

REPORT TO:	Council 25 July 2022
SUBJECT:	Independent Panel for dismissal purposes
LEAD OFFICER:	Stephen Lawrence-Orumwense Director of Legal Services and Monitoring Officer
CABINET MEMBER:	Councillor Jason Cummings, Cabinet Member for Finance
WARDS:	All
PUBLIC/EXEMPT:	Public

SUMMARY OF REPORT:

This report seeks Council's approval to establish an Independent Panel for the statutory purposes explained, to appoint all the Council's Independent Persons to it and authorise the Monitoring Officer to invite, in accordance with statutory rules, three such Independent Persons to form a Panel from time to time and to amend the Constitution.

COUNCIL PRIORITIES 2020-2024

Appointing an Independent Panel is a statutory requirement and strengthens the Council's governance which underpins the Council's priorities.

FINANCIAL IMPACT:

There are no direct financial implications arising from this report. Independent Persons do not receive any remuneration for fulfilling the role set out in this report.

RECOMMENDATIONS:

That, for the reasons set out in this report, Council is recommended to:

- 1. Establish an Independent Panel, comprising three Independent Persons, and approve the terms of reference set out at paragraph 1.10.**
- 2. Appoint all the Council's Independent Persons to the Independent Panel and authorise the Monitoring Officer to invite, in accordance with the statutory rules, three such Independent Persons to form a Panel from time to time.**
- 3. Authorise the Monitoring Officer to include the establishment of the Independent Panel in the Constitution and to make any necessary consequential changes.**

1. BACKGROUND

Independent Persons

- 1.1. The need for an 'Independent Person' was introduced by the Localism Act 2011 (the Act) on 1 July 2012 as part of the current standards regime. Under the Act, the Council has a duty to promote and maintain high standards of conduct by members and co-opted members and, among other things, must appoint an Independent Person whose views are sought and taken into account by the Council before it makes its decision on an allegation that it has decided to investigate.
- 1.2. The views of the Independent Person may also be sought by the Council at other stages of the complaints process and may also be sought by the member/co-opted member the subject of the complaint.
- 1.3. The Council has appointed five Independent Persons as most recently reported to Council on 8 March 2021. At that meeting Donald Axcell, Alan Malarkey and Jennifer Gordon were appointed to the pool of Independent Persons and authority was delegated to the Monitoring Officer to select Independent Persons as and when the need arises. They were appointed for a term of 4 years, subject to annual appointment at Council.
- 1.4. In addition, Anne Smith and Ashok Kumar, who had already been appointed as Independent Persons, had their terms extended by a further term of 2 years, subject once again to annual appointment at Council.

Role in statutory dismissal procedures

- 1.5. In 2015, statutory dismissal procedures relating to the Head of Paid Service (i.e. Chief Executive); Section 151 Officer (i.e. the Corporate Director of Resources) and Monitoring Officer (i.e. Director of Legal Services) (the statutory officers) were amended and a new role was created for Independent Persons.
- 1.6. As from 11 May 2015, which is when the relevant amendments to the Local Authorities (Standing Orders) (England) Regulations 2001 (the regulations) came into force, dismissal decisions (other than for reasons of redundancy and ill-health) relating to the statutory officers have to be taken by Council who must consider, amongst other things, any advice, views or recommendations from a panel of at least two Independent Persons.
- 1.7. The Council's Staff Employment Procedure Rules in Part 4J of the Constitution (the Rules), already make provision for the essential role of the Independent Panel in relevant disciplinary proceedings.

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- 1.8. The Rules acknowledge that the Appointments and Disciplinary Committee (the ADC) is responsible for considering disciplinary allegations against the statutory officers and can recommend dismissal to Council.
- 1.9. In accordance with the regulations, the Rules then state that before Council vote on whether or not to approve such a dismissal, Council must take into account, in particular, and among other things, any advice, views or recommendations of the Independent Panel.
- 1.10. The regulations state that the Independent Panel must be appointed by Council as an advisory committee under s102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of the statutory officers.
- 1.11. Guidance issued by what was then the Department for Communities and Local Government (DCLG), recommends that the Independent Panel should consist of Independent Persons only. According to DCLG, this is necessary to ensure independent scrutiny and the involvement of non-elected persons in the disciplinary process.
- 1.12. This approach is also consistent with the Joint Negotiating Committee (JNC) for Local Authority Chief Executives Model Disciplinary Procedures and Guidance which the Council has adopted for all the statutory officers and, at the Council's discretion, other chief officers.
- 1.13. The proposal in this report is to establish a standing Independent Panel, comprising three Independent Persons, with the following terms of reference:

"Independent Panel

Membership

Three Independent Persons appointed under s28(7) of the Localism Act 2011.

The Monitoring Officer will invite three of the Independent Persons appointed by the Council to form a Panel from time to time in accordance with the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).

In particular, the Monitoring Officer will invite Independent Persons in accordance with the following priority order:

- (a) an Independent Person who has been appointed by the Council and who is a local government elector;*
- (b) any other Independent Person who has been appointed by the Council;*

(c) an Independent Person who has been appointed by another Council or Councils.

Form

The Independent Panel is constituted as an advisory committee under s102(4) of the Local Government Act 1972.

Purpose

To carry out the function of 'the Panel' referred to in the Local Authorities (Standing Orders) (England) Regulations 2001(as amended) and advise the Council on matters relating to the dismissal of relevant officers (including those officers that the statutory procedure has been extended to in the exercise of the Council's discretion).

Accordingly, the Panel can give advice, express its views and make recommendations to Council before it meets to consider whether or not to approve a proposal to dismiss a relevant officer.

Quorum

The Independent Panel cannot meet to carry out its function unless at least two Independent Persons are in attendance."

- 1.14. According to the regulations, if a standing Panel has not been appointed by a local authority, one must be appointed at least 20 working days before a full council vote on whether or not to approve such a dismissal. Council is recommended to appoint a standing Independent Panel to avoid the additional cost, delay and disruption of appointing a Panel each time the need arises.
- 1.15. The priority order set out above is a stipulation of the regulations. As the Council has a pool of five Independent Persons, there should be no need to rely on an Independent Person appointed by another Council. In any event, they will not be available for selection unless and until they have been appointed by Council to the Independent Panel.
- 1.16. Appointing all five Independent Persons to the Panel subject to the Monitoring Officer inviting, in accordance with the statutory rules, three such Independent Persons to form a Panel affords the Council greater flexibility in the event of non-availability and conflict of interest issues. An Independent Panel comprising of five Independent Persons is considered to be unwieldy and excessive.
- 1.17. If due to availability or other issues, it is not possible to form a Panel of three Independent Persons, it is proposed that a Panel of at least two Independent Persons (which meets the minimum statutory requirements) should be

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formed to ensure that the disciplinary proceedings can be progressed without undue delay.

1.18. Although not a statutory requirement, this procedure can also, at the Council's discretion, be extended to other chief officers from time to time.

1.19. Finally, Council is requested to authorise the Monitoring Officer to include the establishment of the Independent Panel in the Constitution and to make any necessary consequential changes.

2. CONSULTATION

2.1. Not applicable.

3. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

3.1. There are no direct financial implications arising from this report. Independent Persons do not receive any remuneration for fulfilling the role set out in this report.

4. LEGAL CONSIDERATIONS

4.1. The legal comments are incorporated in the report.

4.2. Approved by Looqman Desai, Deputy Monitoring Officer on behalf of the Director of Legal Services and Monitoring Officer

5. HUMAN RESOURCES IMPACT

5.1. The key HR implications are covered in the body of the report. It is important to have trained, appropriate, independent panel members available should the need arise in the event the Council has to invoke certain HR processes, such as the JNC Chief executives' model disciplinary procedure.

5.2. Approved by: Dean Shoesmith, Chief People Officer

6. EQUALITIES IMPACT

6.1. There are no equalities impacts directly arising from this report.

7. ENVIRONMENTAL IMPACT

7.1. None.

8. CRIME AND DISORDER REDUCTION IMPACT

8.1. None.

9. DATA PROTECTION IMPLICATIONS

9.1. The identities of the Independent Persons named in this report is already a matter of public record and the statutory nature of their role is such that this is lawful and fair.

APPENDICES TO THIS REPORT

None.

BACKGROUND DOCUMENTS:

None.