

# Appointment and Role of Independent Persons



**Report to:** Full Council

**Date:** 11 April 2024

**Lead Officer:** Julie Galvin, Legal Services Manager and Deputy Monitoring Officer (01279) 446045

**Contributing Officer:** Yvonne Rees, Interim Chief Executive (01279) 446004

## Recommended that:

- A** The Deputy Monitoring Officer, in consultation with the Leader of the Council and Chief Executive, and Assistant Director for Governance, HR and Legal is given delegated powers to:
- (i) Commence the process (to include recommended remuneration) to advertise for one or more “Independent Persons”
  - (ii) To finalise a governance structure to appoint a Statutory Officer Investigatory and Disciplinary Committee.
  - (iii) Return to Full Council in May 2024 with a recommendation to appoint both Independent Persons and Investigatory and Disciplinary Committee Members.
- B** All allowances payable be benchmarked.
- C** The role of Independent Persons as shown at Appendix A of this report is noted and approved.
- D** The draft terms of reference for the Investigatory and Disciplinary Committee as shown at Appendix B of this report is noted and approved.

## Background

1. The council is required to appoint Independent Persons under Section 28 of the Localism Act 2011 to fulfil key aspects of the council’s governance as regards the complaints procedures for elected and co-opted members; and key aspects of the statutory procedures to be followed for the dismissal of a senior officer.

2. As such, it is very prudent that the council appoints more than one such person so that the council has access to more than one independent perspective; and also, of course, to ensure that there is continuity of procedure should one Independent Person not be available.

### **Issues/Proposals**

3. An Independent Person appointed by the Council performs several important roles, under law.

### **Members' Code of Conduct & Councillor Complaints Procedure**

4. Independent persons' views must be sought, and taken into account, by the Council before the Council makes any decision on an allegation it has decided to investigate that a councillor or co-opted member has allegedly breached the Members' Code of Conduct.

The Independent Person may be consulted by:

- (i) The Council – normally through its Monitoring Officer – as part of the established complaints procedures for elected and co-opted members;
- (ii) The member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation;
- (iii) Senior Officers.

### **Dismissal Procedures Statutory Officers**

5. While it is for Full Council to decide on the dismissal of the three key statutory officers, namely the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer, it must, before doing so, consult a Committee and or Panel which should, at the least, contain the Independent Persons appointed by it under Section 28 of the Localism Act 2011, or those appointed by another authority. There is an expectation that such Independent Persons will, if possible, be those appointed by the council.
6. The role of the Independent Person in this context is, again, advisory as a Committee or Panel will be responsible for giving Full Council any advice, views or recommendations as regards a proposed dismissal.

### **Other considerations**

7. The law requires that, prior to the appointment of any Independent Person under the Localism Act 2011, any such position must have been advertised publicly; and that the

person whose appointment the council is considering has submitted formal application for it.

## **Implications**

### **Equalities and Diversity**

Applications will be considered in accordance with the Council's HR procedures to ensure fairness and avoid direct or indirect discrimination. Because of this, no equality impact assessment has been conducted.

Author: Julie Galvin, Legal Services Manager and Deputy Monitoring Officer

### **Climate Change**

None Specific.

### **Communities and Environment**

None Specific.

Author: Yvonne Rees, Chief Executive

### **Finance**

Statute limits the remuneration that should be paid to Independent Persons on the panel to the level of the remuneration akin to a modest annual allowance or small meeting fee. This approach ensures that the new process will not involve high costs.

Author: Jacqueline Van Mellaerts, Assistant Director – Finance and Deputy Section 151 Officer

### **Governance and Corporate Services**

An Independent Persons role is set down in the Localism Act 2011 and Standing Order Regulations, whose views:

- (i) are to be sought, and taken into account, by the authority before it makes its decision on any standards allegation that it has decided to investigate, and in any other such circumstances it considers appropriate and
- (ii) are to be considered by Full Council as part of the statutory process for disciplining or dismissing an Authority's Head of Paid Service, Monitoring Officer or Chief Finance Officer.

Any appointed Independent Person will be considered an officer holder of the Council in accordance with statutory duties under s28(7) Localism Act 2011 and will therefore be entitled to be indemnified by the Council's officers insurance provide they act reasonably and within the confines of protocol. They are not required to notify and register any interests in the Register of Members' interests. The Independent Person is however required to abide by the Seven Principles of Public Life ('the Nolan Principles'). Certain due diligence may be necessary to determine any unspent convictions, cautions or bankruptcy restriction orders.

The creation of an Investigatory and Disciplinary Committee will meet statutory requirements as set out in The Local Authorities (Standing Orders) (England) Regulations 2001 as amended  
Author: Julie Galvin, Legal Services Manager and Deputy Monitoring Officer

**Housing**

None Specific.

Author: Yvonne Rees, Chief Executive

**Strategic Growth and Regeneration**

None Specific.

Author: Yvonne Rees, Chief Executive

**Appendices**

Appendix A – Functions and Responsibilities of an Independent Person

Appendix B – Draft Investigatory and Disciplinary Committee (Statutory Officers) Terms of Reference

**Background Papers**

None.

**Glossary of terms/abbreviations used**

None.

## Appendix A

### FUNCTIONS AND RESPONSIBILITIES OF AN INDEPENDENT PERSON

1. To undertake the statutory role of Independent Person appointed under Section 28(7) of the Localism Act 2011. To help the Council discharge its duty to promote and maintain high standards of conduct amongst Members and Co-opted Members.
2. (Subject to any extant conflict or interest, which must be declared) to be consulted by the Monitoring Officer (or their Deputy) as required during the initial assessment of a complaint to determine whether it is admissible, whether it warrants formal investigation or is suitable for alternative resolution or whether it warrants no further action.
3. Following completion of any investigation, to review any Investigating Officer's report in consultation with the Monitoring Officer when required.
4. To provide their views to the Council before it makes a decision on an allegation that it has decided to investigate, and to be available to attend meetings of the Audit Committee for this purpose.
5. Generally, to provide their views to the Council at any other stage of the Council's process for dealing with complaints against Members alleging breaches of the relevant Code of Conduct.
6. To be available for consultation by any elected or co-opted Member who is the subject of a complaint and to provide their views as appropriate when sought.
7. To develop a sound understanding of the ethical framework as it operates within Harlow Council
8. To participate in training events to develop skills, knowledge and experience relevant to assisting the Council in promoting high standards of conduct by elected and Co-opted Members of the Council
9. With at least one other Independent Person, as a panel, to be appointed consider any proposal that may lead to the authority dismissing a statutory officer and to make recommendations to full council.

The priority order for appointment to such a panel is:

- i. an Independent Person who has been appointed by the council and who is a local government elector,
- ii. any other Independent Person who has been appointed by the council,  
and

- iii. an Independent Person who has been appointed by another council or councils.

10. To act as an advocate and ambassador for the Council in promoting ethical behaviour.

11. To be consulted by the Monitoring Officer on any other matters in relation to standards and conduct that they deem necessary.

## **C CRITERIA – INDEPENDENT PERSONS**

An Independent Person will:

1. not be required to have any specific qualification or background, save a general interest in and capability to act impartially in a regulatory and consultative capacity;
2. be committed to the need for high standards in public life and be aware of the views of the local community in relation to standards;
3. have the ability to be objective, independent and impartial;
4. understand and comply with confidentiality requirements;
5. have a demonstrable interest in local issues and desire to serve the local community and uphold democracy;
6. develop a sound understanding of the ethical and wide regulatory framework within which the Council operates;
7. have an interest in public service and local government in particular;
8. be of good standing in the community;
9. be able to make judgements based on evidence or information presented in order to provide reasoned views.

Please note, you will need to be contactable during normal working hour by telephone or e-mail and to be available to attend hearings which may be held in the daytime or evening.

Contact will be (by the most part) by email or telephone and that there are few occasions where attendance is required.

In accordance with the Localism Act 2011, the appointment of the Independent Person shall be approved by a majority of the Members of the Full Council.

**Additional desirable skills/knowledge are as follows:**

Working knowledge and/or experience of local government or other public service organisations, or other large complex organisation(s).

### **Means of Assessment**

Applicants will be assessed on their application form and by interview.

### **D RESTRICTIONS ON APPOINTMENT**

Certain people are restricted from being appointed to the position of Independent Person.

You cannot be an Independent Person if you are:

- (a) A councillor, co-opted member or officer of Harlow Council or have been A councillor or co-opted member or officer of Harlow Council during any time in the last five years
- (b) A relative or close friend of a person in (a) or (b) above.

A relative is defined as:

- (a) The candidate's spouse or civil partner;
- (b) Any person with whom the candidate is living as if they were spouses or civil partners;
- (c) The candidate's grandparent;
- (d) Any person who is a lineal descendent of the candidate's grandparent;
- (e) A parent, brother, sister or child of anyone in paragraphs (a) or (b);
- (f) The spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
- (g) Any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

In addition, to ensure that the role is non-political and remains independent you should not be a member of any political party, or have/had a public profile in relation to political activities.

### **E TERMS OF APPOINTMENT**

1. Appointment will be on a fixed basis agreed by Full Council for a period of up to four years and may be extended at any time during that period.
1. Appointment will be terminable by the Council at any time in the event of:

- Incapacity;
- Failure to comply with any training requirements;
- Persistent failure to be available for consultation without good reason;
- Failure to observe the standards reasonably expected from an Independent Person AND in this context the Independent Person would be expected to refrain from any activity, political or otherwise, which would conflict with the impartial nature of the appointment;

The Independent Person may,

- (i) by giving three months' written notice, resign the appointment at any time OR
- (ii) may decline to accept any renewal of a term of appointment.

The role of the Independent Person is unsalaried, [but a sum of [£TBC] for up to 4 hours work, and £[TBC] for 4 hours and over, up to a maximum of £[TBC] per person per annum is payable in recognition of the role undertaken. This is in addition to reasonable expenses claimed for travel and subsistence when meetings have been attended. Otherwise, the work is entirely voluntary.



## APPENDIX B

### 1 Investigatory and Disciplinary Committee (Statutory Officers) terms of Reference

1.1. Appointed by:

- a) Full Council

1.2. Membership

- a) Five Councillors allocated between political groups in accordance with the rules on political balance set out in the Local Government and Housing Act 1989.
- b) At least one member must be part of the Cabinet.

1.3. Chair/Vice Chair

To be determined by Full Council.

1.4. Terms of Reference

- a) To consider any allegation of misconduct capability or break down of trust against the Head of Paid Service, the Section 151 (Chief Financial Officer) or Monitoring Officer (“Statutory Officers”)
- b) To authorise an investigation in relation to matters referred to in a) above (with set timescales), including the appointing of an Independent Person who will consult with the Chair of the Committee.
- c) Decide when the matter can be dealt with by informal resolution or other appropriate procedures of that there is no case to answer and advise the Statutory Officer accordingly
- d) To suspend the Statutory Officer, if deemed appropriate, whilst an investigation takes place into alleged misconduct, for a period of up to two (2) months. The Chair will have delegated powers to review the suspension after the two-month period. The suspension may only be extended following consultation with the Independent Person and the consideration of representations by the Statutory Officer. The Chair will also have delegated authority to suspend the Statutory Officer immediately in an emergency.
- e) To review the outcome of the investigation to consider whether disciplinary action is appropriate, after hearing the Statutory Officer under investigation, and report its recommendations to Full Council

- f) To take disciplinary action short of dismissal against the Statutory Officer.
- g) To make a recommendation to the Independent Panel of dismissal against the Statutory Officer.
- h) The Committee will be governed by the provisions contained in Part 5 of the Constitution (Officer Employment Procedure Rules) and guidance from the JNC.

## **2 Investigatory and Disciplinary (Statutory Officers) Appeals Panel (“Appeals Panel”)**

### 2.1. Appointed by:

- a) Full Council

### 2.2. Membership:

- a) Five Councillors allocated between political groups in accordance with the rules on political balance set out in the Local Government and Housing Act 1989.
- b) No Councillor must also be on the Investigatory and Disciplinary Committee (Statutory Officers).
- c) At least one member must be part of the Cabinet.

### 2.3. Chair/Vice Chair

- a) To be determined by Full Council.

### 2.4. Terms of Reference

- a) To determine appeals against decisions, short of a recommendation of dismissal, made by the Investigatory and Disciplinary Committee (Statutory Officers).
- b) To consider the report of the report of the Independent Person, other relevant information considered by the Committee, and any representations made by the statutory officer at the meeting.
- c) To determine whether the decision of the Committee should be upheld, a lesser sanction should be imposed, or no sanction imposed and advise the Statutory Officer accordingly

- d) The Appeals Panel will be governed by the provisions contained in Part 5 of the Constitution (Officer Employment Procedure Rules) and guidance from the JNC.

### **3 Investigatory and Disciplinary (Statutory Officers) Independent Panel (“Independent Panel”)**

#### 3.1. Appointed by:

- a) Full Council

#### 3.2. Membership

- a) At least two Independent Persons appointed under Section 28(7) of the Localism Act 2011.
- b) The Independent Panel shall consist of appointed Independent Persons only.

#### 3.3. Chair

- a) To be determined by the Independent Panel.

#### 3.4. Terms of Reference

- a) To consider reports of the Investigatory and Disciplinary Committee (Statutory Officers) and all other relevant information where the Committee has recommended dismissal of the Statutory Officer.
- b) To consider oral representations from the Statutory and a nominated representative of the Committee on such matters.
- c) To recommend to the Council on any proposed course of action involving or culminating in dismissal of a Statutory Officer
- d) The Independent Panel will be governed by the provisions contained in Part 5 of the Constitution (Officer Employment Procedure Rules) and guidance from the JNC.