

BIRMINGHAM CITY COUNCIL

CABINET COMMITTEE - GROUP COMPANY GOVERNANCE

WEDNESDAY, 05 JUNE 2019 AT 13:00 HOURS
IN COMMITTEE ROOM 2, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 **APOLOGIES**

To receive any apologies.

2 **MEMBERSHIP OF THE COMMITTEE**

Labour

Councillor Brigid Jones (Deputy Leader) (Chair), Councillor Tristan Chatfield
(Cabinet Member)

Conservative

Councillor Debbie Clancy

Liberal Democrat

Councillor Jon Hunt

3 **DECLARATIONS OF INTERESTS**

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

5 - 6

4 **TERMS OF REFERENCE**

The terms of reference to be noted.

7 - 12

5 **PUBLIC NOTES OF THE LAST MEETING**

The notes of the last meeting to be confirmed.

13 - 16

6 **BIRMINGHAM CHILDREN'S TRUST - UPDATE AND BUSINESS PLAN**

Report of the Corporate Director - Finance and Governance.

<u>17 - 22</u>	7	<u>ACIVICO LIMITED - UPDATE AND BUSINESS PLAN</u>	Report of the Corporate Director - Finance and Governance.
<u>23 - 26</u>	8	<u>COMPANY UPDATE</u>	Report of the Director of Finance and Governance
<u>27 - 34</u>	9	<u>GROUP COMPANY GOVERNANCE - SECTION 24 RECOMMENDATIONS</u>	Report of the Director of Finance and Governance
<u>35 - 62</u>	10	<u>GROUP COMPANY GOVERNANCE RISK REGISTER</u>	Report of the Director of Finance and Governance
<u>63 - 70</u>	11	<u>GROUP COMPANY DIRECTORS AND NOMINEES - GUIDELINES</u>	Report of the Director of Finance and Governance
	12	<u>TRAINING - UPDATE FOR COMPANY</u>	Information update. Report to follow
	13	<u>DATE OF NEXT MEETING</u>	The next meeting is scheduled for Thursday, 12 September 2019 at 1300 hours in HMS Daring Room.
	14	<u>OTHER URGENT BUSINESS</u>	To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.
	15	<u>EXCLUSION OF THE PUBLIC</u>	That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:- Exempt Paragraph 3

PRIVATE AGENDA

16 **PRIVATE NOTES OF THE LAST MEETING**

Item Description

17 **BIRMINGHAM CHILDREN'S TRUST - PRIVATE**

Item Description

18 **ACIVICO LIMITED - PRIVATE**

Item Description

19 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

Cabinet Committee – Group Company Governance

Membership and Terms of Reference

This Cabinet Committee will be established by the Cabinet with the following membership:

- The Deputy Leader
- Another Cabinet Member as deemed appropriate by the Deputy Leader
- To include non-executive directors from the wider business community (no voting).

The Membership of the Committee shall be based on cross party representation.

The quorum for the Committee shall be determined by the Committee and this must include a Cabinet Member and a member of the Opposition.

The role of the Committee is to ensure that the Council's strategic objectives are met across the group and to support the development of the group in line with the Council's regulations and ambitions.

The Committee's responsibilities include:

- Holding entity Boards to account for their performance with the necessary powers to make and drive immediate change through the Boards;
- Supporting the development of entities and making decisions on the disposal/dissolution of companies (below Cabinet limit on value) and matters such as varying Articles of Association, varying ownership and structure and varying share rights;
- Identification of entities' business support requirements;
- Provides subsidiaries with clear direction and support in its role as sole shareholder;
- Evaluation of effectiveness of entity board governance structure, processes and recommend changes as required;
- Reviewing business plans and strategies of the entities to ensure compliance with the Council's strategic direction;
- Ensuring compliance of the entities with the Council's interests including the Birmingham Business Charter for Social Responsibility;
- Oversight of compliance to ensure that taxation, legal and financial interests of the Council are considered and protected;
- Oversight of compliance to EU procurement or other such legislative regulations and Council Standing Orders;
- Ensuring that risk relating to the entities is at a suitable level for the Council to bear;
- Receiving and reviewing entity performance reports;
- Advising Cabinet of issues

BIRMINGHAM CITY COUNCIL

CABINET COMMITTEE – GROUP COMPANY GOVERNANCE

**Wednesday 17 April 2019 at 1100 hours in
Ellen Pinsent Room, Council House,
Victoria Square, Birmingham B1 1BB**

Attendance:

Councillor Brigid Jones, Deputy Leader, in the Chair;
Councillors: Tristan Chatfield, Debbie Clancy and Jon Hunt

Also in Attendance:

Kate Charlton	City Solicitor
Connie Price	Head of Service – Legal
Georgina Dean	Solicitor
Alison Jarrett	Assistant Director, Finance and Governance
Dave Smith	Committee Services
Marie Reynolds	Committee Services

CHAIRMAN'S INTRODUCTION

- 1 The Chair welcomed all to the meeting
-

APOLOGY

- 2 There were no apologies submitted.
-

DECLARATIONS OF INTERESTS

- 3 There were no declarations submitted.
-

PUBLIC NOTES OF THE LAST MEETING

- 4 The public notes of the last meeting were agreed.
-

TRAINING – UPDATE FOR COMPANY

The following report of the City Solicitor, Finance and Governance was submitted:-

(See document No. 1)

Connie Price, Legal Services, provided an overview of the training that had been received to date by referring to Appendix 1 of the report.

It was noted that as well as the 2 training sessions that had been provided on 29 October 2018 and 29 January 2019 with Cabinet Committee Group Company Governance and to officers and Members that had been appointed to companies and charities in which the Council had a significant interest, there had also been additional one to one sessions for an elected member requiring additional guidance in his role, and for a Council finance officer newly appointed to a number of companies.

It was noted that a further training session on Director Roles and Responsibilities would be provided for those who could not attend previously and for additional directors who had been further identified. Due to the number of attendees that it could attract, consideration was being given to engaging and funding the external provider appointed in January.

It was noted the one to one training sessions were planned during May 2019 and given the highly commercial nature of these directorships, it was considered that a highly regarded commercial director from the private sector would attend to provide a basic overview of company due diligence, understanding business plans, financial trends and various aspects of company operation.

It was noted that there would be training session on Trusts and Charities and that an external specialist lawyer had been secured and had agreed to provide training at a significantly reduced rate.

Although a date had not yet been secured, the list of attended invitees was being collated and it was anticipated to include directors and trusts where the Council had an interest and was not limited to BCC nominees. This would also be extended to any 'new' nominees that had recently been identified as part of the company 'cleanse' exercise.

It was noted that Committee members would be kept updated on the progress of this exercise as dates were agreed.

During the discussion the following points were captured:-

- One to one sessions tailored to the individual's level, role and responsibilities – to provide a degree of assurance and understanding.
- Introduction of a register of members' training.

- Trust and Charities Training – Directors/Trustees of Trust required to attend training.
- Councillor Chatfield – to receive training
- Connie highlighted that they were currently looking into Schools Trust – investigating unsure of how many, each one needed specific investigation – update accordingly.

5

RESOLVED:-

The Committee noted the information provided.

COMPANY UPDATE

The following report of the Corporate Director, Finance and Governance was submitted:-

(See document No. 2)

Alison Jarrett, Assistant Director, Finance and Governance, referred to the details of the changes in companies as set out in 3.2 of the report.

Further reference was made to 3.3 of the report which highlighted that work was being undertaken to try and capture information on charities that were associated with maintained schools within the City.

As part of the work undertaken by Birmingham Audit in their visits to schools, they were now asking whether there were any charities associated with the school. Only one additional charity had been identified at present and additional information was being sought on the constitution, aims and members of the charity.

During the discussion the following points were captured:-

- Charities – Schools – unaware of their liability – non-compliance – not filing accounts – requirement to ascertain where responsibility lies and need to get into bursary forums to impart knowledge.
- Importance of keeping an eye on Companies House – awareness of BCC involvement in order to prevent any issues arising that could affect elected members' directorships.

6

RESOLVED:-

The Committee noted the report

GROUP COMPANY GOVERNANCE – SECTION 24 RECOMMENDATIONS

The following report of the Corporate Director, Finance & Governance was submitted:-

(See document No. 3)

Alison Jarrett, Assistant Director, Finance and Governance, while introducing the report confirmed that there would be a further update of the report and Appendix at the end of the month. She detailed the reporting mechanism relating to progress on the Section 24 recommendations which was submitted to Audit Committee on a regular basis as well as this Committee.

It was noted that the auditors were aware of all responses to Section 24 Recommendations.

7 RESOLVED:-

The Committee noted the progress in delivering the necessary actions to mitigate the issue raised by the external auditor.

GROUP COMPANY GOVERNANCE - RISK REGISTER

The following report of the Corporate Director, Finance & Governance was submitted:-

(See document No. 4)

Alison Jarrett, Assistant Director, Finance and Governance made introductory comments to the report.

It was suggested that G-02 'Council nominated Directors fail to attend meetings' Low/Low - to monitor and alter the level of risk if necessary.

8 RESOLVED:-

The Committee considered the information provided and determined the judgement on the risks was reasonable and the mitigating actions were sufficient to reduce the risks to the Council to an acceptable level.

MEMBERSHIP AND GOVERNANCE OF THE CABINET COMMITTEE CGC

The following report of the City Solicitor was submitted:-

(See document No. 5)

Dave Smith, Committee Team Leader, Committee Services, provided a comprehensive breakdown of the report.

Following discussions, it was agreed that formal substitution arrangements – named substitutes councillors be brought back to this Committee.

9 **RESOLVED:-**

That the Committee agreed to increase the quorum of the Committee to 2 Cabinet Members and a member of the Opposition and notifies Cabinet accordingly;

That recommend to Cabinet that formal substitution arrangements be introduced for Cabinet Members and members of the Opposition on this Committee; and

That subject to the above changes to the quorum and substitution arrangements being agreed, it was requested the City Solicitor submit a report to Full Council recommending all necessary changes to the Constitution as appropriate.

SCHEDULE OF MEETINGS

10 The following schedule of Meetings was agreed:-

Wednesday 5 June 2019	- 1300 – 1500 hrs	Committee Room 2
Thursday 12 Sept 2019	- 1300 – 1500 hrs	HMS Daring
Thursday 7 Nov 2019	- 1400 – 1600 hrs	HMS Daring
Thursday 16 Jan 2020	- 1400 – 1600 hrs	HMS Daring
Thursday 12 March 2020	- 1400 – 1600 hrs	HMS Daring

DATE OF NEXT MEETING

11 The next meeting is scheduled to take place on Wednesday, 5 June 2019 at 1300 hours in Committee Room 2, Council House.

EXCLUSION OF THE PUBLIC

12 **RESOLVED:-**

That, in view of the sensitive nature of the discussion due to take place relating to Acivico Limited, the public be now excluded from the meeting.

Public Report

Birmingham City Council

Report to Cabinet Committee – Group
Company Governance

5 June 2019



Subject: Birmingham Children's Trust CIC – Pen Portrait

Report of: Corporate Director - Finance & Governance

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O & S Chair(s): Councillor Sir Albert Bore

Report author: Alison Jarrett

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report sets out summary information in respect of Birmingham Children's Trust CIC as background information to the company's business plan in the private section of the agenda.

2 Recommendations

- 2.1 Members are recommended to note the information in this report.

3 Background

- 3.1 Birmingham Children's Trust CIC was created as a company limited by guarantee without share capital with the Council as sole member. The company was created in May 2017 and became a Community Interest Company in October 2018.

- 3.2 The company has been created as an asset locked company so that on any future dissolution, the assets of the company will not come back to the Council but will go to a similar type of entity.
- 3.3 The company was created to provide all elements of social care, special educational needs, youth offending and other related services and support to children, young people and their families.

4 Options considered and Recommended Proposal

- 4.1 This report provides information to Members on Birmingham Children's Trust CIC.

5 Consultation

- 5.1 The Chair of the Committee has been consulted on this paper.

6 Risk Management

- 6.1 This report provides information for Members and there are no risk management issues arising.

7 Compliance Issues:

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

a) The Council has created companies to support the delivery of services.

- 7.2 **Legal Implications**

a) There are no legal implications associated with this report.

- 7.3 **Financial Implications**

a) There are no financial implications directly arising from this report.

- 7.4 **Procurement Implications**

a) There are no procurement implications directly arising from this report.

- 7.5 **Human Resources Implications**

a) There are no Human Resource implications directly arising from this report.

- 7.6 **Public Sector Equality Duty**

a) There are no specific Equality Duty or Equality Analysis issues relating to the proposals set out in this report.

8 Background Documents

Appendix 1 – Pen portrait Birmingham Children's Trust CIC

Appendix 1

Birmingham Children's Trust Community Interest CompanyCompany N^o: 10762047

Subsidiary Companies None

Directors Brian Carr
 Andrew Christie
 Andrew Couldrick
 Balwinder Kaur Dhanoa
 Professor Jonathan Glasby
 Ruth Harker
 Colin Horwath
 Elizabeth Stafford
 Jonathan Tew
 Jennifer Turnross
 Lee Yale-Helms

Company Purpose Birmingham Children's Trust CIC was set up as a wholly owned company of Birmingham City Council from 1st April 2018. The objects of the Company are to provide all elements of social care, special educational needs, youth offending and other related services and support to children, young people and their families.

Financial Year End 31 March
Filing Date 31 December

Financial Information	2018/19
	£m
Base Contract Sum	189.7
Income	(3.7)
Net Contract Sum	186.0
Support Services	10.2
Base Contact Sum	196.2
2018/19	
Payment of Reserves	5.7
Contract Payment	
2018/19	201.9

Public Report

Birmingham City Council**Report to Cabinet Committee – Group
Company Governance**

5 June 2019



Subject: Acivico Limited – Pen Portrait
Report of: Corporate Director - Finance & Governance
Relevant Cabinet Member: Councillor Brigid Jones
Relevant O & S Chair(s): Councillor Sir Albert Bore
Report author: Alison Jarrett

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report sets out summary information in respect of Acivico Limited as background information to the company update presentation on this agenda.

2 Recommendations

- 2.1 Members are recommended to note the information in this report.

3 Background

- 3.1 Acivico Limited was created as a wholly owned subsidiary of the Council in September 2011.

- 3.2 Two subsidiary companies, wholly owned by Acivico Limited, were created in January 2012, namely:
- Acivico (Building Consultancy) Limited
 - Acivico (Design, Construction and Facilities Management) Limited
- 3.3 Acivico has been designed as a Teckal company, which means that 80% or more of its activity has to be through contracts for services with the Council. The benefit of being a Teckal company means that contracts may be awarded without going through a public tendering exercise.
- 3.4 The principal activities of the group of companies were for the provision of consultancy, design, construction and facilities management within the construction and property industry. The companies became operational from 1 April 2012 as Council staff were TUPE'd to the companies.
- 3.5 In April 2015, three additional services were transferred to Acivico, namely Civic Catering, Cleaning and Birmingham City Laboratories. These services provided catering, cleaning, asbestos surveys and toxicology testing to the public and to the Council. These services have recently been transferred back to the City Council.
- 3.6 Acivico has been in financial difficulties for some time and it has been undertaking a review of its activities. The company has recently undertaken a review of its staffing requirements and a number of staff have left. The company transferred its catering function back to the Council with effect from 1 October 2018 and is planning to transfer the laboratory service back to the Council with effect from 28 February. It is anticipated that cleaning services will also transfer back to the Council with the date to be confirmed. The Council gave Acivico Limited a letter of assurance on 24 October that it could continue to meet its liabilities as they fell due and thereby give its external auditors comfort that it could continue to be regarded as a going concern.
- 3.7 A report regarding the future of Acivico was considered by Cabinet at its meeting on 11 December 2018. It was agreed that the Council would continue to remain a shareholder and also plan to award Acivico a new three year contract once the current extension ends, thereby reversing the decision taken in July 2017 to outsource DCFM work. The expectation is that Acivico would no longer be a Teckal company at the end of the new contract.

4 Options considered and Recommended Proposal

- 4.1 This report provides information to Members on Acivico Limited.

5 Consultation

- 5.1 The Chair of the Committee has been consulted on this paper.

6 Risk Management

- 6.1 This report provides information for Members and there are no risk management

issues arising.

7 Compliance Issues:

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

- a) The Council has created companies to support the delivery of services.

7.2 Legal Implications

- a) There are no legal implications associated with this report.

7.3 Financial Implications

- a) There are no financial implications directly arising from this report.

7.4 Procurement Implications

- a) There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- a) There are no Human Resource implications directly arising from this report.

7.6 Public Sector Equality Duty

- a) There are no specific Equality Duty or Equality Analysis issues relating to the proposals set out in this report.

8 Background Documents

Appendix 1 – Pen Portrait Acivico Limited

Acivico Limited

Company N°: 07792304

Subsidiary Companies	Acivico (Building Consultancy) Limited		
	Acivico (Design, Construction and Facilities Management) Limited		
Directors	Ian Briggs (Chair)		
	Councillor Peter Griffiths		
	Councillor Frederick Grindrod		
	Councillor Kenneth Wood		
Chief Executive	Ian Benson (Interim)		
Company Purpose	Acivico is a multi-service company providing services in design, construction, facilities management and building control to clients across the public and private sectors.		
Financial Year End	31 March		
Filing Date	31 December		
Financial Information	2017/18	2016/17	2015/16
Accounts Filed	27 December 2018	6 April 2018	27 September 2016
	£m	£m	£m
Turnover	31.4	35.5	38.3
Operating Profit/(Loss)	(6.3)	(2.3)	(0.6)
Profit/(Loss) after tax	(6.5)	(2.5)	(0.7)
Balance Sheet			
Fixed Assets	2.1	2.3	0.1
Current Assets	12.2	15.1	21.6
Current Liabilities	(18.7)	(18.2)	(21.0)
Other Liabilities	(0.5)		
Pension Liability	(9.3)	(7.8)	(2.2)
Net Assets/(Liabilities)	(14.2)	(8.6)	(1.5)
Profit & Loss A/c	(14.2)	(8.6)	(1.5)
Net Reserves	(14.2)	(8.6)	(1.5)

Public Report

Birmingham City Council

Report to Cabinet Committee – Group Company Governance

5 June 2019



Subject: Company Update

Report of: Clive Heaphy, Corporate Director, Finance & Governance

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O &S Chair(s): Councillor Sir Albert Bore

Report author: Martin Stevens

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

This report provides Members with an update on changes within entities that fall within the Council's group structure.

2 Recommendations

2.1 Members are asked to note the information provided

3 Background

3.1 There have been a number of changes in companies that fall within the Council's group structure, which have been detailed below.

Company Changes

3.2 Details of the changes in companies are set out below:

- Acivico Limited
Acivico (Building Consultancy) Limited
Acivico (Design, Construction and Facilities Management) Limited
Ian Benson appointed as interim Chief Executive on 29th April 2019
- Birmingham LEP Company Ltd (Local Education Partnership)
30 Mar 2019 Compulsory strike-off action has been discontinued.
Companies House does not record the reason for the strike-off notice being given in February 2019. BCC owns 10% of the company

Schools

3.3 Further work is being undertaken to try and capture information on charities that are associated with maintained schools within the City. As part of the work undertaken by Birmingham Audit in their visits to schools, they are now asking whether there are any charities associated with the school. Only one additional charity has been identified at present and additional information is being sought on the constitution, aims and members of the charity.

4 Options considered and Recommended Proposal

4.1 This report provides information to Members on changes to organisations that fall within the Council's group structure. Further reports will be provided to future meetings of this committee.

5 Consultation

5.1 The Chair of the Committee has been consulted in the preparation of this Report..

6 Risk Management

6.1 This report sets out information on external organisations associated with the Council.

7 Compliance Issues:

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

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

7.2 Legal Implications

- a) 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.

7.3 Financial Implications

- a) The Council needs to consider whether any of the changes in the company group structure has a financial impact on or increases the financial risks to the Council.

7.4 Procurement Implications

- a) There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- a) There are no human resources implications directly arising from this report.

7.6 Public Sector Equality Duty

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

8 Background Documents

CIPFA Code of Practice on Local Authority Accounting

Public/Private Report

Birmingham City Council**Report to Cabinet Committee – Group Company Governance**

5 June 2019



Subject: Group Company Governance – Section 24 Recommendations

Report of: Clive Heaphy, Corporate Director, Finance & Governance

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O &S Chair(s): Councillor Sir Albert Bore

Report author: Martin Stevens

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

1.1 This report sets out the progress to date in implementing actions to mitigate the recommendation raised by the External Auditor under Section 24 of the Local Audit and Accountability Act 2014 that was included in his Audit Findings Report published on 30 July 2018. The specific recommendation related to the Council's understanding of the financial position of its related companies and the Council's responsibility for their liabilities.

2 Recommendations

2.1 Members are recommended to note the progress in delivering the necessary actions to mitigate the issue raised by the External Auditor.

3 Background

3.1 The External Auditor issued his Audit Findings Report (AFR), which was considered by Audit Committee at its meeting on 30 July 2018. Contained within the AFR were a number of recommendations made under Section 24 of The Local Audit and Accountability Act 2014. Recommendations made under Section 24 had to be considered by full Council, which took place on 11 September 2018.

3.2 The External Auditor identified within one of his Section 24 recommendations that the financial position of companies and the Council's responsibility for their liabilities has not been well understood or reported by the Council. The external auditor went on further to state that the Council had not always had sufficient accurate information upon which to make decisions relating to the companies created in order to mitigate risk and that governance arrangements had not been adequate to enable companies' activities to be monitored. The auditor's specific recommendation in respect of companies was that the Council needs to:

"ensure that appropriate arrangements are implemented in relation to the Council's subsidiary bodies, including regular financial reporting and Council representation on subsidiary body boards, to ensure that emerging risks are monitored, reported and managed promptly."

3.3 The Council needs to monitor its response to the recommendation to ensure that the proposed action to mitigate the weaknesses identified is being progressed. Attached at Appendix 1 is the latest progress report for Members to consider.

4 Options considered and Recommended Proposal

4.1 This report provides information to Members on the actions taken to mitigate the matter raised by the External Auditor in his Audit Findings Report recommendation in respect of the Council's arrangements in operating through subsidiary, associate and other related companies.

5 Consultation

5.1 The Chair of the Committee has been consulted

6 Risk Management

6.1 This report concerns the delivery of the proposed actions to mitigate the concerns raised by the External Auditor in his Audit Findings Report following the audit of the Council's Financial Statements 2017/18.

7 Compliance Issues:

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

- a) The Council operates and delivers services through a number of different vehicles. The Council needs to consider the risks of delivering through arms-length arrangements so that Council policies can continue to be implemented.

7.2 Legal Implications

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

7.3 Financial Implications

- a) There are no financial implications directly arising from this report.

7.4 Procurement Implications

- a) There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- a) There are no human resources implications directly arising from this report.

7.6 Public Sector Equality Duty

- a) There are no specific Equality Duty or Equality Analysis issues relating to the proposals set out in this report.

8 Background Documents

8.1 Audit Findings Report of the External Auditor – 30 July 2018

Progress Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
Sec 24 Recommendations					
6	The Council needs to ensure that appropriate arrangements are implemented in relation to the Council's subsidiary bodies, including regular financial reporting and Council nominees on subsidiary body boards, to ensure that emerging risks are monitored, reported and managed promptly.	The shareholder role is discharged through the CC-GCG, with attendance by subsidiaries either on a cyclical timeframe or where there are concerns with a Council-owned company, on a more regular basis.	Ongoing	Clive Heaphy	<p>November 2018: The workplan and timetable for the CC-GCG is being developed and regular reports of and presentations by the Council's subsidiary companies will be programmed into the timetable.</p> <p>The CC-GCG has been timetabled into the Committee calendar on a monthly basis and will be chaired by the Deputy Leader and be supported by senior officers.</p> <p>Acivico Limited presented its business plan to CC-GCG at its meeting on 13 November 2018.</p> <p>December 2018: Birmingham Children's Trust CIC presentation of its business plan to CC-GCG</p> <p>At its meeting on 11 December 2018, Cabinet considered a report on the Options for the Future of Acivico</p> <p>February 2019: Acivico Limited presenting a business plan update</p> <p><u>June 2019: Acivico Ltd and Childrens Trust present business plan 2019/20.</u></p>
		The Intelligent Client Function is more robustly developed for some subsidiary bodies than others and the role of contact officers requires formal			<p>November 2018: The role of client functions will be developed and implemented during the year to ensure that there remains a strong focus on the</p>

Progress Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
		definition. This will form part of the work programme for CC-GCG in 2018, along with further development of the training package for officers and members who take up directorships.			<p>relationship with subsidiary companies.</p> <p>Client Officers will report to the CC-GCG on a regular basis in support of presentations by subsidiary companies.</p> <p>January 2019: A training session for Council appointed directors was delivered on 24 January. Further training will be provided to support those who couldn't attend and also consider the training needs of Charity Trustees.</p> <p>June 2019: In-fill training provided. GCGC receives report on directors role in respect of their obligations to the council/shareholder role.</p>
		Risks within subsidiary bodies are formally reported to Audit Committee annually as part of an assurance statement. The Council will extend this mechanism to capture emerging in-year risks.			<p>November 2018: CC-GCG will consider a regular report on the risks associated with subsidiary companies and emerging issues will be identified at the earliest opportunity to allow consideration at the committee.</p> <p>CC-GCG considered the risk register associated with its involvement in companies and the risk assurance questionnaire to be completed by those companies that will be consolidated into the Council's group accounts at its meeting on 13 November 2018.</p> <p>December 2018: An updated risk</p>

Progress Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
					<p>register of the Council's involvement in companies to be presented to CC-GCG at its meeting on 12 December.</p> <p>January 2019: An updated risk register of the Council's involvement in companies to be presented to CC-GCG at its meeting on 16 January. Assurance statements from companies on their governance arrangements, approach to risk and financial performance were considered by CC-GCG at its meeting on 16 January and by Audit Committee at its meeting on 29 January.</p> <p>February 2019: An updated risk register of the Council's involvement in companies to be presented to CC-GCG at its meeting on 13 February.</p> <p>April 2019: An updated risk register of the Council's involvement in companies to be presented to CC-GCG at its meeting on 17 April.</p> <p>June 2019: An updated risk register of the Council's involvement in companies presented to CC-GCG at its meeting on 5 June 2019.</p>

Public Report

Birmingham City Council

Report to Cabinet Committee – Group Company Governance

5 June 2019



Subject:	Group Company – Risk Register	
Report of:	Corporate Director – Finance & Governance	
Relevant Cabinet Member:	Councillor Brigid Jones	
Relevant O &S Chair(s):	Councillor Sir Albert Bore	
Report author:	Alison Jarrett	
Are specific wards affected? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No – All wards affected		
If yes, name(s) of ward(s):		
Is this a key decision? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Does the report contain confidential or exempt information? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report provides Members with information on the potential risks faced and the actions being taken to mitigate those risks through the Council's relationship with external organisations where the Council has influence through its shareholding, an entity's Articles of Association, director appointments or other arrangement.

2 Recommendations

- 2.1 Members are asked to consider the information provided and determine whether the judgement on risks are reasonable and assess whether the mitigating actions are sufficient to reduce the risks to the Council to an acceptable level.

3 Background

3.1 Members have considered the company risk register at previous meetings of this committee. The risk register has been updated and the following items are to be considered:

- G-01- Nominated Directors do not have sufficient skills to fulfil their roles within a third party whilst also representing the Council's interests. Consideration of current risk level.
- G-08 – Failure to provide information for consolidation in Group Accounts. Source of Assurance: Return of draft and final questionnaires, management accounts during the year and companies' draft accounts by 29 April 2019.

3.2 Identified risks have been assessed under two criteria, Likelihood and Impact. Each criterion has then been ranked as to whether they are Low, Medium, Significant or High Risk. Recognising that risk can never be completely eliminated the desired outcome from mitigating actions has been identified to assess the level of risk that the Council is willing to bear.

3.3 The risks borne by the Council will vary from company to company dependent on the Council's relationship with an entity, for example, where a company is:

- a wholly owned subsidiary, the risks and impacts will translate fully through to the Council;
- an associate where the Council has, generally, between 20% and 50% control, the risks and impacts will be shared between owning entities; and
- related to the Council through nomination rights, there may be little financial impact on the Council.

3.4 However, risks cannot just be determined in financial terms as there may be reputational risks to consider.

3.5 A full schedule of identified risks and the actions to mitigate them to an acceptable level are set out in Appendix 1 to this report.

4 Options considered and Recommended Proposal

4.1 This report provides information to Members on the risks faced by the Council from its operational arrangements with organisations over which it is considered to exert an influence.

5 Consultation

5.1 The Chair of the Committee has been consulted on this paper.

6 Risk Management

- 6.1 This report considers the main risks that the Council faces as a result of its operation through and its partnership arrangements with external organisations. The report sets out the actions being taken to mitigate those risks.

7 Compliance Issues:

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

- a) The Council has created a number of entities or entered into a number of partnership arrangements to ensure that services can be delivered more effectively for local citizens. There is an element of risk in any activity and this report sets out details of potential risks faced and the actions being taken to mitigate them.

7.2 Legal Implications

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

7.3 Financial Implications

- a) There are no financial implications directly arising from this report.

7.4 Procurement Implications

- a) There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- a) There are no Human Resource implications directly arising from this report.

7.6 Public Sector Equality Duty

- a) There are no specific Equality Duty or Equality Analysis issues relating to the proposals set out in this report.

8 Background Documents

- 8.1 None.

Group Company Directors and Nominees - Guidelines

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
G-01	Nominated Directors do not have sufficient skills to fulfil their roles within a third party whilst also representing the Council's interests.	Chief Finance Officer	Significant/ High	<p>The role as a director of a company carries certain onerous obligations and there may be consequences to an individual if they do not fulfil their role appropriately. This may also have implications for the Council, both reputationally and financially.</p> <p>It is important that Directors demonstrate specific skills and knowledge and there should therefore be specific criteria for the selection of appropriate candidates and they should receive the necessary information to enable them to fulfil their duties in their role as Director.</p> <p>Action: Procedure to be agreed for the selection of Directors to be appointed by the Council.</p> <p>Directors to receive training on their personal responsibilities in their role within a company. Training has been provided for members of the Group Company Governance Committee and a</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: Criteria to be considered by Group Company Governance Committee for the selection of appropriate individuals to act as Directors by January 2019.</p> <p>Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p>Source of Assurance: Directors should be required to record meetings invited to and those that they attend. This should be provided on a regular basis to the Council.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				session was provided for current Directors, potential Directors and officers who may support Directors on 24 January 2019. Further training sessions will be provided for those who were unable to attend on 24 January and as part of continuous training for all.	
G-02	Council nominated Directors fail to attend meetings	Contact Officer	Low/ Significant	<p>Directors have specific responsibilities in the management and operation of a company to ensure that it operates in accordance with its Articles of Association and that it trades solvently. If a Director does not attend appropriate meetings then they may be considered to have acted negligently in the exercise of their duties.</p> <p>Action: It is essential that Directors receive training on their personal responsibilities in their role within a company. Training has been provided for members of the Group Company Governance Committee and a session was provided for current Directors, potential Directors and officers who may support Directors on 24 January 2019.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p>Source of Assurance: Directors should be required to record meetings invited to and those that they attend. This should be provided to the Council on a regular basis.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>Training will have to be provided on an ongoing basis to ensure new councillors, officers or other Council nominated individuals who are asked to take on the role of a director are adequately trained.</p> <p>A system of recording Director attendance should be created to monitor attendance at meetings.</p>	
G-03	A company fails to file appropriate returns with Companies House	<p>Company Directors</p> <p>Contact Officer</p>	Low/ Significant	<p>Failure to file accounts or annual returns is a criminal offence. The filing of late accounts automatically generates a late notice penalty, which rises from £150 if up to 1 months late to £1,500 if more than 6 months late. Repeat offences receive a higher fine. A Director can end up with a criminal record and a fine of up to £5,000 for each violation.</p> <p>It is recognised that there may be a higher level of competency in Directors with specific backgrounds, for example, those with legal or financial qualifications, and consequently their penalties/sanctions may be higher.</p>	<p>Target Risk Rating: Low/Medium</p> <p>Anticipated date of attainment: Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p>The recording database will be updated to provide details on forthcoming filings to ensure that there is a proactive rather than reactive review.</p> <p>Source of Assurance: Responses from company</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>The failure to provide returns on a timely basis may be indicative of performance issues which may not have been detected.</p> <p>Action: It is essential that Directors receive training on their personal responsibilities in their role within a company. Training has been provided for members of the Group Company Governance Committee and a session was provided for current Directors, potential Directors and officers who may support Directors on 24 January 2019.</p> <p>Training will be provided on an ongoing basis to include new councillors, officers or other nominated representatives who are asked to take on the role of a director.</p> <p>The Council will also monitor each of its companies so that confirmation can be sought from companies that they have met the relevant filing date.</p> <p>A monitoring database has been</p>	<p>secretaries</p> <p>Review of information held on Companies House</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				implemented to record information from Companies House as returns are made.	
G-04	Observers at meetings act inappropriately	Meeting Observers	Low/ Significant	<p>There is a difference in the roles of Director and Observer. Whilst a Director's role is defined, an Observer should not be part of the running of a company. They should attend meetings to view the activity of the Board and ask/answer questions for information if invited to do so.</p> <p>There is the potential for an Observer to comment at Board meetings which may be seen as issuing guidance. Where an Observer influences a company to take actions then they may be seen as acting as a Shadow Director and bear the same consequences as though they were a Director of a company.</p> <p>Action: Observers at meetings should receive training on the same basis as Directors so that they understand the difference between the two roles.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p>Source of Assurance: Record of those undertaking training. Attendance at Board meetings as an Observer should be formally fed back to appropriate management within the Council.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				Training will have to be provided on an ongoing basis to include new councillors, officers or Council nominated individuals who are asked to take on the role of observer.	
G-05	A company fails to operate within the terms of its Articles of Association	Contact Officer	Low/ Medium	<p>The Articles of Association (AoA) regulates the way that a company is administered. If actions are taken that are outside of the AoA then they may be declared illegal by the courts.</p> <p>Action: As part of the training provided to Directors it should include the powers that a company has to undertake certain activities and any constraints on those activities.</p> <p>Training will have to be provided on an ongoing basis to include new councillors, officers or Council nominated individuals who are asked to take on the role of Director.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p>Source of Assurance: Record maintained of those undertaking training.</p>
G-06	The potential of a fraud taking place within a company	Chief Finance Officer	Low/ High	Inherent within any organisation is the risk of fraud taking place. Within organisations it is usual for	Target Risk Rating: Low/Low

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>a series of checks and balances to be put in place to ensure that the opportunities for fraud are minimised.</p> <p>Directors carry out two main roles to deter fraud in that they should ensure that management has put in place appropriate controls that minimise the opportunity for fraud and that any frauds that are perpetrated are reported to the Board for consideration, which would include identification of additional controls to stop such episodes recurring.</p> <p>Action: For the larger companies that are to be consolidated within the Council's Group Accounts a questionnaire is sent out annually seeking assurance on the systems for minimising fraud within a company and that frauds that are identified are reported to the Board appropriately and then to the Council where appropriate. This document means that each major company has to consider its approach to risk management appropriately.</p>	<p>Anticipated date of attainment: March 2019</p> <p>Source of Assurance: Returns from companies on their approach to risk management and fraud.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				Risk assurance statements from the Council's larger companies were considered by CC-GCG on 16 January and by Audit Committee on 29 January.	
G-07	Failure to comply with the requirements of GDPR	Contact Officer	Low/ Significant	<p>The Council has to recognise that wholly owned companies are separate entities and that there are limits on what information can be shared. It is also important to recognise that there are constraints on companies releasing information accidentally. The consequences of a breach of GDPR can be significant.</p> <p>Action: The Council must follow its own GDPR practices and assess whether it is appropriate to share information with its companies.</p> <p>The request for information in respect of deterring fraud also asks for information on the company's approach to manage the requirements of GDPR. Responses from the Council's larger companies were considered by CC-GCG on 16 January and by Audit Committee on 29 January.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: March 2019</p> <p>Source of Assurance: Returns from companies on their approach to the management of GDPR.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
G-08	Failure to provide information for consolidation in Group Accounts	Chief Finance Officer	Medium/ Significant	<p>The Council has to produce its draft financial statements by 31 May and its audited financial statements by 31 July of each year. This reporting timetable is in advance of that for companies that generally have nine months in which to produce their audited financial statements.</p> <p>The Council has to produce financial statements that show a “true and fair view” and are materially correct. The level of materiality for the Council is significant and therefore estimates of a company’s position are usually sufficient to satisfy external audit requirements as long as they are reasonably assured that there can be no material errors in the company accounts.</p> <p>Action: Companies that are considered necessary for consolidation, including those that are not consolidated but near the level for consideration, are contacted during the year so that they are made aware of the</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: April 2019</p> <p>Source of Assurance: Return of draft and final questionnaires, management accounts during the year and companies’ draft accounts by 29 April 2019.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>proposed timetable and of the information requirements that will be necessary.</p> <p>A questionnaire is sent out for return by 18 January for draft information on a financial position with the final return due by 29 April.</p> <p>Companies are also asked to provide management accounts so that a profile can be built up of the information that will be used for the final consolidation.</p>	
G-09	The Council is considered to have significant influence over a company through its nomination rights	Chief Finance Officer	Medium/ Medium	The test of control for accounting purposes is different to that for legal purposes. The Council is considered to have control over an entity if it controls 50% or more of the day to day activities of the company or has significant influence if it has more than 20% control. Control may be measured through the representation on company or charity boards where directors are considered to control the activities of a company. With the Council having nomination rights to a wide range of entities,	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: July 2019</p> <p>Source of Assurance: Information is sought on the overall structure of entity boards when the Council considers nominating individuals to external bodies.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>there may be occasions where the number of Council nominees is such that they represent 20% or more of the board. In such cases, the entity would have to be considered for consolidation into the Council's group accounts. Failure to consolidate would lead to adverse audit reports or ultimately, qualification of the Council's accounts.</p> <p>Action: in the consideration of Council nominations to external bodies, a review should be undertaken of the level of control that may be exercised by the Council.</p>	
G-10	A company does not have appropriate insurance covers in place	Company Directors	Low/ Significant	<p>Companies must have statutory insurance covers in place and should properly assess their financial tolerance to insurable risks. Financial risks which the company is unable to absorb should be transferred to the insurance market where insurance protection may be purchased.</p> <p>Action: In the creation of companies, the Council will need to ensure that consideration is</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: January 2019</p> <p>Source of Assurance: Information is sought through the return of the risk assurance questionnaire considered by Audit Committee.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>given to the procurement of appropriate insurance cover.</p> <p>The Council will monitor companies' approach to ensure they have appropriate insurance arrangements in place through the risk assurance questionnaire.</p>	
G-11	Risks faced by the Council in respect of its associated companies are not given due consideration	Chair – Group Company Governance	Low/Medium	<p>As more information is provided in respect of Council companies and as people become more familiar with the issues faced, there is the potential for a more relaxed approach to be taken in critically analysing the position of a company. This may lead to issues slipping through and only being challenged when they become critical.</p> <p>Action: That individual risks and the associated mitigating actions are challenged on a regular basis and additional information sought where appropriate.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: February 2019 and ongoing</p> <p>Source of Assurance: Risks are considered in detail on a regular basis and the information provided.</p>
G12	The Council is not aware of all of the relationships entered into, which may fall within its overall remit.	Chief Finance Officer	Medium/Significant	There may be arrangements put in place, either through nomination rights on to external bodies or the creation of external bodies of which the Council is not aware but	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: October 2019 and ongoing</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>which may have implications for it, for example, a number of charities have been created where governors and/or school staff from maintained schools have been nominated to act as trustees. The Council will need to consider whether the arrangements place it at risk.</p> <p>Action: The Council continue to identify all potential relationships with external bodies.</p>	<p>Source of Assurance: Information gathered from Companies House and the Charity Commission to determine potential relationships.</p>
G13	Senior Managers within a company leave	Company Directors	Low/Significant	<p>It is expected that there will be movement of senior managers within companies. However, the loss of a number of senior managers within one company in a sort space of time may lead to operational difficulties and delays in making appropriate decisions in respect of staffing, resources, contracts etc..</p> <p>Action: The responsibility for the appointment of senior managers would lie with the Company Directors. However, the Council should be informed of any senior manager changes so that any potential implications can be assessed. It is also important to</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: Ongoing</p> <p>Source of Assurance: Information to be sought through the gathering of information from companies.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				ensure that there are appropriate succession plans in place to mitigate any adverse impacts.	
No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
Financial Risks					
F-01	A company requires support from the Council to remain a going concern		Significant/ High	<p>A company is a separate legal entity and if it were to get into financial difficulties then the company could become insolvent. The Council may determine, as shareholder, that this is the most appropriate way forward to minimise financial losses. However, there are a number of significant implications that may arise from this course of action in that:</p> <ul style="list-style-type: none"> • The reputational impact on the Council may be significant • The impact on local businesses may be significant if the company were to be unable to pay its creditors impacting directly on the local community • The Council may have given guarantees to the company to enable it to continue trading which it will have to honour • The Council may face a loss of critical services that it will have to replace at a higher cost 	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: The provision of training to Directors will provide a base of knowledge to enable appropriate levels of challenge to be put in place.</p> <p>Source of Assurance: The oversight of regular monitoring reports and the review of business plans and final accounts will give added oversight of performance so that downward trends can be identified at the earliest opportunity.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<ul style="list-style-type: none"> The Council may have to meet a pension guarantee if staff were originally TUPE'd from the Council <p>The appropriate course of action to minimise the impact of any company falling into financial difficulties is to identify any fall off in trading performance at the earliest opportunity so that corrective action may be taken. This will be reliant on having the appropriate management team in place and Directors providing challenge at the appropriate level. The provision of appropriate performance reporting to the Council on a regular basis will also provide some assurance to the Council that performance is within acceptable bounds.</p> <p>Action: The training of Directors will give them knowledge of their responsibilities and the actions that they can take to gain assurance that performance is being delivered to the necessary level to remain solvent or the recognition that mitigating actions should be put in place where there is a drop in performance.</p>	

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				The provision of regular monitoring reports to the Council will provide an added oversight so that any downward trends can be identified at the earliest opportunity.	
F-02	The council does not arrange its tax affairs to minimise its level of corporation tax.	Chief Finance Officer	Medium/ Medium	<p>Companies that operate on a trading basis may be liable for Corporation Tax. As the Council has a number of entities under its control there is an opportunity to look at the companies on a group basis to determine whether there is any opportunity for Group Relief. At present each company operates on a silo basis with limited consideration of any opportunities for tax minimisation across the group.</p> <p>Action: Review the tax position across the Council's group and seek advice from external tax advisers.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: July 2019</p> <p>Source of Assurance: Advice received from external tax advisers</p>
F-03	A company provides guarantees/indemnities to a third party	Chief Finance Officer	Low/ Medium	Where an entity gives guarantees/indemnities to third parties, an assessment needs to be undertaken each year to determine any likelihood of that guarantee being called. Guarantees need not be explicit but may be as part of general contracts.	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: April 2019</p> <p>Source of Assurance:</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				Action: Information will be sought from the companies consolidated into the Council's Group Accounts to assess whether any guarantees have been given.	Responses to questionnaires from group companies
F-04	Movement away from the Council's terms and conditions of employment	Head of HR	Low/ Significant	<p>When the Council TUPE's staff to third parties, the transfer is undertaken on the basis of current terms and conditions and access to the local government pension scheme. Where a company is controlled by the Council, should it move away from the Council's terms and conditions there is a potential for an Equal Pay Claim.</p> <p>Action: The Council monitors the terms and conditions of employment of Council companies.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: 31 March 2019</p> <p>Source of Assurance: Feedback from Companies.</p>
F-05	A company does not recognise that it is a controlled company for the determination of the Apprenticeship Levy	Head of HR	Medium/ Significant	<p>The introduction of the Apprenticeship Levy has meant that those companies with an employee budget of more than £3m were required to contribute to the scheme. However, where there is a group structure in place, the total group employee budget should be considered as a whole. This has meant that subsidiary companies with an employee budget of less than</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: April 2019</p> <p>Source of Assurance: Information sought from subsidiary companies through the financial information questionnaire for</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>£3m, who may have considered that they did not have to contribute, may have been in breach of the levy requirements.</p> <p>Action: Seek information from the Council's subsidiary companies to determine whether they have been contributing to the Apprenticeship Levy.</p>	consolidation purposes.
F-06	A company does not have a viable business plan/budget	Company Director	Medium/ Significant	<p>The Company Business Plan sets the framework for the company's activities for both the short and medium term. The financial consequences of the plan set the budget, resource requirements and targets for service delivery. If a company does not have an agreed business plan, then it does not have clear direction and directors have no measures against which to assess management and company performance or to consider the impact of risks to the company.</p> <p>Action: Companies to be required to share their business plans with the Council, both as part of their contractual commitment for service delivery and for receipt of grant support to ensure that the Council's</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: September 2019</p> <p>Source of Assurance: Receipt of business plans from companies with oversight by the Group Company Governance committee for major entities.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				resources are being used appropriately.	
F-07	The Council, as accountable body, is deemed responsible for the liabilities of a third party	Corporate Director, Finance & Governance	Medium/ Significant	<p>The Council has an on-going accountable body role for a range of grant funding regimes, both historical and current, which include supporting programmes and projects under its direct control as well as managing programmes involving wider partnerships with external organisations.</p> <p>In accepting this role, the Council underwrites the financial performance and delivery of the activity along with compliance with the funding regulations. There may be a potential liability to the Council arising from its accountable body role due to the non-delivery of outputs, claiming of ineligible expenditure or from the disposal of assets prior to any clawback liability expiring.</p> <p>The Council may also act as the accountable body for external organisations where the Council transacts activities through its own accounts. In such cases, the Council is acting as an agent of the external organisation. However, the Council</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: September 2019</p> <p>Source of Assurance: Appropriate mechanisms in place to cover or minimise the impact of clawback of grant. A review of the monitoring arrangements around activities where the Council transacts the activities of external organisations through its own financial systems.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
Governance Risks					
				<p>may be responsible for certain liabilities if it is considered that it has not acted appropriately in dealing with the affairs of the external organisation.</p> <p>Action: The Council has put in place various measures to minimise the impact of any grant clawback, which include putting legal agreements and charges over assets in place to ensure that any grant clawback can be covered by disposal of an asset and by the provision of detailed expenditure verification and monitoring procedures.</p>	

No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
Reputational Risks					
R-01	Company does not follow the principles of public service	Company Directors	Low/ Significant	<p>The 7 principles of public service were laid down in the report by Lord Nolan. Whilst Council staff are expected to adhere to this level of integrity, the same should be expected of those companies controlled by the Council as they are perceived as being directly linked.</p> <p>Action: Company Directors should ensure that the ethos of the company includes the adherence to the 'Nolan' principles of public service.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: December 2019</p> <p>Source of Assurance: Feedback from company contact officers.</p>

No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
Contractual Risks					
C-01	A company fails to provide appropriate levels of service	Client Function	Medium/ Significant	<p>Where companies fail to provide the level of service expected from customers then this may adversely affect their ability to generate new business. Whilst the Council has some companies that trade externally, the majority of service provision is to the Council itself. The Council, therefore, has a choice of penalising its own company for non-performance, with a potential for then having to deal with a company in financial difficulties, or accepting a lower level of service.</p> <p>Action: the development of strong Client Functions that can monitor contract performance regularly and identify at the earliest possible stage any issues in delivery will ensure that service performance is of the required standard.</p>	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment: March 2019</p> <p>Source of Assurance: Assessment of activity by Client Managers on a regular basis</p>
C-02	A company does not comply with public contract regulations	Head of Procurement	Medium/ Medium	If a Council owned company fails to comply with public contract regulations resulting in a legal challenge to a contract the company has awarded and consequential legal costs and reputational impact.	<p>Target Risk Rating: Low/Low</p> <p>Anticipated date of attainment:</p>

No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
Contractual Risks					
				Action: To ensure that all Council companies where appropriate have either: <ul style="list-style-type: none"> appropriately skilled procurement and contracting staff who are experience in public contract regulations or; have access to these skills, competence and experience. 	Source of Assurance: Initial written confirmation from Companies' Chief Executive Statement of compliance in annual returns from companies or the statement of assurance to the shareholder.

Public Report

Birmingham City Council

Report to Cabinet Committee – Group Company Governance

5 June 2019



Subject:	Group Company Directors and Nominees – Guidelines	
Report of:	Corporate Director – Finance & Governance	
Relevant Cabinet Member:	Councillor Brigid Jones	
Relevant O &S Chair(s):	Councillor Sir Albert Bore	
Report author:	Assistant Director Development and Commercial	
Are specific wards affected? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No – All wards affected		
If yes, name(s) of ward(s):		
Is this a key decision? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Does the report contain confidential or exempt information? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report sets out for the Committee Members a draft guideline for officers and members tasked with representing the council on company boards either as non-executive directors or official board observers. The requirements and obligations will not replace or supersede director's duties in relation to their companies but are intended to ensure that officers and members have the skills to be able to undertake those duties, that duties are discharged appropriately and that the council is appraised on matters pertinent to its own business needs.

2 Recommendations

- 2.1 Members to consider the draft BCC Directors and Nominees Guidelines, appendix 1, and provide feedback for a final document.
- 2.2 Members to delegate approval of final content to the Deputy Leader for distribution to all council appointed directors and nominees.

3 Background

- 3.1 Members have previously discussed the role of council nominated directors and appointed representatives to the boards of the council's group of companies. Primarily, Committee has concentrated on ensuring that all existing appointees are aware of their duties as directors and a programme of training has been carried out. This programme will be further developed as appropriate and each new appointee will be required to attend and maintain a full awareness of their legal obligations when becoming a director.
- 3.2 The risk register for Group Company Governance has been considered by the Committee at its meetings and contains a number of risks that are mitigated through information and actions that can be communicated and/or managed through the council nominated non-executive directors and appointees, be they members or officers.
- 3.3 To provide assurance that such nominees are able to carry out their duties appropriately and efficiently Committee has previously discussed a list of requirements and obligations for each person appointed. These are set out in appendix 1, Guidelines for Council Group Company Representatives. This guidance will be reviewed and updated by the Committee at least annually to ensure that it is appropriate and provides the information required by the council to mitigate certain risks associated with Group Company Governance.
- 3.4 Assessment of the compliance against these guidelines will be reported to Committee.

4 Options considered and Recommended Proposal

- 4.1 This report suggests a new set of guidelines for each council appointed non-executive director or company board observer to assist with their duties and to provide the council with some assurance in relation to group company risk. The guidelines will be reviewed at least annually and are recommended as good practice.

5 Consultation

- 5.1 The Chair of the Committee has been consulted on this paper.

6 Risk Management

- 6.1 This report contributes to the actions being taken to manage the main risks that the Council faces as a result of its operation through and its partnership arrangements with external organisations. The report sets out the actions being taken to mitigate those risks.

7 Compliance Issues:

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

- a) The Council has created a number of entities or entered into a number of partnership arrangements to ensure that services can be delivered more effectively for local citizens. There is a requirement to ensure that members and officers nominated to board membership or as observers are equipped to perform those duties and assisted through a set of best practice guidelines. For the council there is an element of risk in any activity and provision and adherence to these guidelines will assist in understanding those potential risks faced and the actions being taken to mitigate them.

7.2 Legal Implications

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

7.3 Financial Implications

- a) There are no financial implications directly arising from this report.

7.4 Procurement Implications

- a) There are no procurement implications directly arising from this report.

7.5 Human Resources Implications

- a) There are no Human Resource implications directly arising from this report.

7.6 Public Sector Equality Duty

- a) There are no specific Equality Duty or Equality Analysis issues relating to the proposals set out in this report.

8 Background Documents

- 8.1 None.

DRAFT - Group Company Directors and Nominees - Guidelines

No	Action	Frequency	Risk Ref	Risk	Compliance Records
1	Nominated directors and board observers to undertake training fitting with their role and obligations. As a minimum each nominee will attend council provided training on the role of a director.	At least annually plus as reqd.	G-01	Nominated Directors do not have sufficient skills to fulfil their roles within a third party whilst also representing the Council's interests.	Register of training to be maintained by the individual appointee and by officers supporting the Group Company Governance Committee where such training is provided by the council. Directors and nominees to update central register on any company or privately provided/undertaken relevant training.
2	Directors will maintain a record of board meetings invited to and attended. Where appropriate, if a deputy attendee is nominated they will also maintain a record of attendance.	At least annually – depending on materiality (size, performance, risk)	G-02	Council nominated Directors fail to attend meetings	Record of attendance will be reported at least annually to the Group Company Governance Committee who will recommend continuation or replacement of nominee.
3	Board observers should not be part of the running of a company but should attend to view activity and answer/ask questions if invited to do so. Observers will undertake training including instruction on how the role of observer differs to that of director. Observers will maintain a record of board meetings invited to and attended. Where appropriate, if a deputy attendee is nominated they	At least annually – depending on materiality (size, performance, risk)	G-04	Observers at meetings act inappropriately	Training records will be maintained. Observers will be required to confirm that they have not taken on shadow-director roles during their appointment. A record of meeting attendance will be maintained.

No	Action	Frequency	Risk Ref	Risk	Compliance Records
	will also maintain a record of attendance.				
4	Directors and observers will report to the council (Legal Services) should they become aware of or concerned that the company is not operating within its Articles of Association.	As required	G-05	A company fails to operate within the terms of its Articles of Association	Training to directors and observers will include the powers that a company has to undertake certain activities and any constraints on those activities. Advice on these matters will be given by the council to directors and observers as requested. Shareholder actions will be recorded.
5	Directors and observers will report to the council (Legal Services) should they become aware of or concerned that the company does not have adequate controls to minimise the opportunity for fraud in place or should any fraud be reported to the board.	As required	G-06	The potential of a fraud taking place within a company	Larger companies will return a statement to the council on their approach to risk management and fraud. These returns will be made available to directors and observers. Training to directors and observers will include their role in reporting such matters. Advice on these matters will be given by the council to directors and observers as requested. Shareholder actions will be recorded.
6	Directors and Observers will inform the council (GCGC) of any changes to the senior management of group companies so that any potential implications can be assessed.	As required	G-13	Senior Managers within a company leave	A record of notices will be maintained and reported to GCGC as part of the regular update on group companies.
7	Directors and Observers are required to provide regular reports to the council (GCGC) should they become concerned or consider that	Bi-annual plus as required.	F-01	A company requires support from the Council to remain a going concern	Training for directors will provide knowledge of their responsibilities and the actions that they can take to gain assurance that performance is being

No	Action	Frequency	Risk Ref	Risk	Compliance Records
	the position of the company may give rise to financial difficulty and/or insolvency. This will include identification of any fall off in trading performance and the ability to challenge reports and performance at an appropriate level.				<p>delivered to the necessary level to remain solvent or the recognition that mitigating actions should be put in place where there is a drop in performance.</p> <p>Regular monitoring reports will be requested from directors/observers (dependent upon materiality and frequency of board meetings)</p>
8	Company Directors should ensure that the ethos of the company includes the adherence to the 'Nolan' principles of public service. Any concerns over this should be reported to the council (GCGC)	As required	R-01	Company does not follow the principles of public service	<p>The 7 principles of public service were laid down in the report by Lord Nolan. Company directors and observers will be made aware through training that the companies that they support as directors should operate to the same level of integrity.</p> <p>Reports of non-adherence will be received by the GCGC who will consider actions taken by the director and whether any further shareholder response is appropriate.</p>
9	Council nominated directors and observers may be requested to attend GCGC alongside either programmed or requested attendance by the company.	As required	-	General risk management. Opportunity to meet with and question the directors/observers will contribute to overall risk assessment and oversight of the group companies.	Attendance at Committee.

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