

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

31 JANUARY 2022

Report of the Director of Central Services

Part 1 - Public

For decision

1 APPOINTMENT OF INDEPENDENT PERSONS

Summary

This report asks Members to approve the process for the recruitment of Independent Persons

1.1 Introduction

- 1.1.1 The Localism Act 2011 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.
- 1.1.2 The ‘arrangements’ adopted by the Council must include provision for the appointment by the Council of at least one Independent Person.
- 1.1.3 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.
- 1.1.4 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.

- 1.1.5 The Independent Person plays an important role in the ethical standards process. Within the Borough Council's adopted arrangements for dealing with Code of Conduct complaints, the Independent Person is consulted on all Code of Conduct complaints as part of the Initial Assessment Process, and again following receipt of the investigation report. The Independent Person will also be invited to attend meetings of the Standards Hearings Panel and give their views to the Panel.
- 1.1.6 The role of the Independent Person has since been widened under the Local Authority's (Standing Orders) England (Amendment) Regulations 2015. These regulations changed the localised disciplinary process in relation to the Council's Head of Paid Service, the Chief Finance Officer and the Monitoring Officer statutory positions. In the case of any proposed disciplinary action against such a statutory officer, the Council is required to invite the Independent Person(s) who have been appointed for the purposes of section 28(7) of the Localism Act (i.e. for the functions set out in para 1.1.4 of this report) to be considered for appointment to the Panel set up to advise the Council on any disciplinary action to be taken against a statutory officer. In the event that the Independent Person(s) accept the invitation then the Council must appoint up to 2 Independent Persons to the Panel in a priority order set out in our Standing Orders.
- 1.1.7 On 11 July 2017 Council resolved to appoint two Independent Persons, namely Mr Clive Grenyer and Mr David Mercier for a 5-year period expiring on 30 June 2022. The appointment of 2 Independent Persons rather than 1 provides additional resilience/ flexibility in the discharge of our statutory obligations e.g. to cover for absence and conflicts of interest, and will help avoid a situation where both the Monitoring Officer and subject member are calling upon the same Independent Person. Such an approach is in line with best practice and recommendations from the Committee on Standards in Public Life. The approach taken in 2017 therefore mirrored the approach we had taken in the initial appointment of Independent Persons in 2012.
- 1.1.8 Mr Grenyer sadly passed away in December 2019. Since that time the Council has continued with Mr Mercier as the sole Independent Person. However, as we now approach the end of Mr Mercier's appointed term of office, we are required to conduct a new recruitment process for the appointment of Independent Persons. Mr Mercier is able to be appointed for a further term and he has indicated that he would be interested in applying to continue in the role.
- 1.1.9 As with the previous appointments, it is proposed that a Panel comprising the Chair and Vice-Chair of the Joint Standards Committee, together with the Group Leaders be set up to interview candidates and make a recommendation to Council for appointment.
- 1.1.10 There is presently no minimum or maximum term of office for the appointed Independent Persons. The practice of the Borough Council to date has been to appoint the Independent Persons for a 5-year term, and there have been no issues that have arisen with this approach. However, in its 2018 review of Local

Government Ethical Standards, the Committee on Standards in Public Life (CSPL) recommended to Government that the Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of 2 years, renewable once. The government is yet to respond to the recommendations of the CSPL so for now the position remains that the term of office of the Independent Person(s) is at the discretion of the Borough Council.

1.2 Financial and Value for Money Considerations

- 1.2.1 The Independent Person receives an annual allowance for performance of their role, currently £531 pa.

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 ethical standards regime and will provide independent advice to the Council and members in connection with complaints.

1.4 Equality Impact Assessment

- 1.4.1 The issues detailed in this report have a remote or low relevant to the substance of the Equality Act. There is no perceived impact on end users.

1.5 Recommendations

- 1.5.1 It is recommended that:
 - (a) the Monitoring Officer advertises for the recruitment of 2 Independent Persons;
 - (b) a panel comprising the Chair and Vice-Chair of the Joint Standards Committee, together with the Group Leaders be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.

contact: Adrian Stanfield

Background Papers: none