

<b>Committee/Meeting:</b> Standards Advisory Committee	<b>Date:</b> 17 July 2012	<b>Classification:</b> Unrestricted	<b>Report No:</b> 6.4
<b>Report of:</b> Assistant Chief Executive (Legal)  <b>Originating officer(s):</b> John Williams, Service Head, Democratic Services		<b>Title:</b> The new standards regime: Appointment of an Independent Person  <b>Wards Affected:</b> All	

## 1. **SUMMARY**

- 1.1 A key element in the new standards regime introduced by the Localism Act 2011 and incorporated into the Council's own arrangements with effect from 1<sup>st</sup> July 2012, is the appointment of an 'Independent Person' who will provide advice to the Council on any allegation it is considering, and to a member facing an allegation who has sought the views of that person.
- 1.2 The Independent Person(s) must be appointed following a public advertisement and recruitment process and his/her appointment must be confirmed by the majority of Councillors voting in favour at the full Council meeting.
- 1.3 Transitional arrangements allow Councils to appoint a former independent member of the previous Standards Committee as an interim Independent Person pending the completion of the recruitment process. This interim appointment may run only until 30<sup>th</sup> June 2013 at the latest, and from that date onwards the Independent Person may not be someone who has served as a member, co-opted member or officer of the authority within the previous five years. The Council on 18<sup>th</sup> June 2012 appointed Barry O'Connor, former Independent Chair of the Standards Committee, to serve as the interim Independent Person.
- 1.4 This report sets out the proposed process for recruitment to the position in the longer term.

## 2. **RECOMMENDATIONS**

- 2.1 That the Committee note the requirement under the new standards arrangements to appoint an Independent Person.
- 2.2 That the Committee agree the process and timetable for recruitment of an Independent Person and a reserve Independent Person as set out in section 7 of this report, and the draft Role Description and Person Specification as attached at Appendix 2.

- 2.3 That the Committee recommend the Council that the Independent Person's Allowance be set at the level of £117 per matter on which they are required to provide advice as set out at section 5 to this report.

### **3. BACKGROUND**

- 3.1 The Localism Act 2011 requires the Council to adopt a new Code of Conduct consistent with a number of principles set out in the Act, and arrangements for dealing with any alleged breach of the Code.
- 3.2 The arrangements adopted by the Council must include provision for the appointment by the Council of at least one Independent Person. The statute states that the Independent Person must be appointed through a process of public advertisement and appointment by a positive vote of a majority of all members of the Council (not just of those present and voting). The Act sets out specific statutory prohibitions on who can be an Independent Person and excludes previous and current members and Co-optees, their relatives and close friends.
- 3.3 The Independent Person must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member. They may be consulted by the authority in respect of a standards complaint at any other stage. Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee. Instead their role is one of consultation in respect of any investigation of an alleged breach of the Code before the Council takes a decision in relation to the allegation.
- 3.4 The Act provides that the former co-opted Independent Members of Tower Hamlets' Standards Committee, together with members and officers of the authority, cannot serve as Independent Persons for a period of 5 years. However, transitional measures included in the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012 allow a local authority, if it so chooses, to appoint a person who is currently the Independent Chair or an Independent Member of the existing Standards Committee as its 'Independent Person' for an interim period extending no later than 30<sup>th</sup> June 2013. Accordingly the Council agreed on 18<sup>th</sup> June 2012 that to provide continuity, the former Chair, Barry O'Connor, would be appointed as the Independent Person from 1<sup>st</sup> July for a temporary period until the recruitment process described in this report is complete.
- 3.5 The full text of section 28 of the Localism Act 2011 which established the role of Independent Person, is attached at Appendix 1 to this report. Further guidance on the role and the transitional arrangements is contained in a letter of 28<sup>th</sup> June 2012 to all local authority leaders from Bob Neill MP, Parliamentary Under Secretary of State. The following is the relevant extract from Mr Neill's letter:-

“Accordingly, I would particularly draw your attention to the role of the new independent person. This is in no way similar to the role of the independent chairman and independent members on the former standards committees. That former role was principally to be involved in the determination of allegations about misconduct of members. In contrast the role of the new independent person is wholly advisory, providing advice to the council on any allegation it is considering, and to a member facing an allegation who has sought the views of that person.

Notwithstanding these fundamental differences between the roles of the new independent person and members of standards committees, following representations from local government, we have made transitional arrangements to allow the appointment as an independent person of someone who has been an independent chairman or member of the authority’s standards committee. However, given the importance that the new arrangements are, and are clearly perceived to be, a wholly fresh start we are minded to make further provision so that any former member of a standards committee appointed under the transitional arrangements as an independent person can hold that office only until 30 June 2013.”

#### **4. PROPOSED ROLE DESCRIPTION AND PERSON SPECIFICATION**

- 4.1 Consistent with the statutory provisions and the above guidance, a draft role description and person specification has been prepared for use during the recruitment process for the Independent Person(s). These are attached at Appendix 2.

#### **5. REMUNERATION**

- 5.1 As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of the members’ allowances and can therefore be determined without reference to the Independent Remuneration Panel. It may however be relevant to consider the level of payments that the Panel has recommended for related functions previously.
- 5.2 The London Councils Independent Remuneration Panel report of 2010 recommended, in relation to Standards Committee independent members, that the annual payment to the Chair and Members of the committee should be based on an estimate of the number of meetings anticipated, which should be used as a multiplier of the co-optees’ allowances proposed of £256 and £127 per meeting respectively. This is broadly in line with the rates paid in Tower Hamlets (240 and £117 per meeting respectively.).
- 5.3 As outlined above, the Independent Person role is distinct from that of committee member. Initial research shows that most London Boroughs which have determined the matter are proposing to pay the Independent Person an

allowance of up to approximately £1k p.a.. As the workload for the post will vary depending on the number of complaints the Independent Person is required to advise on, it is suggested that the committee consider recommending to the Council that an allowance of £117 per matter is paid.

## **6. A RESERVE INDEPENDENT PERSON**

- 6.1 As stated previously the Independent Person may be consulted by a member or co-opted member of the Council against whom a complaint has been made. This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the advisory role at the investigations stage of that complaint.
- 6.2 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person or the process will be unwieldy. It is recommended that reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

## **7. RECRUITMENT PROCESS AND TIMETABLE**

- 7.1 The Council on 18<sup>th</sup> June 2012 agreed that the Monitoring Officer be authorised to make arrangements to advertise for, and together with an Appointments Panel drawn from the Standards Advisory Committee in accordance with proportionality to take the necessary action to appoint, an Independent Person and a reserve Independent Person, whose appointments shall be confirmed by the Council.
- 7.2 It is important that there is appropriate member involvement in the process of recruiting the Independent Person(s) in order to ensure the necessary majority support for those appointments at the Council meeting. Therefore the Monitoring Officer will seek an Appointments Panel from the members of the Standards Advisory Committee that will be proportionate.
- 7.3 In terms of the timescale, an interim Independent Person is in place and could lawfully remain so until 30<sup>th</sup> June 2013. This provides time for a thorough and considered recruitment process. In view of the imminent approach of the school summer holidays in addition coinciding with Ramadan and the Olympics/Paralympics period, it is proposed that the advertisement for an Independent Person should not be published until late September 2012. The following timetable would then apply:-
- Closing date for applications: 19<sup>th</sup> October 2012

- Initial longlisting by Monitoring Officer, Chair of Standards Advisory Committee and Interim Independent Person: w/b 22<sup>nd</sup> October 2012
- Shortlisting and Interviews by Panel of members drawn from Standards Advisory Committee: w/b 5<sup>th</sup> November (shortlisting) and 19<sup>th</sup> November (interviews)
- Report to Council and confirmation of appointment: 23<sup>rd</sup> January 2013.

## **8. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 8.1 The costs of the recruitment exercise and the Independent Person's allowance will be met from within existing budgets in the Chief Executive's Directorate.

## **9. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 9.1 The Assistant Chief Executive (Legal) is the author of this report and the legal implications arising from this matter are set out in the body of the report.

## **10. ONE TOWER HAMLETS CONSIDERATIONS**

- 10.1 The recruitment exercise will be designed to attract the most diverse range of candidates possible.

## **11. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 11.1 There are no implications arising from this report.

## **12. RISK MANAGEMENT IMPLICATIONS**

- 12.1 There are no implications arising from this report.

## **13. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 13.1 There are no implications arising from this report.

## **14. EFFICIENCY STATEMENT**

- 14.1 There are no implications arising from this report.

## 15. APPENDICES

- Appendix 1 – Extract from Localism Act 2011: Section 28
  - Appendix 2 – Draft Role Description and Person Specification for Independent Person
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### **Local Government Act, 1972 Section 100D (As amended)**

#### **List of “Background Papers” used in the preparation of this report**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
Letter from Bob Neill MP to Local Authority leaders, 28 <sup>th</sup> June 2012	John Williams, 020 7364 4204, Mulberry Place, E14 2BG

## APPENDIX 1: EXTRACT FROM THE LOCALISM ACT 2011

### Section 28: Codes of conduct

(1) A relevant authority must secure that a code adopted by it under section 27(2) (a “code of conduct”) is, when viewed as a whole, consistent with the following principles—

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

(2) A relevant authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of—

- (a) pecuniary interests, and
- (b) interests other than pecuniary interests.

(3) Sections 29 to 34 do not limit what may be included in a relevant authority's code of conduct, but nothing in a relevant authority's code of conduct prejudices the operation of those sections.

(4) A failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with arrangements made under subsection (6); in particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure to comply with the code.

(5) A relevant authority may—

- (a) revise its existing code of conduct, or
- (b) adopt a code of conduct to replace its existing code of conduct.

(6) A relevant authority other than a parish council must have in place—

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions on allegations can be made.

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
  - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
  - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and
  - (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

(8) For the purposes of subsection (7)—

- (a) a person is not independent if the person is—
  - (i) a member, co-opted member or officer of the authority,
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or
  - (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);

(b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was—

- (i) a member, co-opted member or officer of the authority, or
- (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;

(c) a person may not be appointed under the provision required by subsection (7)

unless (i) 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,

(ii) the person has submitted an application to fill the vacancy to the authority, and

(iii) the person's appointment has been approved by a majority of the members of the authority;

(d) a person appointed under the provision required by subsection (7) does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

(9) In subsections (6) and (7) "allegation", in relation to a relevant authority, means a written allegation—

(a) that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or

(b) that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.

(10) For the purposes of subsection (8) a person ("R") is a relative of another person if R is—

(a) the other person's spouse or civil partner,

(b) living with the other person as husband and wife or as if they were civil partners,

(c) a grandparent of the other person,

(d) a lineal descendant of a grandparent of the other person,

(e) a parent, sibling or child of a person within paragraph (a) or (b),

(f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or

(g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.

(11) If a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements put in place under subsection (6)) it may have regard to the failure in deciding—

(a) whether to take action in relation to the member or co-opted member, and

(b) what action to take.

(12) A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area.

(13) A relevant authority's function of adopting, revising or replacing a code of conduct may be discharged only by the authority.

(14) Accordingly—

(a) in the case of an authority to whom section 101 of the Local Government Act 1972 (arrangements for discharge of functions) applies, the function is not a function to which that section applies;

(b) in the case of the Greater London Authority, the function is not a function to which section 35 (delegation of functions by the Greater London Authority) applies.



## **APPENDIX 2**

### **INDEPENDENT PERSON: DRAFT ROLE DESCRIPTION**

Under the Localism Act 2011, the Council must promote and maintain high standards of conduct by members and co-opted members of the authority.

To this end the Council has adopted a Code of Conduct for Members and has agreed arrangements for dealing with any allegation that a member or co-opted member has breached the code.

In accordance with the requirements of the 2011 Act, these arrangements include the appointment of an Independent Person to advise on breaches of the Member Code of Conduct.

The Independent Person will:

- Be available for consultation if an allegation of breach of the Members' Code of Conduct is received by the Council.
- Liaise as necessary with the Council's Monitoring Officer to consider complaints against Members and offer his/her impartial views on the case, including any investigations undertaken.
- Advise the Council prior to any decision to investigate an allegation or complaint relating to whether a member has failed to comply with the Code of Conduct.
- Attend meeting of the Standards Advisory Committee and/or its sub-committees as required
- Contribute to any review of the operation of the standards arrangements and complaints procedure established by the Council under the provisions of the Localism Act 2011.

The Independent Person may:

- Be consulted by the Council's Monitoring Officer in respect of an allegation against a Member in other circumstances.
- Be consulted by a member or co-opted member of the Council against whom an allegation or complaint has been made.

The views of the Independent Person will be considered by the Council's Standards Advisory Committee, who are responsible for recommending on the outcome of any complaints and any remedial action.

### **DRAFT PERSON SPECIFICATION**

The Independent Person will possess the following attributes, to be assessed through an application and interview process:

- Personal integrity and honesty
- A keen interest and commitment to maintaining high standards in public life.
- A wish to serve the local community and uphold local democracy

- An interest in and awareness of the functions of local government relating to ethical governance, in particular the role of elected Members and the relevant Codes of Conduct.
- Independence, impartiality and experience of exercising sound objective judgements in relation to complex matters
- Excellent questioning, analytical and evaluation skills in order to advise whether a breach of the Code of Conduct or complaint should be investigated.
- A commitment to promoting equality and an awareness of the issues affecting a diverse community in an inner London borough
- Excellent communication skills in particular the ability to provide clear rationale for advice and to explain decision making when required.
- Experience of dealing with private and sensitive issues, exercising discretion and maintaining confidentiality of information received.
- Flexibility to deal with urgent requests.
- Aged 18 or over and with a mature and sound temperament

The Independent Person will not be:-

- A Member, co-opted member or employee of the London Borough of Tower Hamlets; or have held such a post within the previous 5 years.
- A relative or close friend of such a person; or
- An active member of a political party.