

## **Standards Committee – 3<sup>rd</sup> October 2016**

### **Role of the Independent Person**

#### **Summary of report:**

The report is to provide information to Elected Members in respect of the statutory role of the independent person in the complaints process in relation to Member conduct.

#### **Background papers:**

None

#### **Recommendation:**

1. To note the content of the report

### **1.0 Background**

1.1 The Localism Act 2011 requires the Council to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated and whose views can be sought by the authority at any other stage or by a member against whom an allegation has been made. The Independent Person therefore has a statutory role under section 28(6) of the Localism Act 2011 in relation to the determination of complaints made against councillors:

- to advise the Monitoring Officer/Deputy Monitoring Officer in connection with the determination of complaints in relation to councillor misconduct in accordance with the Council's arrangements
- advise the Standards Committee in connection with the determination of councillor misconduct complaints in accordance with the Council's arrangements
- advise complainants and elected and co-opted members of Walsall Metropolitan Borough Council in connection with complaints made against them under their code of conduct

1.2 The Council's Arrangements for dealing with Elected Member complaints describes the Independent person role as follows:

#### **“What is an Independent Person?”**

The Independent Person is a person who has applied for the post following advertisement of a vacancy. They are appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means-
  - 11.2.1 Spouse or civil partner;
  - 11.2.2 Living with the other person as husband and wife or as if they were civil partners;
  - 11.2.3 Grandparent of the other person;
  - 11.2.4 A lineal descendent of a grandparent of the other person;
  - 11.2.5 A parent, sibling or child of a person within paragraphs 11.3.1 or;
  - 11.2.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
  - 11.2.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11,3.5 as husband and wife or as if they were civil partners.”
- 1.3 Walsall Council has appointed two independent persons to assist with the management of complaints

## **2.0 Resource and legal considerations:**

Section 28(7) Localism Act 2011 states:

(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,

2.1 None directly related to this report. The complaints procedure is being managed within Legal and Democratic Services from existing resources. If there is a

considerable increase in complaints or the council receives a very serious and complex complaint, consideration may need to be given to outsourcing some work if the demand cannot be met from existing resources, or considering the appointment of an additional independent person.

### **3.0 Performance and Risk Management issues:**

3.1 Performance and risk management are a feature of all council functions. It is important that council policies and procedures are reviewed and updated on a regular basis. If the council fails to do this there is an increased risk that the council will be subject to legal challenge or litigation.

3.2 In terms of performance it is important that both Elected Members have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the council delivers services.

### **4.0 Equality Implications:**

4.1 In maintaining up to date policies and procedures the council will ensure that services are delivered fairly in an open and transparent manner. There are specific requirements in both codes that elected members and officers observe equalities. It is important that complaints are dealt with in a fair and transparent manner.

### **5.0 Consultation:**

5.1 There is no requirement to consult on this report.

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