

18 May 2016

Annual Council

**Appointment of Independent Persons for Purpose of the
Localism Act 2011**

Report of: *Daniel Toohey, Monitoring Officer*

Wards Affected: *All Wards*

This report is: *Public*

1. Executive Summary

- 1.1 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.

2. Recommendation(s)

- 2.1 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 2018.**
- 2.2 That a Brentwood Borough Council Independent Person be paid an annual allowance of £500 calculated on a pro-rata 12 monthly basis.**

3. Introduction and Background

- 3.1 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.

- 3.2 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.
- 3.3 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.
- 3.4 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.

4. Issue, Options and Analysis of Options

Statutory Compliance

- 4.1 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

- 4.2 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.

- 4.3 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.
- 4.4 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

- 4.5 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.
- 4.6 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.

5. Appointment of Independent Persons

- 5.1 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.
- 5.2 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 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.

- 5.3 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.
- 5.4 It is the recommendation of the Monitoring Officer that the Council agrees to:
 - 5.5.1 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 2018;
 - 5.5.2 That a Brentwood Borough Council Independent Person be paid an annual allowance of £500 calculated on a pro-rata 12 monthly basis.

6. Reasons for Recommendation

- 6.1 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.

7. Consultation

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

8. Implications

Financial Implications

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- 8.1 The proposed allowance is met by the Members Allowance Budget.

Legal Implications**Name & Title:** Daniel Toohey, Monitoring Officer**Tel & Email:** 01277 312860/ daniel.toohey@brentwood.gov.uk

- 8.2 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.

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

- 8.3 None

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

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

10. Appendices to this report

Appendix A - Independent Person Agreement

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