

# **Cherwell District Council**

## **Council**

**19 July 2021**

### **Standards Arrangements – Independent Persons**

#### **Report of Director of Law and Governance & Monitoring Officer**

This report is public

#### **Purpose of report**

To delegate authority to the Standards Committee, supported by the Director of Law and Governance & Monitoring Officer, to agree the process for and to undertake the recruitment of three Independent Persons for recommendation to the 13 December 2021 Council meeting. To extend the terms of the current Independent Persons pending the recruitment process.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To delegate responsibility to the Standards Committee to agree the process for and to undertake the recruitment of three Independent Persons for recommendation to the 13 December 2021 Council meeting.
- 1.2 To extend the appointments of Mr Graham Matthews, Mr Tom Edwards and Mr Stuart Green to the 13 December 2021 Council meeting.

#### **2.0 Introduction**

- 2.1 The Localism Act 2011 (the Act) requires the standards arrangements adopted by the Council to include provision for the appointment of at least one independent person. This Council's arrangements provide for the appointment of three independent persons.
- 2.2 Due to the terms of the current Independent Persons expiring, it is necessary for the Council to carry out a fresh recruitment process. Section 28(8) of the Act sets out the requirements for the recruitment and appointment of Independent Persons. It is proposed that delegation be given to the Standards Committee to agree and undertake the recruitment process. Proposed appointments will be submitted to the 13 December 2021 Council meeting for agreement.

### **3.0 Report Details**

- 3.1 Section 28(7) of the Act requires the standards arrangements adopted by the Council to include provision for the appointment of at least one independent person. This Council's arrangements provide for the appointment of three independent persons to aid resilience, provide cover in case of conflicts of interest or absence and provide a wider range of external views and skills/knowledge.
- 3.2 The views of the independent person must be sought and taken into account by the Council before it makes any decision on any allegation of councillor misconduct that it has decided to investigate. The views of the independent person may also be sought by the Council in any other circumstances provided for in the adopted arrangements, and also by the councillor who is the subject of a complaint.
- 3.3 This Council's arrangements provide for the Monitoring Officer to seek the views of the independent persons at other stages of the complaints process e.g. on first receipt in deciding whether there is a potential breach of the code of conduct at all and, if there is, whether it is in the public interest to carry out an investigation/seek an informal resolution/take no further action.
- 3.4 The Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 ("The Regulations") require the Council to invite relevant Independent Persons to a Panel (being a committee appointed by the authority under section 102(4) of the Local Government Act 1972) for the purposes of advising the authority on matters relating to dismissal of relevant officers of the authority. Such invitation must be issued to all relevant Independent Persons with a view to appointing at least two Independent Persons to the Panel. The relevant officers to which these provisions apply by legislation are the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer.
- 3.5 The Council currently has three Independent Persons, appointed in accordance with the requirements of the Act:
- Mr Tom Edwards, appointed 2012 and reappointed in 2016
  - Mr Graham Matthews, appointed 2013 and reappointed in 2017
  - Mr Stuart Green, appointed in 2017
- 3.6 Since their appointments, the current independent persons have attended training, carried out their roles diligently and gained experience from which the council has benefitted.
- 3.7 The Act does not prescribe a time limit on the terms of office of independent persons and these are therefore within the discretion of the council. Given that the terms of the current Independent Persons are coming to an end, it is open to the council to carry out a fresh recruitment process at this time and it is recommended that the council agree to this. It will be open to the current Independent Persons to apply to be reappointed through this process.
- 3.8 Section 28(8) of the Act states that a person may not be appointed under the provision required by subsection (7) of the Act 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.

3.9 The Standards Committee is responsible for promoting and maintaining high standards of conduct by councillors. It is therefore appropriate to delegate responsibility to the Standards Committee, supported by the Director of Law and Governance & Monitoring Officer, to agree the recruitment process for the Independent Persons.

3.10 The Act requires that the appointment of Independent Persons must be approved by “the majority of members of the authority”. Following the recruitment process, recommendations will be made to the 13 December 2021 Council meeting to confirm the appointments.

3.10 To ensure the Council continues to comply with its statutory duty under the Act and to enable the Monitoring Officer to deal with any complaints in accordance with the Council’s Code of Conduct during the recruitment process, it is recommended that the appointments of the three standing Independent Persons are extended to 13 December 2021.

## **4.0 Conclusion and Reasons for Recommendations**

4.1 In accordance with the statutory requirements, it is recommended that Council extend the terms of the three current Independent Persons pending a recruitment process which must be carried out in accordance with the Act. The recruitment process will be agreed by the Standards Committee, supported by the Director of Law and Governance & Monitoring Officer and Independent Person appointment recommendations submitted to the 13 December 2021 Council meeting for agreement.

## **5.0 Consultation**

The Council’s three Independent Persons have been consulted and are supportive of the proposals.

The Chairman of the Standards Committee was consulted by the Monitoring Officer and is supportive of the recommendations.

## **6.0 Alternative Options and Reasons for Rejection**

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Not to agree a recruitment process and not to extend the terms of the current Independent Persons. This is not recommended as the Council would be failing in its statutory duty to appoint at least one Independent Person.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 Each independent person receives an annual allowance of £768 and receives travel/mileage allowance. This is provided for in the Members' Allowances budget. The law is clear that the payment of an allowance does not negate independence.

Comments checked by:

Michael Furness, Assistant Director – Finance, 01295 221845  
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### **Legal Implications**

- 7.2 To comply with the requirements of the Localism Act 2011 (section 28(7)), the Council should appoint at least one Independent Person.

Comments checked by:

Richard Hawtin, Team Leader – Non-contentious Business, 01295 221695  
[richard.hawtin@cherwell-dc.gov.uk](mailto:richard.hawtin@cherwell-dc.gov.uk)

### **Risk Implications**

- 7.3 Failing to appoint an Independent Person would place the Council in breach of its statutory duty under the Act and prevent the Monitoring Officer from dealing with complaints in accordance with the Council's code of conduct complaints procedure.
- 7.4 In addition in the event of there being a need to consider dismissal of a relevant officer and the Council not having appointed at least two Independent Persons the Council would be required to approach another local authority to seek to invite their appointed Independent Persons to form part of a Panel.

Comments checked by:

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### **Equalities and Inclusion Implications**

- 7.4 The recruitment process will be fair and open and Independent Persons appointed on merit.

Comments checked by:

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## **8.0 Decision Information**

### **Key Decision**

**Financial Threshold Met:** N/A

**Community Impact Threshold Met:** N/A

### **Wards Affected**

All

### **Links to Corporate Plan and Policy Framework**

Not applicable – this report is made pursuant to a statutory requirement.

### **Lead Councillor**

None

## **Document Information**

### **Appendix number and title**

- None

### **Background papers**

None

### **Report Author and contact details**

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