
REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

1 APPOINTMENT TO ROCHFORD HOUSING ASSOCIATION BOARD

- 1.1 There has been a vacant seat on the Rochford Housing Association Board to which the Council has nomination rights. Appointees contribute to the work of the Board.
- 1.2 The Portfolio Holder for Overall Strategy and Policy Direction has appointed Cllr P A Capon to the Board pending confirmation by Full Council.
- 1.3 It is proposed that Council **RESOLVES** to confirm the appointment of Cllr P A Capon to the Rochford Housing Association Board. (HLEMS)

2 ESSEX POLICE AND CRIME PANEL

- 2.1 This item of business was referred by the Executive on 19 September 2012 to Full Council with recommendations relating to the terms of reference for the Essex Police and Crime Panel and the appointment of a substitute representative on the Panel. An extract of the key elements of the report of the Chief Executive to the Executive is attached at appendix 1.
- 2.2 The Executive noted that the Home Office had approved a proposal that the Panel be expanded to secure a Liberal Democrat presence to ensure all main political parties were represented.
- 2.3 It is proposed that Council **RESOLVES**:-
 - (1) That the terms of reference for the Essex Police and Crime Panel, as set out at appendix B of the report of the Chief Executive, be confirmed.
 - (2) To confirm that Cllr T E Mountain attend as the substitute in the absence of Cllr Mrs J E McPherson, the Council's representative on the Panel. (CE)

3 PROTOCOL FOR INDEPENDENT PERSONS

- 3.1 This item of business was referred by the Standards Committee on 4 October 2012 to Full Council with a recommendation relating to adoption of an Independent Persons Protocol. An extract of the key elements of the report of the Head of Legal, Estates and Member Services to the Committee is attached at appendix 2.
- 3.2 The Standards Committee noted that:-
 - If a District or Parish Member seeks the view of an Independent Person on an allegation made against them, it may not be appropriate for that

Independent Person to be involved in future stages of the process, should the matter be referred to the Sub-Committee.

- It is essential that the Independent Person communicates with the Monitoring Officer whenever he/she has been approached by any of the parties to ensure that there is no conflict of interest at any future stage of the process.
- Reports will be made to the Standards Committee detailing all complaints received and how they have been dealt with by the Monitoring Officer. The legislation encourages informal resolution, where possible, of complaints that a Member has breached the Code.
- The process of how to make a complaint and the role and responsibility of the Monitoring Officer are available on the Council's website. It is not intended that the Independent Person is necessarily the first point of contact by a member of the public. If an Independent Person is contacted he/she should restrict discussions to ascertaining the nature of the grievance and advising how the complaints process works. In some cases assistance may be needed in helping a member of the public to articulate their concerns/grievance.
- In addition to information on the Council's website, the full procedure for making a complaint under the Members' Code of Conduct is in the Council's Constitution. Members requested that this information also be contained within a brief pamphlet to be available at the Council offices.

3.3 It is proposed that Council **RESOLVES** that the Independent Persons Protocol, as appended to the report of the Head of Legal, Estates and Member Services, be approved and adopted. (HLEMS)

4 MANDATORY PLANNING TRAINING ARRANGEMENTS

4.1 This item of business was referred by the Standards Committee on 4 October 2012 to Full Council with a recommendation relating to arrangements for mandatory planning training. An extract of the key elements of the report of the Head of Legal, Estates and Member Services to the Committee is attached at appendix 3.

4.2 The Standards Committee noted that:-

- Non-attendance at even one session of the proposed four mandatory training sessions may result in a gap in essential information, due to constant changes in planning legislation. The proposals are on the basis that Members will have the information they need to participate effectively in planning matters.

-
- As different Members will have different learning styles, some Members may be able to gain the information they need by reading the handouts provided to accompany the planning training course.
 - Prior to being elected as a Councillor, each candidate is made aware of the mandatory training dates for the forthcoming municipal year. This will continue under the new arrangements proposed.
 - Afternoon and evening sessions of a course could be held on different days, which would make arrangements more flexible.
 - Members have access to advice from planning officers at all Development Committee meetings.
 - Independent Persons/Parish members of the Standards Committee will continue to be invited to all training sessions offered to District Council Members.
- 4.3 In principle, the Committee accepted the desirability/necessity of having additional sessions of mandatory planning training throughout the year but was concerned that the proposed arrangements might be too inflexible, which would result in Members' ability to be fully involved in the Development Committee being compromised, through no fault of their own.
- 4.4 It was agreed that the new arrangement of four mandatory planning training sessions each year should be adopted but with a greater flexibility built in, to provide additional 'mop-up' sessions, should this be necessary. It was felt that this would provide a proper opportunity for Members to become fully qualified, although it was recognised that any additional sessions provided by officers would be at a cost in terms of officer time.
- 4.5 It is proposed that Council **RESOLVES** that the arrangements for mandatory planning training, as detailed in report paragraphs 6.1 to 6.9, be adopted in the 2013/14 municipal year, subject to incorporating the following amendment:-
- 'That a greater flexibility be built in to the new arrangements to provide additional 'mop-up' sessions, should this be necessary.' (HLEMS)

ESSEX POLICE AND CRIME PANEL – UPDATE ON PROGRESS**1 DECISION BEING RECOMMENDED**

1.1 That, pending confirmation by Full Council:-

- The terms of reference now agreed for the Essex Police and Crime Panel, attached as Appendix B, be endorsed.
- Who will attend as the substitute Member in the absence of Cllr Mrs J E McPherson, the Council's representative on the Panel, be agreed.

2 REASON FOR RECOMMENDATION

2.1 To ensure the District Council plays a full and active role in the operation of the Panel

3 SALIENT INFORMATION

3.1 A report to the Executive in February (Min. 25/12) on the Police Reform and Social Responsibility Act 2011 and its implications for the District Council, covered, amongst other things, the imminent establishment of an Essex Police and Crime Panel and our representation on that Panel, which was agreed should be Cllr Mrs J McPherson, given her portfolio holder responsibilities relating to Community Safety.

3.2 The Panel is now operating in shadow form prior to the election of the Police and Crime Commissioner in November. Two meetings have been held to date. The current membership of the Panel is attached as Appendix A. County Councillor John Jowers has been elected as Chairman, with Cllr Malcolm Buckley appointed as Vice-Chairman. The Panel has agreed to expand its membership to secure a Liberal Democrat presence on the Panel to ensure all the main parties are represented, subject to Home Office approval.

3.3 In addition, a Member sub-group has been established to progress the appointment of the two independent Members. Terms of reference for the Panel have been agreed and these are set out in Annex B. The Executive is now asked to endorse these terms of reference. The Panel has also agreed that each constituent Authority should be asked to appoint a substitute Member, who can represent the Authority and have voting rights in the absence of the nominated representative. Hence the Executive is asked to identify who should be Cllr Mrs J E McPherson's deputy in this respect.

4 RISK IMPLICATIONS

4.1 The emerging new arrangements involving Police and Crime Commissioners and Police and Crime Panels pose a variety of risks on a number of levels

relating to the Policing and Community Safety agenda. It will be important to recognise those risks and respond to them as the arrangements develop.

5 RESOURCE IMPLICATIONS

- 5.1 There are no specific resource implications associated with this report as such.

6 LEGAL IMPLICATIONS

- 6.1 The details outlined above are in accordance with the new legislation.

Panel Membership

Appendix A

Name	Authority	Political party
Malcolm Buckley	Basildon	Conservative
Graham Butland	Braintree	Conservative
Lionel Lee	Brentwood	Conservative
Jeffrey Stanley	Castle Point	Conservative
Bob Shepherd MBE	Chelmsford	Conservative
Tim Young	Colchester	Labour
Mary Sartin	Epping Forest	Conservative
John Jowers	Essex	Conservative
Daniella Pritchard	Harlow	Labour
Penny Channer	Maldon	Conservative
Jo McPherson	Rochford	Conservative
Ian Robertson	Southend-on-Sea	Conservative
Peter Halliday	Tendring	Conservative
Gerard Rice	Thurrock	Labour
Robert Chambers	Uttlesford	Conservative
TBC (<i>awaiting HO approval</i>)	-	Liberal Democrat
TBC	-	Independent
TBC	-	Independent

Appendix B

ESSEX POLICE AND CRIME PANEL

TERMS OF REFERENCE

1. To scrutinise the work of the Police and Crime Commissioner, exercising the function as a critical friend, in support of the Commissioner.
2. To review and produce a report on the proposed appointment of the Chief Constable.
3. To hold a confirmation hearing, and produce a report or recommendations (as necessary) in respect of proposed senior appointments made by the Commissioner.
4. To scrutinise the proposed precept and make recommendations. If not satisfied with the precept the Panel can veto it, provided there is a two thirds majority in agreement. The Commissioner will then have to respond to the Panel and publish the response.
5. To review the Commissioner's Police and Crime Plan, and produce and publish a report or make recommendations on the Plan.
6. With regard to the Commissioner's annual report, produced in accordance with section 12 of the Police Reform and Social Responsibility Act 2011, to question the Commissioner at a public meeting and scrutinise the decisions made by the Commissioner. The Panel must also produce recommendations or a report which is sent to the Commissioner and published.
7. To review or scrutinise decisions made, or other action taken, by the Commissioner in connection with the discharge of the Commissioner's functions.
8. To fulfil functions in relation to complaints about conduct matters, in accordance with the responsibilities accorded to the Panel by the Police Reform and Social Responsibility Act 2011.
9. Where required (i.e. if the Commissioner resigns, is disqualified from office, is suspended or incapacitated), appoint an Acting Police and Crime Commissioner from amongst the Commissioner's staff.

The Panel will be governed by schedule 12A of the Local Government Act 1972.

PROTOCOL FOR INDEPENDENT PERSONS

1 SUMMARY

- 1.1 This report provides information on the role of the Independent Person under the Localism Act 2011 and a protocol for undertaking their duties, see attached Appendix.

2 INTRODUCTION

- 2.1 Independent Persons are members of the public who have no political connections or associations with the Authority and are appointed through a process of public advertisement and application.
- 2.2 Local Authorities are required to appoint at least one Independent Person to advise and consult with. The Council has appointed four Independent Persons to ensure availability and avoid conflicts of interest.
- 2.3 The role of the Independent Person has changed significantly under the Localism Act, with the ability of all parties to a complaint to contact the Independent Person to seek advice and support.
- 2.4 This protocol seeks to manage that contact and establish general principles to maintain independence and impartiality.

3 THE ROLE

- 3.1 The Independent Person's views must be sought and taken into account by the Council before it makes a decision on an allegation that it has decided to investigate.
- 3.2 Their views may also be sought by the Council on an allegation that it has decided not to investigate.
- 3.3 A Member of the Council or Parish Council may also seek the Independent Person's view on an allegation made against them.
- 3.4 The Council has adopted a Complaints Procedure making provision for involvement of Independent Persons in dealing with complaints against a Member alleging a breach of the Code of Conduct.
- 3.5 It is important that the arrangements instil public confidence and support the Council in maintaining high standards of conduct as required by the Localism Act. The protocol defines the role of the Independent Persons and establishes how they will engage in the process.

4 PROTOCOL

- 4.1 The Independent Persons are required to be independent in the matter being determined and must not allow themselves to become swayed by the arguments of one party over another.
- 4.2 To assist in this role all contact with the Independent Persons should be through the Monitoring Officer to ensure that contact remains within the bounds of professional relationships and under no circumstances should they discuss matters with the press or other parties.
- 4.3 In carrying out this role Independent Persons are required to make themselves available through email/telephone contact in order to receive such queries and respond accordingly.
- 4.4 It is important that the Independent Person does not form a final opinion on a matter to be determined until they are formally consulted and their views are requested on an investigation and its outcome by the Standards Committee. Until that stage their role is to merely advise and assist parties with the process to be followed.
- 4.5 The Independent Person is subject to the Code of Conduct for Members while undertaking their role in this process which imposes a duty of equality, fairness, objectivity and open mindedness.
- 4.6 Any investigation into Member conduct must be undertaken in a manner compliant with the rules of natural justice and be transparent in its proceedings. Therefore any advice given to one party will be shared with others that are party to the proceedings.
- 4.7 The function of the Independent Persons may alter depending upon the role they have in any complaint but in doing so they must work in accordance with the general overarching principles as set out in the appended Protocol.
- 4.8 This is a new and developing area and as further guidance is available these protocols will be reviewed and updated.

5 THE PROCESS

Complaint

- 5.1 The first stage of an allegation of a breach of the code is the receipt of a complaint. On receiving the complaint the Monitoring Officer, in conjunction with the Independent Person if required, will take a view as to the severity of the allegation and its suitability for informal resolution.
- 5.2 Where a matter is suitable for informal resolution, the complainant and the subject member will be encouraged to meet to identify what the difference is, where the complainant is a member of the public they will be invited to meet

with the monitoring officer to discuss the complaint, followed by an informal resolution meeting with both persons present and the Independent Person.

- 5.3 If informal resolution is not appropriate or is unsuccessful, the Monitoring Officer will conduct a fact-finding exercise and may, in consultation with the Independent Person, determine whether the initial tests, as set out in the protocol, are satisfied.
- 5.4 If the complaint does not satisfy the initial tests or is deemed to be frivolous or without merit the Monitoring Officer may in consultation with the Independent Person determine that the matter will not be progressed and the parties will be notified accordingly.
- 5.5 If the Monitoring Officer believes the complaint does have substance a report will be made to the Standards Sub-Committee.

Assessment

- 5.6 The second stage is an assessment of the complaint by the Standards Sub-Committee and a decision as to how the matter should be progressed.
- 5.7 If the Standards Sub-Committee determines that the matter warrants further investigation, an investigator may be appointed by the Monitoring Officer. The Independent Person has no involvement at this stage.

Determination

- 5.8 Once the Investigation has been completed the Standards Sub-Committee will consider the evidence and hear representations from the parties. This may be either by oral evidence or written representations. The Localism Act requires the Council to take into account the views of the Independent Person before it determines the matter.
- 5.9 The Independent Person may be co-opted on to the Sub-Committee or may sit as independent advisor. An Independent Person will have no voting rights.
- 5.10 Where an Independent Person has a conflict in a matter either through personal relationships, personal knowledge or are appearing to show a predisposition/predetermination on a matter, they cannot remain involved and must notify the Monitoring Officer immediately.

6 LEGAL IMPLICATIONS

- 6.1 Under Section 27 of the Localism Act 2011 the Council has a duty to promote and maintain high standards of conduct by Members and co-opted Members of the Authority. In discharging its duty the Council must adopt a Code dealing with the conduct that is expected of Members when they are acting in that capacity.

7 PARISH IMPLICATIONS

- 7 The Council's Code which came into effect on 1 July 2012 has been adopted by all Parish and Town Councils in the District.

Appendix

INDEPENDENT PERSON PROTOCOL

This protocol relates to the discharge of the Independent Person's functions in relation to the assessment of an allegation that a Member of Rochford District Council or a Member of a Parish or Town Council in the District has failed to comply with the Council's Code of Conduct.

Overarching Principles:-

- (1) The Independent Person is a statutory appointment under s.28 of the Localism Act 2011.
- (2) This Protocol applies to all Independent Persons equally.
- (3) The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended as necessary.
- (4) The Independent Person will discharge their responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council, in particular:-
 - (i) Instilling public confidence in the process and how complaints are considered by the Standards Committee and officers.
 - (ii) Complying with the law, the Members' Code of Conduct and any guidance issued.
 - (iii) Complying with the procedures adopted by the Standards Committee.
 - (iv) Complying with the Council's Constitution and standing orders.
 - (v) Preserving confidentiality at all time.
 - (vi) Acting impartially in the interests of fair and natural justice, without prejudice or political bias.
- (5) The Monitoring Officer is the principal adviser to the Standards Committee.
- (6) All Independent Persons are non-voting members of the Standards Committee and are permitted to attend for consultative purposes. However, if considering a complaint the attendance may be altered from sitting with the Committee to observer or alternative capacity due to the involvement of the Independent Person through the complaints process.

- (7) The Monitoring Officer, in consultation with the Chairman of the Standards Committee, will make the final decision on the type of attendance after considering the specific circumstances of the matter under consideration.
- (8) The Monitoring Officer may consult with at least one Independent Person on complaints received as appropriate and throughout the process in accordance with the Complaints Procedure.
- (9) In circumstances where either the Independent Person witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not arise.
- (10) If the Independent Person has any prior or on going personal relationship with the complainant or the Member who is the subject of the complaint they should advise the Monitoring Officer at the earliest opportunity.
- (11) The Monitoring Officer will facilitate contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified by the Independent Person of any direct contact that has been made.
- (12) Under no circumstances should the Independent Person discuss matters relating to a complaint with the press or any third party.
- (13) Independent Persons will notify the Council's Monitoring Officer of the most suitable times to be available for contact.
- (14) When discussing the complaint with the complainant or the Member the subject of the complaint, the Independent Person's role is not to give views on the merit of the complaint or the evidence in support but to give advice and assistance on the process.
- (15) The Independent Person's role is to provide an independent view on the substance of the complaint and/or the quality of the evidence being considered in order to help the Committee to make an informed decision.
- (16) The Independent Person must not form a final opinion on a matter to be determined until their opinion on an investigation and its outcome is requested by the Standards Committee until this time their role is to advise.
- (17) An Independent Person may be consulted on an allegation before the Monitoring Officer takes a decision as to whether it merits further action.
- (18) The Monitoring Officer will have regard to the Independent Person's view but is not bound to accept it.

(19) The Independent Person should consider that, in reaching a decision in respect of how to progress the complaint, the Monitoring Officer will take into account the following factors where appropriate:-

- Was the Member acting in their official capacity?
- Was the Member in office at the time of alleged misconduct?
- Is the complaint of a very minor or trivial matter?
- Is the complaint vexatious or malicious?
- Is the complaint time expired?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?

6 MANDATORY PLANNING TRAINING ARRANGEMENTS

- 6.1 Due to the increasingly complex nature of planning legislation, it is proposed that there be more regular planning training sessions throughout the year and greater penalties for non-attendance. It is vital that Members have an adequate understanding of national and local planning policy to enable them to perform their role as Members of the Development Committee.
- 6.2 It is proposed that the following arrangements for mandatory planning training be introduced in the 2013/14 Municipal Year.
- 6.3 Four sessions of mandatory planning training will be timetabled to take place during the year, which Members will be expected to attend, with a minimum requirement that each Member attends three out of the four sessions. Should a Member miss a session, he/she will be 'rested' from the Development Committee until he/she attends a further scheduled mandatory planning training session. A minimum of three training sessions must be attended each municipal year. The training will be based on a 'rolling program' from one year to the next.
- 6.4 A Member who is 'rested' from the Development Committee will be able to speak on an item but not vote (as is now the case for Members who have not attended prescribed mandatory training) until after he/she has attended the next compulsory planning training session.
- 6.5 Newly elected Members will need to attend the first possible planning training session (likely to be in May). If they miss this they will not become a Member of Development Committee until they have attended a compulsory training session.
- 6.6 In respect of any of the four sessions missed, Members who have not attended a session will be given any handouts from the session.
- 6.7 The Members' Tour of the District should be removed from the mandatory training programme as it is inadequate for this to be attended in place of other mandatory planning training. The Tour will continue to be held, however.
- 6.8 Under the new arrangements there will be no facility whereby a Member can apply for exemption from mandatory training to the Standards Committee. Membership of the Development Committee will be restored following attendance at the next scheduled mandatory training session.
- 6.9 There will be no 'mop-up' sessions offered for Members who do not attend mandatory training courses.