

# TONBRIDGE & MALLING BOROUGH COUNCIL

## COUNCIL

10 JULY 2012

### Report of the Chief Solicitor & Monitoring Officer

#### Part 1- Public

#### For decision

### **1 LOCALISM ACT 2011 – APPOINTMENT OF INDEPENDENT PERSON**

#### **1.1 Introduction**

- 1.1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. These changes have been reported to the meetings of the Standards Committee on 5 March and 26 June 2012, and have also been the subject of a workshop with Parish Councils on 14 June.
- 1.1.2 The Act requires that the Council adopt ‘arrangements’ for dealing with complaints of breach of the Code of Conduct both by Borough Council members and by Parish/ Town Council members.
- 1.1.3 The ‘arrangements’ adopted by the Council must include provision for the appointment by the Council of at least one Independent Person.
- 1.1.4 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of members of the Borough Council.
- 1.1.5 The functions of the Independent Person(s) are –
- (i) They *must* be consulted by the authority (and their views taken into account) before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);

- (ii) They *may* be consulted by the authority in respect of a standards complaint at any other stage; and
- (iii) They *may* be consulted by a member or co-opted member of the Borough Council or of a Parish Council against whom a complaint has been made.

1.1.6 As drafted, the Localism Act 2011 prevents both of our existing Independent Members (Mr David Ashton and Mr John Gledhill) from being appointed as 'Independent Persons' under the Act, as any person who is, or has been within the last 5 years, an elected or co-opted member of the Borough Council is ineligible to apply for the role. However, following a number of representations to the DCLG, transitional regulations were published on 6 June 2012 which allow for the appointment of existing Independent Members of the Standards Committee.

1.1.7 On 17 April 2012 Council resolved that I should advertise a vacancy of the appointment of two Independent Persons. It was further resolved that a Committee comprising the Chairman and Vice-Chairman of the Standards & Training Committee, together with the Group Leaders be set up to short list and interview candidates and make a recommendation to Council for appointment.

1.1.8 The necessary advertisement was placed on 7 June 2012, with a closing date of 28 June.

1.1.9 At the time of preparing this report one application had been received in response to the advertisement. I shall update Members further in a supplementary report.

## **1.2 Financial and Value for Money Considerations**

1.2.1 On 17 April 2012 Council resolved that the Monitoring Officer, in consultation with the Chairman of Standards and Training Committee, and with the advice of the Personnel and Customer Services Manager, be authorised to set the initial allowances and expenses for the Independent Person, and this function subsequently be delegated to the Standards and Training Committee.

## **1.3 Risk Assessment**

1.3.1 It is important that a robust system exists for promoting and maintaining high standards of conduct. The absence of such a framework will lower public confidence in the democratic process.

1.3.2 The role of 'Independent Person' is an important element of the new regime, and will provide independent advice to the Council and members in connection with complaints.

## **1.4 Equality Impact Assessment**

1.4.1 See 'Screening for equality impacts' table at end of report.

## **1.5 Recommendations**

## 1.5.1 To follow in a supplementary report

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The government has carried out an equality impact assessment of the changes contained in the Localism Act 2011, which has found that no unintended or disproportionate impact is likely.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

Background papers:

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Localism Act 2011

Adrian Stanfield

Chief Solicitor & Monitoring Officer