

Committee(s) Establishment Committee	Date: 9 December 2020
Subject: Fixed terms for Independent Persons	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1, 3, 6 and 8
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	£
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Comptroller & City Solicitor	For Decision
Report author: Edward Wood, Chief Solicitor	

Summary

The Committee on Standards in Public Life has recommended that Independent Persons are appointed for a fixed term of two years, renewable once. They also recommend that the terms of multiple Independent Persons should ideally overlap. The Standards Committee has considered the matter and is proposing a fixed term of two years, renewable twice. The Standards Committee has also agreed in principle to stagger the appointments of the Independent Persons. Members are asked to endorse these proposals and the necessary transitional arrangements.

Recommendation(s)

Members are asked to endorse a fixed term of office of two years, renewable twice, for the City Corporation's Independent Persons, and the necessary transitional arrangements as set out in this report, so that a recommendation can be made from the Standards Committee to the Court of Common Council on that basis.

Main Report

Background

1. Under section 28 of the Localism Act 2011 the City Corporation must appoint at least one Independent Person whose views must be sought, and taken into account, before the Corporation makes its decision on an allegation that a Member has breached the Code of Conduct that it has decided to investigate. The City Corporation has decided to seek the views of an Independent Person at every stage of the complaints process and a Member complained about may also seek the views of an Independent Person at every stage. To avoid any issues of fairness and confidentiality arising from this dual role, the Corporation aims to have three Independent Persons in post at any one time.

2. The Independent Persons have an additional role in providing advice, views or recommendations on any disciplinary action to be taken against the Town Clerk (as head of paid service), Comptroller & City Solicitor (as monitoring officer) and Chamberlain (as chief finance officer). The appointment of the Independent Persons also therefore comes within the remit of the Establishment Committee. Any recommendation will subsequently need to go to the Court of Common Council for approval, as the appointing body.
3. The Committee on Standards in Public Life (“CSPL”) advises the Prime Minister on ethical standards across the whole of public life in England. The CSPL published its report on Local Government Ethical Standards in January 2019 and made a number of recommendations. One of these recommendations was that the Localism Act 2011 (which is silent about terms of office) should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.
4. The findings of the CSPL review were initially reported to the Standards Committee on 3 May 2019, which agreed in principle at that stage to introduce a fixed term of office for the City Corporation’s Independent Persons, without waiting for any legislative change. As stated in the CSPL review, this was perceived to have benefits for both the Independent Persons and the City Corporation. However, Members expressed the view that the term proposed was potentially too short, and requested a further report outlining the advantages and disadvantages of introducing fixed terms of differing lengths. Additional papers were subsequently presented on 24 January 2020 and 2 October 2020 which has resulted in the present proposals. The minute of the discussion from the last Standards Committee meeting is attached at Appendix 1.

Fixed terms

5. The CSPL make the point that security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person’s judgment and independence is not compromised by a long period of involvement in a single authority. They therefore recommend a fixed term of two years, with the option of a single re-appointment. They also recommend that the terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.
6. The Standards Committee accepted that the CSPL recommendation would ensure a regular turnover of Independent Persons, with a constantly changing perspective and no opportunity for any bias, or apparent bias, towards the City Corporation or any of its Members to emerge. However, it was also felt that this could lead to a lack of continuity that might prove disruptive to the work of the Standards Committee. It has not always been easy to recruit Independent

Persons with the necessary skills and experience to carry out the role effectively.

7. Both Members and Co-opted Members of the Standards Committee are currently able to serve for a maximum of eight years, and this is normally achieved through a four year term, renewable once. There was some support for introducing equivalent arrangements for the City Corporation's Independent Persons, which would provide a level of consistency, whilst still moving away from the undesirable situation of having open-ended appointments.
8. Comparisons were drawn to the Audit and Risk Management Committee, where appointments are for three years, and the Co-opted Members can serve for up to nine years in total. Reference was also made to the guidance that charity trustees should generally serve no more than nine years in office.
9. However the Standards Committee were also mindful that, if the Government were to subsequently adopt the CSPL recommendation in full, then opting for any other option now would lead to further disruption in the future, as the terms of office of the Independent Persons would have to be adjusted again at that stage. It was ultimately considered that a two year term, renewable twice (up to six years in total) would strike the best balance between independence and continuity, whilst providing the opportunity for regular reviews and minimising disruption in the event that the statutory provisions were subsequently changed.

Phased appointments

10. The City Corporation currently has four Independent Persons. Two of those are original appointments dating back to 21 June 2012. Two new appointments were made by the Court of Common Council on 16 July 2020, following the resignation of the third original appointee. This temporary increase in numbers represented an acknowledgement that the two incumbents had already served for an extended period and would be vacating their positions in the near future.
11. The Standards Committee expressed support for the terms of the Independent Persons being staggered, in order to spread recruitment and assist with continuity. Officers have subsequently spoken to the two recently appointed Independent Persons and it is proposed that one will serve an initial one year term, and up to five years in total, whilst the other serves an initial two year term, and up to six years in total. They are happy for lots to be drawn to determine this. Officers have also spoken to the two longer serving Independent Persons and they are content to continue in post until the summer of 2021, when it is proposed that one new Independent Person will be appointed in their stead.

Governance review

12. Lord Lisvane's recently published review of corporate governance made wide-ranging recommendations in relation to the work of the Standards and Establishment Committees. Whatever arrangements are adopted in the future, one or more Independent Persons will still be required. In relation to his proposed Panel of Independent Persons, Lord Lisvane wrote that:

The terms of appointment will need to be staggered to avoid the need for substantial replacement of the Panel, and loss of embodied experience, at any one time. A base term of appointment might be four years, with reappointment for one further term.

13. The Standards Committee acknowledged that if Lord Lisvane's review led to the Court introducing standard terms across the board for all external appointees then the terms of the Independent Persons may need to be revisited in order to comply with that. However, it was felt that Members needed to take a view on this specific issue now, based on all of the information currently available.

Conclusion

14. The Standards Committee is proposing to introduce fixed terms of office for the City Corporation's Independent Persons and to stagger their appointments. As two of the incumbents have been in post for more than eight years it has now become pressing for Members to make a decision on an appropriate length for those terms and the necessary transitional arrangements. Your Committee is asked to endorse these proposals so that an appropriate recommendation can be made to the Court of Common Council.

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Background Documents

Report to Standards Committee dated 3 May 2019: Review of Local Government Ethical Standards by the Committee on Standards in Public Life

Report to Standards Committee dated 24 January 2020: Review of Local Government Ethical Standards by the Committee on Standards in Public Life – Follow Up Actions

Report to Standards Committee dated 2 October 2020: Fixed terms for Independent Persons