

<b>REPORT REFERENCE NO.</b>	<b>DSFRA/18/10</b>
<b>MEETING</b>	<b>DEVON &amp; SOMERSET FIRE &amp; RESCUE AUTHORITY</b>
<b>DATE OF MEETING</b>	<b>18 APRIL 2018</b>
<b>SUBJECT OF REPORT</b>	<b>CONVENTION RELATING TO APPOINTMENT OF NON-EXECUTIVE DIRECTORS FROM THE AUTHORITY MEMBERSHIP TO AUTHORITY-OWNED COMPANIES</b>
<b>LEAD OFFICER</b>	<b>Director of Corporate Service</b>
<b>RECOMMENDATIONS</b>	<i>That the Authority considers the contents of this report and determines whether it would wish to introduce a convention relating to Non-Executive Directors appointed from Authority membership on any company owned by the Authority.</i>
<b>EXECUTIVE SUMMARY</b>	In accordance with Standing Order 19, the Authority Chair (Councillor Randall Johnson) has asked that an item be placed on the agenda for this meeting to enable the Authority to consider whether it wishes to introduce a convention whereby, to aid in managing potential conflicts of interest, neither the Chair nor Vice Chair should be eligible for appointment as non-executive directors on any company owned by the Authority.
<b>RESOURCE IMPLICATIONS</b>	Nil.
<b>EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)</b>	The contents of this report are considered compatible with existing equalities and human rights legislation.
<b>APPENDICES</b>	A. Extract from "Review of the current working arrangements of the Board of Directors of Red One Ltd. on behalf of the Devon & Somerset Fire & Rescue Authority", as considered at the Extraordinary Authority meeting held on 4 April 2017.
<b>LIST OF BACKGROUND PAPERS</b>	

## **1. BACKGROUND**

1.1 Over the past 18 months or so, the Authority has considered a number of externally-commissioned reviews to assist in establishing improved governance arrangements for its commercial training arm, Red One Ltd. One review report (considered initially by the Authority meeting on 30 September 2016, with a revised version considered at the Authority Extraordinary Meeting held on 4 April 2017) featured a section on Director duties (many stemming from the Companies Act 2006 – “the Act”) and highlighted, amongst other things:

- the duty to exercise independent judgement (Section 173 of the Act);
- the duty to exercise reasonable care, skill and diligence (Section 174); and
- the duty to avoid conflicts of interest (Section 175).

1.2 The Authority, at the Extraordinary Meeting held on 4 April 2017, resolved to adopt the recommendations as contained in the report (Minute DSFRA/59 refers). One recommendation was:

“in light of the dual role of the Members as Non-Executive Directors of the Company and Members of the Authority, it considers Section 6.11 of this Report which highlights the importance of ensuring that Members are aware of potential conflicts of interest arising and that if conflicts of interest arise, these are carefully managed and appropriate measures are implemented.”

1.3 For ease of reference, Section 6.11 of the report is reproduced in its entirety at Appendix A to this report. Also of relevance, however, is paragraph 6.65 of the review report, contained in the section headed “Additional consideration for conflicts of interest for the Authority appointed Non-Executive Directors”. This paragraph is reproduced below, for ease of reference:

“6.6.5 Given the role of the Chairman of the Authority, the likelihood of conflicts of interest arising is much greater than for other Members of the Authority and it is our view that it is generally not advisable for them to be appointed as a director of an Authority controlled company. It is considered that their participation and leadership in relation to the setting the strategic direction and exercise of the Shareholder function is an important aspect of the Chairman of the Authority’s role. As an elected Member and Director of the Company, we consider that in practice it will be difficult to ensure that both the statutory requirements for directors and the Members’ Code of Conduct are not infringed. Members will need to think about how their involvement with the Company will impact on their work as a Member. The Authority appointed as Non-Executive Directors of the Company will therefore need to consider how they could address any apparent tensions and their options will include declining appointment or resigning their directorship.”

1.4 The issues identified in paragraph 6.6.5 (as reproduced above) could be equally applicable to the position of Authority Vice-Chair. Given this, the Authority might wish to introduce a convention whereby neither Authority Chair nor Vice-Chair may be appointed by the Authority as non-executive directors on any company owned by the Authority. This would then serve to better safeguard the Authority, the Company and the individuals concerned in effectively managing the potential for conflicts of interest.

**MIKE PEARSON**  
**Director of Corporate Services**

## 6.11 Confidential and commercially sensitive information

6.11.1 The dual roles may mean that Authority Appointed Non-Executive Directors will have access to Authority information that may not be appropriate to disclose at the Company board meetings and vice versa, in respect of commercially sensitive information that is available as a director. This heightens the need for Members to be aware of the potential for conflicts of interest. The Members' Code of Conduct sets out the parameters for the provision of confidential information and any requirements of the Company as to confidentiality must be observed. Further, Members are aware of the restrictions on the disclosure of exempt information. The Authority and the Company are different legal entities and so Members must not make the mistake of thinking that information they acquire in one setting can simply be disclosed in the other setting.

6.11.2 The duty of confidentiality is such that, even where the director is appointed by a shareholder, he cannot, without the authority of the company, disclose to that shareholder any confidential information relating to the company which had been gained by him as a director of that company. It is often the case that the appointment of a director to a local authority owned company is because that Member has a particular interest in the subject matter and therefore it would not be unusual if their own view as a director and those of the company and the Authority are closely aligned. It is very important that directors have a clear understanding of which "hat" they are wearing at any time. As a general principle:

- A Member will be acting as a Director if they are considering papers sent to them from the Company, attending Board meetings, participating in other formal company business or discussing company business with others for the purposes of the company (subject to the point in connection with confidential information /commercially sensitive information above); and
- A Member will be acting as a Member if they are considering papers sent to them from the Authority, attending committee or other meetings of the Authority, participating in other business of the Authority or discussing Authority business with others that arises directly from, or is for the purposes of, discharging their responsibilities as a Member of the Authority (subject to the point in connection with confidential information /commercially sensitive information above).

6.11.3 Conflicting interests should be declared by Directors on every occasion and the Articles of Association of the Company and the Members' Code of Conduct should be carefully followed as this continues to apply when they are serving on the Board of Directors as an Authority appointed Non-Executive Director. There are currently confidentiality agreements between the Authority appointed Non-Executive Directors and the Authority however these are simply in relation to their relationship with the Company as Members of the Authority rather than as Directors. In our view, appropriate clauses within all the letters of appointment should be included to clearly outline the Director's responsibilities in this regard.