

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>17<sup>th</sup> December 2024</b>	
<b>REPORT TITLE:</b>	<b>Re-appointment of Independent Persons</b>	
<b>DIRECTOR:</b>	<b>Stephen Lawrence-Orumwense Director of Legal &amp; Governance and Monitoring Officer</b>	
<b>LEAD OFFICERS:</b>	<b>Adrian May</b> <b>Senior Democratic Services &amp; Governance Officer</b> adrian.may@croydon.gov.uk  <b>Klaudia Petecka</b> <b>Democratic Services &amp; Governance Officer</b> klaudia.petecka@croydon.gov.uk	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>Public</b>
<b>WARDS AFFECTED:</b>	<b>N/A</b>	

### 1 SUMMARY

- 1.1 The report provides a succession planning outline to ensure that the Council has a sufficient number of Independent Persons, with the necessary knowledge and experience, to continue performing the Council's statutory functions under the Localism Act 2011 and Part 4J of the Council's Constitution (Staff Employment Procedure Rules).
- 1.2 The recommended re-appointment of both Ashok Kumar and Jennifer Gordon provides for continuation of experienced Independent Persons for a further year from the next Annual Council Meeting, in 2025.

### 2 RECOMMENDATIONS

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

- 2.1 to recommend to Full Council the re-appointment of Ashok Kumar as Independent Person for a further term of one year from the 14<sup>th</sup> May 2025.
- 2.2 to recommend to Full Council the re-appointment of Jennifer Gordon as Independent Person for a further term of one year from the 14<sup>th</sup> May 2025.

- 2.3 to note Alan Malarkey's resignation and thank him for his contribution to the work of the committee and in his role as an Independent Person for the Council.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 The proposal 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.
- 3.2 The proposals also seeks to maintain a high level of knowledge and experience among the pool of Independent Persons, particular due to the recent recruitment of two new Independent Persons.

### **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](#) <sup>1</sup>.
- 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 mitigate the risk of bias and ensure greater independence in the advisory process, up to four Independent Persons might be involved in providing advice at different stages of and to different parties in the Ethics Process – an Independent Person to advise the Member complained about, an Independent Person who may advise the Monitoring Officer at Assessment Stage, an Independent Person who might be consulted by the Authority

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

at any other stage in the process and an Independent Person 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.

- 4.4 The Local Authorities (Standing Orders) (England) Regulations 2001 as amended (“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.
- 4.5 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.
- 4.6 The Council currently has four Independent Persons appointed by Full Council - Jennifer Gordon and Ashok Kumar whose appointments were to expire by the end of this municipal year May 2025, and Luisa Zingone and Joanne Middlewick.
- 4.7 It should be recorded that Alan Malarky resigned as an Independent Person on the 9<sup>th</sup> August 2024. The Committee and Officers gives thanks for Alan Malarkey’s service as an Independent Person and work on the Committee. Alan Malarkey has stated he wished to offer his good wishes to the Committee and its Members in their future deliberations.
- 4.8 With regards to the term of office for an Independent Person, there is no set term in law, nor is there a statutory maximum number of Independent Persons which a Council may appoint. However, the 2019 Committee on Standard in Public Life (CSPL) report on Local Government Ethical Standards recommended that it was best practice to have at least two Independent Persons for purposes of running the Ethics process and as detailed above, the Council’s disciplinary processes in relation to statutory officers also require the involvement of an Independent Panel of Independent Persons.
- 4.9 In addition, CSPL considered 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 could 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.

- 4.10 Whilst CSPL recommended to the Government in that 2019 report that the *Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once*, no such amendment has as yet been made by Government and is therefore not a legal requirement or barrier to term of appointment.
- 4.11 Ashok Kumar has been appointed as an Independent Person since 2008 and Jennifer Gordon since May 2021.
- 4.12 Ashok Kumar and Jennifer Gordon have both advised they are both happy to remain as an Independent Person. It is recommended that the Committee, subject to Full Council approval, seeks their re-appointments for a further year from the 14<sup>th</sup> May 2025. Their re-appointments will help support the induction of the new Independent Persons and provide continuity of support to the Council.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The Council could choose not to retain experienced Independent Persons at this stage; however, this approach would risk reducing the overall knowledge and experience within the Independent Person pool.

## **6 CONSULTATION**

- 6.1 N/A no formal consultation has been undertaken in relation to this proposal.

## **7. CONTRIBUTION TO EXECUTIVE MAYOR'S BUSINESS PLAN**

- 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 costs arising from these re-appointments.

8.1.2 Approved by: Ian Geary, Head of Strategic Finance on behalf of the Director of Finance (6 December 2024)

## **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 as to the role of independent persons in relation to the Council's disciplinary processes for statutory officers are set out within the body of this report.
- 8.2.8** *Approved by:* Gina Clarke Principal Lawyer Corporate Law and Litigation on behalf of the Director of Legal Services and Monitoring Officer (04/11/24).

### **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).
- 8.3.5** Comments approved by Ken Orlukwu, Senior Equalities Officer, on behalf of Helen Reeves, Head of Strategy & Policy on 03/12/2024.

### **8.4 WORKFORCE IMPLICATIONS**

- 8.4.1** It is critical that there are a sufficient number of Independent Persons with the necessary knowledge and experience should disciplinary matters arise pertaining to the senior posts named in the body of this report. The Chief People Officer will facilitate any necessary arrangements to comply with the requirements should any such disciplinary matters arise.
- 8.4.2** Approved by Gillian Bevan, Head of HR Business Partnering on behalf of the Chief People Officer (2/12/24)

### **9. APPENDICES**

None

### **10 BACKGROUND DOCUMENTS**

None