

Statutory Report

Report of Rochelle Tapping

Director of Legal and Governance & Monitoring Officer

1. INTRODUCTION

- 1.1 This report is issued under section 5 of the Local Government and Housing Act 1989 (hereafter referred to as the Act) which imposes a duty, on the Monitoring Officer, to report to Full Council if any proposal, decision or omission contravenes the rule of law. Per s5(3) of the Act, both Matthew Gladstone, Chief Executive Officer and Cecilie Booth, s151 Officer were consulted by email on 8th August 2023.
- 1.2 It is the duty of Peterborough City Council to (a) consider this report at a meeting held not more than twenty-one days after copies of this report are first sent to members of the authority and (b) to ensure that no step is taken for giving effect to any proposal or decision to which this report relates at any time while the implementation of the proposal or decision is suspended in consequence of this report.

2 CONTEXT

- 2.1 The matter to which this section 5 report relates is the constitution of the Independent Panel due to sit on 14th August 2023. That Panel has been illegitimately constituted and contravenes the Local Authorities (Standing Orders) (England) Regulations 2001 (hereafter referred to as the Regulations) as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 2.2 Per Schedule 3(7), the Regulations reserves appointment of the Independent Panel members to Full Council. Schedule 3 states:

2. A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3. The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

4. In paragraph 3 “relevant independent person” means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

5. Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—

(a) a relevant independent person who has been appointed by the authority and who is a local government elector;

(b) any other relevant independent person who has been appointed by the authority;

(c) a relevant independent person who has been appointed by another authority or authorities.

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7. The authority must appoint any Panel at least 20 working days before the relevant meeting.

2.3 A report was prepared to Full Council dated 26th July 2023, which sought to establish an Independent Panel. That report did not provide details of who would be appointed to the Independent Panel. Further, there was no recommendation to Full Council delegating the appointment to officers, despite ambiguous wording within the Terms of Reference for the Panel.

2.4 Concerns regarding the report to Full Council were raised by the Monitoring Officer by emails dated 24th and 26th July 2023 to the Chief Executive Officer, but those concerns were subsequently ignored. Full Council then approved the recommendations within that report, as there was no legally qualified person in attendance to advise Full Council in relation to the matters of concerns.

- 2.5 Given the concerns, legal opinion on the matter was obtained from Mr Straker QC. That opinion stated that it is *'necessary for the members of the Panel to be identified to the Council so that they can be appointed by the Council. In other words, there must be a record that on such and such a day the Council were invited to consider the appointment of named persons and did so appoint named persons. If there is no such record the whole Panel is thrown into doubt. The report I have seen does not identify named persons so, consequently, cannot have appointed named persons.'*
- 2.6 Counsel goes on to state *'that the independent persons on any disciplinary hearing panel must have been appointed by the full Council, if they were not then that hearing is illegitimately constituted.'*
- 2.7 The Independent Panel is scheduled to sit on 14th August 2023 with three panel members named. Those persons were not appointed to the Panel by Full Council and/or their names presented to Full Council for approval.

UNLAWFUL DECISION

- 2.8 The Independent Panel scheduled to sit on 14th August 2023 is 'illegitimately constituted'. Further and in consequence, that Panel does not have jurisdiction to hear any matter. If the Panel were to sit on 14th August 2023, Peterborough City Council would be acting in contravention of the Regulations, which is unlawful.
- 2.9 Full Council is required by law to consider this report and decide what action (if any) to take in response. Corrective action could include legitimate appointment of the Independent Panel at the extraordinary Full Council meeting proposed for 29th August 2023 or at a later meeting of the Full Council.
- 2.10 Although this matter indirectly relates to the current Monitoring Officer, a position that the report author occupies, the s5 duty may only be delegated to a deputy where the Monitoring Officer is unable to, owing to absence or illness.

Further the duty requires the Monitoring Officer to report to Full Council personally (s5(7) of the Act). The current Monitoring Officer is neither absent or ill and therefore has produced this report.

3. ACTION

- 3.1 In the circumstances, a formal Section 5 Statutory Report to all Members of the Council, setting out the legal position and concern is necessary.
- 3.2 In accordance with s5(6) of the Act, as the Independent Panel is illegitimately constituted in contravention of the Regulations, the Panel meeting scheduled for 14th August 2023 is hereby suspended in consequence of this report until the end of the first business day after the day on which this report is considered.
- 3.3 Full Council must legitimately appoint the Independent Panel members so that the Panel may sit and hear matters that are reserved to it under the Regulations.

8th August 2023