
LCC Interests in Third Parties

Governance and Audit Committee

Date of meeting: 18 September 2024

Lead director: Kamal Adatia

Useful information

- Ward(s) affected: All
- Report author: Kevin Carter
- Author contact details: kevin.carter@leicester.gov.uk
- Report version number: v1.0

1. Summary

- 1.1 There has been much focus on the failure of local authority companies which have identified problems in governance and oversight and resulted in financial and reputational damage to the authorities concerned. There are also, of course, local authority companies that are operating successfully and are aligned with the parent authority's purpose and objectives.
- 1.2 The range of the Council's current interests in third parties spans a wide range of companies and organisations, which are summarised in the Appendix.
- 1.3 It should be recognised that councillors and officers are able to bring great value to the third parties to which they are appointed, bringing knowledge and experience of their relevant specialisms, of the Council and its services. Councillors also bring their insight and status as democratically elected community representatives.
- 1.4 Being a director or trustee, however, requires councillors and officers appointed to those roles to operate in a completely different legal and philosophical framework to that which they are used to inside the Council. Such appointments can lead to conflicts between the duty owed to the third party and the interests of the Council. It is therefore important that councillors and officers are provided with appropriate advice and support and this paper includes actions which ensures this happens.

2. Recommended actions/decision

It is recommended that the Committee notes the report, supports the proposed actions and makes any comments they consider relevant.

3. Scrutiny / stakeholder engagement

None.

4. Background and options with supporting evidence

- 4.1 A paper was brought to Audit & Risk Committee on 17th March 2021 regarding the governance of wholly or partly owned companies together with the level of oversight exercised by the Council. This was at a time of well-publicised and significant concerns at other councils about the governance of wholly or partly owned companies. The report sought to offer assurance that the Council had appropriate governance arrangements in place to manage the involvement in third parties, whilst making some recommendations for improvement.

- 4.2 This report is a follow-up to that paper and its purpose is to provide an overview of the Council's interests in third parties, including where councillors and officers are undertaking roles in third parties of behalf of the Council. It also provides fresh assurance that the Council has appropriate governance arrangements in place to manage current involvement in third parties.
- 4.3 The complexities of considering the interests which the Council has across third parties include the variety of the organisations in which the Council holds an interest as well as the reasons behind, or purpose of, the Council doing so. In the previous paper to the Committee, the following steps (each underlined and in Roman numerals below) were proposed to be taken to ensure appropriate governance arrangements were put in place. Actions taken against each are identified along with proposed further steps.
- (I) Formalised training for officers & councillors acting as directors and/or trustees, covering key areas such as legal requirements, best practice and conflicts of interest.
- 4.4 Training was delivered by an external firm of solicitors in October 2022 on the topic "Formal Duties of a Director or Trustee under the Companies Act & Charities Act". It was delivered for those councillors and officers appointed by the Council to act as directors or trustees in third parties, and covered legal requirements, best practice, and conflicts of interests, as well as providing practical case studies and opportunities for questions. Further external legal training will be organised this year and it is proposed that training will continue to be delivered periodically. The Committee is asked to endorse the importance of training and is also invited to put forward any topics or themes which the training should cover.
- (II) Where we are a member of a Company or Shareholder (and it is not wholly owned) ensuring those companies have an appointed Council officer (who is not a director) who will receive communications intended for shareholders/members, and where appropriate may attend the Annual General Meeting to represent the Council's interests.
- 4.5 Issues of governance and oversight have resulted in high-profile failures. One way of gaining greater insight on company performance is via reviewing information which is available to the Council by virtue of its role in third parties, and the most appropriate approach will also be influenced by the level of risk which the Council bears in relation to each interest. The Committee can be assured that individual arrangements are being addressed, including the use of a single repository for relevant information.
- (III) If a dormant partly or wholly owned company were to become active, then the governance arrangements would require review and a report back to the Committee.
- 4.6 In this scenario the relevant company would already have governance documents in place, which would require review and officers are developing relevant guidance to support this review process. This includes ensuring the strategic rationale for the company, clarity on the required roles and responsibilities and ensuring sufficient skills are held for commercial decision-making.

4.7 Re-activating a company may justify a new business case. Where changes are recommended to a partly-owned company, the Council would not of course be the sole decision-maker and therefore negotiations with the other stakeholders would be required.

4.8 Such a change in the status of a company in which the Council has an interest would be reported back to this Committee for information to aid transparency around the decision and to enable review of the risk assessment and governance arrangements.

(IV) A register of third parties in which the Council has an interest is established and maintained.

4.9 The register is in place and maintained within Legal Services. An extract from the register is set out in the Appendix and shows that the Council currently has interests in thirty different organisations, including non-profit making companies and registered charities. It also shows that there is a mix of councillors and officers in roles. The register has been split into two sections between organisations in which officers or members have been appointed to decision-making roles and those where the roles are non-decision making, such as where the Lord Mayor holds honorary positions. It should be noted that this second section is not necessarily complete at this stage.

4.10 The governance structure of each organisation is set out in the column headed "Governance" and it should be noted that those identified as a "Charitable Company" are dual registered with Companies House (as companies limited by guarantee) and the Charity Commission (as a registered charity). It should also be noted for completeness that any subsidiaries of these companies are not included in the list. Some charitable companies, for example, have wholly owned 'trading arms' for their non-charitable activities, such as Firebird Trading Ltd which is a wholly owned subsidiary company of Leicester Arts Centre Ltd through which activities such as the café, bar, confectionary counter and venue hire are routed.

4.11 Five companies - Forge Health Ltd (which is wholly owned by the Combined Fire Authority), Fosse Energy Ltd, Housing Leicester Ltd, the Leicester and Leicestershire Enterprise Partnership Ltd and The Leicester DNA Centre Ltd - are expected to be wound up this year as they are no longer required.

(V) Ensure we have appropriate indemnity cover for appointed directors/trustees to protect against potential liability claims.

4.12 Where councillors and officers act within the Council, and within their powers and in good faith, they have statutory immunity from personal liability. When involved in third parties the issue of personal liability becomes relevant and Insurance Services can provide support and advice through the Council's insurance broker and insurer on transfer of insurable risks to be indemnified under our current insurance arrangements, where possible. The first step will be to check whether a suitable indemnity is provided by the third party. If not, the applicability of the Council's insurance policy can be considered and, ordinarily, an indemnity for third party work will be in place provided the Council is entitled to make the appointment or nomination and the councillor's/ officer's role in the third party is strictly in accordance with their role with the Council.

4.13 Indemnities will not, however, cover every situation. For example, there are limited circumstances in which directors can be liable for company debts, whereas trustees may be personally liable for liabilities incurred which exceed the trust assets. Liability will depend on the terms of the trust deed, general trust law and the relevant circumstances.

4.14 Appointments to unincorporated associations can present more risk as an association has no legal identity separate from its members and therefore the liability of members is not limited. Each member can incur personal responsibility for liabilities incurred on behalf of the association and relies on the membership agreement to be able to recover his/her costs from the other members. However, that can be of little comfort if neither the organisation nor the other members have sufficient assets.

4.15 Given different types of third parties carry different types and levels of risk it is important that appointments are considered on a case-by-case basis, an assessment of the legal nature of the third party is made and, if a decision is made to proceed, for checks to be carried out with Insurance Services' support to ensure appropriate protection or insurance is in place.

(VI) Ensure there is a formal process to approve new organisations that the council wishes to establish (whether it is wholly or partly owned) or join (where it is an existing company) or appoint trustees/directors to. Including ensuring we have appropriate governance arrangements.

4.16 Should the Council wish to establish a new organisation or join an existing one in which it is going to have a formal governance role, it is proposed there will be a business case process subject to the approval of the Chief Operating Officer in consultation with the Section 151 Officer and Monitoring Officer, and internal guidance will be developed to support the proposed process and decision-making. If appropriate, an Executive Decision will be sought and decisions to establish a new organisation or join an existing one will be reported back to this Committee for information to support transparency. A recent example, with which the Committee will be familiar, is the Council becoming a member of Veritau Public Sector Ltd. This was the subject of a formal Executive Decision, informed by a report and business case.

4.17 To develop a sufficiently robust business case, it would be expected that finance, legal, HR and other specialist internal advice would be obtained to ensure all relevant factors are properly considered, including the proposed organisation's purpose and objectives (including whether these can be achieved via a better alternative), affordability, governance controls, risk management and other implications on the Council. This process need not be followed if the Council is simply going to be a corporate member of a subscription organisation or a regulatory body, or similar.

4.18 It should be noted from the Appendix that there is a real mix of appointments between councillors and officers. The appointment, or revocation, by the Council of a councillor to any third party office is made by the City Mayor. Appointments of officers are made by the Chief Operating Officer or relevant director, following appropriate consultation.

4.19 For clarity, this is not intended to cover situations such as where councillors or officers become school governors or undertake other voluntary roles in the community where such appointments and roles are in a personal capacity rather than being appointed on behalf of the Council. In such circumstances, councillors need to comply with their Code of Conduct, including declaring the interest on appointment, and officers remain subject to their employment contract and HR policies.

4.20 For councillors and officers who hold roles as directors it is important to note that they carry a number of statutory duties to their company under the Companies Act 2006 and they are expected to be familiar with these duties, particularly those which could lead to a potential, actual or perceived conflict with their role as councillor/officer (e.g. the duties to promote the success of the company, to exercise independent judgement, and to avoid conflicts of interest). Similarly, trustees of charities are subject to separate, albeit sometimes overlapping, duties.

5. Financial, legal, equalities, climate emergency and other implications

5.1 Financial implications

There are no financial implications arising directly from this report. However, good governance of the Council's third-party interests will minimise any associated risks.

Signed: Colin Sharpe, Head of Finance

Dated: 25.07.24

5.2 Legal implications

5.2.1 As noted earlier in the report, there is a wide variety of organisations in the Appendix and it should be noted that the nature of them will dictate the extent to which the Council has a role or control of the organisation. The report does not provide a detailed legal position on each.

5.2.2 There are a range of statutory powers available to the Council to participate in third parties, including councillor or officer participation including:

- general power of competence in Section 1 of the Localism Act 2011,
- power to trade in Section 95 of the Local Government Act 2003,
- 'incidental' power in Section 111 of the Local Government Act 1972, and
- other powers to participate in companies for specific purposes.

5.2.3 In addition, local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts.

5.2.4 Further legal implications are set out in the body of this report.

Signed: Kevin Carter, Head of Law (Commercial, Property & Planning)

Dated: 29.08.24

5.3 Equalities implications

- 5.3.1 Under the Equality Act 2010, public authorities have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.
- 5.3.2 Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- 5.3.3 It is important to recognise the risk of conflicts of interest and their impact on how decisions and operations are perceived. There are no equality impacts arising directly from the recommendations in this report. It is important to ensure the Council is transparent and is as open and engaging with all its local communities through in its governance practices.

Signed: Kalvaran Sandhu, Equalities Manager

Dated: 23.08.24

5.4 Climate Emergency implications

There are no significant climate emergency implications directly associated with this report.

Signed: Aidan Davis, Sustainability Officer

Dated: 27.08.24

5.5 Other implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

None.

6. Background information and other papers:

'LCC Interests in Third Parties' paper to Audit & Risk Committee, 17th March 2021:
[Executive decisions \(leicester.gov.uk\)](https://www.leicester.gov.uk/Executive%20decisions)

7. Summary of appendices:

Appendix - Leicester City Council's interest in third parties.

8. Is this a private report (If so, please indicate the reasons and state why it is not in the public interest to be dealt with publicly)?

No.

9. Is this a "key decision"? If so, why?

No.