

Report of the Monitoring Officer – Appointments to Committees and outside bodies, Section 151 Officer appointment and Data Protection Officer appointment

Cabinet Member: N/A

Division and Local Member: N/A

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1. Summary

- 1.1** This report sets out decisions on proposed changes to appointments to committees and outside bodies, the appointment of a Section 151 Officer and the appointment of a Data Protection Officer

2. Recommendations

2.1 **Appointments Schedule – Appendix 1 refers**

To approve the changes to Committee and Outside Bodies appointments – see section 3.1 and Appendix 1 to this report.

2.2 **Appointment of a Section 151 Officer (Chief Finance Officer)**

To appoint Sheila Collins, Interim Director of Finance, as the Council's Section 151 Officer with effect from 1 March 2019, pending the recruitment of a permanent appointment to the Section 151 Officer role.

2.3 **Appointment of Data Protection Officer**

To appoint the post of Service Manager-Customer Experience & Information Governance, held by Rebecca Martin, as the Council's Data Protection Officer.

3. Background

3.1. Changes to seats held by the Council, appointments to Committees and Outside Bodies:

- 3.1.1** Following the 2017 elections, the Council in May 2017 appointed committees and made all related appointments in accordance with the requirements of the Local Government and Housing Act 1989.
- 3.1.2** The Act sets out the principles to be used in agreeing the size of and allocation of places to committees (and sub-committees) of the Council and also requires this process to be repeated annually at the Council's Annual General Meeting (AGM). The principles must be followed so far as is reasonably practicable.

3.1.3 The following principles from the 1989 Act, together with a commentary where appropriate, must be applied to the allocation of seats on committees.

1. All the seats should not be allocated to the same political group.
2. A majority group is required to have a majority on all committees unless the Council agrees otherwise. *The proposal in the table in 3.2.4 below satisfies this principle. Local arrangements apply to the Constitution and Standards Committee membership where all political groups are represented and the Scrutiny Committee for Children & Families where the membership includes 5 co-opted members with a vote on education matters only.*
3. Subject to principles (1) and (2), the total number of seats on all the committees of the Council allocated to each political group should reflect the number of seats held by that group on the Council. *The table below reflects this calculation.*
4. Subject to principles (1), (2) and (3), the number of seats on each committee of the Council allocated to each political group should reflect the number of seats held by that group on the Council.

3.1.4 Following the elections in May 2017 the Council agreed member appointments to its committees and outside bodies in accordance with the principles set out above. In addition to the entitlements to each political group, individual political groups have previously chosen to allocate a place to another political group as a local arrangement e.g. Liberal Democrat group chose to allocate one of their places on Scrutiny Committee for Children and Families to the Green group.

3.1.5 During 2018 there were some changes to the size of some of the political groups which resulted in a recalculation of committee places and appointments to outside bodies. This was considered and agreed at the Council meeting November 2018 where the entitlement for places was as follows:

Seats held on the Council	33	13	4	3	2	55
Committee	Con	Lib Dem	Ind	Lab	Green	Total
Regulation	5	2	1 or	1		8
P&P (Place)	5	2	1 or	1		8
P&P (Adults & H)	5	2	1 or	1		8
P&P (Child's S)	5	2	1 or	1		8
HR Policy	4	1	1 or	1		6
Audit	5	2	1 or	1		8
Officer App	4	1	1 or	1		6
Pensions	3	1				4
Fire Authority	5	2	1 or	1		8
Exmoor NPA	3	1				4
Con & Standards	1	1	1	1	1	5
Individual cttee totals	45	17	5	4	2	73
Overall calculation - total places	43.84	17.25	5.31	3.98	2.65	73

Notes

- The overall calculation takes priority over individual committee allocations

- As stated above, the Conservative Group must have a majority on each committee unless a 'local arrangement' is agreed. They chose to exercise this right in all cases other than the Constitution & Standards Committee
- On the larger committees (8 members) 1 seat was left on each to be filled either by the Independent or Labour Groups by agreement
- The Green group was not entitled to any places on individual committees but had a place on the Constitution and Standards Committee as of right under a proposed 'local arrangement'.

3.1.6 As set out in 3.1.4, some of the political groups decided in November to allocate one of their entitled places instead to another political group to bring the allocation of seats closer in line with the overall allocation in the table above :

- Independent group allocated their place on Regulation Committee to the Green group
- Independent group allocated their place on HR Policy Committee to the Labour group
- Liberal Democrat group allocated one of their places on the Scrutiny Committee for Children and Families to the Green group

3.1.7 Since the Council's meeting in November there has been further changes to the size of the political groups:

Political Group	Nov 2018	Current	Difference
Conservative	33	34	+1
Liberal Democrat	13	14	+1
Labour	3	3	0
Independent	4	2	-2
Green	2	2	0
Totals	55	55	

These changes to the membership of some of the political groups require the Council to make changes to the allocation of seats held by the Council in accordance with the principles set out in 3.1.3 above.

3.1.8 A revised calculation of committee places and outside bodies has been undertaken and this is set out below:

Seats held on the Council	34	14	3	2	2	55
Committee	Con	Lib Dem	Lab	Ind	Green	Total
Regulation	5	2	1			8
P&P (Place)	5	2	1			8
P&P (Adults & H)	5	2	1			8
P&P (Child's S)	5	2	1			8
HR Policy	4	2				6
Audit	5	2	1			8
Officer App	4	2				6
Pensions	3	1				4
Fire Authority	5	2	1			8
Exmoor NPA	3	1				4
Con & Standards	1	1	1	1	1	5
Individual cttee totals	45	19	7	1	1	73
Overall calculation - total places	45.13	18.58	3.98	2.65	2.65	73

- 3.1.9** It can be seen from the above allocation of places table that the main changes and actions required are:
- a) The need for the Liberal Democrat group to advise of their nominations for their additional place on HR Policy and Officer Appeals committees or whether they wish to allocate these instead to another political group (see point (c) below)
 - b) The Labour group become the party with the third highest membership and therefore have 'first choice' in terms of their preference from the available places for 'minority political groups' to achieve their total allocation of 4 places.
 - c) Both the Liberal Democrat and Labour groups are over-provided for in terms of places on individual committees and need to consider giving up places of their choice under a 'local arrangement' to the Independent group and Green Party group to achieve a closer match with the overall calculation (see 3.1.6 above). This would mean the Liberal Democrat group selecting one place and the Labour group selecting 3 places to provide for the Independent group to have a total of 3 places and the Green group to also have 3 places.

- 3.1.10** All political group leaders have been advised of the revised calculations and any proposed changes to committee places and outside bodies will be set out in an revised Appointments Schedule (Appendix A) which is expected to be tabled on the day of the Council meeting for approval. This appendix will set out:
- Confirmation of the Council's committees, their size, the allocation of places and appointments to those places
 - Any potential changes to Chairs and Vice-Chairs, where appointed by the Council

- 3.1.11** No changes are proposed within this report to the terms of reference of Committees of the Council as agreed by Council and set out within the Constitution.

3.2 Appointment of a Section 151 Officer

- 3.2.1** In July 2018, the Council appointed the Interim Director of Finance (Peter Lewis) to the statutory role of Section 151 Officer (S151 Officer).
- 3.2.2** There have been two attempts to recruit to the permanent Director of Corporate Resources role, neither of which have been successful. As the council is about to undergo a redesign and restructure it makes sense to delay a permanent appointment until there is more certainty.
- 3.2.3** Peter Lewis will leave Somerset County Council at the end of February 2019 and the proposals in this report mean that he will remain the Council's Section 151 Officer until and including 28 February 2019. During his service with the Council, Peter appointed a senior finance expert (Sheila Collins) to help lead financial planning processes. Sheila has significant s151 experience in an upper-tier authority and is a qualified accountant.
- 3.2.4** An Appointments Committee was convened, in accordance with Somerset County Council's Constitution. This was augmented by technical advice from a second panel comprising six directors from the senior leadership team.

- 3.2.5 Following the interviews, the Appointments Committee received the recommendations from the SLT panel and the Committee agreed unanimously to recommend to the Chief Executive that Sheila Collins should be offered the role.
- 3.2.6 On 6 February, the Chief Executive agreed to appoint Sheila Collins as the Interim Director of Finance. 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
- 3.2.7 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 can 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 directors to undertake SLT and statutory roles.
- 3.2.8 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.
- 3.2.9 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. The Chief Executive therefore recommends that the County Council appoint Sheila Collins, the Interim Director of Finance, as the Section 151 Officer with effect from 1 March 2019 pending the recruitment of a permanent Corporate Director for Resources.

3.3 Appointment of the Council's Data Protection Manager

- 3.3.1 There is a requirement for the Council to appoint a Data Protection Officer in accordance with the EU-General Data Protection Regulations 2016 Section 4 Articles 37 – 39, specifically Article 37 (a) but other Articles (b) and (c) also support the appointment:

37.1 The Controller and the processor shall designate a data protection officer in any case where:

The processing is carried out by a public authority, except for courts acting in their judicial capacity.....

- 3.3.2 This new requirement follows a new regulation coming into force on the 25th May 2018 as part of the European Union harmonising data protection legislation across Europe.
- 3.3.3 In November 2018, the Council appointed the Data Protection Manager post currently held by Lucy Wilkins as the post to hold the statutory Data Protection Officer role within the organisation. This postholder is scheduled to commence maternity leave and therefore the Council is recommended to appoint a Data Protection Officer. It is proposed that the Council appoints the post of Service Manager-Customer Experience and Information Governance, held by Rebecca Martin, as the Council's Data Protection Officer.

4. Implications

- 4.1 **Legal & Risk:** This report complies with all legal requirements. The only risk to the Council would result from the Council failing to fulfil its legal obligations as set out in the report through any decisions taken or not taken at this meeting.
- 4.2 The Council's Constitution sets out the legal framework within which the Council takes decisions and fulfils its functions and responsibilities. It needs to be kept up to date and legally compliant. All of the proposed amendments to the Constitution are in accord with the legislative requirements which give considerable scope for the Council to agree its own constitutional arrangements.
- 4.2 **Financial, equalities, sustainability and community safety implications:** There are no direct equalities implications arising from any of the proposals in this report. There are also no direct financial, sustainability or community safety implications.

5. Background papers

- 5.1 Council's Constitution dated July 2018