

**Title of meeting:** Cabinet

**Date of meeting:** 14 February 2022

**Subject:** Portico Shipping Limited

**Report by:** Mike Sellers, Port Director

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

- 1.1 To provide members with an overview of the Council's ownership of Portico Shipping Limited ("Portico"); and
- 1.2 To seek approval of the revised Articles of Association of Portico

**2. Recommendations**

- 2.1 To approve the revised Articles of Association of Portico and to delegate authority to the City Solicitor to take such action as shareholder that is necessary to communicate such decision to Portico.

**3. Background**

- 3.1 The Council acquired Portico, formerly MMD (Shipping Services) Ltd, which was on the brink administration in February 2008, to support the Council's economic growth strategy and safeguard jobs.
- 3.2 The officer employed by the Council as its Director of the Port has since that time been a director of Portico. The Council's s151 officer joined the Portico Board in approximately 2011. In approximately 2018, the then Leader of the Council and the Leader of the Opposition were voted onto the board of Portico and there has been political representation on the board more or less since that time.
- 3.3 Responsibility for the oversight of Portico sits within the Leader's portfolio.
- 3.4 Operationally, the Council's Director of the Port is responsible for oversight of Portico.

**4. Board Structure**

- 4.1 The current structure of the Portico Board is as follows;
  - Camilla Carlbom Flinn - Independent Non-Executive Director (NED) and Chair of the Portico Board



Camilla is Chair of Carlbom Shipping Ltd, specialist shipping agents based on the Humber. Camilla is also Honorary Consul for Sweden for Humberside, Lincolnshire and Nottinghamshire; Honorary Consul for Finland for Immingham, Grimsby and Hull and Deputy Lieutenant of the County of Lincolnshire.

- Justin Atkin – Independent NED

Justin is the UK and Ireland representative for the Port of Antwerp and an independent industry expert.

- Chris Ward – NED

Chris is employed as the Council's s151 officer however where matters at the Council concern Portico, his role at the Council is discharged by the deputy s151 Officer.

- Mike Sellers - NED

Mike is employed by the Council as the Port Director of Portsmouth International Port. He has 30 years' experience in the port sector and heads up the development of the new business plan for Portico.

- Steve Williams MBE - Executive Director, Portico

Steve has over 30 years' experience in the port sector and is a full-time employee of Portico. Steve was awarded the MBE in the Queen's honours in 2020 for his work at Portico during the pandemic to maintain operations and ensure essential supplies continued to flow to supermarkets.

- Cllr Gerald Vernon-Jackson – NED

Cllr Vernon-Jackson is a Councillor and the Leader of the Council.

- Cllr Simon Boshier – NED

Cllr Boshier has been invited to join the board. He is a Councillor and the Leader of the opposition Conservative group.

4.2 Portico also employs its own Company Secretary, Shakira Hiron, who is a professional in maritime law and a full-time employee of Portico.

4.3 The appointment of Camilla and Justin, the two independent NEDs, followed a restructure of the Portico board to the proposed changes to the Articles of Association, to provide external independent board attendance and following skills review.

4.4 In addition to the board, two senior appointments attend the board meetings to provide financial and general management information. Mark Webb (Finance



Manager) and Ben Harraway (General Manager).

- 4.5 The NEDs are remunerated with the exception of the Councillors who by law have restrictions on the remuneration they can receive from the Company.

## **5. Company governance**

- 5.1 Portico is part of the Council's internal audit plan each year to ensure governance compliance. These reports are presented to the Council's Governance Audit Standards Committee.

## **6. Portico and its business plan**

- 6.1 Portico employs 186 employees with 95% of the staff living in Portsmouth contributing to the economy within the city. Appendix 1 shows the company structure.
- 6.2 In February 2019 a report went to the Council's Cabinet and Full Council that considered an assessment of the available options for the use of the Portico (formally MMD (Shipping Services) Ltd) site.
- 6.3 Part of the £15m loan was needed to invest in assets to allow Portico to retain existing income, and to make operations more efficient and effective. The loan was also needed to allow Portico to invest in facilities to enable Portico to diversify its operations into general cargo.
- 6.4 To 31 December 2021 Portico has drawn down £7m of the £15m loan facility.

## **7. Portico's Articles of Association.**

- 7.1 Portico's Articles of Association (the constitutional document which sets out how the Directors are to run the company) have not been updated since the company was purchased by the Council in 2008.
- 7.2 The articles should have been updated on purchase and a subsequent review of them have identified that they require an update to ensure that they both reflect the modern legislative regime around companies but to also ensure that they reflect the ownership of the company by the Council as a public body and therefore to ensure that there is appropriate oversight of the company by the Council, whilst continuing to allow the board of Directors of the company to operate and run Portico largely independently of the Council.
- 7.3 The changes proposed to be made are shown in full in the comparison document at Appendix 2 but the main updates are;
- 7.3.1 To strengthen the governance of Portico by ensuring that there is a requirement to have independent non-executive Directors appointed, including an independent chair. This will not however overly restrict the ability of the Portico Directors to appoint additional Directors;
- 7.3.2 to strengthen and simplify the rights under statute that the Council (as shareholder) has to appoint and remove Directors; and
- 7.3.3 to expand and simplify the statutory rights of the Council as shareholder to access any information held by Portico (all records, books and documents) as well as giving new rights to the Council to access any and all Portico premises.



- 7.3.4 to address conflict of interest issues where a company Director also has a role, either as an officer or a councillor, at the Council (a "**PCC Director**").
- 7.4 Finally, the revised articles will strengthen the Council's oversight of Portico's business planning and risk profile to the Council so that the Council is better able to evaluate the purpose of Portico against the Council's priorities and risk appetite.
- 7.5 The Council already has some oversight of this through the contractual arrangement of the loan agreement between the parties in 2019, but the revised articles strengthen the Council's position so that Portico is required to submit an annual Business Plan to the Council for approval which covers the next three years and includes;
- 7.5.1 An annual operating revenue plan and capital expenditure requirements (including details of funding sources);
- 7.5.2 A balance sheet forecast;
- 7.5.3 A minimum 3-year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the company and a list of key risks of its business;
- 7.5.4 A plan for the use of any surpluses made in each year including the making of any distribution of profit subject to the provisions of the Act;
- 7.5.5 An annual profit and loss account.
- 7.6 These changes do not alter the fundamental principle that the Portico Directors will be responsible for running the company as they see fit but will ensure that they do so within a framework (the Business Plan) approved by the Council.
- 8. Reasons for recommendations**
- 8.1 Portico's current Articles of Association refer substantially to the Companies Act 1985 which was largely repealed by the Companies Act 2006. There are other examples of dated practice and crucially they do not recognise the ownership of Portico by the Council and do not give the Council any additional rights to information about the company than is set out in statute, which is to say not a great deal.
- 8.2 The revised Articles of Association will ensure that Portico is able to continue to run and operate as a separate legal entity, operating independent of the Council, whilst ensuring that the Council is easily able to access appropriate information to ensure it can appropriately scrutinise Portico and hold its directors to account.
- 9. Integrated impact assessment**
- 9.1 The contents of this report do not have any relevant equalities impact and therefore an Integrated Impact Assessment is not required.
- 10. Legal implications**
- 10.1 The Articles of Association of a company are the foundation of good governance in a company. Those in relation to Portico are badly dated and should better reflect the reality of a publicly owned, private company. The proposed new Articles of Association have been prepared by the Council's legal services team.



### **PCC Directors' conflict of interest**

10.2 Of particular importance are updates made to address conflict of interest issues where a company Director also has a role, either as an officer or a councillor, at the Council (a "**PCC Director**").

10.3 Portico's Directors do not, by virtue of their office as a Director of the company, owe fiduciary duties to the Council (as shareholder or creditor save where the company is insolvent). Their responsibility is to ensure that they act in the best interests of Portico, which may inevitably conflict with the best interest of the Council. These fiduciary duties are reflected in the seven general duties imposed on company Directors by the Companies Act 2006;

10.3.1 To act within their powers;

10.3.2 To promote the success of the company;

10.3.3 To exercise independent judgement;

10.3.4 To exercise reasonable care, skill and diligence;

10.3.5 To avoid conflicts of interest; and

10.3.6 To declare interest in proposed transaction or arrangement;

10.3.7 To not accept benefits from third parties.

Remedies for breaches of these duties is personal to the Director in question and can include injunctions, damages, set aside orders, termination of appointment as a Director and disqualification as a Director from future appointments.

10.4 In practice, this means that where Portico Directors take into account the wishes of the Council as shareholder, then they may be acting in breach of the statutory duty to 'exercise independent judgement' as their decision is not being taken in the best interest of Portico. In many instances, PCC Directors may also be in breach of the duty to avoid conflicts of interest by their role as a Council officer or Councillor.

10.5 The revised articles will continue to require PCC Directors to exercise independent judgement, but they will be able to take into account the success of the Council in their decision making as a Portico director.

10.6 The revised articles will also ensure that by simply being an employee or Councillor of the Council, PCC Directors will not be in breach of the statutory requirement to avoid conflicts of interest and will be expressly authorised to make decisions on such matters which involve the Council.

10.7 Notwithstanding paragraphs 10.5 and 10.6, the PCC Directors will still owe the duties to Portico as set out in paragraph 10.3. The amendments also do not abrogate any conflict of interest PCC Directors will need to address when acting in their Council role.

### **11. Deputy Director of Finance's comments**

11.1 There are no direct financial implications as a result of approving the recommendations within the report.

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Signed by:

**Appendices:**

Draft Articles of Association.  
Portico organisation chart.

**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: