proposed appointment of an additional Independent Person for a term of 4 years, whilst noting that appointment within that term does ordinarily take place annually by Full Council.
- 4.13 With regards to likely timescales, the advert will be published in local press and online through the Council's website in July 2023 with the selection process proposed to take place Sept/ Oct (and thereafter the recommendation/s back to this Committee and onto Council).

5 ALTERNATIVE OPTIONS CONSIDERED

No other options considered as the Selection Panel needs to be comprised of existing members of the Ethics Committee.

6 CONSULTATION

- 6.1 No formal consultation has been undertaken in relation to this proposal however the Localism Act requires that the recruitment process will involve a public advertisement and formal application process.

7. CONTRIBUTION TO COUNCIL PRIORITIES

- 7.1 Mayor's Business Plan - Priority 4 : Ensure good governance is embedded and adopt best practice

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

8.1.1 No allowance is payable for the role of Independent Person. There are no employee costs arising from these appointments, and recruitment costs are minimal and can be funded from operational budgets.

8.1.2 Please note, these are draft implications submitted by the author, and may be subject to change by Finance (any update will be given at meeting).

8.2 LEGAL IMPLICATIONS

8.2.1 The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority and in discharging this duty, the Council must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.

8.2.2 The Council must also have in place arrangements under which allegations of breaches of the Code can be investigated, and under which decisions on

allegations can be made.

- 8.2.3** These arrangements must include provision for the appointment by the Council 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 views 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.
- 8.2.4** For these purposes a person is not independent if the person is a Member, co-opted Member or officer of the authority or a relative, or close friend, of a person who is a Member, co-opted Member or officer of the authority.
- 8.2.5** A person may not be appointed as an Independent Person if at any time during the 5 years ending with the appointment the person was a Member, co-opted Member or officer of the authority.
- 8.2.6** Finally, a person may not be appointed unless the vacancy for an independent person has been advertised in such manner as the authority considers is likely to bring it to the attention of the public, the person has submitted an application to fill the vacancy to the authority, and the person's appointment has been approved by a majority of the members of the authority.
- 8.2.7** Remaining legal requirements and matters are set out within the body of this report.
- 8.2.8** *Approved by:* Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Legal Services and Monitoring Officer (26/06/23).

8.3 EQUALITIES IMPLICATIONS

- 8.3.1** 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.
- 8.3.2** 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.
- 8.3.3** 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 applicant's demonstrating 'independence' the vacancy would be available to all.

8.3.4 Please note, these are draft implications submitted by the author, and may be subject to change by the Equalities team (any update will be given at meeting).

9. APPENDICES

None

10 BACKGROUND DOCUMENTS

None