
Subject: APPOINTMENT OF INDEPENDENT PERSONS

Meeting and Date: COUNCIL – 18 MAY 2022

Report of: MONITORING OFFICER

Classification: UNRESTRICTED

Purpose of the report: To seek approval of the process to appoint two Independent Persons in accordance with section 28 of the Localism Act 2011.

Recommendation:

- (a) That the Council appoints two Independent Persons with effect from 22 July 2022.
- (b) That the Monitoring Officer be authorised to advertise the vacancies in accordance section 28 Localism Act 2011.
- (c) That a panel comprised of the Chairman of the Governance Committee, the Democratic and Corporate Services Manager and the Monitoring Officer be requested to shortlist and interview applicants for the vacancies and make recommendations for the appointment of two applicants to the Council meeting on 20 July 2022.

1. Summary

The terms of office of the current Independent Persons are due to expire on 21 July 2022. The Council is required to appoint at least one Independent Person under section 28 of the Localism Act 2011. This report seeks approval to the process for appointing two Independent Persons.

2. Introduction and Background

2.1 The Council is required by the Localism Act 2011 to put in place its own arrangements for dealing with complaints that members had failed to comply with the new Code of Conduct. Section 28 of the Act requires these arrangements to include the appointment of at least one Independent Person. Since 2017 the Council has fulfilled this requirement by the appointment of two Independent Persons.

2.2 The Current Independent Persons, (Janet Waghorn and Bernard Dowley), were appointed by the Council on 19 July 2017 for a term of 5 years and 1 day, effective from 20 July 2017. This means that the terms of office of both Independent Members are due to expire on 21 July 2022. There is therefore a need to make new appointments.

Role of Independent Person

2.3 The Council is required to appoint at least one Independent Person to discharge the functions ascribed by section 28 of the Localism Act 2011. The role of the Independent Person is, in summary, as follows:

- To assist the Council generally in discharging its duty to promote and maintain high standards of conduct by Elected Members and Co-opted Members of Dover District Council and the Town and Parish Councils in its area.
- To advise the Monitoring Officer in connection with the assessment and post-investigation stage of complaints against elected and co-opted members.

- To advise the Governance Committee in connection with complaints and potential sanctions where a failure to comply with a code of conduct has been established.
 - To advise their view, where sought, to an Elected or Co-Opted Member of Dover District Council or a Town and Parish Council partially or wholly within its area who is the subject of an allegation that their behaviour has breached a Code of Conduct.
- 2.4 The Independent Persons also now have functions in connection with the dismissal of any of the Council's Head of Paid Service, Section 151 Officer and the Monitoring Officer.
- 2.5 The Independent Person must not be, or have been during the last 5 years, a member, co-opted member or officer of Dover District Council or a Town or Parish Council within the district; or a relative or a close friend of a member, co-opted member or officer of Dover District Council or a Town or Parish Council within the district.
- 2.6 The role of an Independent Person is voluntary. They are neither officers of the Council nor members. Nevertheless, they receive an allowance. This is set by the Council at £927 pa for the Council Year 2022/2023.

Recruitment of Applicants for the position of Independent Person

- 2.7 The law provides that a person may not be appointed as an Independent Person unless the position has been advertised, the person has submitted an application to fill the vacancy and the person's appointment has been approved by a majority of members of the Council (see section 28(8)(c) Localism Act 2011). This precludes the practical expedient of simply extending the term of the current Independent Persons.
- 2.8 It is recommended that the Monitoring Officer be authorised to place a suitable advertisement of the vacancies, that a panel consisting of the Chairman of the Governance Committee (Councillor D Hannent), The Democratic and Corporate Services Manager and the Monitoring Officer be requested to shortlist and interview applicants for the vacancies and make recommendations for the appointment of two applicants to the Council meeting on 20 July.

Review of Arrangements for an Independent Person

- 2.9 The Council must appoint at least one Independent Person. For the period 2012 – 2017 the Council appointed a single Independent Person and a substitute. This was reviewed by the Council on 19 July 2017 when the Council decided to appoint two Independent Persons.
- 2.10 The appointment on just one Independent Person can work effectively. Nevertheless, the current arrangements whereby two Independent Persons are appointed has delivered the advantages contemplated by the Council when it decided to appoint two. These include increased flexibility and always having available an Independent Person who is familiar with the arrangements for assessing complaints and who has had the ability to gain practical experience of the overall arrangements.

3. Identification of Options

- 3.1 Option 1: To appoint two Independent Persons for a period of 5 years and 1 day.
- 3.2 Option 2: To appoint one Independent Person and one substitute Independent Person for a period of 5 years and 1 day.
- 3.3 Option 3: To appoint only a single Independent Person for a period of 5 years and 1 day and to not appoint a substitute Independent Person.

4. Evaluation of Options

- 4.1 Option 1 reflects the current arrangements, maintaining a greater degree of resilience with two trained and experienced Independent Persons. For this reason Option 1 is the recommended option.
- 4.2 Option 2 reverts to earlier arrangements and with it creates the problem with maintaining of maintaining the knowledge and experience of the substitute Independent Person who may not be called upon the act upon very frequently. This, while not the recommended option, is the recommended alternative in the event that Option 1 is not acceptable to Members. It should be noted that whilst the Council may choose to appoint a person under the style of Substitute Independent person, the substitute would have the same status in law as the Independent Person, it is just that as a matter of practice, they would only be called upon to act as a substitute.
- 4.3 Option 3 while does not provide any resilience in the event that the Independent Person is unavailable for any reason and could lead to delays in processing complaints against Members.

5. Resource Implications

- 5.1 There are no additional resource requirements. The allowances for the two Independent Persons are included within the Members Budget.

6. Corporate Implications

- 6.1 Comment from the Director of Finance (linked to the MTFP): Accountancy has been consulted and has no further comment (JS).
- 6.2 Comment from the Solicitor to the Council: The Head of Governance & HR has been consulted during the preparation of this report and has no further comment to make.
- 6.3 Comment from the Equalities Officer: 'This report does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>'
- 6.4 Comment from the Principal Climate Change and Sustainability Officer: There are no climate change or environmental implications resulting from the appointment of the Independent Persons.

7. Appendices

Appendix 1 – Independent Person's Job Description

8. Background Papers

Localism Act 2011

Code of Conduct for Dover District Council

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