

SHAREHOLDER CABINET COMMITTEE	AGENDA ITEM No. 6
13 JUNE 2022	PUBLIC REPORT

Report of:	Director of Law & Governance (Monitoring Officer)	
Cabinet Member(s) responsible:	Cllr Andy Coles, Cabinet Member for Finance & Corporate Governance	
Contact Officer(s):	Fiona McMillan, Director of Law & Governance (Monitoring Officer) Cecilie Booth, Director of Corporate Resources (s151 officer)	

REVIEW OF GUIDANCE & ASSURANCE REVIEW OF PARTNERSHIP ARRANGEMENTS

RECOMMENDATIONS	
FROM: Director of Law & Governance	Deadline date: N/A
<p>It is recommended that the Shareholder Cabinet Committee:</p> <ol style="list-style-type: none"> 1. Notes this report and its attached guidance note “Guidance for Member & Officers who serve on outside bodies”. 2. Agrees that officers should carry out an assurance process on the council’s partnership activities to assess the strength and robustness of the current governance arrangements 3. Delegates responsibility for carrying out this assurance process to the Director of Corporate Resources and the Director of Law and Governance with progress to be reported back to the next Committee meeting 4. Agrees that further refresher training for members and officers on their roles and responsibilities in relation to council companies and partnerships, to be organised by Democratic Services 	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Shareholder Cabinet Committee as part of its annual review of the guidance for members, first issued by the Monitoring Officer in 2018 and noting recent CIPFA guidance on local authority companies and best practice.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to:

- Review the remit and powers of the Committee.
- Recommend an assurance review is carried out of the Council’s partnership arrangements
- Highlight potential conflicts of interest that members need to be aware of in order to manage interactions more pro-actively
- Endorse training proposals for members and officers.

- 2.2 This report is for the Shareholder Cabinet Committee to consider under its Terms of Reference No. 3.3.2. (a), ‘*To monitor performance and financial delivery of the companies, partnerships and*

charities set out above in line with Cabinet approved business plans by means of monthly performance monitoring and scrutiny.'

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. **BACKGROUND AND KEY ISSUES**

4.1 **This report:**

- Sets out the reasons why the Council established a Shareholder Cabinet Committee
- Sets out the Shareholder Cabinet Committee terms of reference and how it interacts with Cabinet
- Lists those Council companies, partnerships and charities that the Committee has responsibility
- Notes the publication of recent CIPFA good practice guidance on local authority companies
- Proposes a review of the council's companies and partnerships using a good practice model from the CIPFA guidance as a way of assessing current arrangements and whether changes need to be made to improve governance arrangements and the council's oversight of these entities

4.2 **Shareholder Cabinet Committee Purpose and Functions**

The Shareholder Cabinet Sub-Committee meets four times a year, with more or less meetings to be arranged as necessary, with the agreement of the Chairman. It has responsibility for the Council's companies, partnerships and charities including, but not limited to:

- (a) Peterborough Limited
- (b) Blue Sky Peterborough,
- (c) Empower Peterborough, CIC
- (d) Opportunity Peterborough and its Joint Venture company Smart Manufacturing Alliance,
- (e) Peterborough Investment Partnership LLP, and its subsidiary SPVs
- (f) Medesham Home LLP and Medesham Ltd,
- (g) NPS Peterborough Ltd,
- (h) Peterborough Museum and Art Gallery,
- (i) The Mayor's Charity. and
- (j) Peterborough HE Property Company Ltd

The Shareholder Cabinet Committee will act as a decision-making body in relation to the functions delegated to it as well as an advisory body to Cabinet. Support and advice will be provided to the Shareholder Cabinet Committee by the Monitoring Officer, the Section 151 Officer and other client officers as appropriate.

4.3 **Functions of the Shareholder Cabinet Committee and those reserved to Cabinet**

The Shareholder Cabinet Committee is responsible for making decisions:

- a) To monitor performance and financial delivery of the companies, partnerships and charities set out above in line with Cabinet approved business plans by means of monthly performance monitoring and scrutiny.
- b) To ensure that those companies, partnerships and charities comply with relevant Council policies, strategies and objectives.
- c) To exercise decisions, where delegated by Cabinet, in relation to a company, partnership or charity's reserved matters.

- d) To seek approval from and make recommendations to Cabinet in relation to investments, loans and assets.
- e) To oversee the relationships between the Council and the Council's companies, partnerships and charities, and any such relationships between the Council's companies, partnerships and charities in accordance with the Council's objectives.
- f) To review any reports in relation to the Council's companies, partnerships or charities prior to their submission to the Audit Committee to ensure compliance with Council policies, strategies and objectives.
- g) To determine for each individual company, partnership or charity whether the Shareholder Cabinet Committee recommends to Cabinet the delegation of any functions to the officers of the Council.”

All other matters not falling within the remit of the Shareholder Cabinet Committee functions set out at a) to g) above will be referred to Cabinet for decision.

Functions Reserved to Cabinet

Cabinet will be responsible for the following functions in relation to the Council's companies, partnerships and charities:

- a) The establishment of any new company, partnership or charity
- b) The decommissioning/winding up of existing companies, partnerships and charities; c) The determination of Articles of Association
- d) The determination of the percentage share of ownership
- e) The determination of the investment of funds or assets
- f) The determination of any lending facilities to the Council's companies, partnerships and charities
- g) The determination of decisions reserved to the Council as shareholder or member of a company, partnership or charity
- h) Scheme of delegations to the Shareholder Cabinet Committee
- i) Approval of Business Plans
- j) Approval of changes to service agreements in respect of KPIs, service levels and service standards
- k) The setting of Policy Strategy and objectives for the operation of the Council's companies, partnerships and charities

4.4 Overview of Issues

The Council, as part of its annual governance processes, allocates members and officers to various companies and boards. One of the significant responsibilities of the Shareholder Cabinet Committee is to ensure that Council aims, objectives and requirements are delivered both within these Companies and also across these Companies. As such the Committee:

- Needs to understand potential conflicts of interest between Company Board member's statutory requirements and the Council's objectives.
- What needs to be put reinforced in terms of the governance and client management of the Council's companies in order to ensure the Council's objectives are delivered.

PCC Guidance note for members and officers and training

The Monitoring Officer previously prepared and issued a guidance note “Guidance for members & officers who serve on outside bodies” which was approved by the Committee and issued to all councillors and officers and is reviewed and re-circulated annually. External training has also previously been provided for Cabinet members on their responsibilities and it is recommended that this is now repeated to ensure all current members of Cabinet and relevant officers are aware of their responsibilities.

New CIPFA guidance

CIPFA has just issued “Local Authority Companies: a good practice guide” which sets out and highlights best practice for councils in relation to local authority companies. This followed several public interest reports issued in 2020 and 2021 which criticised local authority governance and commercial scrutiny. In recent years, the potential risk associated with local authority trading companies and joint ventures has increased and it is important to learn lessons from others and access support. The guidance aims to assist local authorities by setting out and highlighting existing best practice. It focuses on identifying organisational goals, the process to find the right option to achieve that goal and how to structure the organisation for success.

Key points from the guidance are as follows:

- Establishing a local authority company should only be entered into when it is the best option in respect of what is to be achieved
- Companies must be established in accordance with the principles of good governance and have effective and efficient financial management and comply with all relevant legislation.
- The council must maintain appropriate arrangements for ensuring effective oversights and accountability for any alternative delivery mechanisms in which it is engaged
- Reasons for financial failure in local authority companies include a lack of robust due diligence and a failure to appreciate or understand market complexities or trends

Conflicts of interest

CIPFA highlights that it is good practice to have some ‘distance’ between key authority decision makers and company decision makers in terms of personnel. When acting in the capacity of a director, an individual’s principal duty is to the company. When at local authority meetings acting in their capacity as an officer or elected member, they must act in the best interests of the council, subject to confidentiality of information required by the company.

“It could be a breach of a director’s duty to the company either to disclose confidential company information to their appointing council, even if it were relevant to something that the council was discussing, or to disclose confidential council information to the company.”

It is very important that directors have a clear understanding of which hat they are wearing at any time. For these reasons, the CIPFA guidance advised that authorities may choose not to appoint local authority members to the boards of wholly owned companies, referencing other guidance as follows:

LLG’s “The Governance of Council Interests in Companies – Code of Practice (2018):

“The representatives who are appointed directors by the executive will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so ... this requirement in a trading company and the accompanying conflicts of interests that may arise means that officers are better placed to fulfil this role.” The guidance note goes on to say: *“Whilst it will therefore be the norm that officers, not members, will be appointed as directors, this should not prevent the council from appointing members as directors where it is considered to be in the best interests of the company and council.”*

The report Local Government Ethical Standards (Committee on Standards in Public Life, 2019) notes that: *“Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.”*

This echoes comments in the Robin Hood Energy (RHE) Ltd public interest report into the governance arrangements by Grant Thornton included a focus on the role of councillors on the board.

The report made the following comments:

"More generally, it is not seen as good practice for councillors to be on the boards of local authority companies, with other mechanisms used to ensure that the company meets the Council's policy objectives. This reflects the above issues in relation to the expertise and experience of many councillors, and the potential for conflicts of interest between the councillors' commitment to the interests of the company, which has to override other interests when they are on company 'business', and their wider responsibilities as councillors. Having councillors on company boards can lead to a failure to properly separate the two sets of interest – of the company and of the Council."

The Committee may wish to reflect on this guidance in terms of current and future appointments to the Council's companies and partnerships.

Assurance review

The CIPFA guidance includes a case study of good practice from Manchester City Council. Discussions have already taken place with senior officers at Manchester City Council, who have agreed to support PCC in the implementation of the necessary changes to our governance arrangements.

Since 2008 Manchester City Council undertakes a comprehensive assurance process on its partnership activities, which is called the Register of Significant Partnerships (RSP), on an annual basis as part of its approach to good governance. These arrangements are diverse including Joint Ventures, wholly owned companies, statutory groups and Private Finance Initiatives (PFIs) and similar to PCC this assurance process is accountable to the Council's Audit Committee.

The RSP outlines key partnership arrangements that are considered to be of the highest significance to the financial position, reputation of the Council or to the delivery of key corporate objectives. The process involves a nominated link officer completing a self-assessment form covering questions about aims and objectives, membership, decision making, finance, audit and risk management, conduct and performance of the partnership. This leads to an overall self-assessment governance strength based on the robustness of the arrangements that the partnership has in place.

The assessment can fall into one of four categories:

Substantial: Demonstrating consistent application of good governance practices, providing a high level of assurance and delivering both the partnership and Council objectives. Any matters noted do not put the overall objectives at risk.

Reasonable: An overall sound system of governance has been established but there are some areas for improvement to ensure the delivery of both the objectives of the Council and the partnership. Recommendations will be moderate or a small number of key priorities.

Limited: A governance system has been established but there are a number of significant areas highlighted for improvement, which if not implemented, could result in the non-delivery of partnership and Council objectives. Recommendations will be significant and relate to key risks.

Weak: Controls are generally weak leaving the partnership's system open to the potential of significant error, resulting in a high probability that partnerships and the Council's objectives will not be met unless action is taken. Critical priority or a number of significant priority actions required.

The rankings are moderated by a multi-disciplinary officer working group representing finance, legal, audit and commercial governance. Once the ranking is agreed, for any partnerships rated

other than 'substantial', from the information provided, the officer working group proposes a number of improvement measures to enable the partnership to move up the assurance scale.

The recommendation is for Peterborough to carry out a similar assurance process on all its partnership activities to make clear whether there are improvements needing and to highlight any gaps and risks. This process requires the establishment of a cross-services working group or member and officers, and it is proposed that the Director of Corporate Resources and the Director of Law & Governance are tasked with carrying out this review, including setting up the process and the officer cross-disciplinary working group, with a progress report coming to the next Committee meeting.

5. CONSULTATION

5.1 N/A

6. ANTICIPATED OUTCOMES OR IMPACT

6.1 The purpose of this report is to endorse the establishment of a cross-services working group to review the assurance process across all the council's companies and partnerships, along with noting the potential for conflicts of interests for members and officers.

7. REASON FOR THE RECOMMENDATION

7.1 To consider adding further governance measures into arrangements for the council's companies and partnerships following the publication of new CIPFA advice on good practice for local authority owned companies.

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 None

9. IMPLICATIONS

Financial Implications

9.1 There may be additional costs relating to external support and / or additional resources to complete this review. Any additional costs will be reported to members as part of this process.

Legal Implications

9.2 There are no legal implications arising from this report.

Equalities Implications

9.3 There are no equalities implications arising from this report.

Carbon Impact Implications

9.4 There are no carbon impact implications arising from this report.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

CIPFA "Local Authority owned companies: a good practice guide" (2022)

11. APPENDICES

11.1 Appendix A - Guidance for Member & Officers who serve on outside bodies