

COUNCIL

Wednesday, 20 July 2016

APPOINTMENT OF INDEPENDENT PERSONS (STANDARDS) (REP1149)

EXECUTIVE SUMMARY

1. This report follows on from the recommendations adopted by the Council at its meeting on 23 May 2012 (REP746 and relevant minute refers), 25 July 2012 (REP870 and relevant minute refers) and 23 July 2014 (Paper REP916 refers).

2. The Council is required to appoint at least one Independent Person to deal with complaints made under the Suffolk Code of Conduct. Dr Peck and Mr Keys were appointed as such for a term of two years, from 23 July 2014 (Paper REP916 refers). Mr Keys is going to retire abroad, at the end of his appointment.

3. This report recommends that Dr Peck’s appointment be extended whilst we look to recruit another Independent Person to serve alongside him.

<table>
<thead>
<tr>
<th>Is the report Open or Exempt?</th>
<th>Open</th>
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<tbody>
<tr>
<td>Wards Affected:</td>
<td>All Wards in the District</td>
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<tr>
<td>Cabinet Member:</td>
<td>Councillor Colin Law</td>
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<td>Leader of the Council</td>
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<td>Supporting Officer:</td>
<td>Hilary Slater</td>
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<td>Monitoring Officer</td>
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<td>01394 444336</td>
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<td><a href="mailto:hilary.slater@eastsuffolk.gov.uk">hilary.slater@eastsuffolk.gov.uk</a></td>
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INTRODUCTION

1.1 The revised provisions with regard to the regulation of standards of conduct for elected and co-opted Councillors, under the Localism Act 2011 (‘the Act’) came into effect on 1 July 2012.

1.2 At the Council meeting on 23 May 2012, the Council adopted the Suffolk Code of Conduct (Appendix A to that report). It was agreed that the Suffolk Code of Conduct would replace the old Model Code of Conduct with effect from the implementation of section 27(2) of the Localism Act 2011. The Council has therefore been operating under the new Suffolk Code of Conduct since 1 July 2012.

1.3 Similarly, as agreed at the Council meeting on 23 May 2012, the Council’s Standards Committee ceased to exist from 1 July 2012. All the Standards Committee’s residual relevant functions, and the Council’s new responsibilities under sections 26 to 37 of the Localism Act 2011, were transferred to the Audit and Governance Committee.

1.4 In accordance with recommendation 5 of the Code of Conduct report approved on 23 May 2012, the Audit and Governance Committee considered and approved the final “arrangements” for dealing with complaints (see Appendix D of that report).

INDEPENDENT PERSONS

2.1 Paragraph 5 of the Council’s Code of Conduct Report in May set out in detail the requirements under the Act with regard to Independent Persons. The “arrangements” adopted by Council for dealing with complaints under the Suffolk Code must include provision for the appointment by Council of at least one Independent Person.

2.2 To remind Members, the Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council (not just of those present and voting).

(a) A person is considered not to be “independent” if: -

(i) S/he is, or has been within the last 5 years, an elected or co-opted member or officer of the District Council or of any of the Parish / Town Councils within its area;

(ii) S/he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the District Council or of any of the Parish/Town Councils within its area (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or

(iii) S/he is a relative or close friend of a current elected or co-opted member or officer of the District Council or any Parish/Town Council within its area, or of any elected or cop-opted member of any Committee or Sub-Committee of such Council.

(b) For this purpose, “relative” comprises: -

(i) The candidate’s spouse or civil partner;

(ii) Any person with whom the candidate is living as if they are spouses or civil partners;

(iii) The candidate’s grandparent;

(iv) Any person who is a lineal descendent of the candidate’s grandparent;

(v) A parent, brother, sister or child of anyone in Paragraphs (i) or (ii);
(vi) The spouse or civil partner of anyone within Paragraphs (iii), (iv) or (v); or

(vii) Any person living with a person within Paragraphs (iii), (iv) or (v) as if they were spouse or civil partner to that person.

2.3 The functions of the Independent Person(s) are:-

(i) They 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 (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);

(ii) They may be consulted by the authority in respect of a standards complaint at any other stage; and

(iii) They may be consulted by a member or co-opted member of the District Council or of a Parish/Town Council against whom a complaint has been made.

2.4 The Act gave discretion to appoint one or more Independent Persons, but provided that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there appeared to be little advantage in appointing more than one Independent Person. However, it was an area where joint working with other authorities was useful, in setting up a panel of Independent Persons who could be called upon by any authority when their own was unavailable or conflicted out. Therefore, the Suffolk Leaders agreed that the Monitoring Officers should recruit a pool of Independent Persons for Suffolk.

2.5 The report in July 2012 also provided details regarding the joint Suffolk wide approach that had been adopted to recruit the Independent Persons. The recruitment process was conducted jointly by the Monitoring Officers of the districts and county. The County Council placed an advertisement in the East Anglian Daily Times, inviting expressions of interest. 25 people responded. They were shortlisted by three of the Monitoring Officers, and 14 were interviewed by the same three Monitoring Officers.

2.6 The Council appointed seven Independent Persons recruited for Suffolk. All of the other councils in Suffolk appointed eight Independent Persons, one for each Council, with the exception of Suffolk Coastal, as one of the appointees was Mr Kevin Williams, the former Chairman of the Council’s Standards Committee, and he was disqualified for appointment, by virtue of that fact. Their names were set out in Appendix C to REP870. In order to provide the Council with the maximum flexibility within the revised ethical governance framework, it was proposed that the Council appointed all seven Independent Persons to act as a pool, to be drawn upon as and when required. It was proposed and agreed that these Independent Persons be appointed for an initial term of 2 years, with an option for Council to renew their appointment for a further 2 years thereafter.

2.7 As Independent Persons were not Members of the authority or of any Committees or sub-Committees, any remuneration of Independent Persons no longer came within the scheme of Members’ Allowances, and could therefore be determined without reference to the Independent Remuneration Panel. It was proposed that the remuneration for Independent Persons comprised of an annual allowance of £300, and a fee of £50 for each investigation report that an Independent Person considered. Although the Council was recommended to appoint a pool of 7 Independent Persons, it would only be financially responsible for paying one of the 7/8 Independent Persons an annual amount of £300. Any extra payments of £50 would only be incurred if an investigation was completed and would be paid to the relevant Independent Person that reviewed the Investigation Report.
2.8 As it has transpired, the level of complaints received against town, parish or district councillors under the new regime has been relatively low. For Suffolk Coastal District Council, there have been 18 complaints since 2012, and 10 for Waveney District Council. This compares to an average of twelve (12) complaints per annum under the previous standards regime. These have been referred to Dr Peck, mostly, an Independent Person who lives locally, in Felixstowe. The arrangements have worked well. Only two of the Suffolk Coastal complaints have gone to a full investigation, none have for Waveney.

2.9 When the end of the initial two years term of appointment approached, the other councils in Suffolk considered whether to extend the existing terms of office of the eight Independent Persons which they each had appointed. West Suffolk (St. Edmundsbury Borough Council and Forest Heath District Council) wished to carry out their own recruitment exercise, as none of the eight Independent Persons appointed to form the Suffolk-wide pool in fact lived in their districts. Suffolk County Council, Babergh and Mid-Suffolk and Ipswich wished to carry out a further recruitment exercise, to refresh the pool of Independent Persons. This will incur costs in carrying out a further recruitment exercise, in terms of advertising, shortlisting, interviewing, appointment and induction of the new Independent Persons. It will also take up officer time in running this recruitment process, inevitably.

2.10 Given the low level of complaints, and the flexibility of the arrangements currently, Suffolk Coastal District Council and Waveney District Council are not of the view that incurring such costs and taking up officer time to conduct a recruitment exercise were justified. When the seven/eight Independent Persons were appointed, it was for a term of two years, with an option to extend their appointment for a further two years. Therefore, it was always envisaged that their terms of office could be extended, to save on a further recruitment exercise. In reality, the same two Independent Persons have been used by each Council, in any event, and both provide sound advice and assistance to the Monitoring Officers.

2.11 Therefore, it was practical and efficient to extend the appointment of Mr Keys and Dr Peck for a further term of two years. Both were willing to serve for a further two years. Both then provided an “East Suffolk” pool, which either Mr Charvonia or Mrs Slater could use, in dealing with complaints which either might receive. This in turn gave sufficient cover and flexibility, for the relatively low level of complaints. It also meant that this Council could continue to make a relatively modest payment of £300, for one Independent Person, with Waveney District Council paying the other retainer for Mr Keys.

2.12 The Council resolved in July 2014, therefore, to extend the appointment of both Mr Keys and Dr Peck for a further term of two years. Also, that the Council continued to pay an annual allowance of £300 to one Independent Persons, and agreed to pay a fee of £50 for each investigation report that any Independent Person considered on behalf of the Council.

2.13 Mr Keys is about to retire to Tenerife and can no longer act as an Independent Person when his appointment ends. Dr Peck is willing to continue, but we need to consider recruiting other independent persons to provide some resilience and cover, should Dr Peck not be available, for what ever reason.

2.14 Therefore, it is suggested that Dr Peck’s appointment be extended for a further two years, whilst we also look to recruit another person to act for both councils as an Independent Person.

3 REASON FOR RECOMMENDATION

3.1 To comply with the requirements of the Act which took effect from 1 July 2012, and to have Independent Persons to whom the Monitoring Office may refer complaints.
RECOMMENDATIONS

1. That the Council extends the appointment of Dr Peck for a further term of two years.

2. That the Council pays an annual allowance of £300 to the Independent Person, and agrees to pay a fee of £50 for each investigation report that any Independent Person considers on behalf of the Council.

3. That a further recruitment exercise be undertaken to appoint one other Independent Person.

APPENDICES

Appendix A  Summary profile of the Independent Person

BACKGROUND PAPERS (Please note that copies of background papers have not been published on the Council's website but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.)

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<th>Date</th>
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<td>23.05.2012</td>
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INDEPENDENT PERSONS – DR ANDREW PECK

The Council is recommended to extend the appointment of Dr Andrew Peck as an Independent Person for this authority. Dr Peck is a retired solicitor (non practising) with 25 years partner level experience. He has also been involved in a wide range of Committees at Milton Keynes Council, including as a Co-opted Independent Member of their Audit Committee and various other roles with amongst others the Open University and the Homes and Communities Agency. Born in Ipswich, Dr Peck has returned to the county and now lives in Felixstowe.