

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

10 MAY 2022

Report of the Monitoring Officer

Part 1 - Public

For decision

1 APPOINTMENT OF INDEPENDENT PERSON

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 also has a statutory role in any 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. If 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.

- 1.1.6 On 31 January 2022, the General Purposes Committee resolved to advertise for the appointment of 2 Independent Persons, for a 5-year period commencing on 1 July 2022. The Committee further resolved that 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.
- 1.1.7 The necessary advertisement was placed on 4 February 2022, with a closing date of 4 March 2022.
- 1.1.8 The Council received one application for the post, from Mr David Mercier, the current Independent Person (application attached as private **Annex 1**). In light of this I wrote to all Group Leaders and the Chair/ Vice-Chair of the Joint Standards Committee to seek their confirmation that the panel process would be dispensed with, and a recommendation made to Council that Mr Mercier be appointed. At the time of preparing this report I have not yet heard back from all of the Group Leaders.

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 standards regime and will provide independent advice to the Council and members in connection with complaints.
- 1.3.3 The Council is under a statutory obligation to appoint at least one Independent Person. Failure to do so will mean that the Council will be unable to discharge the functions set out at paragraph 1.1.4 above. In particular, the Standards Hearing Panel will be unable to make a finding as to whether a member has failed to comply with the Code of Conduct.

1.4 Equality Impact Assessment

- 1.4.1 None arising from this report.

1.5 Recommendations

- 1.5.1 That Mr David Mercier is appointed as an Independent Person under s28 of the Localism Act 2011, for a term expiring on 30 June 2027.

contact: Adrian Stanfield

Background Papers: None