

Appointment and empowerment of Interim Director of Finance

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1. Summary

- 1.1** This report recommends a way forward to ensure that the statutory Chief Finance Officer (Section 151 Officer) role is fulfilled by the new Interim Director of Finance, who is an interim agency placement filling this key post within the Senior Leadership Team following the departure of the Director of Finance, Legal and Governance on 11 July 2018. It is also proposed that the Interim Director is empowered to take decisions under the Council and Cabinet Schemes of Delegation and therefore be held fully accountable in the role that they are undertaking on a contractual basis.

2. Recommendations

2.1 The Council is recommended to:

- (1) Appoint and allocate the statutory Chief Finance Officer (Section 151 Officer) role to the Interim Director of Finance with effect from the 18 July 2018 pending the recruitment of a permanent employee to the role of Corporate Director for Resources.**
- (2) Agree, subject to the agreement of the Council to (1) above to amend the Constitution and Council Scheme of Delegation to recognise and empower the Interim Director of Finance to undertake all of the statutory functions of a Chief Finance Officer (Section 151 officer), the functions of the Director of Finance, Legal and Governance and take all decisions related to the role;**
- (3) Delegate authority to the Monitoring Officer to make any changes necessary to the Constitution as a result of the decisions of the Council.**
- (4) Recommend the Leader to make complementary changes to those outlined in 2.1 (2) above to the Cabinet Scheme of Delegation.**

3. Background

- 3.1.** The Director of Finance, Legal and Governance (Kevin Nacey) has resigned from his post at Somerset County Council. The Chief Executive has also taken forward a restructuring of the Senior Leadership Team, as a separate process.

- 3.2.** The Director of Finance post and its responsibility for the section 151 role is a key part of the Senior Leadership team. The restructuring of the Senior Leadership team has included extending this post to include the Procurement and Property functions to create a new Director of Corporate Resources role.
- 3.3.** The financial challenges facing Somerset County Council are significant and therefore the Chief Executive agreed the appointment of an Interim Director of Finance to ensure this key role is filled. The appointment is for approximately 6 months and offers several advantages:
- Providing Somerset County Council with significant financial and business expertise gained at other organisations;
 - A view as to the strength and capability of the current Finance function and where our skills and capacity might need to be enhanced;
 - An individual who can 'hold' the role whilst the Council completes the process to secure a permanent appointment.
- 3.4.** Whilst the Chief Executive has appointed the Interim Director of Finance, the appointment of a statutory Chief Finance Officer (Section 151 officer) is a decision for Full Council. It is therefore proposed that the County Council appoint the Interim Director of Finance as the Section 151 Officer from the 18th July 2018 pending the recruitment of a permanent Corporate Director for Resources.
- 3.5.** The appointment of the Interim Director of Finance was made on the basis of contracts between the Council and their respective agency as their employer. This arrangement is becoming more common for senior management appointments within local government and has been confirmed by the HR & OD Director following liaison with several other councils. Agency staff need to be empowered to take decisions on behalf of the Council under the Schemes of Delegation as the Constitution normally restricts full decision making responsibilities to either elected members or officers of the Council (officers who have a direct contract of employment with the Council). Therefore interim appointments without that direct contractual relationship with the Council are not normally empowered to take formal decisions on behalf of the Leader or the Council and therefore cannot be held fully accountable for their performance in the role unless specific delegated arrangements are put in place.
- 3.6.** The role and functions of the Chief Finance Officer (S151 Officer) are directly informed by a comprehensive framework of statutory duties and responsibilities. In summary, the S151 Officer:
- is a role prescribed by law. All local authorities must assign S151 duties to one officer who must be a qualified member of a recognised accountancy body;
 - must ensure compliance with all statutory requirements for accounting and internal audit (including supporting records and all systems of internal checks and control);
 - manage the financial affairs of the authority in all its dealings and transactions and in so doing secure the proper stewardship of Council (and Members) responsibilities;

- must report under S114 powers to the Cabinet, the District Auditor and all Members of an authority if there is, or is likely to be any item of unlawful expenditure or an unbalanced budget;
- owes a personal duty of care to local tax payers in managing Council resources on their behalf. In discharging this responsibility the S151 Officer must balance the needs and interests of both current and future taxpayers.

- 3.7.** The legislation is unclear on the issue of whether interim appointments without a direct contract of employment with the Council can be empowered to take decisions under a Council's Constitution and be held fully accountable for service delivery. The position is only likely to be clarified through case law. There has been some case law around the definition of the term 'officer' and whilst this cannot be taken as definitive it would suggest that an interim could be regarded as having 'officer' status and could therefore be empowered to take decisions and be held to account. It was on this basis that the Council has previously engaged and empowered interim staff to undertake SLT and statutory roles.
- 3.8.** Currently there has been no test case against a council for using a fully empowered agency / independent contractor in a statutory role. It is clear therefore that the practice of some council's to fully empower an interim chief officer (SLT Director) has developed on the basis of taking a risk based approach and where there is a business imperative as in this case in order to fill a statutory role.
- 3.9.** An option considered as an alternative would have been the employment of a temporary Director on a direct contractual basis. This potentially would have a lower risk of constitutional and legal challenge but would have potentially restricted the available field of potential candidates and delayed the appointment process.

4. Consultations undertaken

- 4.1 As detailed in the report.

5. Implications

- 5.1 Legal: As stated in this report.
- 5.2 Financial: The only potential additional costs that could arise from this report relate to the potential for a legal challenge to any revised arrangements that the Council might put in place. It is recommended that the Director of Finance makes an appropriate provision in the contingency budget or alternatively seek approval to allocate general reserves should this be required.
- 5.3 Business risk: As detailed in the report.
- 5.4 Impact Assessment: There are no direct impacts on any of the protected characteristics falling under the definition of the equalities legislation or the local additional protected characteristics adopted by the Council. There are also no direct impacts in other impact assessment categories of community safety, sustainability or privacy.

6. Background Papers

- 6.1 Chief Executive decision on 13 June 2018 regarding the appointment of an Interim Director of Finance
- 6.2 Council's Constitution

Note: For sight of individual background papers please contact the report author.