

Statutory Recommendation in Respect of Settlement Agreements

Executive Portfolio Holder:	Councillor Val Keitch, Leader of Council and Portfolio Holder for HR
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Purpose of the Report

1. The purpose of this report is to inform Council of a statutory recommendation made by the auditor and to recommend what action to take.

Public Interest

2. On 23 August 2022 the Chief Executive received the **Auditor's Annual Report on South Somerset District Council for 2020-21**. A copy of this report is attached to Agenda item 11 for this meeting. The Annual Report contains a statutory recommendation from the auditor, which can be found at page 6 of the Report. Full Council is required to consider and publicly respond to this recommendation within one month of receipt and decide (i) whether or not the recommendation is accepted and (ii) what action, if any, to take in response to the recommendation.

Recommendations

3. That Council:
 - (a) accepts the statutory recommendation set out in the Auditor's Annual Report on South Somerset District Council for 2020-21
 - (b) adopts the Procedure Note for Officers set out in the Appendix to the report with immediate effect
 - (c) delegates authority to the Chief Executive to notify the auditor of these decisions and publish a notice approved by the auditor that summarises them on its website.
 - (d) delegates authority to the Monitoring Officer to make any necessary amendments to the Council's Constitution to ensure the following specific provisions contained in the Statutory Guidance on Special Severance Payments are clearly stated:
 - **payments below £20,000** will be approved in accordance with the Council's scheme of delegation



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- **payments of £20,000 and above, but below £100,000** must be signed off by the Head of Paid Service (Chief Executive), with a clear record of the Leader's approval endorsed on the report
- **payments of £100,000 and above** must be approved by a vote of full council

The Statutory Recommendation

4. On 23 August 2022 the Chief Executive received the **Auditor's Annual Report on South Somerset District Council for 2020-21**. A copy of this Report is attached to the Agenda for this meeting. The Annual Report contains a statutory recommendation.

5. The statutory recommendation reads as follows:

"When considering making settlement agreements with, or payments to employees, the Council should:

- Comply with Financial Regulations, Standing Orders and the Constitution;
- Ensure that appropriate consultation takes place with the statutory officers;
- Ensure that approval for the agreement is obtained from the appropriate elected Members;
- Maintain appropriate and sufficient evidence for the decision making process;
- Assure itself of the legality of the transaction, including seeking legal advice;
- Clearly demonstrate value for money has been achieved."

6. The background detail is set out in the Auditor's Summary Findings (page 6 of their report) as follows:

"During 2020/21 the Council entered into a settlement agreement with a senior officer. This resulted in the officer leaving the employment of the authority with a substantial settlement payment.

From our enquiries of management, we have concerns that there was a lack of due process, insufficient records were maintained to evidence how the agreement was reached, and that the agreement does not reflect value for money. There is no evidence that there was approval for the sign off of the agreement or that the requirements of the Financial Regulations and the Constitution were followed. The Council did not obtain legal advice and the Monitoring Officer and s151 Officer were not aware of the agreement. There is no evidence that value for money was considered."

7. The management response is as follows:

"We accept and regret that the management controls that were in place did not operate as they should have done on this occasion. The controls have been reviewed by management and a revised procedure that takes these findings into account will be recommended to our next meeting of Council."



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8. The Auditor's Report and management response were considered by Audit Committee on 2 September and members of the Audit Committee have had the opportunity to comment on the procedure set out in the Appendix.

Suggested Response to the Statutory Recommendation

9. It is important to understand that it is not being suggested that the Council did not have the proper processes and controls in place. The statutory recommendation arises from a failure to follow those processes which meant those controls were not triggered.
10. As the necessary controls are already in place and there is a new Senior Leadership Team in place, this could be treated as a serious one-off failure without the need to introduce any further governance. However, that would not necessarily give sufficient assurance to Councillors and members of the public that the existing processes and controls would be applied in the future. To provide this assurance, a detailed procedure note for officers, that aligns with and will sit below the Council's Constitutional provisions, has been drawn up and is attached as an Appendix to this Report. In preparing this procedure note, particular attention has been paid to the recently issued Statutory Guidance on Special Severance Payments to ensure it is appropriately reflected.
11. The Statutory Guidance contains specific provisions on where different levels of payment should be agreed:
 - **payments below £20,000** will be approved in accordance with the Council's scheme of delegation
 - **payments of £20,000 and above, but below £100,000** the fully authorised report must be personally approved and signed off by the Head of Paid Service (Chief Executive), with a clear record of the Leader's approval endorsed on the report
 - **payments of £100,000 and above** must be approved by a vote of full council
12. It is also recommended that the Council's Constitution is amended to give these provisions greater prominence.

Financial Implications

13. There are no financial implications arising from this report.

Legal implications (if any) and details of Statutory Powers

14. Paragraph 2 of Schedule 7 of the Local Audit and Accountability Act 2014 gives a local auditor power to make a written recommendation, which must then be considered under the provisions of the Schedule. Copies of all written recommendations are sent to the Secretary of State at the time they are made.
15. Where an auditor has made a written recommendation, paragraph 5 of Schedule 7 requires it to be considered by a meeting of the authority within one month of the day on which it was sent to the authority. When considering the recommendation, the authority must decide (a) whether or not the recommendation is to be accepted and (b) what, if any, action to take in response to the recommendation. The authority must notify the



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auditor of those decisions as soon as is practicable and publish a notice that summarises those decisions and has been approved by the auditor on its website.

Council Plan Implications

16. There are no Council Plan implications arising from this report.

Carbon Emissions and Climate Change Implications

17. There are no carbon emissions and climate change implications arising from this report.

Equality and Diversity Implications

18. There are no equality and diversity implications arising from this report.

Privacy Impact Assessment

19. There are no privacy impact assessment implications arising from this report.

Background Papers

Auditor's Annual Report on South Somerset District Council for 2020-21
Statutory Guidance on the Making and Disclosure of Special Severance Payments by Local Authorities in England - <https://www.gov.uk/government/publications/special-severance-payments/statutory-guidance-on-the-making-and-disclosure-of-special-severance-payments-by-local-authorities-in-england>

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Statement on the application of the *Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England* published on 12 May 2022

Special Severance Payments (SSP)

1. A special severance payment is any additional discretionary sum paid to an employee, officeholder, worker, contractor, and others leaving employment in public service in addition to statutory and contractual redundancy or severance. Such a payment should only be considered in exceptional cases as they do not usually represent value for money.
2. Statutory guidance on the use of special severance payments is set out in **Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England (12 May 2022)** - <https://www.gov.uk/government/publications/special-severance-payments/statutory-guidance-on-the-making-and-disclosure-of-special-severance-payments-by-local-authorities-in-england>
3. South Somerset District Council will only make a Special Severance Payments if:
 - there is a clear, evidenced justification;
 - all relevant internal policies and procedures have been followed;
 - all alternative actions have been fully explored and documented; and
 - the arrangements are fair, proportionate, lawful and provide value for money for the taxpayer.
4. The following payments will nearly always be Special Severance Payments:
 - payments under a settlement agreement to discontinue legal proceedings without admission of fault;
 - the value of any employee benefits or allowances which continue beyond the exit date;
 - write-offs of any outstanding loans;
 - honorarium payments;
 - any hardship payments;
 - payments for retraining related to termination of employment
5. The following payments will sometimes be Special Severance Payments:
 - pay in lieu of notice where the payment is not greater than the salary due in the contractual period of notice
 - pension strain payments arising from employer discretions to enhance standard pension benefits



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6. The following payments are not Special Severance Payments:
 - statutory redundancy payments;
 - contractual redundancy payments, whether voluntary or compulsory redundancy;
 - severance payments made in accordance with the Council's policy under Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
 - a strain cost paid under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7) or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8)
 - payment for untaken annual leave
 - payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation
 - payments made as part of the ACAS Early Conciliation process
 - payments made to compensate for injury or death;
 - payments made in consequence of the award of ill-health retirement benefits.
7. If a manager wishes to make a Special Severance Payment (SPP) in respect of a person who has or is about to leave the Council's service, they must first obtain written confirmation from their People Specialist about whether or not the Statutory Guidance applies or may apply to the proposed payment.
8. If the People Specialist confirms that the Statutory Guidance applies or may apply, the manager must prepare a report covering the points set out in the Schedule to this statement. If the manager concludes, having completed the report, that a Special Severance Payment is justified by the evidence, that all alternative actions have been fully explored and documented and that the arrangements are fair, proportionate, lawful and provide value for money for the taxpayer, the manager must circulate the report for authorisation by:
 - The manager's SLT lead
 - The Lead Specialist (People)
 - The Section 151 Officer
 - The Monitoring Officer
9. Once a report has been authorised in accordance with paragraph 8 the final decision will depend upon the level of Special Severance Payment proposed.

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payments of £100,000 and above must be approved by a vote of full council



Note: if the proposed payment is to the Head of Paid Service, then to avoid a conflict of interest the report must be approved by a panel including at least two independent persons.

10. Once a payment has been approved in accordance with paragraph 9, the signed copy must be sent to the Lead Specialist (People) for retention with the employee’s record. The Lead Specialist (People) is responsible for notifying payroll in writing that payment has been formally approved. This is in addition to the normal payment approval process and payments must not be made without such written notification from the Lead Specialist (People).

Approved by Council - 15 September 2022

Appendix – Issues that must be covered in any report recommending a Special Severance Payment (SSP)

Issue	Questions to answer include:
economic rationale	<p>Is there is any feasible possibility of exiting the individual at a lower cost? If yes, an Special Severance Payment (SSP) must not be considered</p> <p>How will the SSP be perceived by the public?</p> <p>Is an SSP in line with the Council’s duty to manage taxpayers’ money appropriately?</p> <p>All SSPs reduce the funds that would otherwise be available to deliver important public services - what alternative use could be made of that expenditure?</p> <p>Will this SSP set a precedent?</p> <p>Is this SSP potentially discriminatory?</p> <p>What evidence is there that the person to be offered the SSP would not have been willing to leave with their statutory and contractual benefits alone?</p>
impact on efficiency and effectiveness	<p>What is the legal advice on the prospects of successfully defending an Employment Tribunal or other claim, if this person challenged the termination of their employment? How do the chance of success and the likely costs (fees and staff time) weigh against the cost of the SSP?</p> <p>Is an SSP being suggested to avoid management action or disciplinary processes or unwelcome publicity or to avoid embarrassment?</p> <p>Is there any evidence to show how a similar claim would be dealt with in the private sector?</p> <p>Are there any conflicts of interest to be taken into account?</p>
exceptional circumstances	<p>Are existing statutory and/or contractual entitlements insufficient to facilitate an exit or offer sufficient compensation for loss of employment or office? If so, what are those</p>



Issue	Questions to answer include:
	<p>circumstances and how would an SSP provide value for money?</p> <p>Would an SSP set aside what would otherwise be a reduction in entitlement caused by a break in continuity of service (e.g. where a member of staff has taken a break in service to accompany their spouse on military service overseas)?</p> <p>Is an SSP appropriate because, to help recruitment and retention, the Council has resolved to recognise past service with another employer for severance payment calculation purposes?</p>
Settlement of disputes, where it can be demonstrated that other routes have been thoroughly explored and excluded	<p>Can it be properly demonstrated that other routes have been thoroughly explored and excluded?</p> <p>Has appropriate professional advice been received and does it suggest that an SSP is the most suitable option and a prudent use of public money?</p> <p>If the SSP relates to a settlement agreement is there appropriate evidence to show attempts were made to resolve disputes before they escalated to a legal claim?</p> <p>Even if the cost of defeating an apparently frivolous or vexatious claims will exceed the likely cost of an SSP, is it still desirable to take the case to formal proceedings to discourage future frivolous or vexatious claims and demonstrate that the Council does not reward such claims?</p>
Other	<p>Does the SSP comply with the provisions of the Council's pay policy statement?</p> <p>Does the SSP comply with the requirements of the Council's policy under regulation 60 of the Local Government Pension Scheme Regulations 2013 in relation to the exercise of the discretion to enhance pension benefits under regulations 16(2)(e) and 16(4)(d) (funding of additional pension), regulation 30(6) (flexible retirement), regulation 30(8) (waiving of actuarial reduction); and regulation 31 (award of additional pension)?</p> <p>Will the SSP be consistent with the Council's Public Sector Equality Duty under the Equality Act 2010?</p>