

## **Councillor Conduct Committee**

**10 July 2024**

### **Appointment of Independent Persons**

Report from/Author: Bhupinder Gill, Assistant Director Legal and Governance

#### **Summary**

The report informs the Committee of the requirement to appoint independent person(s) and proposals of the process to appoint.

#### **1. Recommendations**

##### **1.1 Committee are requested to**

- 1.1.1 Note the requirement for the appointment of independent person(s) under the Localism Act 2011.
- 1.1.2 Agree to recommend Full Council to appoint Mr Greenwood for a further four year term.
- 1.1.3 Approve the process set out in paragraph 4.2 for the advertisement, selection and recommendation to Council for the appointment of a second independent person.

#### **2. Budget and policy framework**

- 2.1 It is a mandatory requirement for each relevant local authority to appoint an independent person to undertake specific roles in the performance of maintaining high standards of ethical behaviour in local government. Such requirements have been adopted by the Council as part of the Council's policy and budget framework.

#### **3. Background**

- 3.1 S28(7) of the Localism Act 2011 requires the appointment of an Independent Person
  - 3.1.1 whose views are sought and taken into account before determining allegations that a Member is in breach of the Code of Conduct,
  - 3.1.2 who may be contacted by a Councillor who is the subject of an allegation.

- 3.2 The appointment of an Independent Person must be approved by the majority of the Members of the authority.
- 3.3 In addition, the Local Authorities (Standing Orders) (England) Regulations 2015 (SI 2015/881) provide that a local authority must include at least two independent persons to a panel hearing the dismissal of a senior officer (Chief Executive, S151 Officer or Monitoring Officer).
- 3.4 **Role of Independent Person.** Pursuant to the Localism Act 2011 (the Act) each local authority is required to adopt a code of conduct that members (co-optees) elected/appointed to that authority must comply with when undertaking duties associated with holding public office. The code is derived from the Nolan principles of holding public office together with statutory defined elements that every code must contain.
- 3.5 The Act sets out minimum requirements for the consultation with, and taking into account the views of an independent person (see Appendix 1)
- before it makes its decision on an allegation that it has decided to investigate,
- and whose views may be sought-
- generally. At Medway Council, the Independent Person is consulted as part of the initial screening process
  - by a member, or co-opted member whose behaviour is the subject of an allegation, and
  - by a member, or co-opted member, of a relevant parish council whose behaviour is the subject of an allegation.
- 3.6 Additionally and separate to the above role, the Independent person has to be consulted as part of the statutory processes when considering disciplinary action against any of the statutory officers.

## 4. Recruitment

- 4.1 **Qualification and Recruitment.** Before an Independent Person can be appointed, they must have applied for the role which was advertised publicly by the local authority. There are strict criteria set out in the Act which detail when a person qualifies to be considered independent, (section 28(8), Appendix 1). In essence they cannot have been a member, co-optee of the local authority in the last five years, nor can they be a friend or relative of a member or co-optee of the Council. Relative is a defined term under the Act and is very broad including partners, siblings and descendants of the same grandparents.
- 4.2 It is proposed that the following process is followed to recruit and independent person

- 4.2.1 The Monitoring Officer (MO), in consultation with the Chairperson of the Councillor Conduct Committee, draft an advert and publicise the same on the Council's website inviting applications from suitably qualified individuals
- 4.2.2 The MO screens all applications received to make sure that applicants meet the statutory qualification criteria
- 4.2.3 Details of those applications which pass the initial screening process (para 4.4.2 above) are then shared with all group whips. Only those applicants who are unanimously supported are taken forward to an interview process (if required). The interview panel to consist the Chairperson of this committee, the three group whips (or their nominees) and the MO.
- 4.2.4 The selected applicant is recommended to Council for appointment.
- 4.3 **Reappointment.** The Council currently has two independent persons appointed, Mr Greenwood and Mr Teckhandani. Both have been contacted to ascertain if they would like to be considered for reappointment to this role. Mr Greenwood has confirmed he would like to be considered; however no communication has been received from Mr Teckhandani (email or letter).
- 4.4 Subject to the agreement of the committee, it is proposed that Mr Greenwood's appointment be renewed for a further 4-year term (date of appointment by Council). If there is contact from Mr Teckhandani following publication of these papers and before the meeting of the committee, it will be reported verbally to the committee.
- 4.5 The current independent persons are allowed to claim out of pocket expenses incurred in the performance of their duties but there is no nominal allowance for holding the office. Whilst some other councils pay allowances (annual or day rates) it is not considered to be an impediment. Should that become an issue during this recruitment cycle, a further report can be brought to the committee.

## 5. Options

- 5.1. The terms of office for the independent persons expire on 7 October 2024.
- 5.2. The Council is mandated to have at least one independent person for the purposes of the Act. The Monitoring Officer considers it would be beneficial to have a minimum of two to overcome potential issues that may arise due to unavailability or potential conflict of interest/ bias where an independent person is consulted a member subject to an investigation which proceeds to a determination hearing
- 5.3. The Council is mandated to have two independent persons to meet the requirements of the Local Authorities (Standing Orders) (England) Regulations 2015.

## 6. Advice and analysis

- 6.1. The committee is recommended to approve the process for recruitment and appointment of persons to the role of independent person.

## 7. Risk management

- 7.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Using the following table this section should therefore consider any significant risks arising from your report.

Risk	Description	Action to avoid or mitigate risk	Risk Rating
Loss of confidence in the ethics regime	The public and others lose confidence in the complaints process	<ol style="list-style-type: none"> <li>1. Appointment of Independent persons</li> <li>2. All groups on the councils are involved in the selection process.</li> <li>3. Only those applicants unanimously agreed upon are recommend for appointment</li> </ol>	CIII
Unlawful decision making	Failure to consult with Independent person before determining a complaint	Appointment of independent person	CIII

For risk rating, please refer to the following table

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

## 8. Consultation

- 8.1. There was no consultation undertaken in producing this report.

## 9. Climate change implications

9.1. [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.

9.2. There are no direct implications arising from this report.

## 10. Financial implications

10.1. There are no financial implications arising from this report.

## 11. Legal implications

11.1. These are contained within the body of the report.

### Lead officer

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### Appendices

Appendix 1 - S.28 Localism Act 2011

### Background papers

None.



Section 28 Localism Act 2011

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
  - (I) by the authority in relation to an allegation in circumstances not within paragraph (a),
  - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and
  - (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

(8) For the purposes of subsection (7)—

- (a) a person is not independent if the person is—
  - (i) a member, co-opted member or officer of the authority,
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or
  - (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);
- (b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was—
  - (i) a member, co-opted member or officer of the authority, or
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;
- (c) a person may not be appointed under the provision required by subsection (7) unless—

- (i) the vacancy for an independent person has been advertised in such manner as the authority considers is likely to bring it to the attention of the public,
    - (ii) the person has submitted an application to fill the vacancy to the authority, and
    - (iii) the person's appointment has been approved by a majority of the members of the authority;
  - (d) a person appointed under the provision required by subsection (7) does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.
- (9) In subsections (6) and (7) “allegation”, in relation to a relevant authority, means a written allegation—
- (a) that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or
  - (b) that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.
- (10) For the purposes of subsection (8) a person (“R”) is a relative of another person if R is—
- (a) the other person's spouse or civil partner,
  - (b) living with the other person as husband and wife or as if they were civil partners,
  - (c) a grandparent of the other person,
  - (d) a lineal descendant of a grandparent of the other person,
  - (e) a parent, sibling or child of a person within paragraph (a) or (b),
  - (f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or
  - (g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.