

Birmingham City Council

Report to Cabinet Committee – Group Company Governance

14 March 2024



Subject: Group Governance And Strategic Review - Update
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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 :

Exempt Appendix gives personal or commercially confidential information

1 Executive Summary

- 1.1 The report contains the update to a programme of work resulting from a review of the council's group company governance procedures and practices compared to those contained within the Local Authority Company Review Guidance - A toolkit for undertaking strategic and governance reviews of wholly or partly owned council commercial entities – 2023 edition.
- 1.2 Recommendations resulting from this review were approved and adopted as a structure for best practice at the January 2024 meeting of the Cabinet Committee.

2 Recommendation(s)

Cabinet Committee Group Company Governance are asked to:

- 2.1 Note the updates and progress within the report and at appendix 1.
- 2.2 Note the conclusions of the of the Acivico Ltd “deep-dive” within the exempt appendix 2 and support the progress of the Acivico Contract Extension Report to Cabinet in March 2024.
- 2.3 Note that the annual review of the Committee Terms of Reference, the consequent scope and relevant parts of the Constitution will take post May 2024 Council to accommodate any consequent new Committee appointments.
- 2.4 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.

3 Background

- 3.1 At the Committee's meeting on the 24 January 2024 a report was presented noting a programme of change and improvement to the council's group company governance procedures and practices. That programme of actions is noted at appendix 1 together with updates and progress. The appendix is based upon the conclusions and recommendations of 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 Within the Improvement Programme was a recommendation to commence a cyclical review of all material companies. Given the materiality of Acivico Ltd both in company size and contract value across the council, that company was reviewed first. The review with Committee took the form of an informal meeting with Company officers, members and council officers with the opportunity to question, challenge and more fully understand the company performance, client list, finances and business plan. Acivico will formally present their 5-year business plan to Committee on this March 2024 agenda. Further commercially sensitive narrative is contained in the exempt appendix.
- 3.3 Portfolio rationalisation has been a programme supported by the Committee for some time. Since the January 2024 meeting the following updates are available:
- LSB Law Ltd – Closed at Companies House as of 6th Feb 2024
 - GBS Finance Ltd – Closed at Companies House as of 13th Feb 2024
 - Birmingham Charities Ltd – Application submitted for strike off on 16th Jan 2024. Following the two month notice period, formal closure should take place on or after 23rd March.
 - GBSLEP Ltd – The Company is progressing the Members Voluntary Liquidation. A Directors meeting to finalise preparations took place on 22nd February and a Members meeting to make the formal resolutions to enter into the MVL is scheduled for 7th March.
 - CSR City Limited - CSR City Ltd was incorporated in 2015 and was set up with the Chamber of Commerce, Birmingham City Council and GBSLEP as members/guarantors, to act as an “umbrella” for helping coordinate Corporate Social Responsibility activity across the business community, focusing on greatest need in the city-region. The Company did help to convene and support some very positive activity initially, however it has not been active for some time. The Company has filed dormant accounts since incorporation and has never traded. As it remains dormant and there are no

plans for it to become active in the future, there is a proposal to dissolve it. Approval to dissolve the company has been given by the three members/guarantors and the process is underway, being led by the Chamber of Commerce.

- Birmingham Venture Capital Limited (BVC) – A decision to close BVC Limited (the postal company) has already come to Committee. Preparations have started however as BVC are the parent Company of Creative Advantage West Midlands Limited, consideration needed to be given to the future of that Company before proceeding (see below). Once Creative Advantage has been dissolved, the process to dissolve BVC can continue.
- Creative Advantage West Midlands Ltd (CAF) – Having considered its options following the news of the proposed closure of BVC, the board of CAF also decided to dissolve the company as the Company is not currently active. It does however hold limited assets and one investment. The board have identified a suitable way forward to transfer the assets in accordance with their articles of association and lawyers have been engaged to progress this. It is hoped that the transaction will be complete before the end of the financial year so that strike off papers can be submitted.
- Birmingham Wheels Ltd – There has been some delay caused by the need to clarify instructions and costs with the firm appointed to assist in the liquidation. This has now been resolved and final instructions are being prepared to proceed with the liquidation process.
- Birmingham Endeavour Ltd – The corporation tax element is being reviewed and settled with HMRC before initiating the liquidation process. In the meantime the abridged accounts for the year ended March 2023 have been filed at Companies House.

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 the improvement plan at appendix 1, adopted at the January 2024 meeting of this Committee is implemented by officers and members.

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 – Improvement Plan – Group Company Governance, adapted from the LA Company Review Toolkit

APPENDIX 1

Group Company Governance Improvement Plan (adapted from the 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	Progress/Update
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	In progress Request made to Monitoring Officer and existing Shareholder representatives to add Director Group & Company Governance as shareholder rep.
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	In progress 2024/25 Forward plan to be agreed – will cycle companies under control. Acivico – deep dive – Feb 24
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	In progress – see above C1
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	Acivico – review commenced Programme not yet in place
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 director-ships. This is under managed progress	Resignations submitted: Propco Ltd FDH Ltd Finance Bham Bham Endeavour – on liquidation (in progress) NECD Plc (post sign off of 2022/23 accounts 12/03/24)
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	Programme of meetings to be confirmed. In place – Acivico Group, Finance Bham, PropCo, InReach
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	In place for Museums, B:Music, Acivico, Children’s Trust. Control list not yet in place

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]	Acivico – in progress Other companies – to be developed with CEOs
C9	There should be evidence that senior company staff are performance managed against KPIs	Not in place	Document process as part of item C6	not commenced
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	Not commenced
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	Risk workshop to be supported by Internal Audit
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.	To be documented as part of above recommendations
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	In place with GCGC officer rep – to be added to duties of service officer support.
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	Financial Regulations – Group Companies due for update - to capture constitution update
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.		To consider access under e-filing arrangements
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.	To follow post identification of link officer. Part of annual business plan approval Key element of review of portfolio reduction
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	Commenced in part – Fin Bham SLA Acivico – contract extension
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	In part commenced through link officer review – Companies under significant control (>20%)
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	May Council report
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	May Council appointments limited to non-financial interest companies

The following controls and practices will be recorded against each entity as the CEO link officers are identified. Each link officer to confirm compliance and procedures in place.

Annual Audit Risk Assessment will confirm material controls.

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		