

**Title of meeting:** Cabinet

**Date of meeting:** 8 February 2022

**Subject:** Oversight and decision making for Council companies

**Report by:** Chief Executive

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

- 1.1 To facilitate the replacement of the Cabinet sub-committee with an alternative executive procedure for discharging its functions by the full Cabinet, in accordance with the recommendation of the sub-committee on 15 December 2021.

**2. Recommendations**

- 2.1 If members wish to change the procedure for discharging the council's responsibilities as the sole shareholder of council companies, it must:
- 2.1.1 Abolish the constituted shareholder committee reverting the discharge of PCC company shareholder functions (executive functions) to full Cabinet;
  - 2.1.2 Agree that distinct and separate shareholder delegation(s) be provided for each PCC company to be agreed in each separate company paper 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"), the Council undertook a thorough review and audit of the legality and best practice for management and governance of wholly owned local authority companies.
- 3.2 It 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 in order to protect those involved (officers, councillors and directors) and ensure a transparent and uniform approach in terms of governance and oversight for all PCC companies.



- 3.3 On 14 July 2020, Cabinet received advice in a report which identified three options for consideration;
- 3.3.1 Company matters going to full cabinet
  - 3.3.2 Company matters going to a committee of cabinet; or
  - 3.3.3 Delegations to certain members (individual portfolio holders) and/or senior officers
- 3.4 The need for a small committee, distinct from the functions of Cabinet, was 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. In line with the legal advice, Cabinet agreed to establish a distinct 'Shareholder Committee' as a sub-committee of Cabinet, to be responsible for the oversight of all Council companies.

Establishment and recent developments

- 3.5 Following the Cabinet decision on the 14 July 2020, consultation was undertaken with the Governance & Audit & Standards Committee on 20 November 2020 and consequently the Terms of Reference of the sub-committee were incorporated into the Council's Constitution by the City Solicitor.
- 3.6 Members of the sub-committee drawn from the Cabinet, 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 6 September 2021 by lead legal advisors in the area - Bevan Brittan - and a representative of Local Partnerships.
- 3.7 The City Solicitor 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 21 September 2021 with generally good attendance. It is intended that further regular training will be provided and will be a requirement of PCC Officers or Councillors being company directors. Clear competency is to be encouraged through training and mentoring of all who seek to act as company directors before appointment.

1<sup>st</sup> meeting of the sub-committee

- 3.8 The sub-committee constituted on the 15 December 2021 and considered two reports including (1) "*The Council as a Company Owner*" reported by the City Solicitor.
- 3.9 The report noted the importance of the sub-committee to ensure the Council had a well-informed, trained and commercially aware political oversight of the companies, particularly considering a number of repeated governance failing identified in the recent past in other local authorities and within some of the PCC company structures most notably VESL.

- 3.10 The report included a recommendation that the sub-committee reconvene in early January to consider further detailed reports from the Council's companies.
- 3.11 In the discussion that followed, the elected chair of the sub-committee noted that Cabinet had considered that due to the *gravity of the Council owning private companies, it was felt that it was more appropriate for the Companies to report to Cabinet directly as it would provide a greater amount of scrutiny to the public as well as due to the logistics of it.*
- 3.12 It was further noted there had been a learning process over the time since the decision in July 2020 and consequently following discussions with opposition group leaders (the identity of whom had changed since 2020), it was felt that there should be greater emphasis on transparency and openness and that this aspiration would sit better within the scope of Cabinet rather than a distinct shareholder committee.
- 3.13 The sub-committee therefore substituted recommendation one of the report for one which recommended to Cabinet that the sub-committee be abolished and instead the companies report into full Cabinet.
- 3.14 This report has therefore been drafted as consequence of the sub-committee's recommendation.

#### **4. Options available to the Cabinet**

- 4.1 Cabinet has a number of options through which it can discharge the Council's shareholder function;

##### **4.1.1 (1) Full Cabinet**

Executive functions of the Council are primarily discharged through full Cabinet. This is a forum which officers, councillors and members and the public at large are broadly familiar with. It will provide scope for the engagement of the full Cabinet in matters which may cross portfolios. It is open and transparent to the public and Opposition members may attend and put across their views (although not vote) in the forum.

The disadvantage is primarily one of logistics - Cabinet has a busy programme of work to consider at each meeting and it may therefore not be able to dedicate its focus solely to company matters in the detail and to consider in a scrutiny sense the best practice guidance as consistently advised by Legal Services and external legal input.

To mitigate this risk, there should be a regular Cabinet agenda reserved for company matters and the terms of reference of the existing sub-committee should be transferred to full Cabinet where it is solely considering company matters and key commercial advice on discharging of the full range of shareholder functions. This will include an explicit notification to Opposition party representatives to address the need for cross party oversight and

engagement in accordance with the previous audit review and best practice guidance as contained with the Cabinet report dated 14 July 2020. It should be noted that Opposition Councillor's may attend Cabinet but there is no voting right for any members other than those on the Cabinet.

4.1.2 Through a sub-committee

A sub-committee of Cabinet which solely focuses on company matters enables a cohort of members to be developed who are well-informed, trained and commercially aware on the matters they are considering. It is open and transparent to the public and the terms of reference of the sub-committee can expressly permit opposition members to attend and take part (although not vote) in the forum.

The disadvantages are that the oversight of the companies and the knowledge and skills held by the members of the sub-committee will be contained in a small cohort of members and other Cabinet members who are not members of the sub-committee and may not be aware of issues which impact on their portfolio.

To mitigate this risk, all Cabinet members (including non-members of the committee) can be invited to briefings.

4.1.3 Through delegations to certain members (individual portfolio holders) and/or senior officers

Delegation in this way may be an appropriate method of discharging the shareholder function even where the primary responsibility is discharged by Cabinet or a dedicated sub-committee. This would be particularly the case where the council has minimal ownership rights and therefore little leverage (and risk) concerning the company.

The disadvantages are that this does not address one of the fundamental purposes of establishing a dedicated body, that being to oversee the Council's companies and this omission, in effect will create risk that the Council will not provide oversight of its companies in a consistent way.

To mitigate this obvious risk, delegations should be joint with the City Solicitor and the s151 Officer and any delegations would need to include a requirement for regular report back to Cabinet or a sub-committee as to the effectiveness of the shareholder function so that Cabinet can ensure delegations are appropriate and functional in all cases.

## **5. Reasons for recommendations**

- 5.1 The recommendations are set out to enable the Cabinet to consider the resolution of the sub-committee in the light of the legal advice set out below and previously issued.

## **6. Integrated impact assessment**

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

## **7. Legal implications**

- 7.1 The 'shareholder function' is an executive function which falls to Cabinet to discharge.
- 7.2 As per the relevant legislation and the Council's own constitution, it is at the discretion of the Leader of the Council to decide how executive functions will be discharged whether by full Cabinet, sub-committees of Cabinet, individual portfolio holders or as delegated to senior officers.
- 7.3 Such decisions must however be recorded in writing and set out the alternative options considered and rejected by the decision maker. It must also reference any conflicts of interest relating to the matter declared by the decision maker (or decision making body).
- 7.4 In relation to the decision of the 14 July 2020, the decision to establish the sub-committee was one taken by Cabinet as a whole. The Council's executive procedure rules note that any decision which is likely to affect more than one portfolio be taken by the Cabinet as a whole. The decision should therefore be taken by Cabinet as a whole.
- 7.5 Cabinet should consider carefully in its decision making how best the Council can discharge the shareholder function. It is the City Solicitor's position, having considered carefully many of the best value reports and lessons learned from other local authorities, that a sub-committee of Cabinet is the best method through which the Council can discharge its shareholder function. That said, this is a matter in the discretion of Cabinet as to which of the options outlined at 4.1 of this report it chooses, though such a decision must evidence consideration of the relevant alternative options so that Cabinet can evidence it has made a rational decision.

## **8. Director of Finance's comments**

- 8.1 There are no direct financial implications as a result of approving the recommendations within the report

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Signed by:

**Appendices:**

**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:

<b>Title of document</b>	<b>Location</b>

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

.....  
Signed by: