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| REPORT TO: | STANDARDS COMMITTEE |
| DATE: | 14 December 2021 |
| REPORT OF: | Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer) |
| SUBJECT MATTER: | UPDATE ON INDEPENDENT PERSON |
| REPORT SUMMARY: | This report concerns the recruitment and appointment of Independent Persons who will work with the Monitoring Officer on standards matters in accordance with the Localism Act 2011 and the Council’s Code of Conduct. Independent Persons will also work closely with the Standards Committee on all aspects of the Committee’s work in relation to wider ethical and governance issues affecting the Council, providing independent input. |
| RECOMMENDATION(S) | Members are asked to consider the report and <ul style="list-style-type: none"> (a) Acknowledge the tremendous work overtaken by the Chair and Deputy over the last decade which has maintained high standards of conduct and thank them for agreeing to cover the pandemic period; (b) Consider and approve the Independent Person Protocol attached at Appendix A. (c) That the Monitoring Officer be authorised to undertake a recruitment process to appoint two Independent Persons in the capacity as Chair and Deputy of the Standards Committee for a term of 4 years (from the start of the 2022/23 Municipal Year until the end of the 2025/26 Municipal Year - with such term of office being extended to a maximum of 8 years. |
| FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer) | The Independent Person and Deputy are paid in accordance with the Members Allowances Scheme pursuant to the Local Authorities (Members’ Allowances) Regulations 2003 currently these stand at £6,692 and £2,492 for the Deputy together with any necessary travel expenses and is within existing budgetary provisions. |
| LEGAL IMPLICATIONS: (Authorised by Borough Solicitor) | The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications. Section 28 of the Localism Act provides that arrangements must be put in place under which allegations can be investigated and action taken which must include provision of at least one independent person, although no term of office is specified. The Act does not limit the number of independent persons who can be appointed but does require appointments to be approved by “the majority of members of the authority”. Although the role of the Independent Person is voluntary, an allowance is paid (per role) to cover any expenses incurred whilst carrying out the role. The law is clear that such an allowance does not negate independence. |

RISK MANAGEMENT:

Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.

LINKS TO COMMUNITY PLAN:

Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:



Telephone: 0161 342 3028



e-mail: Sandra.Stewart@tameside.gov.uk

1. CONTEXT

- 1.1 Councils have a duty to promote and maintain high standards of conduct by their elected councillors and co-opted members.
- 1.2 The Localism Act 2011 (the Act) requires every council to have in place a process under which allegations of misconduct can be investigated and decisions made on such allegations.
- 1.3 To comply with the requirements of the Act, the Council is required to appoint at least one Independent Person to deal with standards matters and, in some circumstances, must seek the views of an Independent Person before taking a decision on an allegation of misconduct that has been investigated.
- 1.4 An Independent Person has a number of roles:
 - (a) The views of an Independent Person must be sought and taken into account by the Council before it makes a finding that any Member has failed to comply with its code of conduct or imposes any sanction;
 - (b) The views of an Independent Person may be sought on whether to investigate a complaint and how to deal with a particular allegation; and
 - (c) Any Member against whom an allegation has been made may consult the Independent Person regarding that allegation.
- 1.5 In addition, Independent Persons are required to advise Full Council in the event of any disciplinary action being proposed against three key statutory officers: Head of Paid Service, Monitoring Officer and Chief Finance Officer.

2. CURRENT POSITION

- 2.1 The Council has been very well served by Valerie Bracken as Chair of the Standards Panel and supported by Judith Barnes who have through their dedication and commitment supported and maintained high standards of integrity and conduct at the Council. The intention was that they would serve two terms of four years. However, the impact and uncertainty meant that it was an inappropriate time to seek a new Chair and Deputy and both kindly agreed to support the Council by extending their tenure. However, it is now felt appropriate and in line with good corporate governance that we should now look to recruit two independent persons to act as Chair and Deputy of the Standards Committee seeing their guidance and support to recruit to the roles.
- 2.2 Additionally, as we will lose a lot of experience and knowledge it was thought useful if an Independent Person protocol was drafted to help clarify the role and that is set out at **Appendix A** for consideration and approval.

3. PROPOSAL AND REASONS

- 3.1 The Council has been operating with two Independent Persons since 2011, when they were created by legislation and such an approach is in line with best practice and recommendations from the Committee on Standards in Public Life., and one of the 15 best practice recommendations of the Committee on Standards in Public Life (CSPL) local government ethical standards report of January 2019. This provides the Council with greater flexibility, to cover for absence or conflicts of interest, and will negate a situation where both the Monitoring Officer and subject member are calling upon the same Independent Person.
- 3.2 Individuals appointed as Independent Persons must be recruited through a formal procedure. As a result, in accordance with the Act, a public advertisement campaign is recommended. A copy of the proposed advert and candidate information pack is attached at **Appendix B**.

- 3.3 The Localism Act requires the appointment of Independent Persons to be approved by “the majority of members of the authority”. As a result, the Standards Committee will make recommendations to Council to appoint to serve as Independent Persons.
- 3.4 An initial one year term of office is recommended, for the Municipal year 2022/3, which can be extended annually at Annual Council to a maximum 8 year period to provide stability of tenure where appropriate.
- 3.5 Section 28 of the Localism Act provides that arrangements must be put in place under, which allegations can be investigated and action taken, which must include provision of at least one independent person, although no term of office is specified. The Act does not limit the number of independent persons who can be appointed but does require appointments to be approved by “the majority of members of the authority”.
- 3.6 The Localism Act also stipulates that a person is not independent (and cannot therefore be considered for appointment) if the person is or has been within the last five years:
- (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 (i) or (ii) above.

4. RISK MANAGEMENT

- 4.1 The absence of an Independent Person would place the Council in breach of its statutory duty under the Act and would prevent the Monitoring Officer from dealing with complaints in accordance with the Council’s Code of Conduct.
- 4.2 Appointing at least two Independent Persons will aid resilience, provide cover in the case of conflicts of interest or absence while also providing a wider range of external views and skills/knowledge.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies.
- 5.2 While there are no specific equalities implications arising from this report, the recruitment process will seek to find a variety of candidates that whilst meeting the profile, offer a variety of different backgrounds and experiences.

6. RECOMMENDATION

- 6.1 As set out at the front of the report.

APPENDIX A

INDEPENDENT PERSON PROTOCOL

Introduction

1. The purpose of this Protocol is to set out the principal ways in which the Council, the Monitoring Officer and the Independent Person will interact in relation to the assessment of an allegation that a Member of the Council or a Member of the Mossley Town Parish Council within the Borough, has failed to comply with the Council's Code of Conduct.
2. Any reference in this Protocol to the Independent Person applies to however many Independent Persons the Council has and Independent Persons could also include an Independent Person from a neighbouring authority.
3. The Localism Act 2011 requires the Council to appoint at least one Independent Person to assist the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process.
4. The Council intends to appoint two Independent Persons in capacity as Chair and Deputy of the Standards Committee to act in this role. If required, the Council can request for an Independent Person appointed by another Greater Manchester Authority to act as their Independent Person(s).
5. The role of the Independent Person is set down in legislation (section 28(7) of the Localism Act 2011) - 'Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, 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 in any other such circumstances it considers appropriate'.
6. The Independent Person will be considered an office-holder of the Council in accordance with the duty under s28(7) of the Localism Act 2011 and will therefore be entitled to be covered by the Council's indemnity insurance provided they act reasonably and within the terms of this Protocol.
7. The Council has adopted a Code of Conduct for Members and has agreed arrangements for dealing with any allegation that a Member of the Borough Council or a Mossley Town Parish Council Member, has failed to comply with the Council's Code of Conduct.

Role of Independent Person

8. The purpose of the Independent Person's role is to enable the public to have confidence in how the Council deals with allegations of misconduct.
9. In carrying out the role, the Independent Person will ensure s/he will be available for consultation at various points in the arrangements for dealing with complaints concerning Councillors and or Town Parish Councillors.
10. If the Independent Person has or has had a personal relationship with the complainant or the Member who is the subject of the complaint, they should advise the Monitoring Officer at the earliest opportunity and the Monitoring Officer will consider making appropriate arrangements to ensure an Independent Person can be made available.
11. The Monitoring Officer function (including the Deputy Monitoring Officer) will review every complaint received and may, at their discretion, consult the Independent Person. If it is the

initial view of the Monitoring Officer function that the complaint would not amount to a breach of the Member Code of Conduct and the Monitoring Officer will not progress the matter further.

12. Where an initial fact-finding investigation has been undertaken, a report will be submitted by the Investigator (usually the Deputy Monitoring Officer) to the Monitoring Officer. The Monitoring Officer, having consulted with the Independent Person, will consider and decide whether there is evidence of a failure to comply with the Code of Conduct and, if so, what action should be taken.
13. The Independent Person shall provide an objective and impartial opinion, which the Monitoring Officer will consider in making the decision.
14. The Monitoring Officer, having consulted the Independent Person may consider resolution of the complaint by one of the following means:
 - (a) The Member accepting that his/her conduct was unacceptable and offering an apology or other remedial action to the Council.
 - (b) Referring the matter to the Member's Group Leaders.
 - (c) The Member being required to attend training.
 - (d) The member being required to meet with the Monitoring Officer and/or other Chief Officers.
 - (e) Such other action as is considered appropriate by the Monitoring Officer and Independent Person.
15. Where a complaint is the subject of a Hearings Panel, the Independent Person or their Deputy must attend and Chair the meeting.
16. Where the Independent Person nor their Deputy is not available to deal with a particular matter or where the Independent Person and Deputy has a potential conflict of interest, the Council shall appoint another Independent Person who shall act in the particular matter. Such Independent Person may be an Independent Person appointed by another Authority to act as their Independent Person.

Relationship with the Standards Committee

17. The Monitoring Officer is the principal advisor to the Standards Committee supported by the Deputy Monitoring Officer(s) and Officers within Democratic Services.
18. The Independent Person is the Chair of the Standards Committee and their Deputy the Deputy of the Standards Committee.

Right of access to documentation

19. The Independent Person shall have a right of access to such files and other documents as are necessary to fulfil their duties and obligations as set out in this protocol, their role description and the arrangements adopted from time to time by the Council for dealing with standards complaints. The Independent Person shall not have a right to undertake a roving commission. Normally access to files and other documents will be through the Monitoring Officer, Deputy Monitoring Officer or other officer appointed on their behalf.

Duty to declare interest

20. The Independent Person shall promptly disclose in writing any actual or potential conflict of interest that they may have in a matter, which has been referred to them.

Register of Members' Interests and the Seven Principles of Public Life

21. The Independent Person is not a Member, so they are not required to notify and register any interests in the Register of Members' interests. The Independent Person is however required to abide by the Seven Principles of Public Life ('the Nolan Principles').

Protecting the independence of the Independent Person

22. No Member or Officer shall do anything, which does or is likely to compromise the independence of the Independent Person or to otherwise inappropriately interfere in the discharge of the Independent Person's lawful duties.

Miscellaneous

23. The Monitoring Officer will ensure that the Independent Person is kept up to date with changes to the Code of Conduct, procedures for handling allegations, in legislation, national guidance and/or good practice.
24. A further role of the Independent Person arises from the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended). By amending regulations in 2015, there is a prescribed statutory process for disciplining or dismissing an authority's Head of Paid Service, Monitoring Officer or Chief Finance Officer. A decision to discipline or dismiss must be taken by Full Council, which must consider, amongst other things, advice, views or recommendations from an independent panel. That panel must include at least two Independent Persons appointed under Section 28(7) of the Localism Act 2011 by the Council or by another local authority.
25. The Independent Person together with the Monitoring Officer will meet at least once a year to discuss Member behaviour in a general context.
26. This Protocol will be kept under review by the Monitoring Officer and amended where necessary, considering legislation, guidance, good practice etc.

APPENDIX B

TAMESIDE METROPOLITAN BOROUGH COUNCIL APPOINTMENT OF INDEPENDENT PERSON (ETHICAL STANDARDS)

Do you want to help us to maintain and promote high ethical standards at Tameside Council and be a better Tameside? Are you interested in:

- making a difference to your local community
- upholding high ethical standards
- shaping the discussion on ethical behaviour in local government in Tameside
- supporting good judgement and governance

We are seeking to appoint two “Independent Person(s)” as the Chair of Standards Committee and the Deputy Chair to provide an impartial, balanced and informed view on complaints about the behaviour of councillors and contribute to the oversight of ethical standards in local government in Tameside. The role is defined in the Localism Act 2011.

Independent Persons Chair and deputise our Standards Committee, which meets three or four times a year is responsible for monitoring our Code of Conduct and promoting high ethical standards amongst elected councillors.

Independent Persons liaise with local authority staff and councillors, review and comment on Standards proposals (and complaints) and get involved in ethical accountability conversations with local leaders and senior council officials, working collegiately with fellow committee members.

The role will require those appointed to be available for consultation if an allegation of breach of the Members Code of Conduct is received by the Council and to Chair or deputise the Standards Committee and attend meetings, as required, to discuss and contribute to wider ethical and governance issues

Some of the fundamental skills and qualities required of the role are:

- Honesty and integrity;
- Fair mindedness and impartiality;
- Mature and sound temperament;
- Good communication skills;
- Evidence of ability to exercise sound judgement;
- Commitment and reliability; and,
- Interest in ethical standards.

Suitable candidates for this role will ideally have experience of dealing with complaints or monitoring and compliance at a high level within a previous organisation. Some knowledge of corporate governance in local government, charities, schools or public bodies would be an advantage, but no particular qualifications or experience are required.

To apply, you will need to be:

- over the age of 18
- **not** be involved as a member of a political party or in the management of a local lobbying group.
- **not** a current or recent employee or councillor of the Tameside Council (within the last five years), or a relative or close friend of such a person.

For an informal discussion about the role please contact – Sandra Stewart Director of Governance and Pensions sandra.stewart@tameside.gov.uk

The Independent Person and Deputy are paid in accordance with the Members Allowances Scheme pursuant to the Local Authorities (Members' Allowances) Regulations 2003 currently these stand at £6,692 and £2,492 for the Deputy.

Papers for the Council's Standards Committee and a role description and person specification for the Independent Person together with the application form can be viewed on the Council website at

The closing date for applications is xxxx.

**TAMESIDE METROPOLITAN BOROUGH COUNCIL
INFORMATION PACK:**

INDEPENDENT PERSON: ROLE DESCRIPTION

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|-------------------------|--|
| Role: | Independent Persons |
| No of Roles: | 2 Chair and Deputy of Standards Committee |
| Responsible to: | Council's Monitoring Officer |
| Responsible for: | Advising on allegations of breach of the Members' Code of Conduct and the Council in respect of disciplinary proceedings against the Head of the Paid Service, the Monitoring Officer, or the Chief Finance Officer |

We are looking to appoint an 'Independent Person' to provide an important service to Tameside Council and contribute to maintaining the high ethical standards of the authority.

The appointment of independent members for the purposes of consultation is required by the standards provisions in the Localism Act 2011.

The role will require the successful applicants to be available for consultation if an allegation of breach of the Code of Conduct is received by the Council and to attend meetings, as required, of the relevant Committees to discuss and contribute to wider ethical and governance issues.

The Independent Persons will liaise, as necessary, with Tameside Council's Monitoring Officer (in accordance with the Council's complaints procedure) to consider complaints against Members and offer their impartial views on the respective case, including any investigations undertaken.

The Independent Persons will also chair or deputise the Council's Standards Committee to participate in the consideration and discussion of wider ethical and governance issues affecting the Council, as they relate to elected Members of the Council.

In addition, as part of a Panel of at least two Independent Persons, the successful applicants will be required to advise the Full Council in the event of any disciplinary action being proposed against the Head of the Paid Service, the Monitoring Officer or the Chief Finance Officer.

In accordance with the Localism Act 2011, the Council must promote and maintain high standards of conduct by members and co-opted members of the authority.

The Council has adopted a Code of Conduct for Members and has agreed arrangements for dealing with any allegation that a member Mossley Town Parish Council or co-opted member has breached the code. These arrangements include the appointment of one or more Independent Person(s) to advise on breaches of the Member Code of Conduct.

The Independent Person will:

- Be consulted if an allegation of a breach of the Members' Code of Conduct is received by the Monitoring Officer.
- Liaise as necessary with the Council's Monitoring Officer to consider complaints against Members and offer his/her impartial views and independent perspective on the case, including any investigations undertaken.
- Advise the Council prior to any decision to investigate an allegation or complaint relating to whether a member has failed to comply with the Code of Conduct.
- Chair or deputise the meetings of the Standards Committee as a co-opted member, reviewing meeting papers (including confidential documents), contributing their own perspective to the meeting's informed discussion and debate.
- Contribute to any review of the operation of the standards arrangements and complaints procedure established by the Council under the provisions of the Localism Act 2011.

The Independent Person may be consulted:

- by the Council's Monitoring Officer in respect of an allegation against a member.
- by a member or co-opted member of the Council against whom an allegation or complaint has been made.

As part of the statutory role, the Independent Person will also be available for consultation by any Council (and Mossley Town/Parish Council) member who is the subject of an alleged breach of the Code of Conduct. Such consultation may be sought at any time during the process and may be carried out by telephone, written correspondence (e mail or letter) or at a meeting (including at a final hearing). This advisory role to an individual Council member will only arise where the member is subject to an alleged breach of the relevant code of conduct. An Independent Person will not be expected – and should decline - to give advice to Council or Mossley Town/Parish Council members in any other circumstances. Where such advice is required, Council members will be expected to seek it from the Monitoring Officer, or some other appropriate Council officer).

The views of the Independent Person will be considered, and formally noted, by the Monitoring Officer on initial assessments and by the Council's Standards Committee, who are responsible for recommending on the outcome of any complaints and any remedial action.

TAMESIDE METROPOLITAN BOROUGH COUNCIL INDEPENDENT PERSON: PERSON SPECIFICATION

The Independent Person will possess the following attributes, to be assessed through an application and interview process:

- Personal integrity and honesty.
- A keen interest and commitment to maintaining high standards in public life.
- A wish to serve the local community and uphold local democracy.
- An interest in and awareness of the functions of local government relating to ethical governance, in particular the role of elected Members and the relevant Code of Conduct.
- Independence, impartiality and experience of exercising sound, objective judgements in relation to complex matters
- Excellent questioning, analytical and evaluation skills in order to advise whether a breach of the Code of Conduct or complaint should be investigated.
- A commitment to promoting equality and an awareness of the issues affecting a diverse community.
- Excellent communication skills in particular the ability to provide clear rationale for advice and to explain decision making when required.
- Experience of dealing with private and sensitive issues, exercising discretion and maintaining confidentiality of information received.
- Flexibility to deal with urgent requests.
- Be aged 18 or over and with a mature and sound temperament.

Some of the fundamental skills and qualities are required for the following reasons:

Honesty and integrity This role carries a high level of moral responsibility and the successful appointments will be placed in a position of high regard and trust within the authority. The Independent Persons may, due to the nature of the role, be privy to sensitive, private or personal information which must be treated in confidence. Any information disseminated to an Independent Person in relation to an allegation of breach will be entirely confidential and there will be a fundamental expectation that the matters discussed are not disclosed further. The successful candidates will be able to evidence that they are able to be placed in a position of trust, handle confidential information with integrity and exercise discretion when discussing matters relating to the authority.

Fair mindedness and impartiality The Independent Persons will have a responsibility to consider

the facts of any case and offer fair, impartial views to the Monitoring Officer about an allegation of breach of the Code of Conduct. Applicants will be able to evidence the ability to exercise sound objective judgments, including a willingness to thoroughly challenge and impartially assess complaints, reports or defences; and act without bias when forming their views.

Good communication skills and an enquiring mind - The Independent Persons will Chair or Deputise the Standards Committees and attend Full Council as necessary – either in relation to an allegation case, or to discuss other ethical and governance matters relating to the authority. The Independent Persons will be expected to fully participate in these discussions and good communication skills are essential. The allegations of breaches, which the Independent Persons will be consulted about may be complex, involve numerous pieces of evidence, and involve a degree of investigation by the Council's delegated Monitoring Officer. Applicants will be able to evidence an enquiring mind and be adept at analysing information and formulating views accordingly.

Mature and sound temperament This role is not age restricted, but those appointed will require a mature temperament and a fundamental appreciation of the responsibility attached to this role, having a genuine interest in dealing with standards hearings.

Commitment and reliability The role is expected to be a long-term commitment. Whilst the Council reserves the right to terminate the appointment (should, for example, an individual prove to be unsuitable), it is expected that the post-holders will provide a commitment to undertake the role long-term.

Previous experience and knowledge The successful candidates should be able to evidence the attainment of the aforementioned skills and qualities in a similar role at another local authority, auditing body, legal institution, or public or private organisation.

They should also need to show a commitment to upholding high ethical standards, and demonstrate an understanding of governance matters, such as the Council's Constitution, and of the work of the Council.

The Independent Person must not be:

Please note that this role is legally restricted as detailed below Sections 28(8)(a) and (b) of the Localism Act 2011 stipulates that a person is not independent (and cannot therefore be considered for appointment) if the person is or has been within the last five years:

- A Member, co-opted member or employee of the Tameside MBC or Mossley Parish Council or have held such a post within the previous 5 years.
- A relative or close friend of such a person.
- A member of a political party or involved in the management of a local lobbying group

Expenses This is a voluntary role and The Independent Person and Deputy are paid in accordance with the Members Allowances Scheme pursuant to the Local Authorities (Members' Allowances) Regulations 2003 currently these stand at £6,692 and £2,492 for the Deputy to cover any expenses incurred whilst carrying out the role.

How to apply: You can apply by submitting a application to sandra.stewart@tameside.gov.uk the Director of Governance and Pensions by xxxx