

Title of meeting: Cabinet Sub-Committee Meeting

Date of meeting: 15 December 2021

Subject: The Council as a company owner

Report by: City Solicitor

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

1.1 The report outlines;

- 1.1.1 the background to the establishment of the sub-Committee and recent developments;
- 1.1.2 the Council as a company owner and the role of the sub-Committee;
- 1.1.3 an outline of the Terms of Reference for the role of the sub-Committee;
- 1.1.4 next steps.

2. Recommendations

2.1 It is recommended that Cabinet;

- 2.1.1 agrees to a sub-Committee meeting in January to receive reports from all of the Council's companies and to meet quarterly thereafter;
- 2.1.2 Delegate authority to the City Solicitor to engage with all PCC companies and request relevant reports for the January meeting; and
- 2.1.3 authorises the City Solicitor to engage the services of Local Partnerships to provide commercial advice to the sub-Committee in relation to its companies going forward.

3. Background

Reasons for establishing the sub-committee of Cabinet

- 3.1** Following the winding up of the Council's wholly owned energy company, Victory Energy Supply Limited ("VESL"), a review and thorough audit was undertaken of the legality and best practice for management and governance of wholly owned local authority companies.



- 3.2 It was identified that the Council required an appropriate structure to enable the Council to discharge its role as a company shareholder in an efficient, legally accountable and transparent way. The aim - to protect those involved (officer, councillors and directors) and ensure a uniform approach in terms of governance and oversight for all PCC.
- 3.3 The report noted Councillors and statutory officers being board members of Council owned companies and the conflicts that could arise.
- 3.4 Cabinet agreed on the 14 July 2020 to the setup of a distinct 'Shareholder Committee', a sub-committee of cabinet, to be responsible for the oversight of all Council companies. The need for a small committee, distinct from the functions of cabinet, is considered necessary and best practice due to the number of companies the Council has ownership of, the need for specialist knowledge & training of those Councillors sitting on the committee and the corporate need for a consistent approach by the Council in relation to the governance oversight of its companies.
- 3.5 The committee's purpose is not to run the companies but to approve and oversee the Council's strategic objectives and provide strategic oversight and assurance to the Cabinet that the companies are compliantly run, achieving best value for the Council and are fit for purpose and to make decisions in the best interests of the Council.
- 3.6 The committee will govern and oversee by way of approving the business case of the companies and hold the directors (who will run the companies) to account for their performance (see from paragraph 4.1 for more details)
- 3.7 The importance of having well-informed, trained and commercially aware political oversight of Local Authority trading Companies, has been repeatedly reinforced by repeated governance issues identified at a number of local authorities in the last 18 months;
- 3.7.1 Liverpool City Council - Best Value Inspection (March 2021) by Max Caller CBE who reported that it was not evident that appropriate training had been provided to Councillors acting as Directors and it was noted that they may be unaware of the personal risks they are running (when acting as directors) and that the principles of good company governance in a local authority context were not understood and best value clearly not delivered. *"In reality, [the company] looked more like [a Council department] than a company"*;
- 3.7.2 The London Borough of Croydon - Report in the Public Interest (October 2020) which criticised the Council for a lack of clear governance arrangements on how its interests (as sole shareholder) were safeguarded and the extent to which the original aims of the business plan were being achieved;
- 3.7.3 Nottingham City Council - Report in the Public Interest (August 2020) which

criticised the governance of the company; the lack of appreciation with the Council of the huge risks in the investment and ownership of their company; the insufficient sector (or general commercial) expertise at non-executive company board level (which was primarily staffed by Councillors); and a failure by the Council to establish an appropriate and consistent balance between holding to account and allowing the Company freedom to manage;

3.7.4 Bristol City Council's review of Governance Arrangements (January 2021) which criticised the Council's governance of its companies and recommended that the Council should minimise the conflict of interest such as related to the role of elected members and officers and to ensure councillors had appropriate and regular training to be able to make decisions and scrutinise the operations of the Council;

3.8 These high profile examples have resulted in a slew of supporting advice being published. Lawyers in Local Government published extensive guidance for the development of governance in relation to Council interest in companies (which instructed much of the framework for the establishment of the council's company committee) and more recently Local Partnerships has published a "Local Authority Company Review Guidance" (attached at Appendix C) which builds on and reinforces many of the lessons learned from the reviews cited in paragraph 3.7.

4. The Council as a company owner and the role of the sub-Committee

4.1 The Company ownership function is an executive function of the Council and therefore the responsibility of Cabinet to discharge.

4.2 Cabinet previously approved that the sub-committee will have a membership comprised of the Leader of the Council as Chair of the Committee with the Leader appointing 3 cabinet colleagues to join the Committee with him. The Committee's approved terms of reference also require Councillors from the opposition groups to be invited to attend as non-voting members. Representatives to attend the Committee were sought, and made, from the opposition parties.

4.3 As previously described, the sub-Committee perform a vital oversight and challenge role and direct the strategy of the company. It is only in this role that Councillors are able to freely exercise their wider objectives for the residents of the City without being constrained by the requirements that a Company Director has placed upon them through the Companies Act.

4.4 The sub-Committee will not run the companies. The day-to-day responsibility for the operation of the companies will be with the Directors of each company who will be personally responsible and required to make decisions in the best interest of the relevant Company (which are not necessarily the same interests as the Council).

4.5 An example of certain decisions the Council may be asked to make in relation to Portico Shipping Limited and Ravelin Housing Limited is set out in Appendix D.

- 4.6 As the owner (or part owner) of a company, the Council can exercise statutory oversight of a company (although the degree it can do so depends on the % of ownership the Council has) in relation to;
- Changes to the constitution of the company
 - Declaring a dividend
 - Approving the financial statements of the company
 - Winding up of the company by way of voluntary liquidation
 - Any shareholder's reserve power
 - Appointing/ removing directors (in addition to board if relevant)
 - General meetings as requested (generally annual)
- 4.7 Depending on the nature of the company, the sub-Committee may also be required to;
- Approve the annual business plan
 - Require or receive regular reports (issues/regular finance and budget updates)
 - Approving reserved matters.
- 4.8 The sub-Committee will in the main be responsible for holding the company, through its Directors, to account for its performance.
- 4.9 The sub-committee will also wish to prepare and maintain a strategic risk register in relation to the Company risks to report to Cabinet.
- 4.10 In future, the sub-committee may wish to consider delegating certain of its functions as shareholder to the City Solicitor in consultation with relevant Directors.

Confidentiality

- 4.11 As an offshoot of Cabinet, the sub-committee will function in the usual way with Councillor's bound to confidence in relation to the Council's business through their duties enshrined in their Code of Conduct and Officers through their employment contracts.
- 4.12 Much of the work of the sub-committee is likely to involve consideration of commercially confidential information. The sub-committee will be able to conduct such business in private in the usual fashion.

Establishment and recent developments

- 4.13 Following the Cabinet decision on the 14 July 2020, consultation was undertaken with the Governance & Audit & Standards Committee on the 20 November 2020 and consequently the Terms of Reference of the sub-committee were incorporated into the Council's Constitution by the City Solicitor. The Terms of Reference are attached

committee, it meet quarterly with this being reviewed as the work of the sub-committee and its relationship with the Companies evolves.

- 6.2 It is proposed that the sub-committee meet on the 25 January 2022 to receive initial reports from all Council's Companies so that the sub-committee can understand the purpose of the Council's ownership of the Companies and make decisions where relevant or required.
- 6.3 Note - Ravelin Housing Limited will be bringing a decision paper to the meeting on the 15 December 2021 due to the pressure and need to commence development work and engage with key decisions prior to the 25 January 2022.

Commercial insight

- 6.4 At present the Council has no overall commercial strategy in relation to its companies, to ensure that the Council's ownership and investment in its companies is consistent with and advances the Council's corporate objectives and long term plans for the City.
- 6.5 It is recommended that the City Solicitor is delegated authority to engage the services of Local Partnerships who have an experienced team used to working with authorities to develop their commercial capabilities and supporting them to achieve and maintain financial resilience.
- 6.6 The City solicitor will engage with a relevant representative of Local Partnerships to shore up a retainer/costing package for presentation to the sub-committee on 25 January for approval.

7. Integrated impact assessment

- 7.1 The contents of this report to do not have any relevant equalities impact and therefore an Integrated Impact Assessment is not required.

8. Legal implications

- 8.1 Legal comments are contained within the content of this decision report.

9. Director of Finance's comments

- 9.1 The financial implications associated with the recommendations contained within this report relate to the cost of retaining Local Partnerships to support the Council's overall commercial strategy and governance arrangements. These are costs associated with the Shareholder function and therefore not chargeable to the Companies themselves. Whilst in the medium term, the dividends from the Council's companies are expected to exceed such costs, any costs in the current year will be funded from the Council's Corporate Contingency, with future costs built into future years' Budgets.


Signed by:

Appendices:



at Appendix A.

- 4.14 All members of the sub-committee, representatives of the opposition parties and the chair and deputy of the Governance & Audit & Standards Committee along with the key senior Officers (including statutory officers) attended a training session on the 6 September 2021 by lead legal advisors in the area - Bevan Brittan and a representative of Local Partnerships. The training slides are attached at Appendix B.
- 4.15 The City Solicitor has also arranged training for Officers and Members who are company directors, to ensure that they are better informed as to their function. An initial training session was held on the 21 September with generally good attendance. It is intended that further regular training will be provided and will be a condition of PCC Officers or Councillors being company directors.

5. The Council's Companies

- 5.1 The Council wholly or part owns the following companies ("the Companies");
- 5.1.1 Portico Shipping Limited (company no.02012886);
- 5.1.2 The Ravelin group of companies, consisting of;
- (a) Ravelin Group Limited (company no.10551072) which is the parent of two wholly owned subsidiaries;
- (b) Ravelin Property Limited (company no.10552514);
- (c) Ravelin Housing Limited (company no. 12644895);
- 5.1.3 Springvale Management Company Limited (company no.02630602);
- 5.1.4 Magna Park Management Limited (company no. 02224536);
- 5.1.5 North Harbour Estates Management Limited (company no. 07833141); and
- 5.1.6 HCB Holding Limited (company no. 9121398).
- 5.1.7 Portsmouth Harbour Renaissance Ltd (company no 03290436)
- 5.2 Each company is unique in its function and purpose and the Council's role in them as owner (or part owner). A little more detail as to the Council's ownership and their respective boards of directors is set out in appendix D (Company visuals)
- 5.3 Is it proposed that detailed reports concerning these Companies is presented to a meeting of the Companies Cabinet on the 25th January 2022

6. Reasons for recommendations

Schedule of sub-committee meetings and delegation to Monitoring Officer.

- 6.1 The sub-committee should schedule meetings regularly to ensure a planned programme of oversight for the Council's companies and to allow the Companies themselves to plan their decision making around any decisions it needs from the sub-committee. It is therefore suggested that during the initial set up phase of the sub-

- Appendix A - Company Ownership Committee terms of reference;
- Appendix B - Training Slides - role of Committee;
- Appendix C - Local Partnerships - Local Authority Company Review Guidance;
- Appendix D - PCC company visual

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

