

## **Report of the Monitoring Officer – proposed appointment of the Council’s Reserve Independent Person and recruitment of Independent Persons for Somerset Council**

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### **1. Summary**

- 1.1 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.

## **2. Recommendation(s)**

### **2.1 The Committee is asked to comment on the Monitoring Officer's proposed recommendations to Council in relation to:-**

- 1. Appointing Lorraine Davey as a Reserve Independent Person under Section 28 of the Localism Act 2011 with immediate effect until 31 March 2023**
- 2. Authorising 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

Wiltshire (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 Officers 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

Wiltshire - £ 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.

#### **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 are being consulted for their views on the proposals in this report prior to the Monitoring Officer making recommendations to the Council meeting on 23 November 2022.

## **6. Background Papers**

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