

COUNCIL		
Report Title	Independent Person Appointments	
Key Decision		Item No. 8
Ward		
Contributors	Head of Law	
Class	Part 1	Date: 22 January 2014

Appointment of independent person

1 Summary

This report asks the Council to appoint Erica Pienaar and Wendy Innes to act as independent person to assist the Council in the investigation of complaints under the Council's Member Code of Conduct

2 Purpose

The purpose of this report is to ensure that the Council is in a position to investigate any allegations of breach of the Member Code and to comply with the Localism Act 2011.

3 Background

- 3.1 The Localism Act 2011 made significant changes to the standards regime in local government. It amended the national elements of the Member Code of Conduct and abolished the national body, Standards for England. The Act removed voting rights from independent co-optees on the Standards Committee, thereby ensuring that the Committee could no longer be chaired by an independent member. The Act also provides for complaints of breach of the Member Code of Conduct to be handled locally and changes the procedure by which such complaints are investigated.
- 3.2 One of the changes to this procedure is the requirement for local authorities to appoint at least one independent person whose views are to be sought and then taken into account by the authority before it makes a decision on an allegation that has been investigated.
- 3.3 The Act provides that the independent person may not be a Lewisham member, co-opted member or officer (or close friend or relative of such) and must not have been so within the last 5 years. However, transitional arrangements were introduced by regulation for a period of one year, the impact of which was to enable those who had previously been co-opted members on the Standards Committee to fulfil this role for up to one year.

- 3.4 In Lewisham, the previous independent Chair of the Standards Committee, Sally Hawkins, was appointed to this role and she has ably assisted the Council in one investigation during her tenure as independent person. However, her transitional year has now expired and it is therefore necessary to appoint a replacement.
- 3.5 The Act requires that vacancies for the position of independent person must be advertised in such manner as the authority considers likely to come to the attention of the public. Those seeking appointment must submit an application form. An advert was placed on the Council's website and over 20 expressions of interest were received. 8 applications were received and in early January 2014, 3 candidates were interviewed by the Chair of the Standards Committee, assisted by the Monitoring Officer.
- 3.6 The Chair of the Standards Committee recommends that Erica Pienaar and Wendy Innes be appointed as independent person. References have been taken up for both. Brief details of those suggested for appointment appear at Appendix 1.
- 3.7 Lewisham's procedures for dealing with complaints of breach of the Member Code of Conduct provide for any investigation report prepared by the Monitoring Officer to be sent to the independent person for them to consider prior to its submission to the Standards Committee. The independent person also prepares a report for the Committee. Though the procedure provides for the independent person usually to conduct a review of the investigation on the papers, they have a good deal of flexibility in how they come to their view. It may be that they will ask questions of the Monitoring officer, seek further information themselves, interview key people involved if they consider it appropriate to do so and they may be asked to attend Committee to present their findings. They may also have a view on what action should be taken if there is a finding of breach, which may inform the Committee.
- 3.8 It is suggested that were the Council to appoint both Erica Pienaar and Wendy Innes to fulfil the role of independent person, then either could perform any and all of the functions of the independent person at any time if so asked. Both candidates are of very high quality. It is likely however that first call would be made on Erica Pienaar, simply because of her physical proximity to the borough and her knowledge of it.
- 3.9 However in the event that Erica Pienaar is unavailable for any reason, for example if she were on holiday or unwell, then the second independent person could step in. It may be also that on occasion, circumstances might arise where it would not be appropriate for Erica Pienaar to conduct the role of independent person – if for example an allegation were made against a member serving with her on a school governing body. Though when explored at interview there appeared to be very few occasions when this might arise, the appointment of a second independent person would provide the opportunity to avoid any possible perception of conflict of interest by engaging the services of the second independent person instead.

4 Legal implications

- 4.1 These are broadly dealt with in the body of the report. However the Localism Act requires that the appointment of independent persons must be approved by a majority of the members on the Council (i.e. at least 28 people).

- 4.2 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 4.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 4.4 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for members, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 4.5 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 4.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- The essential guide to the public sector equality duty
 - Meeting the equality duty in policy and decision-making
 - Engagement and the equality duty
 - Equality objectives and the equality duty
 - Equality information and the equality duty
- 4.7 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

5 Financial implications

The independent person has to date been paid a retainer of £1000 per year and in the event of an investigation £300 per day for work carried out in the course of it. It is proposed that the retainer be paid to Erica Pienaar only and that the day rate be paid to each person appointed on the basis of actual work carried out. This will be contained in existing budgets.

6. Crime and Disorder implications

There are no specific crime and disorder implications arising from this report though members are reminded that breach of the statutory provisions of the Member Code of Conduct is a criminal offence

7. Environmental implications

There are none.

8. Recommendation

It is recommended that Erica Pienaar and Wendy Innes be appointed to act as the independent person for the London Borough of Lewisham until further notice as set out in this report.

Appendix 1

Erica Pienaar

Erica lives in Bromley and has a B.A. Certificate in Education from Goldsmiths as well as an MBA in Education from London South Bank University. She held various teaching posts in Bromley for 25 years before being appointed to the position of head teacher at Prendergast School in 1998, a position she held until 2008 when she was appointed as Executive Headteacher. Though working in Lewisham for the last 15 years, she never been a Lewisham Council employee. Throughout her professional life she has conducted a number of sensitive investigative and disciplinary procedures and hearings. She also served on the Council of Queen Mary College of London University. Having retired recently, she serves as a Chair of Governors at a Lewisham primary School. Erica has been granted the Freedom of Lewisham.

Wendy Innes

Wendy is based in Newcastle upon Tyne. She has an M.A. in Swedish Studies and is a solicitor with extensive experience of advising North Tyneside Council where she was employed for 17 years until 2013, most recently as head of the legal service and deputy monitoring officer there. Before that she worked for 5 years in a commercial legal firm. North Tyneside operates a directly elected mayoral system like Lewisham and Wendy is very familiar with the new ethical framework under the Localism Act, has conducted two independent investigations into allegations of breach of the Member Code of conduct in North Tyneside and presented reports about the investigations to their Standards Committee.