

Independent Persons

Report of Corporate Management Team

**Paul Darby, Corporate Director of Resources and Helen Lynch,
Head of Legal & Democratic Services**

Electoral division(s) affected:

None.

Purpose of the Report

- 1 To invite Council to consider the recruitment of the Independent Persons to take place prior to the expiry of the term of office of the existing Independent Persons on 21 September 2021.
- 2 The Council is also asked to consider a revision to the duration of the term of office of the Independent Persons for future appointments.

Executive summary

- 3 Durham County Council has two Independent Persons who are appointed in accordance with the Localism Act 2011. The Independent Persons were appointed in 2012 and their term was extended in November 2016 for a further four years.
- 4 The recruitment exercise for the appointment of Independent Persons was due to take place in advance of the expiry of the term of office with appointments to be approved by full Council. Following the cancellation of Council meetings in March 2020 due to the Covid-19 pandemic neither the Standards Committee or Council had the opportunity to consider or approve the recruitment of two Independent Persons in advance of the expiry of their term of office.
- 5 The Corporate Director of Resources, exercising the delegated power extended the term of office of the Independent Persons until 21 September 2021. This decision was taken in consultation with the Chair and Vice Chair of the Standards Committee as well as the Head of Legal & Democratic Services. The decision was reported at the full Council meeting on 21 October 2020.

- 6 Full Council is required to approve the appointment of the new Independent Persons prior to the expiry of the term of office of the existing Independent Persons on 21 September 2021.
- 7 In respect of the duration of the appointment, the Committee for the Standards of Public Life (CSPL) recommend having two Independent Persons who are appointed for a fixed term of two years and that they are only re-elected once. Council is asked to consider a revision to the local arrangements to reflect the recommendations of CSPL.

Recommendation

- 8 Council is recommended:
 - (a) To approve that a recruitment exercise be undertaken for the appointment of two Independent Persons and that this be conducted by the Head of Legal and Democratic Services (Monitoring Officer), the Deputy Monitoring Officer and the Chair of the Standards Committee; and
 - (b) To approve that the term of office and re-appointment of Independent Persons be brought in line with the recommendations of the Committee for Standards in Public Life to a two-year term of office which is limited to one re-appointment only; and
 - (c) To receive a further report in July 2021 following recruitment to appoint two new Independent Persons.

Background

- 9 The Localism Act 2011 sets out the requirements in relation to Local Government Standards and it requires the appointment by the authority of at least one Independent Person.
- 10 The functions of the Independent Person in relation to Standards are:
- They must be consulted by the authority and their views taken into account 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 to that member.
 - They may be consulted by the authority in respect of a Standards complaint at any other stage and;
 - They may be consulted by a member or co-opted member of the Council or a parish council against whom the complaint has been made.
- 11 The role of the Independent Person was widened under the Local Authority's (Standing Orders) England (Amendment) Regulations 2015 which came into force on 11 May 2015 and changed the localised disciplinary process. In the case of proposed disciplinary action against a statutory officer, the Council is required to invite the Independent Persons who have been appointed for the purposes of the Members Code of Conduct regime to form an independent panel and take into account any recommendation of that panel before taking a decision to discipline or dismiss.
- 12 On 9 December 2020 the Standards Committee received this report and agreed to present the recommendations shown at paragraph 8 above for approval by full Council.

Extension of Term of Office

- 13 In September 2012 Mr John Dixon Dawson and Mr Peter Jackson were appointed as Independent Persons for Durham County Council and their re-appointment was confirmed in November 2016 for a further four years to 21 September 2020.
- 14 The appointment of the Independent Persons would have been considered prior to the expiry of the term of office however following restrictions to minimise the spread of the Covid-19 outbreak meetings of the Council were suspended in March 2020.
- 15 As it was not possible to hold Standards Committee or Council meetings before the expiry of the term of office, a decision was taken by

the Corporate Director of Resources to extend the term of office of the Independent Persons to 21 September 2021. This decision was taken in consultation with the Chair and Vice Chair of the Standards Committee as well as the Head of Legal and Democratic Services. The decision was reported to full Council at its meeting on 21 October 2020.

- 16 The extension of the term of office ensured continued provision of the Independent Persons within County Durham who are experienced and suitably qualified. Both Independent Persons confirmed their willingness to continue in their role and have the term of office extended to the 21 September 2021.

Recruitment Process

- 17 The proposed recruitment for the Independent Persons will broadly follow the same process as adopted in 2012. The table below shows an indicative timeline for the recruitment process.

Advert for the appointment of Independent Persons placed in the local press and on the Council website.	1 February 2021
Closing date for applications and shortlisting	26 March 2021
Interviews conducted by the Head of Legal and Democratic Services (Monitoring Officer), the Deputy Monitoring Officer and the Chair of the Standards Committee	21 April 2021
Report to Council seeking approval of proposed appointments	July 2021
Report to Standards Committee confirming appointment	September 2021

Duration of Appointment

- 18 In accordance with the Localism Act 2011, there is no prescribed time limit on the length of appointment of an Independent Person. There is provision set out at section 28(7)(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.
- 19 The Committee for Standards in Public Life (CSPL) report on Ethical Standards in January 2019 recommended as good practice that each authority has two Independent Persons, which is reflected in the Council's existing arrangements.
- 20 The CSPL made a combination of recommendations, those which could be implemented as part of local arrangements (best practice recommendations) and others which were recommendations for government requiring changes to legislation. The CSPL recommended that there is a fixed term office for Independent Persons citing that security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgement and independence is not compromised by a long period of involvement in a single authority.
- 21 The CSPL recommended that the Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. Whilst this change is recommended to be implemented through primary legislation, it is possible for local authorities to determine their own arrangements.
- 22 On 23 September 2015, Council agreed that the term of office for the Independent Persons should be set at four years from the time of appointment with no restrictions on reappointment.
- 23 It is timely now, just before a recruitment exercise is commenced to review the term of office. The Standards Committee on 9 December 2020 agreed to present to full Council the proposal to revise the term of office to reflect the recommendations of the CSPL as set out at paragraph 21.

Background papers

- <https://democracy.durham.gov.uk/ieDecisionDetails.aspx?ID=16139>

Other useful documents

- None

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Appendix 1: Implications

Legal Implications

In accordance with the Localism Act 2011 there is a requirement to have an Independent Person in place. The existing and proposed arrangements reflect the requirements of the Localism Act 2011. The proposed amendment to the term of office reflects what is considered to be best practice by the Committee in Standards in Public Life.

The Corporate Director of Resources exercised the delegated authority under Part 3, Table 1, Paragraph 12 of the Officer Scheme of Delegation, to extend the appointment of the Independent Persons.

Finance

There were no additional costs incurred in respect of the extension of the term of office for the existing two Independent Persons. A recruitment exercise will involve costs in advertising and recruitment as well as subsequent training.

Consultation

There was consultation with the Chair and Vice Chair of the Standards Committee who were supportive of the extension to ensure that Durham continued to have Independent Persons who are experienced and suitability qualified. This extension was supported in recognition of the practical difficulties which would be presented in obtaining Council approval of the appointment of the Independent Persons whilst Council meetings were suspended.

The Standards Committee received this report at its meeting on 9 December 2020 and agreed the recommendations as shown at paragraph 8 within the report.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

None.

Crime and Disorder

None.

Staffing

None.

Accommodation

None.

Risk

None.

Procurement

None.