

Committee(s): Annual Council	Date: 19th May 2020
Subject: Appointment of Independent Persons for Purpose of the Localism Act 2011	Wards Affected: All
Report of: Claire Mayhew, Corporate & Democratic Services Manager	Public
Report Author: Name: Claire Mayhew, Corporate and Democratic Services Manager Telephone: 01277 312741 E-mail: claire.mayhew@brentwood.gov.uk	For Decision

Summary

The Localism Act 2011 requires all principal authorities to have arrangements in place to consider allegations of breaches of the Councillors Code of Conduct for that authority and the Code of Conduct for its associated parish councils and to make decisions on those allegations. In doing so, an authority must take account of the views of an Independent Person appointed by the authority under the Localism Act. This report relates to a proposal that Brentwood Borough Council confirms the appointment of three Independent Persons to comply with the statutory requirements of the Localism Act 2011.

Recommendation(s)

Members are asked to:

- R1. This report proposes the confirmation of appointment of Mr John Boylin, Mr Mike Hawkins and Mr Steve Marsh as the three Independent Persons to comply with the statutory requirements of Section 28(7) of the Localism Act 2011 for a period terminating post the first Council after municipal elections 2023 and**
- R2. That a Brentwood Borough Council Independent Person be paid an annual allowance of £500 calculated on a pro-rata 12 monthly basis.**

Main Report

Introduction and Background

1. The Localism Act 2011 (the "Act") changed the arrangements for dealing with governance issues regarding the conduct of elected and co-opted Members. It

abolished the national Standards Board and required that local authorities establish their own Code of Conduct and establish a process for dealing with allegations that elected and co-opted members of the authority and its associated parish councils may have breached their Code of Conduct.

2. The Localism Act provisions took effect from 1 July 2012. The Council agreed a new Code of Conduct and Complaints Procedure which has been incorporated into the Constitution.
3. The new Localism Act regime removed the requirement to have an independent chair and a statutory standards committee. Instead to add external input, section 28(7) of the Localism Act requires the Council to appoint at least one "*independent person*" who must be consulted and their views taken into account on all complaints investigated and before a decision on any such complaint is made. The Council may consult with the independent person on other matters relating to an allegation and any Member subject to allegations complained about can also seek the independent person's view.
4. To ensure independence, *independent persons* are not to have links to the Council, councillors or officers or have been members including co-opted membership. Unfortunately, this means that the previous independent Members of the statutory Standards Committee were disqualified from applying for the role as they were co-opted members of the Council.

Issue, Options and Analysis of Options

Statutory Compliance

5. The Localism Act 2011 requires that a formal appointment be made therefore there is not alternative of no action.

Need to Avoid Conflicts of Interest

6. The conflict of interest arises because the legislation requires the independent person to take on three specific tasks:
 - *firstly* to give a view that must be taken into account before an authority makes a decision on an allegation that it has decided to investigate;
 - *secondly* to be available to give a view to a member whose behaviour is subject to an allegation; and
 - *finally* giving a view about allegations which have not yet reached the stage of determination.

7. While it may be possible for the Independent person to assist with giving a view on allegations against a Member, it would create a conflict if they were then consulted by that Member. For example, if they had formed a view that the Member was probably guilty of the accusation because they had been consulted by the authority prior to being contacted by the Member then it will be difficult for them to give a view to the Member without disclosing at least in part what they might have been told by the authority. For the same reason if they were consulted by the Member and then were asked for a view by the authority, they face the dilemma for how do they put aside what they have learnt from the Member. This conflict means that the process cannot function satisfactorily unless there are at least two Independent persons readily available because one cannot give a view to Members and the authority at the same time.
8. Furthermore, even with two independent persons there is a risk of an absence of one effectively preventing the whole process from functioning and as the legislation creates an entitlement for the Member to have an Independent Person to consult and an obligation for the authority to consult before it makes a decision. If a member does not have an independent person to consult it will mean that unless they waive their right the process will come to a halt pending availability.

Need for Three Appointments

9. For the above reasons it is recommended establishing a compliment to be maintained of three independent persons. The allocation of roles in terms of the practices of the Independent Persons would be in accordance with best practice utilising a rota arrangement ensuring that all got experience in the various stages of the complaints process.
10. Going forward the availability of independent persons is being addressed by inter authority working and the option of cross borough training and sharing of an independent persons is being considered.

Appointment of Independent Persons

11. To meet the risks outlined in the previous section of this report a recruitment exercise was carried out by the Monitoring Officer. Confirmation of selection was made to Mr John Boylin, Mr Mike Hawkins and Mr Steve Marsh
12. To ensure sound governance the Monitoring Officer has met with the three individuals and proposes in due course to place them under an Agreement as set out in the Appendix A to this report which is utilised as best practice by other boroughs. Subject to the recommendation being agreed the appointments

will commence forthwith subject to satisfactory references and an induction process being arranged, which will allow the independent persons to function according to the Localism Act.

13. The role of Independent Person in adjacent Boroughs attracts an annual nominal allowance of £500. It would be suggested that Brentwood Borough Council reflects this nominal payment which can be met from existing budgets. The Independent Person may also claim reasonable expenses for attendance, travel and subsistence. The Independent Persons are not Co-Opted Members and therefore the inclusion of such an allowance provision will not engage any need to have it approved/reviewed by a Members Remuneration Panel.
14. It is the recommendation of the Monitoring Officer that the Council agrees to confirm the appointments of Mr John Boylin, Mr Mike Hawkins and Mr Steve Marsh as the three Independent Persons to comply with the statutory requirements of Section 28(7) of the Localism Act 2011 for a period terminating post the first Council after municipal elections 2023.
15. That a Brentwood Borough Council Independent Person be paid an annual allowance of £500 calculated on a pro-rata 12 monthly basis.

Reasons for Recommendation

16. The key reasons are set out in the body of the report in summary. It is a statutory requirement on Brentwood Borough Council as a principal Council to appoint Independent persons for the purpose of the Localism Act.

Consultation

17. It is a statutory requirement that Council is consulted and approves the appointments.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources)
Tel/Email: 01277 312829/jacqueline.vanmellaerts@brentwood.gov.uk

18. The proposed allowance is met by Existing budgets within Democratic Services and is included in the Medium Term Financial Plan 2021/2020.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law and Governance) and Monitoring Officer

Tel & Email: 01277 312705/amanda.julian@brentwood.gov.uk

19. The statutory requirements on the Council are set out in the body of the report and the recommendations sets out the necessary steps to ensure compliance.

Economic Implications

Name/Title: Phil Drane, Corporate Director (Planning & Economy)

Tel/Email: 01277 312610/philip.drane@brentwood.gov.uk

20. There are no direct economic implications.

Equality and Diversity Implications

Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager

Tel/Email: 01277 312634/kim.anderson@brentwood.gov.uk

21. Section 149 of the Equality Act requires the Council to have due regard to the Public Sector Equality Duty when making decisions, strategic planning and when implementing policies that may impact on those who have protected characteristics. Listed Authorities must comply with the requirements under the Equality Act 2010 (Specific Duties) Regulations 2011 (the Regulations), to publish equality data and list specific equality objectives. These Regulations apply to the Council.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

22. None.

Background Papers (include their location and identify whether any are exempt or protected by copyright)

23. Localism Act 2011 and Secretary of State for Local Government and Communities Guidance.

Appendices to this report

Appendix A: Independent Person Agreement