Executive Summary:

On 19 May 2015, the Council extended the term of office of our three Independent Persons until the October Council meeting to enable this Committee to agree arrangements for the selection and interviewing of candidates for appointment as Independent Persons. The Committee considered these arrangements at its last meeting and authorised the Monitoring Officer to establish a joint appointments panel with participating Surrey councils to short-list and interview candidates and make recommendations to the respective councils for the appointment of Independent Persons.

This report sets out the results of this process and also a draft Independent Persons Protocol which seeks to codify, amongst other matters, the appointment, role and obligations and allocation of Independent Persons by the participating councils. The Protocol has already been adopted by those councils.

Recommendation:

That the Committee recommends that Council (7 October 2015):

(1) Considers the appointment of such Independent Persons, as may be recommended by the joint appointments panel, for a term of office expiring in May 2019.

(2) Approves the Independent Persons Protocol, attached as Appendix 1 to this report.

Reason for Recommendation:

For the Council to comply with its obligations under the Localism Act 2011 in respect of ethical standards and The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 in respect of dismissal arrangements for statutory officers.
1. **Purpose of Report**

1.1 To ask the Council to agree:

(a) To the appointment of its Independent Persons as required by the Localism Act 2011 ("the Act") in respect of ethical standards and by recent regulations in respect of the dismissal of statutory officers; and

(b) a protocol on, amongst other matters, the appointment, role and obligations and allocation of Independent Persons by the participating councils.

2. **Background**

2.1 The Act introduced a new ethical standards regime for local government in 2012 which, amongst other things, requires the Council to seek the views of an Independent Person before it takes a decision on an allegation of misconduct by a councillor which it has decided to investigate. At Guildford, the Monitoring Officer also decides, after consultation with the Independent Person, whether a complaint merits a formal investigation. The Independent Person’s views may also be sought by the Council at any other stage in a misconduct complaint, or by a councillor against whom an allegation has been made.

2.2 At its meeting on 19 May 2015, the Council agreed to extend the term of office of its current Independent Persons (namely, Tony Allenby, Vivienne Cameron and Roger Pett) until its October meeting. This has enabled the Corporate Governance and Standards Committee to agree arrangements for the selection and interviewing of candidates for appointment as Independent Persons (including such joint arrangements with other councils as may be deemed by the Monitoring Officer to be appropriate) and to make recommendations to full Council on these appointments.

2.3 Subsequently, Corporate Governance and Standards Committee, at its meeting on 23 July 2015, authorised the Monitoring Officer:

   (1) to establish a joint appointments panel with participating Surrey councils so that the panel may short-list and interview candidates and make recommendations to the respective councils for the appointment of Independent Persons; and

   (2) to agree appropriate representation on the panel with participating councils.

2.4 We approached the three other councils (Mole Valley, Spelthorne and Waverley) which had previously participated in a joint appointments process with Guildford to see whether they would be happy to participate again. Both Mole Valley and Waverley expressed an interest and advertisements were placed on the Guildford, Mole Valley and Waverley websites on 30 July 2015, seeking applications by no later than Friday 11 September 2015. A total of four applications were received, three of whom have been shortlisted for interviews, which will be conducted on 23 September 2015 by a panel comprising the respective monitoring officers (or deputies) of the three participating councils.
2.5 The outcome of the interviews, including the panel’s recommendations, will be reported to the Committee at its meeting. Copies of each shortlisted applicant’s CV/personal statement are available for viewing in the Committee Services office.

3. Proposed Independent Persons Protocol

3.1 The Independent Persons have been consulted on a number of occasions by the participating councils and the arrangement has proved to be successful. However, to put the consultation procedures on a more formal footing, the participating councils drafted a protocol in respect of the Independent Persons’ appointment, role and obligations, and how they are allocated to act as independent persons, amongst other matters. Following consultation with the three current Independent Persons, the draft protocol was adopted by the other participating councils.

3.2 A copy of the draft protocol is attached at Appendix 1.

4. Financial Implications

4.1 There are no direct financial implications arising from this report as the process for the appointment of Independent Persons and the drafting of the protocol have been undertaken within existing budgets.

5. Legal Implications

5.1 In order to satisfy the very prescriptive requirements of the Act, we were required to advertise any vacancy for an Independent Person in such a manner as we consider is likely to bring it to the public’s attention and those interested must submit an application.

5.2 In addition, the appointment of an Independent Person must be approved by a majority of the members of the authority. This means that any appointment must be approved by at least 25 councillors, not merely a simple majority of councillors present and voting.

6. Human Resource Implications

6.1 There are no direct human resource implications arising from this report as the process for the appointment of Independent Persons and the drafting of the protocol have been undertaken within existing staff resources.

7. Background Papers

- Council: 19 May 2015 – Item 8: Ethical standards – appointment of Independent Persons (Minute No. CO18)
- Corporate Governance and Standards Committee: 23 July 2015 – Item 8: Ethical standards – appointment of Independent Persons (Minute No. CGS22)

8. Appendices

Appendix 1: Draft Independent Persons Protocol
Guildford Borough Council, in conjunction with three other Surrey district and borough councils, namely, Mole Valley District Council, Spelthorne Borough Council and Waverley Borough Council, has appointed a pool of Independent Persons to be drawn from when required.

Any reference in this document to ‘the Council’ or ‘authorities’, applies to each of the four Local Authorities. Any reference in this document to ‘the Committee’ applies to any Committee of the Council which may have responsibility for promoting the maintenance of high standards of conduct by councillors and any co-opted members of the Council. The four Councils follow a similar approach, but the committee structures vary between them according to each Council’s Constitution and Arrangements.

This Protocol sets out the expected roles and responsibilities of an Independent Person (IP) when they are carrying out their function in relation to the assessment of an allegation that a member, or co-opted member of the Council has failed to comply with the Councillors’ Code of Conduct, or a member or co-opted member of a parish council within the borough has failed to comply with that parish council’s code of conduct.

In addition to the roles and responsibilities referred to in this Protocol, under the provisions of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, an IP may be appointed by the Council to a panel comprising at least one other IP, for the purpose of advising the Council on matters relating to the dismissal of a statutory officer of the Council (i.e. Head of Paid Service, Chief Finance Officer or Monitoring Officer).

Principles

Appointment

1. Each IP will be appointed in accordance with the requirements of Section 28 of the Localism Act 2011 for a term of office not exceeding four years with serving IPs being eligible for re-appointment.

2. The Committee will agree arrangements for the selection and interviewing of candidates for appointment as IPs (including such joint arrangements with other councils as may be deemed appropriate by the Monitoring Officer) and to make recommendations to full Council on these appointments.

Role and Obligations

3. The role of the IP is a consultative position required under section 28 of the Localism Act 2011.

4. The purpose of the IP’s role is to assist the Council in promoting high standards of conduct by elected and co-opted members of the Council and in particular to uphold the Code of Conduct adopted by the Council and the seven principles of
public office, namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

5. The IP is expected to develop a sound understanding of the ethical standards framework as it operates within the Council.

6. The IP may be invited to attend or participate in training events organised or promoted by the Committee.

7. The views of an IP must be sought by the Council before it takes a decision on whether an allegation merits formal investigation, and may be sought by the Council at any other stage (e.g. before a final hearing is arranged or on an allegation it has decided to investigate, or where a local resolution may be appropriate), or by a councillor or co-opted member against whom an allegation has been made.

8. The Council is expected to support the IP in their role by:
   - providing information on its processes and procedures
   - providing the IP with sufficient information to consult them,
   - supporting the IP by dealing with press enquiries
   - adhering to this Protocol
   - providing training which meets the needs of the IP
   - providing advice if an IP is unsure of their role or conduct
   - paying reasonable travelling and subsistence expenses claimed by the IP for undertaking this role (such expenses must be claimed within six months of incurring them). The IP will receive no other remuneration.

Allocation of Independent Person

9. This Protocol covers all the IPs appointed by the authorities and any reference in this Protocol to an IP covers reference to all IPs.

10. The four authorities will endeavour to choose IPs from the pool on an even and fair basis, as far as possible. In order to assist this, each authority will inform the other authorities at the time an IP first becomes involved in a complaint.

11. The authorities will keep a log each time an IP is engaged on a complaint and update it promptly when a new case arises.

12. Before approaching an IP, the Council will consider the number of complaint cases each IP has been allocated by all the authorities using the pool.

13. An IP is not obliged to accept a request to be involved in a complaint, should they either have other commitments or have recently been involved in a complaint at one of the other authorities.

14. Where there is a link between any complaints made to the Council, the same IP will normally be approached if the Monitoring Officer feels it will assist the efficiency of the investigation.
Independent Person’s Conduct

15. In carrying out the role, the IP will ensure that they -

(a) act in accordance with –

(i) any relevant legislation or guidance and the Council’s Code of Conduct in force at the time; and

(ii) the agreed processes/procedures set out in the Council’s Constitution

(b) act impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice; and

(c) maintain confidentiality at all times.

The Committee

16. The Monitoring Officer’s role is to give advice to the (Sub-)Committee.

17. The IP is not a member of the (Sub-)Committee but is welcome to attend meetings and can be asked to give their views to the (Sub-)Committee.

18. The IP does not have any voting rights when attending a meeting of the (Sub-)Committee and shall speak at the invitation of the Chairman.

Involvement in complaints and hearings

19. The Monitoring Officer will brief the IP, by telephone, email or face to face, to provide the context of a complaint upon first contact.

20. The Monitoring Officer will (subject to the Council’s arrangements) consult the IP for advice on action to take in accordance with those arrangements, which may include any of the following stages:

- Upon receipt of a complaint, (to decide whether or not a formal investigation is merited)
- When the Monitoring Officer feels it is appropriate to resolve the complaint informally, without the need for a formal investigation.
- Following a formal independent investigation, on the outcomes or recommendations of the Investigating Officer.
- Where an Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, on whether any form of local resolution is possible.
- At a hearing before the Committee makes a decision on an allegation of failure to comply with the Code of Conduct.

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1 or the sub-committee appointed to conduct local hearings where, following an investigation, there is evidence of a failure to comply with the Councillors’ Code of Conduct

2 Arrangements for Dealing with Allegations of Misconduct by Councillors (Part 5 of the Council’s Constitution)
21. The Monitoring Officer will make a written record of any discussions that take place with the IP and send these to the IP for agreement.

22. When the Monitoring Officer is deciding how to progress with a complaint, he/she should, when consulting with the IP, consider the following:

   (a) Was the councillor/co-optee acting in their official capacity at the time of the alleged misconduct?
   (b) Was the councillor/co-optee in office at the time of the alleged misconduct?
   (c) Can the complaint be considered as being of a very minor or trivial nature; or vexatious, frivolous or politically motivated?
   (d) Is there a potential breach of the Council’s Code of Conduct?
   (e) Is there public interest in the matter?
   (f) Is there sufficient information to enable him/her to make a decision? If not, what information is required?

23. The Monitoring Officer will inform the IP at the earliest opportunity in the process of an investigation, of the Council’s expectations with regards to the timescales for their responses during each stage.

**Feedback and Learning**

24. At the resolution of the complaint, whether there is a formal investigation or not, the Monitoring Officer will advise the IP of the outcome of the complaint.

25. The Monitoring Officer and IP may have a discussion on the lessons learnt, from both the hearings arrangements process and following this Protocol, and whether any improvements are required.

26. The Monitoring Officers and IPs will meet on an annual basis to review progress with the operation of the Protocol and to deal with any training requirements.

**Conflicts of Interest and Confidentiality**

27. The IP should inform the Monitoring Officer if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved in the matter.

28. If the IP approached has a conflict of interest, another IP will be consulted.

29. All contact with the IP should be made through the Monitoring Officer and if the IP is contacted directly by a complainant, he/she is expected to inform the Monitoring Officer immediately. Where the subject Member wishes to speak to the IP then the Monitoring Officer will try to facilitate this in a planned way between the IP and the Member.

30. In terms of confidentiality, the IP should not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken from the Monitoring Officer. The Monitoring Officer will
keep the contact details for the IP confidential, except where otherwise agreed with the IP.

31. The IP will advise during initial discussions with the Monitoring Officer their preference for communications, whether in hard copy, by e-mail, or both.

Contact

32. The IP is requested to provide the Monitoring Officer with appropriate methods of contact e.g. email and telephone numbers, and is expected to make themselves available at all reasonable times.

33. The IP is asked to inform the Monitoring Officer with as much reasonable notice as possible if they will not be contactable for any extended period once they have first become involved in an investigation, so that one of the other IPs can be advised that he/she would be required to stand-in as necessary during this period.