

Birmingham City Council

Report to Cabinet Committee – Group Company Governance

25 January 2024



Subject: Group Governance and Strategic Review
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Officer
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Does the report contain confidential or exempt information? Yes No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential :

1 Executive Summary

- 1.1 The report outlines a proposal to use the recently published Local Authority Company Review Guidance - A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities – 2023 edition – as a comparison tool for existing governance and practises across the BCC Group portfolio. Arising from this review is a series of recommendations and improvements to bring the council in line with best practice.
- 1.2 Recommendations are made for the Committee to oversee a programme of review, compliance and improvement across the council, authorising officers to take action between meetings to effect these initiatives in consultation with the Cabinet Member for Finance and Resources.

2 Recommendation(s)

Cabinet Committee Group Company Governance are asked to:

- 2.1 Note the information provided within the report and at appendix 1 which provides the basis for a governance process review and improvement programme.
- 2.2 Continue to undertake annual review of the Committee Terms of Reference, the consequent scope and relevant parts of the Constitution.
- 2.3 Authorise officers to recommend and make such changes as are required to the Constitution and the operational process to effect improved group governance noting that where these are required to be effected or delivered outside of the

Committee meeting cycle then such decisions and actions will be in consultation with the relevant portfolio holder.

- 2.4 Endorse the extension of shareholder representation posts to include the Director of Group and Capital Finance, Deputy s151, on confirmation that the post-holder is free from conflict of interest.

3 Background

- 3.1 At the Committee's meeting on the 16th November 2023, a report entitled BCC Group Company Overview highlighted that in addition to ongoing work to streamline the group structure through the removal of dormant companies (as appropriate), officers would undertake a review of the existing group governance environment in line with the UK Government Publication, Local Authority Company Review Guidance - A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities – 2023 edition.
- 3.2 The recommendations of that review are set out in appendix 1 together with a comparison to existing practice and delivery structure within the council and recommendations for change, improvement, or addition.
- 3.3 Part of the review has been to consider the role of the council's shareholder representative. Within the Constitution this role sits with the Chief Executive and the Director of Finance, accordingly neither post is able to hold directorships within the portfolio, they must retain objectivity and are trained and kept informed accordingly. There is in addition a recommendation that these roles meet regularly with group CEOs, attend CC-GCG and are actively up to date with portfolio matters.
- 3.4 The CEO and FD are briefed and informed on the portfolio, and together with the Cabinet Member for Finance and Resources are informed on decision making matters in relation to companies, for example the creation of new entities, sale or purchase of shares. As a result of the size of the current portfolio, and including those entities where there is a minority shareholding or interest, much of these officer roles fall to the Director Group and Capital Finance. Consequently it is recommended that this role also becomes a designated Council Shareholder Representative. If this proposal is endorsed by CC-GCG, this change will be reflected in the Council Constitution. Prior to this change, however, the current postholder will be required to resign from directorships held and appoint alternative officer directors in line with required skills, experiences and characteristics suitable for the company board composition.
- 3.5 The actions and recommendations contained in appendix 1 will require resourcing and a programme of implementation. Directorate officers either appointed or supporting member appointments will be asked to complete a review of their entity, resulting in a detailed action plan.

4 Options considered and Recommended Proposals

- 4.1 As reviews, reports and public interest reports are made concerning company governance processes, and in particular those relating to local authority interests, then it is a requirement of the council to ensure that it is following best practice. Implementation of an improvement plan reduces the risk for the council both financial and reputational that is inherent in a wider group structure. It is recommended that an improvement plan is drawn up from the detail within appendix 1, risk rated and monitored and kept under review. Appendix 2 is the existing annual risk assurance document sent to group companies of over 20% shareholding and which informs the audit assessment for the council. This annual review picks up much of the requirement concerning governance within the entity, however improvements to evidence gathering to support these returns is recommended.

5 Legal Implications

- 5.1 The Council's Section 151 Officer has a duty to ensure the proper administration of the Council's financial affairs. The Accounts and Audit Regulations 2015, requires the Council to have effective arrangements for the management of risk.

6 Financial Implications

- 6.1 There are no direct financial implications arising from the recommendations within this report apart from the officer resource required to undertake the reviews. Where this may be in excess of existing provision, re-prioritisation or a request for additional resource will be presented to the Director of Finance. Such a request to be considered in the context of the risk rating applied to the relevant piece of work.
- 6.2 Robust governance over the group portfolio is in itself an efficient and economically strong contribution to the management of resources and risk across the council.

7 Public Sector Equality Duty

- 7.1 There are no equality duty or equality analysis issues relating to the proposals set out in this report.

8 Other Implications

8.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 8.1.1 The Council provides services to the community through a number of different vehicles. This report provides information on the management of the risk environment associated with the group entities through which service delivery is being provided

9 Background Papers

- 9.1 Local Authority Company Review Guidance - A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities – 2023 edition.

10 Appendices

- 10.1 Appendix 1 – taken from the LA Company Review Toolkit
- 10.2 Appendix 2 – informing the audit risk assessment – group accounts preparation document

APPENDIX 1

LOCAL AUTHORITY COMPANY REVIEW GUIDANCE A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities – 2023 edition			
EVIDENCE		CURRENT CONTROL/PROCESS	RECOMMENDATION
COUNCIL ARRANGMENTS			
GOVERNANCE AIMS			
C1	There should be evidence that the council and senior management recognise the importance of establishing appropriate and proportionate governance arrangements for the oversight of entities	Operation of the CC-GCG - supported by senior officers. Improvements implemented following Public Information Reports in July 2021 Financial Regs - Company Procedures Manual - updated July 2023	Shareholder representative to attend CC-GCG
C2	There should be evidence of a culture of challenge and clarity relating to the purpose, efficiency, effectiveness, specific objectives, and freedoms of the entity	Material entities present to CC-GCG Annual assurance return	Embed forward plan Reiterate structure of presentations
SHAREHOLDER ROLE			
C3	There should be a clearly designated council shareholder role or function which is both understood and recognised by the council and the entity (and documented in terms of reference)	Set within Constitution as Chief Executive and Director of Finance, s151	Expansion to include Director Group & Company Finance, Deputy s151
C4	There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting any changes made as the entity has developed, in a shareholder's agreement, or as set out in the company's governing articles of association	Such documents are part of company creation process	Set a cyclical review programme - commence with most material entities

C5	There should be evidence that the individual undertaking the shareholder role is provided with suitable training and support commensurate with the role and is independent of the company. This responsibility may be delegated to a committee rather than an individual. If this is the case, there must be a terms of reference drawn up and a suitable cohort of elected members identified to sit on the committee	Shareholder role sits with Chief Executive and Director of Finance. Both roles are provided with support and training and are independent of the company.	The proposal to increase the representation to a third post will require that postholder to resign from current directorships. This is under managed progress
C6	There should be evidence of formal periodic shareholder/ chair/chief executive meetings with effective supporting papers to inform subsequent company board meetings	Not in place across all entities and where in place these are with the Dir of Group & Capital Finance	Increase shareholder rep to include Dir Group & Company Finance. Expand & formalise meetings across portfolio
COUNCIL OVERSIGHT, SCRUTINY & GOVERNANCE FRAMEWORK			
C7	There should be documented evidence of transparent member and officer scrutiny, oversight, and approval of business plans	Attendance and presentation at CC-GCG	Formalise approval process for wholly owned companies. Document process for significant interest entities - action then as appropriate
C8	There should be evidence of a clear set of KPIs that fall out of the business planning process	Not in place for all entities	Document as an action following business plan approval. [Distinguish between KPIs on contract delivery and KPIs as corporate holding]
C9	There should be evidence that senior company staff are performance managed against KPIs	Not in place	Document process as part of item C6
C10	There should be evidence of ongoing assessment of value for money and quality offered by the entity through an adequately resourced monitoring function	Not in place	Consider appropriate approach across portfolio

C11	There should be ongoing assessment of risks relating to the entity, supported by processes to ensure that risks are managed as part of the council's overall risk management approach, with appropriate escalation and reporting	Risk register in place - overdue for review Individual entity risks previously noted within directorate process	Update risk register - add to forward plan
C12	There should be evidence of a consistent approach across the council when it comes to engaging with its entities	Not captured	Review approaches across council and consider re-introducing engagement template.
C13	The council should have clear and unfettered access to audited accounts for its entities	Provided annually as part of group reporting for material (financial and shareholding) entities Companies House submitted reports reviewed and reported for each CC-GCG meeting	Add to checklist for Shareholder Rep duties
BUSINESS CASE FOR THE ENTITY			
C14	There should be evidence of clear alignment between governance of entities and wider governance of council business by ensuring that issues relating to the performance of entities are integrated into corporate risk management, performance management and governance reviews as well as financial and strategic planning activity. The council constitution should appropriately reference the entity	Business case required to create a company - requires clear alignment of purpose and strategy. Constitution does not reference all entities	Consider how this is managed as a current requirement after company creation across the material entities
C15	A business case which assessed the risk involved in establishing the entity and recommended its establishment, taking account of other potential delivery models, should be available to review	Financial Regulations and Policy/Procedure manual sets out the requirements for a business case to set up a company. This submission is required before permission to create a company may be given.	
AGREEMENTS WITH THE ENTITY			

C16	Objectives of the entity should be clearly defined and documented, and regularly reviewed to ensure that its operation continues to support council policy and strategy, including periodically reviewing the business case to ensure it is still valid	Reviewed by CC-GCG as part of attendance and presentation.	Review and consider how this is managed across directorates - recommendations to follow.
C17	Agreements should be documented between the council and the entity for any support or services provided by either party to the other party	SLAs and contracts in place	review and confirm as part of directorate rep engagement
AVOIDING & MANAGING CONFLICTS OF INTEREST			
C18	All agreements should be clear, up-to-date, and regularly monitored and reviewed, with any changes to agreements documented so that a clear audit trail exists		
C19	There should be evidence that a culture exists whereby actual or potential conflicts of interests are identified, declared, and acted upon, including evidence of appropriate training across the organisation	Training provided for all directors, nominees, observers Evidenced in meeting records	Reinforce through officer support
C20	The council's constitution should contain clear and up-to-date policies and processes to consistently manage actual conflicts or potential conflicts of interest, including a clear process for investigations and procedures for appropriate disciplinary actions in the event of breaches	Constitution contains Code of Conduct and Protocols for members and officers	
COUNCIL APPOINTMENTS TO THE BOARD			
C21	The roles, responsibilities and reporting lines of officers and members who are involved in council oversight of the entities, the provision of services between the entities or the running of the entities should be clearly defined and documented	Defined and available	Review in terms of entity relationship
C22	There should be evidence that all matters relating to appointments to the board are subject to a documented formal, rigorous, and transparent procedure based on merit and published objective criteria which also promote diversity. This could include evidence that the recruitment process has been competitive and transparent, for example by demonstrating that a formal process for advertising and selection has taken place. Board appointments should be approved by the shareholder	In place for some entities	Review across all entities Revise process for annual appointments to provide evidence

ENTITY ARRANGEMENTS		ANNUAL RETURN - INFORMING THE AUDIT RISK ASSESSMENT – (Appendix 2)	OTHER - OR TO IMPLEMENT
ARTICLES OF ASSOCIATION			
E1	The entity's articles of association should be clear, up-to-date, and reflective of how the entity is run		
BUSINESS PLANNING			
E2	There should be evidence of an up-to-date business plan that is reflective of the current circumstances and environment in which the entity operates	Y	Through CC-GCG
ROLES & BEHAVIOURS OF THE BOARD			
E3	There should be evidence that the board meets regularly to consider, review and record discussions and conclusions	Y	
E4	There should be evidence of delivery of strategies and plans, including scrutinising key operational and finance performance information	Y	
E5	There should be evidence of the desired culture and behaviours		Officer contact/meeting with CEO
E6	The company structures should be regularly scrutinised in order to ensure they remain fit for purpose		Officer contact/meeting with CEO
E7	There should be evidence that the board has clear policies and procedures for its members to ensure that actual or potential conflicts of interests are identified, declared, and acted upon		Request confirmation annually

ROLES & BEHAVIOURS OF COMPANY DIRECTORS		
E8	There should be evidence that directors have sufficient skills and experience to run the entity	Y
E9	There should be evidence that directors' behaviours are aligned with the requirements of the Companies Act 2006 and the Nolan Principles as well as Cabinet Office's Code of Conduct for Board Members of Public Bodies ¹⁰	Officer contact/meeting with CEO
E10	The scope of directors' authorities should be documented and clear to all parties	CEO meeting and BCC training provision
COMPANY BOARD COMPOSITION		
E11	There should be evidence that the board has a diverse membership with the collective skills and attributes needed to lead the entity effectively	Officer contact/meeting with CEO
E12	There should be evidence that board membership is reviewed regularly for composition and fitness for purpose	Officer contact/meeting with CEO
THE BOARD & RISK MANAGEMENT		
E13	There should be evidence that the board understands the organisation's risk profile and the effectiveness of key controls and regularly reviews risks and risk appetite	Y
BOARD MEMBERS' SKILLS & DEVELOPMENT		
E14	There should be documented evidence that the board regularly undertakes a skills audit to ensure that it has an appropriate balance of skills and experience	Y
E15	There should be evidence of ongoing professional training provided to ensure that all board members are up-to-date in their understanding and supported in their roles	Y

THE ROLE OF EXEC & NON-EXEC DIRECTORS			
E16	There is evidence that the role of executive directors is clearly defined and documented		CEO Confirmation. BCC training
E17	Non-executive directors are in place to bring an independent judgement to bear on issues of subject matter expertise, strategy, performance, resources including key appointments, and standards of conduct		
E18	There is documented evidence that the board values the role of non-executive directors, and their views are influential in the board's decisions		CEO Confirmation - officer/observer confirmation
THE ROLE OF THE BOARD CHAIR			
E19	There is evidence that the chair provides clear board leadership, supporting the directors and chief executive and taking account of the shareholders' views		Sharehold rep & board appointee confirmation
FINANCIAL MANAGEMENT			
E20	There should be a fully documented and approved business plan that is consistent with and no more than 12 months older than the previous business plan. The changes within the updated business plan should accord with the trajectories that are apparent from monthly financial and non-financial performance reports	Y	
E21	The financial transactions and values attributable to the company within the council's medium term financial plan should agree with the projections in the business plan		Valuations on investments annually. Transactions reflected in MTFP as appropriate
E22	Board reports should include clear presentation of the monthly income and expenditure position of the company as well as a cash flow statement and balance sheet		confirm via board representation
E23	There should be evidence of an annual audit letter from the council's external auditors, confirming the degree of confidence they hold in respect of consolidation or treatment of financial instruments entered by the company	Y	

E24	Documented financial policies and procedures should be available	Y	to be confirmed as part of suite of policies
E25	There should be evidence of an effective annual internal audit programme	Y	