

Report of the Monitoring Officer –Independent Persons for Somerset Council and proposed appointments

Lead Officer & Author: Scott Wooldridge - Monitoring Officer and Head of Governance & Democratic Services

Contact Details: 01823 357628 or 01823 359043

1. Summary

1.1 Independent Persons

The Localism Act 2011 requires Councils to have arrangements in place to investigate and make decisions on allegations that a Councillor has breached the Code of Conduct. The arrangements to make decisions on allegations must include provision for the appointment of one or more “Independent Person” through a transparent process, by advertisement and application. A Member, Co-opted Member or Officer of the Authority or a relative or close friend of such person cannot be appointed as an “Independent Person”. In addition, a person cannot be appointed as an “Independent Person” if at any time during the 5 years before the appointment, the person was a Member, Co-opted Member or an Officer of the Authority. For several years the County Council has put in place an Independent Person and Reserve Independent Person to support its standards arrangements.

The Council must seek and take into account the views of the Independent Person before reaching a decision about an allegation which it has decided to investigate. The Member against whom a complaint is made may also seek the views of the Independent Person. Whilst the Independent Person must be consulted, he/she has no vote or binding authority in any determination process with regard to a complaint. In addition, Councils must include at least two Independent Persons on any panel formed to consider disciplinary action against Statutory Officers.

The Council has been recruiting for a Reserve Independent Person to fill a vacancy. Interviews are now complete and as the appointment of Independent Persons must, by law, be approved by a majority of elected Members, Council are asked to endorse the decision of the Interview Panel.

As part of the transition to the new Somerset Council, work has been undertaken to review the proposals for Independent Persons to support the

new Council's standards arrangements. That work has concluded that comparable unitary councils typically have three Independent Persons. It is recommended that the new Somerset Council appoints three Independent Persons ahead of 1 April 2023.

2. Recommendation(s)

2.1 The Council is asked to consider and agree the following recommendations :-

Independent Persons

- 1. Appoint Lorraine Davey as a Reserve Independent Person under Section 28 of the Localism Act 2011 with immediate effect until 31 March 2023**
- 2. Authorise the Monitoring Officer to undertake the recruitment of three Independent Persons for the new Somerset Council on the basis set out in this report**

3. Background

3.1 Appointment of a Reserve Independent Person

The Council has been recruiting for a Reserve Independent Person to fill a vacancy. At the same time, Mendip District Council needed to undertake the recruitment of an Independent Person and therefore a joint recruitment exercise was undertaken as part of the collaborative work on Local Government Reorganisation in Somerset. Interviews are now complete and as the appointment of Independent Persons must, by law, be approved by a majority of elected Members, Council will therefore be asked to endorse the decision of the Interview Panel.

- 3.1.1** A thorough and transparent selection process has been undertaken. The opportunity was advertised in the local press and online in July. The recruitment campaign was jointly undertaken with Mendip District Council who were also looking to recruit their own Independent Person. This collaborative approach is part of the five councils partnership work through local government reorganisation in Somerset. A single candidate was interviewed by the Monitoring Officers of both Mendip District Council and Somerset County Council.

- 3.1.2 The Interview Panel reached a unanimous decision that they would recommend Lorraine Davey to be appointed by their respective Council. Lorraine Davey has a background in the education sector and has worked for various education/local authorities as well as an academy at a senior level over the last 20 years. Currently she acts as an Independent Early Years Consultant in the nursery sector.
- 3.1.3 The Interview Panel concluded that Lorraine Davey has significant skills and qualities which would benefit the Council in meeting its legal duty to uphold and promote high standards of ethical behaviour amongst elected and co-opted Members.
- 3.1.4 Section 28 of the Localism Act 2011 places a duty on Councils to appoint at least one Independent Person. The Act also requires the vacancy for an Independent Person to be advertised in such manner as the Authority consider is likely to bring it to the attention of the public. A person cannot be appointed as an Independent Person unless they have submitted an application for the vacancy and their appointment has been approved by a majority of members of the Authority.

The options available to the Council therefore are to appoint the candidate recommended by the Panel, or recommend the post is re-advertised.

3.2.1 **Recruitment of Independent Persons for Somerset Council**

The Localism Act 2011 requires Councils to have arrangements in place to investigate and make decisions on allegations that a Councillor has breached the Code of Conduct. The arrangements to make decisions on allegations must include provision for the appointment of one or more "Independent Person" through a transparent process, by advertisement and application. A Member, Co-opted Member or Officer of the Authority or a relative or close friend of such person cannot be appointed as an "Independent Person". In addition, a person cannot be appointed as an "Independent Person" if at any time during the 5 years before the appointment, the person was a Member, Co-opted Member or an Officer of the Authority. For several years the County Council has put in place an Independent Person and Reserve Independent Person to support its standards arrangements.

- 3.2.2 The Council must seek and take into account the views of the Independent Person before reaching a decision about an allegation which it has decided to investigate. The Member against whom a complaint is made may also seek the views of the Independent Person. Whilst the Independent Person must be consulted, he/she has no vote or binding authority in any determination process with regard to a complaint. In addition, Councils must include at least two Independent Persons on any panel formed to consider disciplinary action against Statutory Officers.

- 3.2.3 The appointment of Independent Persons will also contribute to the openness and transparency of the Council's ethical standards arrangements by providing an external view on complaints against elected members.
- 3.2.4 Following the approval of the Somerset Structural Changes Order 2022, Somerset Council will come into effect on 1 April 2023 as part of local government reorganisation in Somerset. Section 28(7) of the Localism Act 2011 requires a relevant authority to put in place arrangements under which any allegations of misconduct can be investigated and decisions made on the allegations. These arrangements must include provision for the appointment of at least one independent person
- 3.2.5 More than one independent person must be appointed to ensure compliance with the Employment Procedure Amendments Regulations 2015 and in relation to standards matters this is required to ensure appropriate cover should there be any prejudicial interest or other conflict preventing an independent person being utilised on a certain issue. Review of other unitary councils formed through local government reorganisation identifies that they have appointed the following numbers of Independent Persons:
- Buckinghamshire (146 members) – 3
- Bournemouth, Christchurch & Poole (76 members) – 3
- Dorset (82 members) - 3
- Somerset (98 members) – 3
- 3.2.6 In view of the large number of council members (110 council members) within Somerset who will be covered by Somerset Council's procedure for dealing with any allegation of misconduct, as well as supporting the Monitoring Officer and Deputy Monitoring Officer(s) in respect of their role in assessing code of conduct complaints relating to all City, Town & Parish Councillors within the County, it is recommended at least three independent persons be appointed to provide the necessary resilience and sufficient capacity.
- 3.2.6 The Committee for Standards in Public Life recommends independent persons be appointed for a two-year period for a maximum of two terms. It is therefore recommended that in this instance independent persons be appointed on a four-year basis up until the next elections in 2027, so as to

avoid a further recruitment process early in the first term of the new Somerset Council.

3.2.7 Allowances paid to Independent Persons vary across councils and in some instances only travel and subsistence expenses are paid. Examples of the annual allowances paid by unitary councils formed through local government reorganisation are as follows:

Buckinghamshire - £ 250 per annum

Bournemouth, Christchurch & Poole – £ 1,000 per annum

Dorset – £ 1,000 per annum

Somerset - £ 2,522 per annum

3.2.8 It is proposed that the three Independent Persons for the new Somerset Council receive an annual allowance of £ 1,000 per annum.

3.2.10 Independent Persons do not need any specific qualifications but the attributes and experience they are expected to possess will be set out in a recruitment pack, together with the grounds which would disqualify an applicant from being appointed.

3.2.9 It is proposed that the Council authorises the Monitoring Officer to oversee and undertake the recruitment process for three Independent Persons. The role and person specification for an Independent Person is set out in Appendix 1. A transparent selection process will be undertaken with the opportunities advertised locally and on the Council's website.

3.2.10 Appointments must be approved by a majority of members of the Council, which means full Council must make the final decision. The proposed recommended appointments for the three Independent Persons will be brought to the Council's meeting in February 2023.

4. Implications

Legal – As outlined in this report the Council must appoint at least one Independent Person by Section 28 of the Localism Act 2011.

There is also a mandatory requirement introduced under the Employment Procedure Amendment Regulations 2015 to invite at least two independent persons to join a panel set up to consider the dismissal of statutory officers.

Appointments must be approved by a majority of the members of the authority. When considering the recommendations, the Council should have regard to budget implications that will arise from the agreed rate of payment for independent persons as detailed in this report.

Financial – For Somerset County Council the role of Independent Person has a current allowance of £ 577 per annum and the Reserve Independent Person has a 'retainer' allowance of £ 289 per annum.

It is proposed that the 3 Independent Persons for the new Somerset Council are paid an annual allowance of £ 1,000 per annum.

Equalities - The recruitment and advertisement process complies with Section 28 of the Localism Act 2011.

Risk - The key risk is that the Council does not have suitable persons to undertake the Independent Person(s) role. Once the appointment is accepted, then any risk will be limited to conflicts of interest which should be rare, but if they arise, they will be determined on an individual case by case basis.

5. Consultation

The Constitution and Governance Committee have been consulted on the proposed recruitment of three Independent Persons at their meeting on 20 October and the Committee was supportive.

The Standards Committee were consulted at their meeting on 10 November 2022 and are supportive of the proposals relating to the appointment and recruitment of Independent Persons.

6. Background Papers

- 6.1 Council's Constitution
- Localism Act 2011
- Somerset Structural Changes Order 2022

**SOMERSET
COUNCIL**

JOB DESCRIPTION AND PERSON SPECIFICATION

**INDEPENDENT PERSON APPOINTED UNDER SECTION 28(7) LOCALISM
ACT 2012**

Ethical Framework

The Localism Act 2011 provides the framework intended to secure high standards of conduct in public office. It requires the County Council to appoint at least one Independent Person who will be consulted on alleged breaches of the Members Code of Conduct for Members of the Council as well as Members of Town and Parish Councils within Somerset.

The Independent Person may also be consulted on allegations referred to the Monitoring Officer in deciding whether to investigate. Members who are the subject of complaints are also entitled to seek the views of the Independent Person. The Independent Person is not however a member of the Council or its Committees.

The role of the Independent person will be important to the public's perception of the effectiveness of the Council's standards arrangements and the maintenance of high standards of conduct, and it is very important that such members are seen to be genuinely independent of the County Council and any of its Town and Parish Councils.

The functions of the Independent Person in relation to Standards are:

- They must be consulted by the Monitoring Officer and/or the Council's Hearing Panel and their views considered before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect to that member.
- They may be consulted by the Monitoring Officer and/or the Council's Standards Committee in respect of the Council's standards arrangements.
- They may be consulted by a member or co-opted member

of the Council or a city / parish / town council against whom the complaint has been made.

The Council is also required to consider the recommendations of the Independent Person before taking a decision to discipline or dismiss one of the Council's Statutory Officers.

Job Purpose

To undertake the statutory role of the Independent Person appointed under section 28(7) of the Localism Act 2011 and to assist the Council generally in discharging its duty to promote and maintain high standards of conduct by members and co-opted members of Somerset Council.

Contacts

- Elected and co-opted members of Somerset Council and of Parish, Town and City Councils in Somerset
- Somerset Council officers
- Members of the Public

Key tasks

- Advising and assisting Somerset Council in discharging its duty to promote and maintain high standards of conduct by elected and co-opted members of Somerset Council.
- Advising elected and co-opted members of Somerset Council and of Parish, Town and City Councils in Somerset in connection with complaints made against them under their Code of Conduct.
- Advising the Monitoring Officer in connection with the initial assessment of member misconduct complaints in accordance with the Council's arrangements made under section 28(6) of the Localism Act 2011.
- Advising the relevant Panel / Committee undertaking the Council's standards arrangements in connection with the determination of member misconduct complaints in accordance with the Council's arrangements made under section 28(6) of the Localism Act 2011.

Person specification

CATEGORY	ESSENTIAL	DESIRABLE
Education	<ul style="list-style-type: none"> • A good general level of education, sufficient to enable the Independent Person to deal with relevant paperwork and discussions. 	
Work Experience		<ul style="list-style-type: none"> • Experience within a similar role that has involved the promotion of high ethical standards.
Skills, Knowledge and Aptitude	<ul style="list-style-type: none"> • Ability to analyse complex issues in a logical way, and to arrive at practical ethical solutions. 	<ul style="list-style-type: none"> • Knowledge of relevant public services.
Personal attributes	<ul style="list-style-type: none"> • Must display the highest standards of integrity and conduct. • must have personal integrity and a commitment to equality and diversity. • must be fair and able to take an objective view of sometimes emotive situations. • must act with independence and tenacity and demonstrate skills of persuasion and influence. • must be able to exercise sound judgement, and must be able to analyse and solve complex problems. • must be able to express their ideas and point of view effectively, while being an excellent listener. • They must have excellent inter-personal skills. 	

Motivation	<ul style="list-style-type: none"> • Must have a firm belief in the importance of public services to the community. • Must have a firm belief in the importance of high standards of conduct to the successful achievement of the Council's objectives. 	
Restrictions	<ul style="list-style-type: none"> • Must not be a member, co-opted member or officer of Somerset Council or of a City, Town or Parish Council within Somerset and must not have held such a position within the previous five years. • Must not be related to, or a close friend of, a member, co-opted member or officer of Somerset Council or of a City, Town or Parish Council within Durham. 	

Equality and Diversity

The Independent Person is obliged to demonstrate and promote a commitment to the Council's Equality and Diversity Policy.

Eligibility

Under section 28(8) and (10) Localism Act 2011 the following persons are not eligible for appointment as an independent person:

- current members, co-opted members and officers of Somerset Council or of any parish, town or city council within its area, or their relatives or close friends;
- any person who has at any time during the 5 years ending with the appointment been a member, co-opted member or officer of the council or any of the parish, town or city councils in its area;

For these purposes a person is a relative of another person if they are -

- a. the other person's spouse or civil partner;
- b. living with the other person as husband and wife or as if they were civil partners;
- c. a grandparent of the other person
- d. a lineal descendant of a grandparent of the other person;
- e. a parent, sibling, or child of a person within a. or b. above;
- f. the spouse or civil partner of a person within c., d. or e. above; or
- g. living with a person within c., d., or e. above as husband and wife or as if they were civil partners.

Term of Appointment

The Council plans to appoint 3 independent persons. These will be appointed up until the ordinary day of elections in 2027.

Allowance

The Council will pay an Independent Person an annual allowance and it is proposed that the allowance for 2023/24 will be £1,000 per annum. The level of allowance will be reviewed regularly as part of the review of the Council's Members' Allowances Scheme.