

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Council

Date: 6 October 2020

Reporting officer: Jan Guylar, Head of Shared Legal Service

Subject: Appointment of Independent Persons

Purpose and summary of report:

The Localism Act 2011 requires the appointment of an Independent Person to investigate allegations that a member is in breach of the Code of Conduct and the appointment of an Independent Person must be approved by the majority of the Members of the authority.

This report provides an update on progress made in recruitment and recommends the appointment of two Independent Persons.

Recommendations:

1. To appoint two Independent Persons.

1. Role of Independent Person

- 1.1 S28(7) of the Localism Act 2011 requires authorities to appoint at least one Independent Person (IP) whose views must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate and whose views should be sought by a member if that person's behaviour is the subject of an allegation. The appointment of an Independent Person under section 28(7) of the Localism Act 2011 must be approved by a majority of the Members of the Council.
- 1.2 The current IP was appointed in July 2016. The end of their term is unclear. The Council has complied with a statutory duty to adopt a code dealing with the conduct expected of Members and co-opted Members and has in place a process for considering complaints about Councillors' conduct under the Localism Act 2011. Amendments were made to the process for considering complaints in 2019, which included the provision to recruit to the IP role in tandem with Medway Council, as the two authorities share a Monitoring Officer. The 4 year term of the Medway Council IPs ends on 12 October 2020. It is therefore proposed that the Monitoring Officer recruits 2 IPs for Gravesham Borough Council (and a further 2 IPs for Medway Council) with the new 4 year term commencing on 13 October 2020. Both authorities have a reciprocal agreement with other local authorities in Kent to share IP's in circumstances where the council's own IP is unavailable or

the complaint involves several members making the issue more complex and avoids any conflict of interest.

- 1.3 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).
- 1.4 At present there is no provision in the Localism Act 2011 that limits the number of times a person can be appointed as an IP and the term of the appointment. The Local Government Ethical Standards – A Review by the Committee on Standards in Public Life report published in January 2019 made the following recommendations:
 - a) Recommendation no.8 – The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once. The responsible body for making this amendment is the government.
 - b) Best practice for Local Authorities no.7: Local Authorities should have access to at least 2 IPs.
- 1.5 In light of the Covid-19 pandemic it is unknown when or if the government will amend legislation. Therefore it is proposed that the status quo is maintained with a term of 4 years. By appointing 2 IPs the council will have met the best practice requirements.

2. Fee payable

- 2.1 A day rate of up to £350 is paid to be negotiated by the Monitoring Officer. Clear targets for work will be agreed in advance with the Independent Person on a case-by-case basis.
- 2.2 Since the Shared Legal Service and Shared Monitoring Officer arrangements began on 1st April 2017 there has been only one complaint that was referred to the Standards Committee which concluded that an investigation was not required. Therefore the IPs role was limited to merely being sent a copy of the report to the Standards Board in case the Standards Board or the Councillor who has been accused of misconduct wish to seek the advice of the IP. That advice was not sought and no charge was made by the IP. It is therefore likely that this fee will rarely be incurred but when it is the calibre of the IP will bring efficiencies due to their experience in such matters.

3. Recruitment process

- 3.1 Approval was obtained from the Management Team to recruit to this statutory post.
- 3.2 The role was advertised in early July prompting 13 applications. Seven candidates were shortlisted for interview with interviews taking place week commencing 27 July. The Panel decided to recommend the Council appoint Martin Pilkington and Joy Ukadike as the two Independent Persons. Martin Pilkington is a qualified solicitor, appointed as a member of the Employment Tribunal in October 2019 and is an experienced IP having been in that role since May 2013. Joy Ukadike is an experienced local government lawyer. Both candidates best met the person specification and were the unanimous choice of the panel.

4. Background papers

4.1 None.

Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

IMPLICATIONS	APPENDIX 1
Legal	S28(7) of the Localism Act 2011 requires authorities to appoint at least one Independent Person whose views must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate and whose views should be sought by a member if that person's behaviour is the subject of an allegation. The appointment of an Independent Person under section 28(7) of the Localism Act 2011 must be approved by a majority of the Members of the Council. Subsequent legislation and best practice requires two Independent Persons should be appointed.
Finance and Value for Money	<p>A daily rate of £350 was considered appropriate to attract the right calibre of applicants and would provide value for money due to the skills an IP would bring to an investigation and could reduce the risk of the matter being referred to the Local Government and Social Care Ombudsman.</p> <p>It is suggested that administration of the IP role could take place through the existing shared Legal Services and Monitoring Officer arrangements, with any Gravesham specific costs recharged from Medway via the existing contribution method between the two Authorities.</p>
Risk Assessment	If the post is not recruited to the council would be in breach of legislation.
Data Protection Impact Assessment	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data? A definition of each type of data can be found on the Information Commissioner's Office website via the above links.</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk. N/A</p>
Equality Impact Assessment	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p> <p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No</p> <p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>

Corporate Plan	People, Place and Progress
Climate Change	N/A
Crime and Disorder	N/A
Digital and website implications	N/A
Safeguarding children and vulnerable adults	N/A