

Council

Date of Meeting: 17 October 2019

Report Title: Appointment of Independent Person for Standards Matters

Senior Officer: Jan Bakewell, Director of Governance and Compliance & Monitoring Officer

1. Report Summary

- 1.1 This report has been prepared following the Notice of Motion, approved at Council on 18 July 2019, as follows:

This Council:

- 1) regrets the comments made by Mr Fousert when, as then Chair of the Cheshire Police & Crime Panel, he noted that the Deputy Chief Constable had worn a rainbow lanyard, said that this was a political statement and that this was a breach of police regulations
- 2) asks the Monitoring Officer to prepare a report on whether Mr Fousert should be removed as an Independent Person
- 3) asks the Monitoring Officer to prepare a report on whether Mr Fousert should be removed as a member of the Police & Crime Panel
- 4) asks the Monitoring Officer not to involve Mr Fousert in any complaints about Councillor conduct while the above reports are being prepared

2. Recommendations

- 2.1 That Council considers Mr Fousert's appointment in light of recent events and either:

a) agrees that he continues in his role as Independent Person for Cheshire East Council

Or

b) removes Mr Fousert from his role as Independent Person and asks the Monitoring Officer to undertake a recruitment exercise to replace him.

3. Reasons for Recommendations

- 3.1 To comply with the requirements of the Localism Act 2011, the Council must appoint at least one Independent Person to deal with standards matters. To ensure that an Independent Person is always available, allowing for possible conflicts of interest and absences, it is recommended that three Independent Persons are appointed.
- 3.2 Mr Fousert was elected for a four-year term of office following a formal recruitment procedure on 28th July 2016. At the same time, two other Independent Persons were appointed by Council.
- 3.3 Mr Fousert was until recently also Independent Chair of the Cheshire Police and Crime Panel (PCP). It was whilst in that role that at the PCP meeting on 14th June 2019, he posed a question to the Police and Crime Commissioner, which referenced the fact that the Deputy Chief Constable had worn a rainbow lanyard and that, in his view, that was a political statement and a breach of police regulations.
- 3.4 Numerous representations were made in the press and through social media leading to the calling of an extraordinary meeting of the PCP at which the Members voted to remove Mr Fousert as Chair of the PCP but to enable him to stay as an Independent Member of the Panel.
- 3.5 There has been an adverse response and significant publicity surrounding his comments. This therefore brings into question whether or not Mr Fousert would going forward be able to maintain his independence and impartiality as an Independent Person for Cheshire East Council in light of those perceptions. Although the role is only in an advisory capacity, it involves the arrangements for dealing with Standards complaints against members considering allegations of breaches of the Code of Conduct. Council therefore needs to determine whether there is an issue of trust and confidence around Mr Fousert's continued appointment as an Independent Person.

4. Other Options Considered

- 4.1. Not applicable.

5. Background

- 5.1 Section 28 of the Act requires the Council to appoint one or more Independent Persons.
- 5.2 The Independent Person has three roles to perform:

- (a) The views of an Independent Person must be sought and taken into account by the Council before it makes a finding that any Member has failed to comply with its code of conduct or imposes any sanction;
- (b) The views of an Independent Person may be sought on whether to investigate a complaint and how to deal with a particular allegation; and
- (a) Any Member against whom an allegation has been made (including a town or parish councillor) may consult the Independent Person regarding that allegation.

5.3 Individuals appointed as Independent Persons must be recruited through a formal procedure in accordance with the Act, as follows:

- (i) The vacancy must be advertised in such manner as the authority considers is likely to bring it to the attention of the public;
- (ii) An applicant has to submit a formal application to be appointed as an Independent Person, and
- (iii) The Independent Person's appointment must be approved by 'a majority of the members of the authority.'

The last requirement means that the appointment must be made by Full Council.

5.4 An Independent Person must **not** be:

- (i) A member, co-opted member, or officer of Cheshire East Council; or
- (ii) A member, co-opted member, or officer of a town or parish council within Cheshire East; or
- (iii) A relative or close friend of any of the above.

5.5 In addition to the restrictions in the preceding paragraph, an Independent Person must **not** have been, at any time in the 5 years preceding the date of their appointment:

- (i) A member, co-opted member, or officer of Cheshire East Council; or
- (ii) A member, co-opted member, or officer of a town or parish council within Cheshire East.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. These are set out in the background to this report. To comply with the requirements of the Act, the Council must appoint at least one Independent Person.

6.2. Finance Implications

6.2.1. There are no financial implications arising from this report.

6.3. Policy Implications

6.3.1. There are no policy implications arising from this report.

6.4. Equality Implications

6.4.1. There are no equality implications arising from this report.

6.5. Human Resources Implications

6.5.1. There are no HR implications arising from this report.

6.6. Risk Management Implications

6.6.1. The risks associated with the public perception of the Council's handling of complaints against Members should Mr Fousert continue in his role as an Independent Person.

6.6.2. Failing to appoint an Independent Person would place the Council in breach of its statutory duty under the Act and prevent the Monitoring Officer from dealing with complaints in accordance with the Council's code of conduct complaints procedure.

6.7. Rural Communities Implications

6.7.1. Cheshire East Council is responsible for handling standards complaints relating to 134 town and parish councils within the Borough.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. There are no implications for children and young people/cared for children.

6.9. Public Health Implications

6.9.1. There are no implications for public health.

6.10. Climate Change Implications

6.10.1. There are no implications for public health.

7. Ward Members Affected

7.1. All

8. Access to Information

- 8.1. The background papers relating to this report can be inspected by contracting the report writer.

9. Contact Information

- 9.1. Any questions relating to this report should be directed to the following officer:

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