

Birmingham City Council

Report to Cabinet Committee – Group Company Governance

15 July 2021



Subject: Governance Review – CIPFA Article on Local Authority Companies

Report of: Assistant Director Inclusive Growth

Relevant Cabinet Member: Councillor Brigid Jones

Relevant O &S Chair(s): Councillor Mohammed Aikhlaq

Report author: Assistant Director Development & 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

In May 2021 CIPFA Published a report by Jo Pitt entitled “The Need for Guidance About Council Owned Companies”. The report provides links to and details on three local authorities who were the subject of recent Public Interest Reports (PIR) that wholly or in part referred to their group company holdings. This report to Cabinet Committee – Group Company Governance (CC-GCG) summarises the findings and notes the recommendations arising from the PIRs, it then considers how the findings may relate to BCC’s own group company governance arrangements.

CC - GCG will discuss the findings in the context of processes already in place and seek to ensure that the council implements improvements where appropriate in order to operate as exemplar in group company governance.

2 Recommendations

- 2.1 To note the information provided within the report and the analysis of PIR recommendations in appendix 1.
- 2.2 To discuss the governance arrangements, the reporting of such within the BCC Group structure and agree priority areas for further work.
- 2.3 To receive a future report on governance process enhancements, including an updated Group Company risk register in light of the experience in other councils.

3 Background

- 3.1 A recent article by Joanne Pitt, local government policy manager at the Chartered Institute of Public Finance & Accountancy (CIPFA) on 25 May 2021 and given at Appendix 2 wrote of the need for guidance about council-owned companies. This article gave examples where recent public interest reports have shown how failures around council-owned companies can have devastating consequences. Her report summarised that the potential for issues can generally be linked to organisational governance, leadership, capacity, financial stability, and culture, including:

- a lack of understanding of roles and responsibilities
- a lack of skills around commercial decision making
- an optimism bias that does not reflect the true position
- a lack of strategic rationale surrounding the creation of companies
- a reluctance to listen to challenges.

- 3.2 Two case studies of recent Public Interest Reports written by External Auditors, Grant Thornton, were provided – Nottingham City Council, Robin Hood Energy and Croyden MBC, Brick by Brick Ltd. The CIPFA article further draws on experience from the recent enquiry into Liverpool City Council. The main findings and recommendations from these reports are given below.

3.3 NOTTINGHAM – Robin Hood Energy Ltd - Grant Thornton Public interest report:

- 3.3.1 Nottingham City Council set up Robin Hood Energy (RHE) in 2015 as a wholly owned not-for-profit subsidiary, in order to tackle fuel poverty in the City of Nottingham and provide a realistic alternative to the 'big 6' energy suppliers. As part of this, it aimed to provide better terms to users of pre-payment meters. As expected, the Company made losses in its early years but reported a small profit of £202,000 in 2017/18 (although this was subsequently amended to a loss of £1.6m as a result of a prior period adjustment as part of the 2018/19 audit). In 2018/19, it made a large loss of £23.1m, giving it cumulative losses to 31 March 2019 of £34.4m.
- 3.3.2 Despite having concerns about the quality of the financial information being produced by the Company, its deteriorating financial performance and therefore its ability to make repayments, the Council decided to make significant additional loans to the Company on several occasions during 2018/19 and 2019/20. The Council faced a choice between continuing to support the company in the hope of recovery or not to support and face losing the investment to date. The PIR

considered this a scenario brought about in large part by the council's own inadequacies in holding the Company to account.

- 3.3.3 The PIR makes a number of recommendations for Nottingham city Council to address in relation to the specific issues with RHE. Appendix 1 shows the specific recommendations from the report and how these might translate to a more general recommendation for assessment against arrangements within BCC.

3.2 London Borough of Croydon - Report in the Public Interest concerning the Council's financial position and related governance

- 3.2.1 The report into the financial position of Croyden resulted in the bulk of the recommendations for improvement. There was one area in relation to a subsidiary company. That company is Brick by Brick Croyden Ltd. This company was set up as a limited company with the Council being the sole shareholder to deliver housing development aiming to address the shortage of housing and the initial business case was presented to Cabinet in September 2014 with the governance arrangements being reported to Cabinet in June 2016. By the 2020/21 Budget, the governance arrangements had been strengthened through the Shareholder Investment Board and a Client Monitoring Group. The external auditors in their review found inadequate evidence within the Cabinet minutes of any degree of challenge to the company including clear governance arrangements on how its interests (as sole shareholder) are safeguarded and the extent to which the original aims of the business plan are being achieved. There was also an inadequate formal reporting mechanism from the Council nominated Directors back to the Council.
- 3.2.2 The recommendations from this report, together again with a recommendation on how these can be adopted or are already incorporated within BCC are given in appendix 1.

3.3 Liverpool City Council – Relevant Findings from Best Value Inspection Report

- 3.3.1 LCC delivers some services through a range of Local Authority Trading Companies (LATCo's). They were not a major focus of the Best Value Inspection and the team only reviewed the two that were integral to the Inspection, Liverpool Streetscene Services Ltd (LSSL) and Liverpool Foundation Homes Ltd (LFH). The report noted similar failings at Liverpool to those identified at Nottingham and Croyden, including accumulation of LCC funded debt, reporting and lack of understanding of good company governance.
- 3.3.2 The report recommendations were far wider than group companies but within them was included the recommendation below. The elements of this are already included within appendix 1 as they echo findings and recommendations made by Grant Thornton within the PIRs to Nottingham and Croyden:
- In the first 24 months, review the roles and case for continuing with each subsidiary company of LCC. For those companies that it is agreed to continue, ensuring that the Directors appointed by LCC are appropriately skilled in either technical or company governance matters to ensure each Board functions effectively under the terms of an explicit shareholder

agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate.

4 Options considered and Recommended Proposal

- 4.1 This report provides information to Members on recent findings by auditors in three other local authorities and invites members to consider these in relation to the arrangements within Birmingham. Group Company Governance is the remit of this Cabinet Committee and therefore the recommended action. There will be options concerning how improvements are implemented and these are for discussion and agreement with Members, officers and BCC Internal Audit.

5 Consultation

- 5.1 This report consults Members, makes recommendations and invites discussion on implementation. The implementation phase of any resulting improvements will undertake consultation with stakeholders as appropriate.

6 Risk Management

- 6.1 This report seeks to review existing governance arrangements in light of recent PIRs issued to three other local authorities. These actions and implementation of improvements and enhancements will contribute to the risk management process of the Group Company position.

7 Compliance Issues:

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

- 7.1.1 The Council provides services to community through a number of different vehicles. This report provides information on the governance structure through which service delivery is being provided.

7.2 Legal Implications

- 7.2.1 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.

7.3 Financial Implications

- 7.3.1 Group company governance is a vital tenet of sound group financial management. Improvements to the process and operation as a "best in class" authority in this regard will contribute to the overall reduction of financial risk for the Council
- 7.3.2 Where implementation of improvements have a financial impact then that will be considered at the decision point for that action, be it by member or officer delegation. None of the elements within Appendix 1 have a material financial impact.

7.4 Procurement Implications

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

7.5 Human Resources Implications

- 7.5.1 There are no direct human resources implications arising from this report.

7.6 Public Sector Equality Duty

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

8 Appendices

- 8.1 Appendix 1 – BCC Review of Public Interest Report recommendations
- 8.2 copy of 25 May 2021 CIPFA Article by Joanne Pitt: The need for guidance about council-owned companies

9 Background Documents

See Appendix 2