

LONDON BOROUGH OF CROYDON

REPORT:	ETHICS COMMITTEE	
DATE OF DECISION	15 November 2023	
REPORT TITLE:	Appointments of Independent Person/s	
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?	YES	Part Exempt To exclude the press and public, under Section 100(4) A of the Local Government Act 1972, from part of the meeting due to the likely disclosure of exempt information falling within paragraph 1 of Part 1 of Schedule 12A of the Local Government Act, 1972, as amended: 1. Information relating to any individual
WARDS AFFECTED:	All	

1 SUMMARY OF REPORT

- 1.1 The Ethics Committee, on the 19 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 Since the meeting an additional vacancy has arisen and so the Ethics Committee is asked to appoint two Independent Persons to the Council.
- 1.3 Advertisements for the positions were advertised on the Jobs section of the council's website, in the Croydon council newsletter, via email to the council's voluntary and community sector subscribers, via the Democratic Services Newsletter, and via email to residents currently volunteering elsewhere in the council. Councillors were also written to by email to encourage their contacts who are keen to be involved in the

voluntary life of the council to apply.

- 1.4 The listings were live for a period of two weeks and applications were received from one person.

2 RECOMMENDATIONS

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

- 2.1 Exclude the Press and Public from a portion of the meeting to discuss and agree the appointment of an Independent Person on the basis it is likely, in view of the nature of the business to be transacted, that if members of the public were present there would be disclosure to them of information which is exempt under Schedule 12A, Part 1, paragraph 1, Local Government Act 1972, namely information relating to any individual;
- 2.2 To note the resignation of one of the Independent Persons as of October 2023;
- 2.3 To agree to appoint one Independent Person as recommended by the Selection Panel for the duration of 2 years, with a possible extension of 2 years;
- 2.4 To recommend the appointment be made formally by Council on 13 December 2023; and
- 2.5 To agree to hold a second round of applications in the coming weeks.

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](https://www.croydon.gov.uk/sites/default/files/articles/downloads/Arrangements%20under%20the%20Localism%20Act%202011_July%202012.pdf)¹.

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- 4.2 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought and taken into account 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 and taken into account by the Council before it takes any final decision on an allegation of breach of the Code which is the subject of investigation.
- 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 and take into account the recommendations of Appointments and Disciplinary Committee and the Independent Panel in reaching its decision on the matter.
- 4.7 The Committee, 19 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 Following Annual Council on 17 May 2023, the Chair of Ethics Committee stood down and was replaced by Cllr Leila Ben-Hassel. Cllr Ben-Hassel was appointed chair of the Selection Panel at a subsequent meeting of the Ethics Committee on 5 July 2023. At the same meeting, Cllr Fraser stepped down from their position on the committee, and was replaced by Cllr Brigitte Graham, who then also took up the position on the Selection Panel, as agreed by the committee at the same meeting.
- 4.9 Following the resignation of Cllr Creatura as a member of the Ethics Committee in October 2023 and subsequently, the Selection Panel, the committee also agreed in consultation with the Monitoring Officer, to appoint Cllr Luke Shortland in his place.
- 4.10 The maximum pool of Independent Persons is currently five. The Council currently has 3 Independent Persons - Jennifer Gordon, Alan Malarkey, and Ashok Kumar.
- 4.11 The outcome of the Selection Panel shall be reported by this Committee for onward recommendation to Full Council for a proposed appointment of an additional Independent Person for a term of 2 years with a possible extension of 2 years, whilst noting that appointment within that term does ordinarily take place annually by Council.

5 ALTERNATIVE OPTIONS CONSIDERED

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

6 CONSULTATION

- 6.1 The Localism Act requires that the recruitment process will involve a public advertisement and formal application process, which took place from 20 October to 2 November 2023.
- 6.2 The views of the current Independent Persons will be sought prior to the appointment.

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 Finance have been consulted and can conclude that there are no financial implications within this report that cannot be met from within existing budgets.
- 8.1.3 Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. 30/10/23

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 The relevant legal requirements in relation to the involvement of Independent Persons in disciplinary action taken against the Head of Paid Service, the Section 151 Officer, and the Monitoring Officer 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 (02/11/23).

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 Comments approved by: Naseer Ahmad for the Equalities manager. (31/10/2023)

8.4 HR IMPLICATIONS

- 8.4.1 There are no immediate Human Resources implications arising from this report. Should any matters arise these will be managed through the appropriate Council processes and procedures.
- 8.4.2 Comments approved by Gillian Bevan, Head of HR Resources and Assistant Chief Executive’s directorates on behalf of the Chief People Officer. 02/11/23

9. APPENDICES

Appendix A – Part B recommendations to the Ethics Committee

10 BACKGROUND DOCUMENTS

None