

# **BIRMINGHAM CITY COUNCIL**

## **CABINET COMMITTEE - GROUP COMPANY GOVERNANCE**

**THURSDAY, 21 NOVEMBER 2019 AT 15:00 HOURS**  
**IN ELLEN PINSENT ROOM, COUNCIL HOUSE, VICTORIA**  
**SQUARE, BIRMINGHAM, B1 1BB**

### **A G E N D A**

1 **APOLOGIES**

To receive any apologies.

2 **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.

**3 - 8**

3 **PUBLIC NOTES OF THE LAST MEETING**

Public Notes of the last meeting to be confirmed.

**9 - 16**

4 **TRAINING UPDATE FOR COMPANY**

Information Update

**17 - 24**

5 **GROUP COMPANY GOVERNANCE - SECTION 24 RECOMMENDATIONS**

Item Description

**25 - 28**

6 **COMPANY UPDATE**

Information Update

**29 - 56**

7 **GROUP COMPANY RISK REGISTER**

Information Update.

8 **INSURANCE POSITION AND IMPLICATIONS FOR COUNCIL DIRECTORS**

Matthew Davis, Finance Manager, Insurance to report.

9 **DATE OF NEXT MEETING**

The next meeting is scheduled to take place on Thursday, 16 January 2020 at 1400 hours in HMS Daring Room.

10 **OTHER URGENT BUSINESS**

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.

11 **PERFORMANCE BIRMINGHAM LIMITED - COMPANY PEN PORTRAIT**

Report of Alison Jarrett, AD Commercial and Development, Finance and Governance.

12 **EXCLUSION OF THE PUBLIC**

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

**P R I V A T E   A G E N D A**

13 **PRIVATE NOTES OF THE LAST MEETING**

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

14 **PERFORMANCE BIRMINGHAM LIMITED - PRIVATE**

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

15 **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.

# BIRMINGHAM CITY COUNCIL

## CABINET COMMITTEE – GROUP COMPANY GOVERNANCE

Thursday 12 September 2019 at 1300  
hours, HMS Daring Room, Council  
House, Victoria Square, Birmingham B1  
1BB

### Attendance:

Councillor Tristan Chatfield, (Chair for the meeting)  
Councillors: Jayne Francis and Gareth Moore

### Also in Attendance:

Connie Price	Head of Service – Legal
Georgina Dean	Solicitor – Legal
Richard Tibbatts	Contract Management, Corporate Procurement
Ian Benson	Interim Managing Director - Acivico Group
Marie Reynolds	Committee Services

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### ELECTION OF CHAIR FOR THE MEETING

- 1 As Councillor Brigid Jones (Deputy Leader) Chair was unable to attend the meeting Councillor Jayne Francis nominated Councillor Tristan Chatfield to Chair the meeting.

### APOLOGIES

- 2 Apologies were submitted on behalf of Councillor Brigid Jones (Chair – Deputy Leader) and Councillor Jon Hunt for their inability to attend the meeting.

### CHANGE OF MEMBERSHIP OF THE COMMITTEE

It was noted that since the last meeting there had been a change of membership - Councillor Gareth Moore (Conservative) replaced Councillor Debbie Clancy.

- 3 **RESOLVED:-**

The Committee noted the change of membership.

**DECLARATIONS OF INTERESTS**

- 4 There were no declarations of interest.
- 

**PUBLIC NOTES OF THE LAST MEETING**

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

**MEMBERSHIP AND GOVERNANCE OF THE COMMITTEE**

The following report of the City Solicitor was submitted to Cabinet on 25 June 2019 and was approved.

(See document No. 1)

- 6 **RESOLVED:-**

The Committee noted the information.

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**TRAINING UPDATE**

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

(See document No. 2)

Connie Price, Head of Legal Services, provided Members with an update on the current and proposed training activity provided to members and officers in relation to their duties and responsibilities as directors and trustees of companies and charitable organisations.

The following areas of proposed training were highlighted:-

- Second training session on Director Roles and Responsibilities – further details of dates and numbers of invitees to be circulated to Committee Members as soon as agreed.
- Basic Trust and Charity Law Training – scheduled for 24 October 2019 – invitations are due to be sent out imminently.
- High Profile Director Training – in the process of reviewing BCC's most 'high profile' companies with a view to provide additional, specifically tailored Director training. This would potentially involve training from a Commercial Director and a Health and Safety expert. It would be set at a higher level than the roles and responsibilities training and would aim to have a real life (but anonymised) case study to follow through. Further updates would be presented to the Committee when available.

A discussion ensued relating to training dates and the difficulties in getting all members to attend at one time. Councillor Chatfield suggested that the training dates could be set on the morning of the City Council meeting to ensure a reasonable turnout. Following a comment from Councillor Moore that members could struggle on that day, Connie agreed to look into matter.

7

**RESOLVED:-**

The Committee noted the information.

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**COMPANY UPDATE**

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

(See document No. 3)

Richard Tibbetts, Head of Category, Strategic Services, referred to the details of the changes in the companies as set out in 3.2 of the report.

Further reference was made to 3.3 of the report which listed the 21 companies that had submitted the annual accounts.

It was noted that 3.4 of the report highlighted that further work was being undertaken to try and capture information on charities that were associated with maintained school 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 further information was being sought on the constitution, aims and members of the charity.

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**RESOLVED:-**

The Committee noted the report.

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**GROUP COMPANY GOVERNANCE – SECTION 24 RECOMMENDATIONS**

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

(See document No. 4)

Richard Tibbetts, Head of Category, Strategic Services introduced the report. He stated that as a new report was due shortly which may not include a risk and therefore this may be the last report submitted to this Committee.

The Chair stressed the importance of the continuation of regular company updates being presented to the Committee. Connie Price agreed that this would be the case confirming that the Assistant Director, Finance would report to this Committee on a regular basis.

9 **RESOLVED:-**

The Committee noted the progress in delivering the necessary actions to mitigate the issue raised by the External Auditor.

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**GROUP COMPANY GOVERNANCE RISK REGISTER**

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

(See document No. 5)

Richard Tibbetts, Head of Category, Strategic Services referred to G-01 and G-02 detailed in Appendix 1 and the draft pro-forma detailed in Appendix 2 of the report.

Following a discussion relating to the suitability of the pro-forma, directors' attendance levels and the associated impact and issues, it was suggested that there was a more local reporting mechanism in place in order to capture the relevant information in a timely manner.

Richard agreed to feedback to Alison and Connie to further explore.

10 **RESOLVED:-**

- a) The Committee considered the information provided;
  - b) It was agreed that the judgement on the risks were reasonable and it was assessed that the mitigating actions were sufficient to reduce the risks to the Council to an acceptable level.
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**DATE OF NEXT MEETING**

- 11 The next meeting is scheduled to take place on Thursday, 7 November 2019 at 1400 hours in HMS Daring Room.
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**OTHER URGENT BUSINESS**

**ACIVICO**

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

(See document No. 6)

12      **RESOLVED:-**

The Committee noted the report.

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**EXCLUSION OF THE PUBLIC**

13      **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.

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## Public Report

## Birmingham City Council

## Report to Cabinet Committee – Group Company Governance

21 November 2019



**Subject:** Update on Training – A Report for Information

**Report of:** Suzanne Dodd, Acting City Solicitor, Finance & Governance

**Relevant Cabinet Member:** Councillor Brigid Jones

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

**Report author:** Connie Price, Head of Law

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 type="checkbox"/> Yes	<input checked="" 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 an update on the recent training delivered to members and officers in relation to their duties and responsibilities as directors and trustees of companies and charitable organisations. The report also provides an update on future pipeline training activities.

## 2 Recommendations

2.1 Members are asked to:

- note the information provided

### **3 Background**

- 3.1 The Council owns, appoints to or otherwise has an interest or involvement in more than 300 organisations made up of limited companies, charities, trusts and other entities.
- 3.2 The Committee has requested a programme of training to ensure Council nominated/appointed directors, observers and trustees are adequately equipped to perform the duties required of them.
- 3.3 The Committee has directed that all newly appointed Council nominated directors, observers and trustees shall receive mandatory training in their roles and responsibilities as directors/trustees.
- 3.4 A training event was carried out in January 2019 focusing on the roles and responsibilities of Directors in limited companies. Feedback from that training supported the Committee's opinion that a further session would be required to focus in roles and responsibilities of trustees in charitable organisations.
- 3.5 An update of the recent training events as well as the proposed future training activities are outlined in Appendix 1.

### **4 Options considered and Recommended Proposal**

- 4.1 The report is for consideration

### **5 Consultation**

- 5.1 The Chair of the Committee has been consulted.

### **6 Risk Management**

- 6.1 Failure to provide directors, observers and trustees with adequate training could result in non-compliance with statutory requirements and personal liability. A robust and comprehensive programme of mandatory training mitigates this risk.

### **7 Compliance Issues:**

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

The report is consistent with the Council's commitment to improve its corporate governance responsibilities.

#### **7.2 Legal Implications**

- a) None – the report is for information only

#### **7.3 Financial Implications**

- a) None

#### **7.4 Procurement Implications**

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

#### **7.5 Human Resources Implications (if required)**

- 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**

8.1 None

#### **Appendix 1**

- Training Update November 2019



## Appendix 1 – Training Update

### Cabinet Committee – Group Company Governance Report providing an Update On Training Activities

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#### Trust and Charity Event – Thursday 24 October 2019

##### Overview

- The Basic Trust and Charity training event took place on Thursday 24 October.
- The event was well attended with a total of 45 attendees on the day. Of these, 21 were Members (including three members of the Trusts and Charities Committee and two former members who hold trusteeships). The remaining attendees were made up of officers who are either appointed as a Trustee to an organisation or are involved in this area as part of their daily role.
- The aim of the training was to provide an introduction to Trusts and Charities law and to equip trustees with knowledge and understanding of what that role involves.
- The training content covered the following areas:
  - Eligibility and considerations to take into account before becoming a trustee
  - Trustee duties and responsibilities and how these differ from Directors
  - Personal Liability
  - Issuing Grants
  - Decision making as a Trustee
  - Charitable Structures
  - Charities and Fraud

##### Feedback

- Attendees were asked to complete a feedback form after the event and of the 37 forms received the majority responded very positively to the training.
- A summary of the feedback received is below
  - 100% of the responses said they found the training to be useful and all rated it at 4 or 5 out of 5
  - Of the 37 responses, 23 declared that their confidence in performing their role relating to charities had improved as a result of the training
  - 100% of the responses were satisfied with the training arrangements and pre-event information
- Many attendees added written comments on the forms, a selection of which are set out below:

*'The paperwork distributed is very useful; especially if difficult decisions need scrutinising. The paperwork will act as a catalyst for guidance and advice.'*

*'I should have had this training 27 years ago.'*

*'The tutor was very knowledgeable and it was good to have PowerPoint slides to recap and reflect.'*

*'Lots of good examples highlighting the point.'*

*'Provided useful background, in particular the issue of conflicts.'*

*'I am more aware of responsibilities.'*

*'The training was informative – especially in our role as finance at BCC in compiling yearly Trust/Charity Accounts.'*

*'My knowledge and awareness has increased.'*

*'Plenty of questions to take up with my organisation.'*

*'Excellent speaker.'*

*'Opened up a train of thought for the future.'*

*'Really worthwhile.'*

*'Very well presented and explained.'*

*'Practical examples helped – good presentation.'*

*'Details on public benefit helped.'*

*'Better understanding of the overall framework of law and clarity of roles.'*

*'Additional knowledge of what is expected of me as a trustee.'*

### **1:1 Sessions**

- A 1:1 training session was provided to an Assistant Director in the Inclusive Growth directorate who has been newly appointed as a Director to the company Birmingham Airport Holdings Limited.

### **Future Pipeline Training Activities**

- Further 1:1 sessions will be carried out as required, particularly in relation to staff changes within Inclusive Growth and the new directorships which will be required as a result of this.
- Feedback received from the Trustee training event requested that some training on GDPR would be helpful. The Committee may wish to give further consideration to this.
- A request for regular refresher 'Trusts and Charities' training was also made which can be incorporated going forward
- The Trusts and Charities Committee have shown an interest in having a repeat session in the new year of the recent Trusts and Charities Training with the same provider. Their legal representative is liaising directly but it may be an opportunity to invite again those who could not attend the first session.

- A second 'Director's Roles and Responsibilities' training session is anticipated for the new year to follow the first session in January 2019. This will act as a refresher for those who wish to attend again as well as a mop up session for non-attendee first time round.
- Further consideration is being given to some Commercial Director training for directors of the most 'high profile' companies the Council is involved with. This would involve training from a Commercial Director and a Health and Safety expert. It would be at a higher level than the roles and responsibilities training





## Public/Private Report

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

21 November 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:** 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 summarises the progress 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 To note the progress in delivering the necessary actions to mitigate the issue raised by the External Auditor.

- 2.2 To approve the cessation of reporting on the progress against this requirement as a separate item for Cabinet Committee - Group Company Governance (CCGCG).
- 2.3 To note that the understanding of the financial position of the council's related companies and the Council's responsibility for their liabilities will form part of the risk register reported separately to CCGCG.

### **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 was required to monitor its response to the recommendation to ensure that the proposed action to mitigate the weaknesses identified has been progressed. To date CCGCG has received a report on the s24 recommendations at each of its meetings. Attached at Appendix 1 is the final progress report.
- 3.4 The 2018/19 audit did not repeat the finding nor did it make recommendations in relation to the governance of group companies.

### **4 Options considered and Recommended Proposal**

- 4.1 This report provides information to Members on the actions that have been 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.
- 4.2 The actions taken to address the matters are in place and a risk relating to group company understanding will be placed on the risk register.

## **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. These actions will remain under review within the CCGCG Risk Register reported at each meeting.

## **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



## Closure Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
<b>Sec 24 Recommendations</b>					
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><b>November 2018:</b> 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><b>December 2018:</b> 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><b>February 2019:</b> Acivico Limited presenting a business plan update</p> <p><b>June 2019:</b> Acivico Ltd and Childrens Trust present business plan 2019/20.</p> <p><b>Sept 2019:</b> Business update from Acivico Ltd and CGCG to set out engagement plan for next period.</p>

## Closure Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
					<b>November 2019:</b> Action embedded. Risk of non-performance to transfer to CCGCG Risk Register
		The Intelligent Client Function is more robustly developed for some subsidiary bodies than others and the role of contact officers requires formal 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><b>November 2018:</b> The role of client functions will be developed and implemented during the year to ensure that there remains a strong focus on the 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><b>January 2019:</b> 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><b>June 2019:</b> In-fill training provided. GCGC receives report on directors role in respect of their obligations to the council/shareholder role.</p> <p><b>Sept 2019:</b> New appointments confirmed at Council. Training requirements assessed.</p> <p><b>November 2019:</b> Action embedded. Risk of non-performance to transfer to CCGCG Risk Register</p>

## Closure Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
		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><b>November 2018:</b> 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><b>December 2018:</b> An updated risk register of the Council's involvement in companies to be presented to CC-GCG at its meeting on 12 December.</p> <p><b>January 2019:</b> 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><b>February 2019:</b> An updated risk register of the Council's involvement in</p>

## Closure Report – Section 24 Recommendation

Rec No	Recommendation	Proposed Actions	Due Date	Responsible Officer	Progress in implementation
					<p>companies to be presented to CC-GCG at its meeting on 13 February.</p> <p><b>April 2019:</b> 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><b>June 2019:</b> An updated risk register of the Council's involvement in companies presented to CC-GCG at its meeting on 5 June 2019.</p> <p><b>Sept 2019:</b> An updated risk register of the Council's involvement in companies presented to CC-GCG at its meeting on 12 Sept 2019. Note that CGCG decided to retain risk of Directors training to reflect the changes to Directors from time to time and that on-going training is a priority.</p> <p><b>November 2019:</b> Action embedded. Risk of non-performance to transfer to CCGCG Risk Register</p>



## Public Report

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

21 November 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:** 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**

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, where a termination or appointment is made that is not a BCC member, officer or associate it is not noted.

1. *IB (Birmingham) Limited- formerly known as Innovation Birmingham Limited*  
The holding company limited by guarantee is wholly owned by the City Council. The company, which operated through its subsidiaries, ceased to trade on 18 April 2018 when its subsidiary companies were sold, and the company then became dormant. In line with the report to Cabinet 6<sup>th</sup> March 2018 which considered the sale, it is intended to now dissolve the company using a members' voluntary liquidation.
2. GALLERY 37 FOUNDATION LTD (05846196) – Termination of Councillor Alberta Margaret Waddington as a director on 3 May 2018. Notification by Companies House on 12 September 2019.
3. BIRMINGHAM AIRPORT HOLDINGS LIMITED (03312673) – Termination of appointment of Waheed Nazir as a director on 23 September 2019.
4. BIRMINGHAM CITY PROPCO LIMITED (10989837) – Appointment of Mrs Kathryn Elizabeth James as a director on 23 October 2019.

Additional changes yet to be confirmed at Companies House as a result of the resignation of Waheed Nazir are:

5. Arden Cross Ltd - Ian McCleod to be appointed
6. Birmingham City Propco Ltd - Kathryn James to be appointed
7. Paradise Circus General Partner Ltd - Guy Olivant appointed
8. Paradise Circus Management Company Ltd – Guy Olivant appointed
9. Paradise Circus Nominee 1 Ltd – Guy Olivant appointed  
Paradise Circus Nominee 2 Ltd – Guy Olivant appointed

Company	Audit unqualified sign-off (where applicable)
Acocks Green Village Bid Company Limited (07845519)	Micro-accounts - unaudited
Harborne Village Bid Ltd (11123874)	Unaudited - exempt
St Basil's (03964376)	Audited - unqualified
Gordon And Phillips Words And Pictures Company Ltd (08144984)	Unaudited - exempt
Bridge Street Management Limited (02286322)	Unaudited - exempt

Frontier Development Holdings Limited (09970140)	Dormant accounts - unaudited
Castle Vale Neighbourhood Partnership Limited (05140750)	Audited - unqualified
Icknield Port Loop Llp (Oc397591)	Audited - unqualified
Birmingham City Propco Limited (10989837)	Audited - unqualified
Acivico (Building Consultancy) Limited (07918763)	Audited - unqualified
Acivico (Design, Construction And Facilities Management) Limited (07918913)	Audited - unqualified
Acivico Limited (07792304)	Audited - unqualified
The Greater Birmingham And Solihull Local Enterprise Partnership Limited (07635395)	Audited - unqualified
The Greater Birmingham And Solihull Local Enterprise Partnership Limited (07635395)	Audited - unqualified
The Greater Birmingham And Solihull Local Enterprise Partnership Limited (07635395)	Audited - unqualified
The Greater Birmingham And Solihull Local Enterprise Partnership Limited (07635395)	Audited - unqualified
Retail Birmingham Limited (06181225)	Audited - unqualified
Birmingham Disability Resource Centre (02897250)	Audited - unqualified

- 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. Each finding will be added to the master-list of company and/or charitable interests.

#### **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 Report

## Birmingham City Council

Report to Cabinet Committee – Group  
Company Governance

21 November 2019



<b>Subject:</b>	Group Company – Risk Register	
<b>Report of:</b>	Assistant Director – Commercial and Development, Finance & Governance	
<b>Relevant Cabinet Member:</b>	Councillor Brigid Jones	
<b>Relevant O &amp;S Chair(s):</b>	Councillor Sir Albert Bore	
<b>Report author:</b>	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. Report on training update to be considered at this meeting – results and comments to be added to the risk register.
- G-02 - Council nominated Directors fail to attend meetings  
Pro-forma for completion by all nominated directors was not supported at the previous meeting. It is proposed therefore to circulate all nominated directors/board observers at half annual intervals to enquire on any company related and attendance issues.

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?**

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**

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**

There are no financial implications directly arising from this report.

### **7.4 Procurement Implications**

There are no procurement implications directly arising from this report.

### **7.5 Human Resources Implications**

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

### **7.6 Public Sector Equality Duty**

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

## **8 Appendix**

- 8.1 Appendix 1 – Risk Register





## Group Company Directors and Nominees - Guidelines

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
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><b>Action:</b> 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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> 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><b>Source of Assurance:</b> 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
<b>Governance Risks</b>					
				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><b>Action:</b> 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</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p><b>Source of Assurance:</b> 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
<b>Governance Risks</b>					
				<p>officers who may support Directors on 24 January 2019.</p> <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</p>	<p><b>Target Risk Rating:</b> Low/Medium</p> <p><b>Anticipated date of attainment:</b> 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>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>with legal or financial qualifications, and consequently their penalties/sanctions may be higher.</p> <p>The failure to provide returns on a timely basis may be indicative of performance issues which may not have been detected.</p> <p><b>Action:</b> 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</p>	<p><b>Source of Assurance:</b> Responses from company secretaries Review of information held on Companies House</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>companies that they have met the relevant filing date.</p> <p>A monitoring database has been implemented to record information from Companies House as returns are made.</p>	
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><b>Action:</b> Observers at meetings should receive training on the</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p><b>Source of Assurance:</b> 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
<b>Governance Risks</b>					
				<p>same basis as Directors so that they understand the difference between the two roles.</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 observer.</p>	
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><b>Action:</b> 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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> Training to be cascaded to current and potential directors at the earliest opportunity with regular refresher sessions for existing and new directors.</p> <p><b>Source of Assurance:</b> Record maintained of those undertaking training.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
G-06	The potential of a fraud taking place within a company	Chief Finance Officer	Low/High	<p>Inherent within any organisation is the risk of fraud taking place. Within organisations it is usual for 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><b>Action:</b> 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</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> March 2019</p> <p><b>Source of Assurance:</b> 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
<b>Governance Risks</b>					
				<p>major company has to consider its approach to risk management appropriately.</p> <p>Risk assurance statements from the Council's larger companies were considered by CC-GCG on 16 January and by Audit Committee on 29 January.</p>	
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><b>Action:</b> 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.</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> March 2019</p> <p><b>Source of Assurance:</b> 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
<b>Governance Risks</b>					
				Responses from the Council's larger companies were considered by CC-GCG on 16 January and by Audit Committee on 29 January.	
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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> April 2019</p> <p><b>Source of Assurance:</b> Return of draft and final questionnaires, management accounts during the year and companies' draft accounts by 29 April 2019.</p> <p>Y/end 2019 – all data required was received in time for the preparation of the council's financial statements. Where there were issues, both within or without the control of the company (eg pensions information) liaison with that company and feedback were given.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p><b>Action:</b> 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 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%	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> July 2019</p> <p><b>Source of Assurance:</b></p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>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, 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><b>Action:</b> 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>	<p>Information is sought on the overall structure of entity boards when the Council considers nominating individuals to external bodies.</p> <p>Sept 2019 Update – review of all bodies for accounts consolidation achieved.</p>
G-10	A company does not have appropriate insurance covers in place	Company Directors	Low/ Significant	Companies must have statutory insurance covers in place and should properly assess their financial tolerance to insurable risks. Financial risks which the	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> January 2019</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>company is unable to absorb should be transferred to the insurance market where insurance protection may be purchased.</p> <p><b>Action:</b> In the creation of companies, the Council will need to ensure that consideration is 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>	<p><b>Source of Assurance:</b> Information is sought through the return of the risk assurance questionnaire considered by Audit Committee.</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><b>Action:</b> That individual risks and the associated mitigating actions</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> February 2019 and ongoing</p> <p><b>Source of Assurance:</b> Risks are considered in detail on a regular basis and the information provided.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				are challenged on a regular basis and additional information sought where appropriate.	
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	<p>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 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><b>Action:</b> The Council continue to identify all potential relationships with external bodies.</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> October 2019 and ongoing</p> <p><b>Source of Assurance:</b> 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	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 short space of time may lead to operational difficulties and delays in making appropriate decisions in respect of staffing, resources, contracts etc..	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> Ongoing</p> <p><b>Source of Assurance:</b></p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<b>Action:</b> 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 ensure that there are appropriate succession plans in place to mitigate any adverse impacts.	Information to be sought through the gathering of information from companies.
No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
<b>Financial Risks</b>					
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"> <li>The reputational impact on the Council may be significant</li> <li>The impact on local businesses may be significant if the</li> </ul>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> 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><b>Source of Assurance:</b> The oversight of regular monitoring reports and the review of business</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>company were to be unable to pay its creditors impacting directly on the local community</p> <ul style="list-style-type: none"> <li>• The Council may have given guarantees to the company to enable it to continue trading which it will have to honour</li> <li>• The Council may face a loss of critical services that it will have to replace at a higher cost</li> <li>• The Council may have to meet a pension guarantee if staff were originally TUPE'd from the Council</li> </ul> <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>	plans and final accounts will give added oversight of performance so that downward trends can be identified at the earliest opportunity.

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p><b>Action:</b> 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> <p>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.</p>	
F-02	The council does not arrange its tax affairs to minimise its level of corporation tax.	Chief Finance Officer	Medium/Medium	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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> July 2019</p> <p><b>Source of Assurance:</b> Advice received from external tax advisers</p>



No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<b>Action:</b> Review the tax position across the Council's group and seek advice from external tax advisers.	
F-03	A company provides guarantees/indemnities to a third party	Chief Finance Officer	Low/ Medium	<p>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> <p><b>Action:</b> Information will be sought from the companies consolidated into the Council's Group Accounts to assess whether any guarantees have been given.</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> April 2019</p> <p><b>Source of Assurance:</b> Responses to questionnaires from group companies</p>
F-04	Movement away from the Council's terms and conditions of employment	Head of HR	Low/ Significant	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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> 31 March 2019</p> <p><b>Source of Assurance:</b> Feedback from Companies.</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<b>Action:</b> The Council monitors the terms and conditions of employment of Council companies.	
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 £3m, who may have considered that they did not have to contribute, may have been in breach of the levy requirements.</p> <p><b>Action:</b> Seek information from the Council's subsidiary companies to determine whether they have been contributing to the Apprenticeship Levy.</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> April 2019</p> <p><b>Source of Assurance:</b> Information sought from subsidiary companies through the financial information questionnaire for consolidation purposes.</p>
F-06	A company does not have a viable business plan/budget	Company Director	Medium/ Significant	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	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> September 2019</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>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><b>Action:</b> 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 resources are being used appropriately.</p>	<p><b>Source of Assurance:</b> Receipt of business plans from companies with oversight by the Group Company Governance committee for major entities.</p>
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</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> September 2019</p> <p><b>Source of Assurance:</b> 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</p>

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				<p>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 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><b>Action:</b> 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</p>	organisations through its own financial systems.

No	Risk	Risk Owner	Current Level of Risk	Comments and Current Action	Long Term Aim
<b>Governance Risks</b>					
				verification and monitoring procedures.	

No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
<b>Reputational Risks</b>					
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><b>Action:</b> Company Directors should ensure that the ethos of the company includes the adherence to the 'Nolan' principles of public service.</p>	<p><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> December 2019</p> <p><b>Source of Assurance:</b> Feedback from company contact officers.</p>

No	Risk	Risk Owner	Current Level of Risk	Current Action	Long Term Aim
<b>Contractual Risks</b>					
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><b>Action:</b> 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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b> March 2019</p> <p><b>Source of Assurance:</b> 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><b>Target Risk Rating:</b> Low/Low</p> <p><b>Anticipated date of attainment:</b></p>

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



## Officials Indemnity Insurance

Cover for compensatory damages recoverable from the **Insured** arising out of a **wrongful act** in connection with the **business**.

Cover includes defence costs where a claim is brought but liability or the extent of damages is denied.

Indemnity Limit            £5,000,000.

**Wrongful act**            Any actual or alleged breach of duty, negligence, error or omission - but excludes deliberate, reckless, dishonest, fraudulent or malicious acts.

**Insured**                    Any person who becomes a **member** or **employee** while acting on behalf of the Council.

Commissions or boards under the jurisdiction of the public authority.

Governing body and any person who becomes a trustee or employee of an LEA within the area of the public authority.

**Member**                    A person elected to serve as an official of the public authority.

A person appointed to serve on any committee or sub-committee of the local authority.

**Employee**                    A person under a contract of service with the public authority.

A self- employed person while performing work for the public authority.

A person volunteering to assist, co-opted, seconded or appointed to assist the public authority.

A member of a joint management committee scheme formed to assist in the business of the public authority.

**Business**                    Official activities of the public authority.

The activities of any member or employee serving in the capacity of a **nominated representative** where the public authority is entitled to approve such activities for any not- for- profit organisation or organisation existing for any educational, research promotional, training or similar non-profit making purpose.

The conduct of elections.

### Nominated Representative

Any **member** or **employee** acting at the request or direction of the public authority as a director, officer or trustee of or in any managerial or supervisory capacity of an **outside entity**.

<b>Outside Entity</b>	Any body, corporate trust association, not-for-profit organisation or committee existing for any profession, trade or research, promotional, training, educational or charitable purpose not under the authority or control of the Council.
<b>Excluded activities</b>	<p>Airports</p> <p>Hospitals</p> <p>Clinics</p> <p>Jail or detention facilities</p> <p>Financial services</p> <p>Pension plans</p>
<b>Exclusions</b>	<p>Bodily injury or property damage</p> <p>Deliberate acts</p> <p>Dishonesty</p> <p>Fines or penalties</p> <p>Claims where the outside entity provides cover</p>

## Public Report

## Birmingham City Council

## Report to Cabinet Committee – Group Company Governance

21 November 2019



**Subject:** Performances Birmingham Ltd - Company Pen Portrait

**Report of:** Alison Jarrett, AD Commercial and Development, 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**

Performances Birmingham Ltd (PBL) is to present to Members on the private agenda. This report provides Members with a pen portrait of the company and its current major capital development.

**2 Recommendations**

2.1 Members are asked to note the information provided

### 3 Background

3.1 PBL is a company limited by guarantee from Birmingham City Council as sole guarantor. The organisation's objectives are:

- To promote and present concert performances of classical, popular, and contemporary music, complementary to those of the City of Birmingham Symphony Orchestra (CBSO), and of world-class calibre; and
- To educate the public by promoting, fostering, and encouraging the knowledge, understanding, and appreciation of the arts, particularly music, providing and education programme for this purpose.

3.2 The company receives a revenue support grant from the council as shown in the table below:

	2019/20	2020/21	2021/22	2022/23	2023/24
BCC Core Grant	£1.27m	£1.15m	£1.06m	£1.00m	£0.95m

During 2019 PBL had 258 employees on full, part-time and variable contracts. At 31 March 2019 (audited) the charity held net assets of £4.024m.

3.3 Performance Birmingham Ltd (PBL) manages and operates Symphony Hall which is one of the finest concert halls in the world. Presenting a world-class programme of music and education, it is a major cultural draw for Birmingham and is the home of the City of Birmingham Symphony Orchestra (CBSO). Over 350,000 audiences enjoyed performances at SH in 2015, across a programme of classic, jazz, folk, rock, pop, comedy and community events, high levels of audience continue to date.

3.4 PBL is about to embark upon a £13.5m capital construction project, "Making an Entrance". This construction project extends and re-models SH's public spaces to create a building that is economically sustainable, vibrant, and connected to the public realm.

Key physical components of the development are:

- An extended glass frontage into Centenary Square
- 750m<sup>2</sup> additional space
- A dedicated front door, separate to the ICC entrance
- New bars and hospitality
- 588m<sup>2</sup> of underused space brought into commercial and learning use
- New learning, education and meeting spaces
- New corporate hospitality suites
- A relocated box office
- Enhanced FOH (front of house) performance space

In order to fund this development, PBL is undertaking a fund-raising programme and on 9<sup>th</sup> October 2019 Cabinet approved a commercial loan facility of up to £3m to assist with the completion of the project should this fund raising not reach the required level.

### **3.5 Key personnel and board members within PBL are:**

Mr Nick Reed – CEO

Mr Nick Loveland – COO

Ms Janine Bradley – Finance Director  
and Marketing

Mr Richard Loftus – Director of Sales

#### **Board Members**

Ms Anita Bhalla OBE DL (Chair)

Mr Paul Faulkner

Mr Dav Bansal

Ms Helen Bates

Mr Joel Blake OBE

Ms Claire Evans

Mr Vidar Hjardeng MBE

Councillor Ewan Mackey

Ms Mary Martin

Mr James Tait

Mr Ian Myatt

Tony Howard

Mac Alonge

## **4 Options considered and Recommended Proposal**

- 4.1 This report provides information to Members on PBL and will assist in the exchanges and discussion on the presentation within the private agenda.

## **5 Consultation**

- 5.1 The Chair of the Committee has been consulted on the attendance of PBL.

## **6 Risk Management**

- 6.1 This report provides an outline of the company and background for discussion of company performance with the company representatives.

## **7 Compliance Issues:**

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

The Council provides services to community through a number of different vehicles. This report provides information on PBL, a major provider of cultural services and events within the city.

The recommended decision supports the Birmingham City Council Plan 2018-2022, outcome 4: Birmingham is a great city to live in through priority 8, we will enhance our status as a city of culture, sports and events.

## **7.2 Legal Implications**

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**

There are no financial implications directly arising from this report but Members should consider any questions or considerations arising from this report for discussion during the private agenda.

## **7.4 Procurement Implications**

There are no procurement implications directly arising from this report.

## **7.5 Human Resources Implications**

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

## **7.6 Public Sector Equality Duty**

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