

ANNUAL COUNCIL – 24 MAY 2022

PART I

21. EXTENSION OF APPOINTMENT OF INDEPENDENT PERSON UNDER THE LOCALISM ACT 2011 (CED)

1. Summary

1.1 Council are asked to agree to the extension of Mr Nigel Gates appointment as an Independent Person (IP) on the Council under the Localism Act 2011 (“the Act”) for a period of 6 months from May 2022 subject to the successful recruitment of a new IP on the Council.

1.2 If following the successful recruitment of a new IP, Mr Gates to move to be a reserve IP in order to continue to provide some mentoring if asked.

2. Details

2.1 Following the abolition of the former standards regime on the 30 June 2012 and the adoption of a new code of conduct and procedure for dealing with Member complaints, this Authority appointed Mr Nigel Gates as an IP under the Act. The appointment has been extended twice before in May 2017 and May 2020. The extension of the current appointment is due to end in May 2022.

2.2 With the IP appointment due to expire in May the Council went out for advert in February 2022 to recruit to the role but were unsuccessful in receiving any suitable applicants. A second advertisement was placed in March/April 2022 and this advert resulted in two suitable candidates applying.

2.3 With the local election coming forward shortly after the second advertisement closed and the need for all Group Leaders or their nominated representative to be on the Interview Panel, officers were not be able to organise interviewing the two candidates in order that a recommendation on an appointment could be made to Annual Council.

2.4 Arrangements are now in place to interview the two candidates in order that a recommendation to appoint an IP maybe able to come forward to Council in July 2022.

2.5 The IP, under the Council's procedures, is required to:

- To give their views on compliance with the District and Parish Councillors Codes of Conduct.
- To give their views to any Hearing Panel, before a decision is taken, following investigation into alleged breaches of the Code of Conduct.
- To give their views to any Hearing Panel or the Monitoring Officer about any other aspect of their consideration of, or decision on, an alleged breach of the Code where required.
- To give their views where sought to Councillors if their behaviour is the subject of an allegation. To advise other co-opted Councillors if their behaviour forms part of an allegation against another Council Member.
- Be Involved in any disciplinary proceedings/action taken against Statutory Officers (Head of Paid Service, S151 officer, Monitoring Officer)

- 2.6 Mr Nigel Gates has served as an IP since June 2012. The appointment was renewed unanimously by Council in 2017 for a further 3 year period and again in May 2020 for a further 2 year period.
- 2.7 This report recommends that the appointment be extended for a further 6 months subject to the successful recruitment of a new IP on the Council. If following the successful recruitment of a new IP, Mr Gates to move to be a reserve IP in order to continue to provide some mentoring if asked
- 2.8 Mr Gates is willing to continue to act in the role. They are not paid for the role and Mr Gates chooses not to claim expenses.
- 2.9 The Government has published its response to the recommendations of the Committee on Standards in Public Life. It has basically ignored most of the recommendations. One Committee recommendation was that the IP should be replaced every 2 years. Below is the Government's response

The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

The Government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The Government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities.

In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution "fresh" and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council.

When local authorities have found effective Independent Persons who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment.

- 2.10 Members will recall that in May 2021 the Council adopted the new Local Government Association (LGA) Model Councillor Code of Conduct 2020 and all Members received training on the new Code. A further update of the Code of Conduct has now been made by the LGA with details on the changes to be provided through the Constitution sub-committee, then to Policy and Resources Committee to make any recommendation to Council they may wish.

3. Financial Implications

- 3.1 The IP does not receive an annual allowance but is entitled to claim travel and other expenses and to receive training on the role. These costs are met from the Democratic Representation budget. No claims have been made other than one claim related to training for the IP.

4. Legal Implications

- 4.1 The Act made major changes to the arrangements for securing high standards of conduct amongst Local Authority elected members.

- 4.2 The requirement for each Local Authority to have a standards committee with an independent chair and members ceased on 1 July 2012. Authorities are required to continue to promote high standards of conduct by elected members and to investigate and determine allegations of misconduct but the arrangements for doing this are a matter for local determination.
- 4.3 The Council was required to appoint one or more persons as an IP by the 1 July 2012 by virtue of the Localism Act 2011. The purpose of the role is to include an independent element in the consideration and determination of complaints.
- 4.4 Detailed arrangements for handling complaints are for each Local Authority to determine. However, it is a requirement of the Act that each Local Authority should appoint one or more persons whose views must be considered when
- An allegation of misconduct by a member has been received and
 - The Council has decided it should be investigated and the investigation has been completed but
 - Before the Council has decided what finding to come to and what sanction, if any, to impose.
- 4.5 The appointment has to be approved by a majority of Full Council.
- 4.6 Independent Persons will be holders of a statutory office and will not be employees or contractors of the appointing authority. No salary, fee or honorarium will be payable but expenses will be met.
5. **Staffing Implications, Environmental and Community Safety Implications, Customer Services Centre Implications**
- 5.1 None specific.
6. **Website Implications**
- 6.1 None specific. The website will be updated when the appointment is known.
7. **Risk Management**
- 7.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 7.2 The subject of this report is covered by the Legal and Committee service plans. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this plan.

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
A majority of the Council does not approve the appointment of the	No IP appointment made	Agree the appointment	Treat	Low - 2

independent person				
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The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely ----- Likelihood ----- Remote	Low	High	Very High	Very High
	4	8	12	16
	Low	Medium	High	Very High
	3	6	9	12
Low	Low	Medium	High	
2	4	6	8	
Low	Low	Low	Low	
1	2	3	4	
	Impact			
	Low	-----▶		Unacceptable

Impact Score

- 4 (Catastrophic)
- 3 (Critical)
- 2 (Significant)
- 1 (Marginal)

Likelihood Score

- 4 (Very Likely (≥80%))
- 3 (Likely (21-79%))
- 2 (Unlikely (6-20%))
- 1 (Remote (≤5%))

7.3 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Corporate Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

8. **Recommendation**

8.1 Council is asked to approve the reappointment of Mr Nigel Gates as Independent Person for a period of 6 months, from May 2022, subject to the successful recruitment of a new IP on the Council.

- 8.2 If following the successful recruitment of a new IP, Mr Gates to move to be a reserve IP in order to continue to provide some mentoring if asked.

Background Papers

Localism Act 2011

Report to Council in May 2012 *Appointment of Independent Person under the Localism Act 2011*

Report to Council in May 2017 *Appointment of Independent Person under the Localism Act 2011*

Report to Council in May 2020 *Extension of Appointment of Independent Person under the Localism Act 2011*

Report of the Committee of Standards in Public Life

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