

Title of meeting: Cabinet

Date of meeting: 14 February 2022

Subject: HCB Holding Limited - Company overview

Report by: Deputy Director of Finance and Resources (Deputy Section 151 Officer)

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

1.1. To provide members with an overview of the Council's part ownership of HCB Holding Limited.

2. Recommendations

That Cabinet;

2.1. Notes the appointment of the s151 Officer to the board of HCB Holding Limited;

2.2. Revokes the delegations to those named in recommendation 3 of paragraph 2 of the cabinet report dated 14/7/2014 (referred to in part 3.2) and re-designates that authority to the Deputy s151 officer in consultation with the Leader and City Solicitor¹;

2.3. Delegates authority to the Deputy s151 Officer in consultation with the City Solicitor and the Leader, to make decisions as shareholder in matters related to the operation of HCB Holding Limited.

3. Background

3.1. HCB Holding Limited is the owner of Hampshire Community Bnk Ltd.

3.2. The principles of the Council supporting Hampshire Community Bnk Limited through an investment in HCB Holding Limited was endorsed by Cabinet on [10 July 2014](#) (Hampshire Community Bank ([minute 67/2014](#)). [Additional appendix](#).). Funding was approved by Full Council on [15 July 2014](#) - Hampshire Community Bnk Limited ([minute 72/2014](#)) - Cabinet Recommendation from its meeting on 10 July 2014. [Additional appendix](#)). The approved report delegated authority to the Head of Financial Services and Section 151 Officer in consultation with the

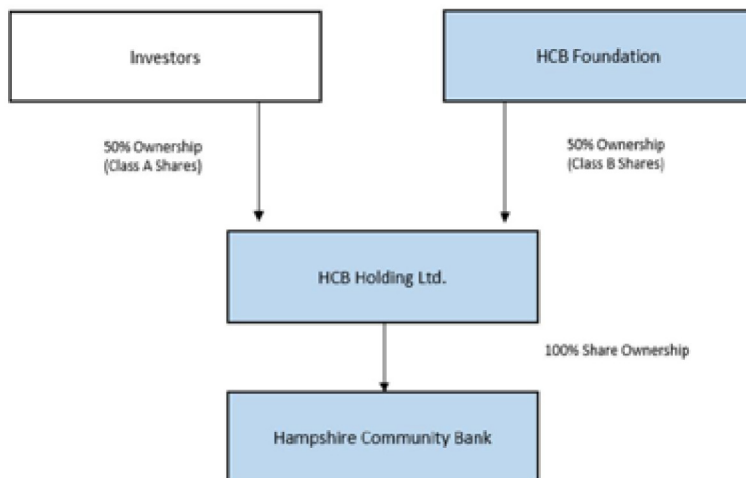
¹ Recommendation 3 was "Authority to approve a Capital Investment of up to £5 million in in the creation of Hampshire Community Bank and incur any necessary costs relating to the Due Diligence process is delegated to the Head of Financial Services and Section 151 Officer in consultation with the Strategic Director Regeneration".

Strategic Director of Regeneration, the Cabinet Member for PRED and the Leader. It had originally been intended that the Council would purchase 'preference shares' with no voting rights, however this had to change as a result of banking regulatory changes (for more details see paragraph 4.1 of the Cabinet report of the 15 September 2020). It has always been the case however that the Council was to own shares in HCB Holding Limited and therefore be entered into the register of members of the company.

- 3.3. A further report was approved by Cabinet on [15 September 2020](#) (Hampshire Community Bnk Ltd - Treasury Loan ([Item 4](#))). This report updated Cabinet on progress for the investment project, and recommended approval of a lending facility to Hampshire Community Bnk Limited, subject to certain conditions, in accordance with the Council's approved Treasury Management Policy 2020/21. The approved report delegated authority to the Deputy s151 Officer and the City Solicitor.

4. Corporate Structure

- 4.1. The corporate governance design of Hampshire Community Bnk Limited has been put in place to mitigate against the risk of takeover, which historical records indicate is the biggest problem when setting up a new local bank. Under UK legal framework, the strongest form of prevention of takeover and ensuring longevity is ownership by a charity for the benefit of the local people. The structure is as follows;



HCB Foundation

- 4.2. HCB Foundation is a company limited by guarantee, registered as a Charity. Its central purpose to own and never dispose of the Hampshire Community Bnk Ltd. It does this via its ownership of 50% of HCB Holding Limited ordinary class B shares. These are issued whenever the investors' ordinary class A shares are issued, such that HCB Foundation will always have 50% of the vote in an AGM of HCB Holding Limited.

HCB Holding Ltd

- 4.3. HCB Holding Limited is a company limited by shares. It has two different class of shares (Ordinary class A and Ordinary class B). Ordinary class B shares account



for 50% of the shares and are owned by HCB Foundation. Ordinary class A shares are those owned by the investors (set out in 4.5). It is the intention that each class of shareholding will always account for 50% of the shareholding in the company.

- 4.4. It is HCB Holding Limited in which the Council and other public sector investors have purchased shares. The shareholders have signed up to purchase 8,000 ordinary class A shares as set out below. To date shareholders have released three quarters of these funds and payment of the remaining quarter is conditional on a further due diligence report from banking experts.
- 4.5. HCB Holding Limited Shares to be acquired in total, and number acquired to date
- 5,000 - Portsmouth City Council (3,750 acquired to date)
 - 500 - Eastleigh Borough Council (375 acquired to date)
 - 250 - Winchester City Council (188 acquired to date)
 - 500 - Test Valley Borough Council (375 acquired to date)
 - 200 - The University of Portsmouth (150 acquired to date)
 - 100 - The University of Winchester (75 acquired to date)
 - 400 - The University of Southampton (300 acquired to date)
 - 100 - Southampton Solent University (75 acquired to date)
 - 950 - Local First Community Interest Company (950 acquired to date)
- 4.6. HCB Foundation owns B Class Common Shares, accounting for the other 50% of the total vote at HCB Holding Limited shareholders' meetings.
- 4.7. The Council's s151 officer is a director of HCB Holding Limited.

Hampshire Community Bnk Limited (HCB)

- 4.8. Hampshire Community Bnk Limited is a company limited by shares with standard articles of association. It is 100% owned by HCB Holding Limited who effectively controls Hampshire Community Bnk Limited as it holds all the share capital for and can appoint and remove its Directors.
- 4.9. This is the company which is seeking authorisation from the Bank of England to operate as a bank. The name includes the word "Bnk" because a company name cannot include the word "Bank" until it is authorised to operate as a bank by the Bank of England
- 4.10. As described in the Cabinet Report [15 September 2020](#), Hampshire Community Bnk has been operating a Loan Book since February 2019 entitled "Green Growth Loans" with over £1m in loans provided. The Bank Licence application is anticipated to be submitted this quarter, the application pack has received its final review from the Shareholder's Due Diligence firm BDO LLP which has recommended some clarifications to the governance arrangements a small number of enhancements to the documents which are "relatively straightforward" and not anticipated to cause delay to the submission application.

5. Reasons for recommendations



- 5.1. The revocation of the delegations as set out in the 2014 are due to the s151 officers role as a director in HCB Holding Limited and the risk of there being a conflict of interest in his role to the Company as a director on the one hand and to the Council as s151 officer on the other. In practice this risk has been managed for some time (as reflected in the authority delegated to the deputy s151 officer in the Cabinet decision in 2020 as noted at paragraph 3.3) by the deputy s151 officer having oversight of this matter on behalf of the Council.
- 5.2. The proposed recommendations in relation to the shareholder function are to ensure that the Council has in place appropriate delegations to enable the deputy s151 officer (in consultation with the Leader) to protect the Council's interests and oversee HCB Holding Limited.

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**

The Council's Shareholding

- 7.1. The Council owns shares in HCB Holding Limited (referred to as "**the Company**"). As described in paragraph 4.3, there are two class of shares in the company and each class of share has different conditions attached to them;

- Ordinary class A;
 - Voting - each share shall have one vote. Total votes of all Ordinary class A shares shall not amount to more than 50% of total votes;
 - Dividend - Ordinary class A share shall receive 50% of distributable profits, paid in proportion to their shareholding;
 - Capital - Ordinary class A share have the right to repayment in priority to any other classes of shares, to the amounts paid up on Ordinary class A shares, including any share premium;
 - Redemption - in the event of the company offering to redeem Ordinary class A shares, class B shareholders will be given the right to acquire the shares at the offer price in priority to the company

The Council owns 3750 of 6238 issued Ordinary class A shares (c.60.1%). The rest are owned by a number of regional local authorities and educational institutes as set out in paragraph 4.4.

- Ordinary class B;
 - Voting - each class B share shall have one vote. Total votes of all class B shares shall not be less than 50% of total votes;
 - Dividends - class B share shall receive 50% of distributable profits, paid in proportion to their shareholdings;
 - Capital - class B shares do not have any rights over the capital of the company



- Redemption - class B shares do not hold, nor are they subject to, any rights of redemption.

HCB Foundation owns all 6,238 issued Ordinary class B shares.

The Council's voting rights

- 7.2. The implication of the ownership structure outlined above would be that the Council owns the equivalent of c.60% of the Ordinary class A shares which would give the Council the equivalent of c.30% of the vote as a shareholder in the Company.

HCB Holding Limited's constitution

- 7.3. The Company has largely adopted the 'model articles' as prescribed by the Companies Act 2006 save for a number of variations which are too numerous to detail in this report. In relation to the appointment of directors, the model article provisions apply which means that any person who is willing to act as a director and is permitted by law to do so may be appointed to be a director either by;
- Ordinary resolution (being a simple majority of shareholders entitled to do so); or
 - By a decision of the directors (of the Company).
- 7.4. The Council does not have any additional rights to appoint directors unilaterally. By its shareholding it can require the circulation of a written resolution proposing such an appointment. To be approved, the resolution would have to be approved by a shareholding equivalent to 50% or more of the ownership.

The subscription agreement

- 7.5. By the terms of the Subscription Agreement between the Council and the Company (which regulates the conditions upon which the Council will purchase shares in the Company), the Company undertook (in consideration of the subscription of shares), that it would propose at least two people suggested by the Council as (a) non-executive Directors of the Company or (b) one person of the two people suggested by the Council as non-executive directors of the Company and the other person as non-executive Director of the Hampshire Community Bnk Limited, subject to approval by the Prudential Regulation Authority/Financial Conduct Authority. It must be noted however that such undertaking does not guarantee that such nominees will be appointed as they would still be subject to unanimous approval by the Company's directors.
- 7.6. The Council is bound by the terms of the Subscription Agreement and would be in breach of contract were it not to comply with the obligations therein.

The Council's nominated director/s

- 7.7. A company director nominated by the Council and who is subsequently appointed to the board of the Company cannot act simply as a proxy for the Council, acting on the instruction of the Council for and in the Council's best interests. Not only would this pose risk to the Council being in effect considered a shadow director (and incurring such liabilities as attach to the role of a director), a director of a company must, by law, act in the best interest of the company and must not be unduly influenced by a third party, such as the Council, even where such a director

is put forward by that third party.

7.8. At the present time the Council's s151 Officer is a director of the Company.

The Council's shareholder function

7.9. The responsibility for deciding how the Council, as shareholder, will act in relation to decisions concerning the Company rests with the Cabinet as an executive function.

7.10. As noted, the Council's role as a shareholder is limited to the current rights to its share in the company which amounts to c.30% of the voting rights in the Company. The rights that attach to that shareholding depend on the articles of association of the company. However it is unlikely that such a shareholding would permit the Council to unilaterally dictate the strategy and direction of the Company.

7.11. The Company is required to have an Annual General Meeting (AGM) at which the shareholder's will be able to exercise their voting rights. It would be advisable for Cabinet to delegate authority to an officer to attend the AGM as well as any other meeting of shareholder so that person can represent and vote at those meetings on behalf of the Council as shareholder.

7.12. Such delegation should include a duty to consult with the relevant executive portfolio holder, the City Solicitor and the Deputy s151 officer before the meeting to decide how the Council will vote. The officer should further be required to report back to Cabinet on the outcome of such meetings.

8. Deputy Director of Finance's comments

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

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:

Title of document	Location

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

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Signed by: