

Cherwell District Council

Standards Committee

11 October 2021

Appointment of Independent Persons

Report of Director of Law and Governance & Monitoring Officer

This report is public

Purpose of report

To consider and agree the proposed arrangements for the appointment of Independent Persons.

1.0 Recommendations

The meeting is recommended:

- 1.1 To agree to recruit Independent Persons.
- 1.2 To consider and approve the proposed arrangements for the appointment of Independent Persons as set out at paragraph 3.13.
- 1.3 To approve the Job Description and Role Profile at Appendix 1 (to follow) and if any amendments are required to delegate final approval to the Monitoring Officer, in consultation with the Chairman of the Committee.
- 1.4 To delegate authority to the Monitoring Officer, in consultation with the Chairman of the Standards Committee, to finalise the recruitment pack.

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.
- 2.2 At the 19 July 2021 Full Council meeting, the terms of the three Independent Persons were extended to 13 December 2021 pending a recruitment process. Members resolved to delegate responsibility to the Standards Committee, supported by the 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 ([Minute 25 refers](#)).

3.0 Report Details

Independent Persons

- 3.1 The Localism Act 2022 (“The Act”) (Section 28, subsections (7) and (8)) required the Council to appoint one or more Independent Persons.
- 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 assessing 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 council’s Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.
- 3.5 Individuals appointed as Independent Persons must be recruited through a formal procedure. To be compliant:
 - The vacancy must be advertised in such manner as the authority considers is likely to bring it to the attention of the public.
 - An applicant has to submit a formal application to be appointed as an Independent Person.
 - The Independent Persons’ appointment must be approved by “a majority of Members of the authority”. This means the appointment must be made by Full Council.
- 3.6 An Independent Person must not be:
 - A Member, co-opted Member or officer of Cherwell District Council ; or
 - A Member, co-opted Member or officer of a parish council that falls within the area of Cherwell District Council

Present Position

- 3.7 To comply with the requirements of the Act the Council appointed two Independent Persons in the summer of 2012. In October 2017 Council appointed a third Independent Person.

3.8 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 and 2021
- Mr Graham Matthews, appointed 2013 and reappointed in 2017 and 2021
- Mr Stuart Green, appointed in 2017 and reappointed in 2021

Proposals

3.9 As detailed in the “Present Position” section above, this Council currently appoints three Independent Persons. At the time Council agreed to appoint a third Independent Person, the level of complaints being received was high resulting in a significant workload for the Independent Persons.

3.10 The current level of code of conduct complaints has reduced. The Committee may wish to consider in making its recommendations to Council following the recruitment process whether it would be appropriate to revert to appointing two Independent Persons rather than three. The Committee would need to be satisfied that this would still ensure resilience, provide cover in case of conflict of interest or absence and provide a range of external views and skills/knowledge. With the appointment of two Independent Persons the Council would remain able to fulfil its obligations under Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015.

3.11 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.

3.12 The Monitoring Officer proposes that the recruitment exercise be undertaken based on the following principles:

- The recruitment exercise to include advertisement, application and interview.
- The interview panel to consist of the Monitoring Officer, the Chairman of the Standards Committee and two members of the Standards Committee, one of whom to be an opposition member.
- Interviews will be carried out virtually via video conference in November 2021 (exact date(s) to be agreed by the interview panel)
- The appointments to be confirmed at the 13 December 2021 Council meeting with a positive vote by a majority of councillors
- The appointments to be for 5 years (to December 2026)
- The Independent Person “job description” and “role profile” attached at Appendix 1 to be approved by the Committee and if any changes are required approval be delegated to the Monitoring Officer, in consultation with the Chairman of the Standards Committee

- The statutory restrictions detailed at paragraph 3.6 above to apply
- Any application from an existing Independent Person to be considered on its merits

4.0 Conclusion and Reasons for Recommendations

- 4.1 To comply with the statutory requirements the Council must appoint at least one Independent Person. In accordance with the delegation from Council to the Standards Committee, supported by the Monitoring Officer, to agree the process for and to undertake the recruitment of Independent Persons, this report sets out the Monitoring Officers' proposals for consideration and agreement by the Standards Committee.

5.0 Consultation

None in the production of this report

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 recruit Independent Persons. This is not recommended as the terms of the current Independent Persons end in December 2021 and the Council would not be compliant with the requirements of the Localism Act 2011.

Option 2: To recruit more than three Independent Persons. This is not recommended as the number of complaints has reduced.

7.0 Implications

Financial and Resource Implications

- 7.1 Each Independent Person receives an annual allowance of £768 and a 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.
- 7.2 A decision to proceed with a recruitment exercise for the appointment of Independent Persons would carry a modest financial cost which can be accommodated within existing budgets.

Comments checked by:

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Legal Implications

- 7.3 To comply with the combined requirements of the Localism Act 1972 (section 28(7) and the Regulation 6 paragraph 5 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, the Council should appoint at least two Independent Persons.

Comments checked by:

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Risk Implications

- 7.4 Failing to appoint Independent Persons would place the Council in breach of its statutory duty under the Localism Act 2011 and prevent or delay the Monitoring Officer from dealing with complaints in accordance with the Council's code of conduct complaints procedure.
- 7.5 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 in accordance with Regulation 6 paragraph 5 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

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Equalities and Inclusion Implications

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

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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

N/A

Document Information**Appendix number and title**

- None

Background papers

None

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