

Title of meeting: Cabinet Meeting

Date of meeting: 26 July 2022

Subject: Local Partnership's Governance review

Report by: Chief Executive

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1. On 14 February 2022 cabinet decided that;
- 1.1.1. there be a minimum requirement for a financial report to report to the Governance & Audit & Standards Committee annually
- and agreed to the recommendations:
- 1.1.2. to have a standing quarterly item reserved to the cabinet agenda for reports on shareholder function in relation to PCC company matters;
 - 1.1.3. to engage Local Partnerships (a joint venture between the Local Government Association and HM Treasury) to provide commercial support to the Council in relation to its companies;
- 1.2. As such, in March 2022 Local Partnerships undertook a governance review of the Council's internal governance of its companies which included interviews with statutory officers (s151, Monitoring Officer and Chief Executive), key officers involved in advising and oversight of the companies (Directors of Regeneration and the Port, Deputy s151 Officer) as well as leading politicians (the Leader of the Council and the leader of the Conservative group).
- 1.3. Local Partnerships identified a range of governance issues and made key recommendations with 9 to be actioned (see appendix 1 attached).

2. Recommendations

- 2.1. It is recommended that cabinet:-
- 1) Notes and accepts in full the report and recommendations made by Local Partnerships;
 - 2) Agrees to develop an action plan to implement the recommendations;
- And in order to facilitate that process;



- 3) Agrees to the appointment of a cabinet member as the portfolio lead for Company matters;
- 4) Agrees to the appointment of the Chief Executive as the Council's "shareholder representative" to all its companies (the role as detailed from paragraph 4.12).

3. Background

- 3.1. In 2017, the Council established Victory Energy Supply Limited (VESL), a wholly owned company intended to trade in the wholesale consumer energy market. On the change in political administration in 2018, cabinet decided to discontinue support for the company and subsequently post review of disposal options to wind the company up.
- 3.2. An internal audit into the governance of the company in October 2020 identified a number of issues with how the Council planned to manage the company.
- 3.3. Cabinet sought to address the governance concerns identified by setting up a Shareholder Committee (a sub-committee of cabinet). This governance approach reflects good practice as advised by Lawyers in Local Government, external advice from legal firm Bevan Brittan and internal legal advice. The purpose of the committee was to ensure that the Council's companies were commercially run and effectively governed.
- 3.4. Chronology of establishment of the Shareholder Committee was as follows:-
 - 3.4.1. 14 July 2020 - establishment of the Shareholder Committee approved by cabinet;
 - 3.4.2. 20 November 2020 - terms of reference of the committee were endorsed by the Governance and Audit and Standards Committee;
 - 3.4.3. 2 February 2021 - cabinet appointed to the Shareholder Committee;
 - 3.4.4. 15 December 2021 - Shareholder Committee was first constituted;
- 3.5. The first Shareholder Committee requested a report to cabinet recommending its abolition and the return of the shareholder function to full cabinet.
- 3.6. Cabinet considered this report from the Chief Executive on the 8 February 2022 and resolved to abolish the shareholder committee and return the oversight of the companies to full cabinet.

4. Reasons for recommendations

- 4.1. Local Partnerships recommendations have noted a significant number of areas for improvement in relation to the Council's oversight, scrutiny and governance of its Companies.
- 4.2. These recommendations are consistent with the themes identified in a number of recent Public Interest Reports at the LB Croydon, Nottingham and Bristol and more recently (in the last month) Northumberland. The Council is seeking to learn from those reports and respond to the increasing volatile, uncertain, complex and ambiguous economic, social, political and environmental situation via governance and oversight arrangements.



- 4.3. The recommendations also feed into many of the key recommendations from the recent LGA Peer review, namely ensuring the creation of more time and space for collective reflection, long term planning and a review of the internal governance and scrutiny arrangements of the Council and working toward training and development of members in this complex area of work.

Development an action plan to action the recommendations

- 4.4. Local Partnerships noted the need for "*coherent and sustainable cross-party engagement in the governance, scrutiny, and challenge of the investee companies*".
- 4.5. For this reason, it is recommended that cabinet (through the appointed cabinet member) be responsible for working up the action plan to deliver the recommendations, including a cross-party group. It would be for the cabinet member to decide on the appropriate membership of this group, but it should include key statutory officers (the Chief Executive as the head of paid service, the s151 Officer as the officer with responsibility for the proper administration of the Council's financial affairs and the Monitoring Officer as the officer with responsibility for ensuring that the Council at all times acts lawfully and within its own rules and procedures), a representative from Audit, and key officers whose remit includes oversight of companies, such as the Director of Regeneration (who has oversight of the Ravelin group of companies) and the Director of the Port (who has resigned as a director of Portico in order to be able to properly advise the Cabinet as shareholder).

The appointment of a cabinet member (who is not a member who is a director of a Council Company) as the portfolio lead for Company matters

- 4.6. Local Partnerships identified a need for an overarching view of PCC's commercial activity to facilitate knowledge sharing, identification of best practice and effective challenge of commercial ventures to support Cabinet in the optimal discharge of the shareholder role.
- 4.7. The appointment of a cabinet member to lead and champion this initiative and to be fully trained to understand the complexities in the area of the Council's activity and to be able to contribute, support and advise cabinet colleagues with this is seen as a key way to ensure that good practice is embedded in the Council from the very top.
- 4.8. The cabinet member could have general responsibility for oversight of the Council's companies and decision making responsibilities as shareholder where the Council needs to make quick decisions in relation to its Companies which don't fit within the ordinary reporting cycle to full cabinet.
- 4.9. This model would not diminish full cabinet's overall responsibility for the discharge of the shareholder function but would enable commercially agile decision making where necessary. It would help to address one of the concerns noted by Local Partnerships that "*there is a question as to whether Cabinet is an appropriate forum for the consideration of complex matters such as business plans, as it may not allow adequate time and space for detailed consideration and challenge of the plans or enable detailed questions to be asked and answered*".



- 4.10. Local Partnership noted that the Council should ensure a "*clear separation of those managing the entities and those responsible for holding them to account*". To ensure that there is no conflict of interest in the ability of the cabinet member to scrutinise and challenge the Council's companies, the cabinet member cannot also be a director of a Council owned company.
- 4.11. The cabinet member should be required to undertake specialist training, organised by the City Solicitor, to enable the proper discharge of this function.

The appointment of the Chief Executive (who cannot be a director of a Council Company) as the Shareholder Representative.

- 4.12. In appointing the Chief Executive as the Shareholder Representative, the 'overarching view' of commercial activity would be achieved within the corporate centre of the officer core, to support the portfolio holder and to support, as Local Partnerships put it, "*greater insight into potential synergies between Ravelin, Portico and HCB, encourage knowledge sharing or best practice to improve performance and provide an overall view of risk*".
- 4.13. In this situation, the Chief Executive would in effect act as the eyes and ears of the shareholder, representing the interests of the shareholder (as directed by the portfolio holder or cabinet) and reporting back regularly to the portfolio leader for companies and cabinet. The Shareholder Representative could not also be a director of a company, as this would not ensure a separation between the role of the shareholder and that of the board.
- 4.14. The Shareholder Representative would not automatically have any delegated authority to act as the shareholder, although for practical and pragmatic reasons cabinet and the portfolio holder may in future wish to consider the delegation of certain functions to the Shareholder Representative. This may for example be in relation to relatively inconsequential decisions (such as amending minor contractual documents between the parties) or where an urgent decision is required of the shareholder. Such delegated decisions could be subject to regular reporting back to cabinet/portfolio holder to ensure the necessity and scope of such delegations is regularly monitored by cabinet.
- 4.15. The nomination would also help to remove some of the current conflict of interest present in the current structure, where for instance Council strategic directors also act as director of companies, which in effect means the Council's shareholder representative has been entrusted by the Council with the role of scrutinising and holding to account the board of the very company they sit on. Legal advice and accepted best practice is for councils not to appoint their statutory officers (Chief Executive, Monitoring Officer and s151 Officer) to company boards, and this should be this Council's corporate position moving forwards.
- 4.16. The Chief Executive should be required to undertake specialist training, organised by the City Solicitor, to enable the proper discharge of this function.
- 4.17. As Local Partnership noted, the establishment of separate legal entities carries risk and "*inevitably necessitate the establishment of an overhead to ensure an environment of objective and expert oversight and scrutiny of commercial activity and a clear separation of those managing the entities and those responsible for holding them to account*". As such, it may be necessary to identify a budget to



support the discharge of this function, for training and specialist commercial and legal advice.

5. Integrated impact assessment

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

6. Legal implications

- 6.1. The recommendations made by Local Partnership are consistent with previous advice given by City Solicitor in relation to the Council's governance of its companies and also generally accepted best practice.
- 6.2. The initial recommendations on the appointment of a cabinet lead and an officer lead for Company matters would ensure that there is a central responsibility for the activity which can only enhance the adequate risk management of the activity.
- 6.3. Cabinet should clearly note the need to minimise conflicts of interest where officers or members are acting as directors of Council owned companies. It is for this reason that it is vitally important that the member and officer leads in this proposal not be conflicted by also sitting as company directors.

7. Director of Finance's comments

- 7.1. The recommendations contained within this report identify a number of far reaching governance requirements aimed to protect both the financial and legal interests of the City Council. To facilitate these requirements, there will be additional Shareholder costs relating to training and advice which in the current year will be met from the Council's Corporate Contingency but from 2023/24 onwards embedded within the Council's Budget proper. It is anticipated that the additional Shareholder costs associated with the oversight and scrutiny of the Council's companies will be offset by the financial returns made by those companies.

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Signed by: David Williams

Appendices:

- Appendix A - Local Partnership Governance review of Portsmouth City Council owned entities.
- Appendix B (extract from Appendix A) - table of recommendations with suggested actions.

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: