
LCC Interests in Third Parties

Audit & Risk Committee

Date of meeting: 17th March 2021

Lead director: Colin Sharpe

Useful information

- Ward(s) affected: All
- Report author: Ben Matthews
- Author contact details: ben.matthews@leicester.gov.uk
- Report version number: V1.1

1. Purpose of Report

This report has been bought to the Committee following well publicised significant concerns at other councils about the governance of wholly or partly owned companies, together with the level of oversight exercised by the council as owner.

In the interests of good governance, this report aims to identify the companies/ organisations in which Leicester City Council has an interest, identifying our involvement and potential exposure to risk. It also seeks to offer assurance that the Council has appropriate governance arrangements in place to manage this involvement whilst making some recommendations for improvement.

2. Summary

This report provides an overview of the Council's relationship with other organisations in which it is a shareholder, member, and/or where officers and members have roles on the board. It concludes that there are no significant financial risks of our involvement, but our involvement may create reputational risk and an expectation that the Council steps in if organisations run into difficulties.

Plans for improving overall corporate oversight are included in the report.

3. Recommended actions/decision

The Committee is asked to note the report and support the next steps detailed and add any comments they see fit.

4. Scrutiny / stakeholder engagement

N/A

5. Background and options with supporting evidence

N/A

6. Detailed report

Background

There have recently been some well publicised significant concerns at other councils about the governance of wholly or partly owned companies, together with the level of oversight exercised by the council as owner. For example:

- The external auditor of Nottingham City Council (NCC), Grant Thornton in 2020

published a public interest report on the Council and its relationship with Robin Hood Energy Ltd (RHE). The report raised fundamental concerns around the management of risk and governance arrangements between the two and the impact it had on the public purse.

- London Borough of Croydon have also received a recent public interest report highlighting concerns around their financial resilience along with concerns around its governance arrangements with a number of companies either wholly owned or part owned, stating:

“The Council’s governance and oversight of the companies shows insufficient rigour and control”

In light of the public interest reports, a review has been undertaken into the Council’s involvement with third parties to ensure we have the appropriate governance arrangements and oversight in place.

Leicester City Council’s involvement with third parties

An exercise has been completed to ensure we have a comprehensive list of third parties in which the Council has formal involvement e.g. shareholder, trustee, director, member of a board, or nominates an officer.

The Council’s interests in other organisations is shown in Appendix A. This table also shows the nature of the Council’s interest. Overall, interests in 26 organisations, involving the City Mayor, 5 elected members, 12 Senior Officers and a voluntary advisor. The Council appoints or nominates members and officers as board directors and trustees for two main reasons:

- The Council wholly or partly owns a company, and the directors are responsible for running the company.
- The Council is not the owner, but alongside the organisation sees wider benefit in Council members or officers having a formal role in governance and decision making, promoting positive relationships and joint working. This can also include organisations where the Council is one of a larger number of members.

It should be noted at this point that all companies that are wholly, or partly owned by the Council are mostly dormant, which means they are not trading. There is only a small number of organisations that present a direct, but limited financial risk, these are identified in Appendix A.

Overall, the review has concluded that the council has very limited risk to financial exposure compared to that of Croydon or Nottingham.

The main area of concern beyond financial exposure, is in relation to potential reputational risk or the expectation the Council would step in financially if an organisation runs into difficulties (morally if not legally). It is therefore important that the Council carefully considers the nature of the relationships with these organisations and ensures appropriate monitoring and governance arrangements are in place.

Roles & Responsibilities

There is an expectation on elected members, the City Mayor and officers to ensure they properly understand their roles and responsibilities to the organisation and the Council when acting in a nominated capacity. There is also a legal requirement on them that they do when acting as a Director.

Members and officers acting as directors owe their first duty to the organisation when representing them. Where possible they should step back from discussions and formal decision taking if there is a conflict with the Council's interests, otherwise they should act in the best interests of the company. Understanding and acting upon actual, potential and perceived conflicts of interest is key.

It is very clear that there is a requirement when officers and Members are on other boards, they need to recognise their separate and different roles. To illustrate this difficulty the following examples are provided below:

- When acting as a company director it would be wrong to disclose confidential information belonging to the council to the company. The duty towards the company only applies when the individual is acting in their capacity as a director.
- Acting as councillor when at council meetings or acting in a role as a local authority officer or elected member, he or she must act in the best interests of the council in law. As a director however they are also bound by their responsibilities and confidentiality of their director position.

Next Steps

Going forward the following steps are going to be taken to ensure appropriate governance arrangements are in place:

- Formalised training for officers & councillors acting as directors and/or trustees, covering key areas such as legal requirements, best practice and conflicts of interest.
- 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.
- If a partly or wholly owned company were to become active, then the governance arrangements would require review and a report back to Audit & Risk Committee.
- A register of third parties in which the Council has an interest is established and maintained.
- Ensure we have appropriate indemnity cover for appointed directors/trustees to protect against potential liability claims.
- 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.

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

7.1 Financial implications

Financial implications are noted within the report.

7.2 Legal implications

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. It is not intended to provide a detailed legal position on each in this report.

It should be clearly noted that owning the company (as a shareholder or member) is not the same as appointing a director to it. Directors are the management board, not the owners. Where we involved at a director level only then we are not owners of the Company.

In terms of trusts, whilst the role of a trustee is distinctly different legally to that of a director there are still responsibilities and duties on anyone appointed as a trustee.

It should also be noted that where a company or trust is charitable there may be additional requirements on the Council (where it wholly or partly owns) or those appointed by the Council as directors/trustees.

It is recommended that a review of the wholly owned organisations is undertaken to ensure that they are required, though dormant the returns are still required with Companies House and it may be that there is no need to keep the Company active.

When establishing future companies which the Council either wholly or partly owns it is advised that there is a central repository for information concerning our involvement and ownership as some of the Companies in the Appendix we no longer have the original paperwork.

Emma Jackman, Head of Law (Commercial, Property & Planning)

7.3 Equalities implications

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.

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.

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.

Surinder Singh Equalities Officer Ext 37 4148.

7.4 Climate Emergency implications

There are no significant climate change implications directly associated with this report. However, it should be noted that in respect of the declaration of a climate emergency and it's ambition for the city to achieve carbon neutrality by 2030, the council has an important role to play through its influence on other organisations, and the opportunities this provides to promote sustainable policies and practices as applicable and appropriate.

Aidan Davis, Sustainability Officer, Ext 37 2284

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

N/A

8. Background information and other papers:

London Borough of Croydon

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Report%20in%20the%20Public%20Interest%20-%20London%20Borough%20of%20Croydon.pdf>

Nottingham City Council Public Interest Report:

<https://www.nottinghamcity.gov.uk/publicinterestreport>

9. Summary of appendices:

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

10. 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

11. Is this a “key decision”? If so, why? No

Appendix A

Leicester City Council's (LCC's) interest in third parties

Third Party	Officers/Councillors involved	Role in third party	Nature of relationship
BID Leicester Limited	Officer	Director	Representing council on the board. Business Improvement District
EMPSN Infrastructure Limited	Officer	Director	Member with other LA's
EMPSN Services Limited	Officer	Director	Member with other LA's
Forge Health Limited	Officer	Director	Wholly owned by the Combined Fire Authority. Officer is a director by invitation of Chief Fire Officer
Fosse Energy Limited	Officer	Director	Dormant; owned 50/50 with Leicestershire County Council
Homecome Limited	Member	Director	Not for profit company created by LCC. LCC has charges against some of Homecome's properties as part of historic funding arrangements
Housing Leicester Limited	Officers	Director	Dormant
Leicester And Leicestershire Enterprise Partnership Limited (LLEP)	Member	Director	LCC is Accountable body. LLEP Ltd is currently formally dormant, although the Board is active. A review of the operational arrangements is being undertaken.
Leicestershire County Cricket Club	Officer	Director	LCC commercial loan to the club £2.45m. LCC invited to the board as a key partner
Procon Leicestershire Limited	Officer	Director	Represents council on board
Schools Development Support Agency (SDSA)	Officer	Director	Represents council on board
The Wyggeston's Hospital And Hospital Branch Trustee	Member	Director	Represents council on board
Craven Recreation Ground	Trust run by the council only	Trustee	Public space/park
Fullhurst Learning Partnership	Vacant	Trustee/Director	Dormant; Foundation School
Leicester Arts Centre Limited (Phoenix Cinema)	Officers/Members	Trustee/Director	Council can be the member or nominate two individuals as members to the board
Leicester Riders Foundation	Member	Trustee	Trustee at Leicester Riders' invitation
Leicester Theatre Trust Limited (Curve)	Officer/Member	Trustee/Director	Member of company & represent council on board
National Space Centre	Officer	Trustee/Director	Council can appoint a director/trustee to the national space centre.
Newarke Houses	Trust run by the	Trustee	Trust run by the council

Museum	council only		
New College Leicester Trust	Vacant	Trustee/Director	Foundation School
The Bradgate Park & Swithland Wood Charity	Officers/Voluntary Advisor/Member	Trustee/Honorary Secretary/Vice Chair	Can nominate 3 trustees according to terms of Charles Bennion's gift. LCC holds the role of Honorary Secretary via the Trust Deed and honorary auditor.
Leicester DNA Centre Limited	Officers	Soon to be director	Company to be formally transferred to the Council
East Midlands Council	The council is a member	Member	Member & Involvement on boards. Potential pension costs
Leicester Community Sports Arena Limited	Officer	May attend board meetings as an observer	Observer by agreement from time to time.
Great Central Railway	None	Shareholder	Shareholder in the company.
North Memorial Homes	Members	Trustees	Housing charity.