

Appointment of Independent Persons

Standards Appointment Task Group, 2 April 2012

Committee:	STANDARDS APPOINTMENT TASK GROUP	Agenda Item
Date:	2 April 2012	3
Title:	APPOINTMENT OF INDEPENDENT PERSONS	
Author:	Michael Perry, Assistant Chief Executive Legal, 01799 510416	Item for decision

Summary

1. This report is to inform members of the requirements relating to the appointment of independent persons under the Localism Act 2011 and to seek members' views as to how best to recruit satisfactory candidates.

Recommendations

2. That the group agree:-
 - a. a person specification
 - b. an advertising/recruitment strategy
 - c. a selection process

Financial Implications

3. None arising from this report unless members decide to advertise in the local press in which case advertising fees will be incurred.

Background Papers (attached)

4. Job description/person specification for independent members of the current standards committee
5. Application form for independent members of the current standards committee
6. Interview questions for independent members of the current standards committee
7. Advert currently used for recruiting independent persons
8. Paper from Essex County Council
9. Letter from the DCLG

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Impact

10.

Communication/Consultation	None
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	The appointment of at least one independent person is essential to enable the council to fulfil its statutory functions with regard to standards
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

11. The Localism Act 2011 contains substantial amendments to the standards regime. Under the Local Government Act 2000 there was a model code of conduct which councils had to adopt as a minimum. District councils and above were required to have a standards committee which had to have at least 25% of its members as independent people (non-elected) and have an independent chair. There were far reaching powers of sanction. The standards committee reported not only to the council but also to Standards for England (the Standards Board) and there was a right of appeal against decisions to the First Tier Tribunal – Local Government Standards in England.
12. So far Standard for England has been abolished. The Localism Act still requires local authorities to adopt a code of conduct but providing the code complies with what are known as the Nolan principles what is in the code is a matter for local discretion. (The Act does however contain some provisions regarding the registration and declaration of some interests which will override the code). District councils and above will not be obliged to have standards committees, although in practice it will be difficult for them to carry out their responsibilities other than through committees. Unlike the present arrangements however such committees will be subject to the rules of political balance. There will be a requirement for there to be at least one independent person but the function of the independent person will be greatly changed. The government has indicated that it intends these arrangements to come into effect on 1 July although to date the necessary statutory instrument has not been laid.

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13. Under the Localism Act independent persons may not be voting members of the Standards Committee (or any other committee of the council). It follows that the chairman of the Standards Committee may not be an independent person as at a minimum the chairman of a committee must have a casting vote in the event of equality of votes. The role of the independent person is defined by what the Council must do rather than the independent person having specified functions. The Council must seek and take into account the views of an independent person before reaching a decision on an allegation of a breach of the Code of Conduct which it has decided to investigate. The Council may seek the views of an independent person in other circumstances. The independent person must also be available for consultation by members of the district council and parish councils within the district who find themselves the subject of a complaint.
14. The Constitution Working Group and present Standards Committee are recommending to Full Council that there should be a Standards Committee appointed to replace the current Standards Committee once the relevant sections of the Localism Act are in force, that subject to no member of the Council present when that committee is appointed objecting that the committee should not be politically balanced and that independent persons should be non-voting members of the committee.
15. As committee members the role of independent persons within this Council will be enhanced from the statutory minimum in that they will be able to attend all meetings of the committee and express their views even though they cannot vote. The procedure for dealing with complaints also enhances the role of the independent persons as under that procedure the Monitoring Officer is to consult with an independent person before deciding whether an allegation of a breach of the Code of Conduct should be investigated.
16. The Act does not contain any criteria as to who may be appointed but does contain disqualifications. The following are not eligible to be appointed:-
 - a. A member, co-opted member (defined as someone who is not a member of the council but is a member of a committee with voting rights) or officer of the council
 - b. A member, co-opted member or officer of any town or parish council within the district
 - c. A relative or close friend of someone who falls within paragraphs a. or b. above
 - d. Someone who within the 5 years preceding the date of appointment has fallen within paragraphs a. or b. above
17. Under this definition the independent members of the existing Standards Committee are ineligible for appointment. However the government has indicated that in the transitional arrangements it will make provision permitting existing independent members to be appointed as independent persons for the purposes of the Localism Act providing that such appointment was made

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within 12 months of the relevant sections of the Act coming into effect. Once appointed however there would be no time limit placed upon their term of office. I believe at least one of the current independent members would wish to apply.

18. However it would not be permissible to merely offer to appoint the existing independent members as independent persons. The Act provides that before an appointment can be made the vacancy must be advertised in such a way as the authority consider will bring it to the attention of the public and applications must be received in writing from those wishing to seek appointment. The appointments when made must be confirmed by Full Council.
19. In terms of advertising in the past the Council has struggled to make appointments. Indeed when the positions were last advertised there were only 3 applicants, the 2 then serving independent members and the retiring chairman of the Independent Remuneration Panel. (In the light of this response and the increasing demands being placed upon the Standards Committee arising from legislation being introduced at that time the Council increased the number of independent members of the Standards Committee from 2 to 3). In particular newspaper advertisements have not stimulated interest. One Essex authority has stated that it has proved successful in the past in recruiting using its equivalent to Uttlesford Life. The one potential obstacle to this approach is that the next edition of Uttlesford Life is not due until the end of May and ideally we would want to have independent persons in place by 1 July when the legislation is intended to take effect. However there is no reason why a 2 stage approach to recruitment could not be considered – especially if at least one of the current independent members intends to apply. The vacancies can be published on the Council's website and there is potential to alert suitably qualified individuals (e.g. outgoing members of the Independent Remuneration Panel, former members of staff with suitable experience who have not been employed by the council for 5 years etc). It would also be appropriate to notify those representing minority groups within the district of the vacancies.

Risk Analysis

20.

Risk	Likelihood	Impact	Mitigating actions
The council does not have a Code of Conduct in place to meet its duties under the Localism Act 2011.	1, the majority of the work has now been done in good time and the Code now merely	3, the council would suffer reputational damage if it did not have a Code of Conduct and	None required.

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	requires approval.	was unable to deal with allegations of misconduct by members.	
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.