

REPORT REFERENCE NO.	DSFRA/22/8
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY (Budget)
DATE OF MEETING	18 FEBRUARY 2022
SUBJECT OF REPORT	PROCESS FOR APPOINTMENT OF AUTHORITY MEMBER NON-EXECUTIVE DIRECTORS TO THE BOARD OF RED ONE LTD.
LEAD OFFICER	Director of Governance & Digital Services
RECOMMENDATIONS	<i>None.</i>
EXECUTIVE SUMMARY	In accordance with Standing Order 21, Councillor Dr. Buchan has asked that the Authority consider whether the process for appointing Authority-Member non-executive directors to the Board of Red One Ltd. is fair and represents good governance practice.
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS	N/A
APPENDICES	Nil.
BACKGROUND PAPERS	Agenda and Minutes of the Authority annual meeting held on 29 June 2021 Authority Standing Orders Officer Urgency Decision – Appointment of two Authority Member Non-Executive Directors to the Board of Red One Ltd. Articles of Association of Red One Ltd. The Devon & Somerset Fire & Rescue Authority (Combination Scheme) Order 2006 (as amended) (“the Order”) Local Government Act 1972 (“the Act”)

1. **INTRODUCTION**

- 1.1. In accordance with Standing Order 21, Councillor Dr. Buchan has asked that the Authority consider whether the process for appointing Authority-Member non-executive directors to the Board of Red One Ltd. is fair and represents good governance practice. In particular, Councillor Dr. Buchan would wish the following considered when debating this item. Officer comments are included below each question by way of additional context.

1. What is the current process, including criteria for nomination and appointment?

Officer comment: The Authority has not set a prescribed process, it agrees the process to be used as each vacancy arises. Previous processes have required the Clerk to seek expressions of interest from Authority Members and appoint an agency specialising in the selection and recruitment of non-executive directors (NEDs) to assess expressions of interest and provide a suitability assessment for consideration when making the final appointments. The only criteria for nomination is to be a Member of the Authority (excluding the Authority Chair and Vice Chair). The appointments have previously been made either by the full Authority or delegated by the full Authority to a committee.

2. How is the independent advice arrived at and incorporated within the decision-making process?

Officer comment: As set out under question 1, advice has previously been provided by specialist NED recruitment agencies in the form of a suitability assessment which is considered by the Authority (or committee) when making the final appointments. It is important to note that consideration of advice does not abrogate the right and responsibility of the decision maker to make the decision. Neither does it preclude the decision maker from taking account of other relevant considerations, nor from reaching a decision that may differ from the advice.

3. Is the process for independent advice good value for money as currently administered?

Officer comment: The specialist agencies referred to earlier have previously been appointed following a proportionate, competitive procurement process. The cost of the last exercise was £5,000. The suitability assessment allows the decision maker to be cognisant of the strengths and weaknesses of each applicant but, as previously indicated, is not the only factor that may be taken into account when deciding appointments. It is for the Authority to determine whether this advice provides value for money.

4. Who comprises the appointment panel and are the Terms of Reference appropriate to ensure that the Authority can be confident in the decisions being made and that these are being made impartially?

Officer comment: As set out in the comment under question 1, the Authority has previously determined the arrangements for each appointment process. In accordance with the provisions of the Act, decisions (whether by the full Authority or a Committee) are reached by a majority of Members present and voting. In the event of a tie in votes, the Chair has a second or casting vote. Decisions made by the Authority must be lawful, be within the recognised parameters of rationality and made in accordance with its constitution. There is no statutory requirement for impartiality and – given the legislative requirements and the political nature of local authorities – it is difficult to see how this could be achieved without fettering Members' independent judgment.

5. Does the Authority wish to make any changes to this process to improve it?

Officer comment: As set out in the comment under question 1, the Authority has not to date set a prescribed process. This provides flexibility to enable the Authority to determine the process to be used as each vacancy arises.

2. LEGISLATIVE AND CONSTITUTIONAL CONSIDERATIONS

- 2.1. The appointment and method of appointment of Authority Member Non-Executive Directors is a matter for the Authority to determine.
- 2.2. Historically, such appointments have been determined by the full Authority, which previously authorised the Clerk, each time the appointments fell due, to undertake the initial stages by inviting declarations of interest from eligible Members and commissioning, following a proportionate procurement process, an independent company with expertise in non-executive director appointments to consider applications and provide a suitability assessment for consideration when making the final appointments.
- 2.3. For the most recent appointments, the same process was followed albeit that the Authority delegated the decision on the final appointments to the Appointments & Disciplinary Committee. In this respect, it should be noted that:
 1. Section 101(1) of the Act (which is expressly applied to this Authority by the Order) provides that, unless a statutory prescription exists, any function of the Authority may be delegated either to a Committee or to an Officer;
 2. there is no statutory or constitutional prescription that prevents Authority Member non-executive director appointments being delegated either to a Committee or to an officer of the Authority;
 3. by virtue of Paragraph 42 of Part 6, Schedule 12 to the Act (also expressly applied to this Authority by the Order), the Authority may make Standing Orders for the regulation of its proceedings; and

4. the Authority's current Standing Orders, specifically Standing Order 28, allows the Chief Fire Officer to exercise all rights, powers and duties of the Authority in cases of urgency, subject to consultation with the Authority Chair or Vice-Chair. A similar Standing Order (allowing Officers to exercise powers and duties in cases of urgency) is commonplace in the constitutions of local authorities.

2.4. It should also be noted that any advice received by the Authority - whether from an officer of the Authority or an external advisor - on any matter requiring a decision is just that i.e. advice. Receipt and consideration of the advice does not abrogate the right and responsibility of the decision maker (the Authority, Committee or officer, as the case may be) to make the decision. Neither does it preclude the decision maker from taking account of other relevant considerations, nor from reaching a decision that may differ from the advice.

2.5. For local authority decisions, the only requirement is that the decision was reached lawfully i.e. in accordance with:

- the legislation and associated constitutional framework for the authority; and
- the common law principles that:
 - the decision maker must have due regard to all relevant considerations and not have regard to irrelevant considerations ("the Wednesbury Rules" deriving from the Court of Appeal case of Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1947)); and
 - any and all decisions are both rational and reasonable (as otherwise the decision in question could be subject to challenge by judicial review).

3. **CONCLUSION**

3.1. The Authority is asked to consider the issue raised by Councillor Dr. Buchan together with the legislative and constitutional considerations as set out in this report.

MIKE PEARSON

Director of Governance & Digital Services