

# Public Document Pack



**Nottingham  
City Council**

## **Nottingham City Council Nottingham City Governance Improvement Board**

**Date:** Wednesday, 20 January 2021

**Time:** 10.00 am

**Place:** Remote - To be held remotely via Zoom -  
<https://www.youtube.com/user/NottCityCouncil>

**Councillors are requested to attend the above meeting to transact the following business**

**Director for Legal and Governance**

**Governance Officer:** Nancy Barnard **Direct Dial:** 0115 876 4312

- 1 Apologies for Absence**
- 2 Declarations of Interest**
- 3 Minutes** 3 - 6  
Last meeting held on 9 December 2020 (for confirmation)
- 4 Governance Improvement Programme - Progress Update and Lessons Learnt** 7 - 32  
Report of the Director of Legal and Governance
- 5 Director Training and External Support to the Governance Improvement Programme** 33 - 40  
Report of the Director of Legal and Governance
- 6 Role of the Shareholder Representative**  
Report to Follow

If you need any advice on declaring an interest in any item on the agenda, please contact the Governance Officer shown above, if possible before the day of the meeting

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## **Nottingham City Council**

### **Nottingham City Governance Improvement Board**

**Minutes of the meeting held remotely via Zoom on 9 December 2020 from 10.03 am - 11.36 am**

#### **Membership**

##### **Present**

Councillor Sally Longford (Chair)  
Councillor Nicola Heaton  
Councillor David Mellen  
Councillor Anne Peach  
Councillor Andrew Rule  
Councillor Sam Webster  
Mark Edgell  
Peter Murphy

##### **Absent**

Councillor Rebecca Langton  
Councillor Audra Wynter

#### **Colleagues, partners and others in attendance:**

Daniel Ayrton	- Business Development Manager
Nancy Barnard	- Governance and Electoral Services Manager
Mel Barrett	- Chief Executive
Beth Brown	- Head of Legal and Governance
Clive Heaphy	- Strategic Director of Finance
Malcolm Townroe	- Director of Legal and Governance

#### **1 Apologies for Absence**

Councillor Rebecca Langton – Personal Reasons  
Councillor Audra Wynter – Leave

#### **2 Declarations of Interest**

In the interests of transparency the following interests were declared:

Councillor David Mellen – Director of Blueprint

Councillor Anne Peach – Director of National Ice Centre

Councillor Sam Webster – Member of the Nottingham Revenues and Benefits Board

Peter Murphy – employed by Nottingham Business School at Nottingham Trent

University, Research Consultant for Nottinghamshire Fire and Rescue Service and employed by the Research Excellence Framework for 2021

Malcolm Townroe – Company Secretary for Enviro-Energy

#### **3 Appointment of Vice Chair**

**Resolved to appoint Peter Murphy as Vice Chair for the remainder of the Municipal Year.**

#### **4 Nottingham City Governance Improvement Board Terms of Reference**

**Resolved to:**

- 1) recommend that Council amend the Terms of Reference to remove the Deputy Leader of the Council as a substitute as the Deputy Leader is already an appointed member of the Board,**
- 2) note the Terms of Reference.**

**5 Introduction from the Chief Executive of Nottingham City Council**

Following a round of introductions Mel Barrett, Chief Executive, Nottingham City Council, introduced the issues under consideration covering the following matters:

- (a) The work being done in implementing the Action Plan in response to the Public Interest Report is now being carried out in the context of the non-statutory review led by Max Caller. The review report has been received but not yet published and cannot therefore be discussed.
- (b) All recommendations made in the Public Interest Report were accepted and the Council agreed some additional recommendations.
- (c) The Action Plan is being implemented at pace and the progress that has been made to date will stand the Council in good stead to respond to the Caller Report.

**Resolved to note the introduction.**

**6 Governance Improvement Programme - Progress Update**

Malcolm Townroe, Director of Legal and Governance introduced the report, covering the following points:

- (a) The report sets out progress to date against the Action Plan that was agreed by Full Council in August and then amended in November. Good progress has been made and the report seeks to provide assurance on that progress as well as outlining the work that is in train.
- (b) A report will be taken to Council in January requesting sign-off of the actions already achieved.

Daniel Ayrton, Business Development Manager then gave a presentation, including the following points:

- (c) The programme has been split into four stages, some of which will run concurrently. Stage one, Programme Planning and Resourcing, is complete and the Research and Review Stage is underway with a review of appointments, terms of reference and best practice. The Proposals and Approvals stage will commence in January when Council considers the progress report. The final stage will involve Adoption and Embedding which will include reviewing the actions taken.
- (d) Work has been undertaken clarifying the roles of the shareholder and the shareholder representative with the shareholder for Council companies being the Executive.
- (e) A range of best practice has been reviewed including guidance from Lawyers in Local Government who have produced a Model Code of Practice on Councillor Directorships. Further consideration will be given to the involvement of Councillors on Boards.

- (f) Work on clarifying the Council's company structures has been undertaken confirming that shareholder representatives are in place for all companies. Further work is being done on the process for appointing and removing directors of company boards.
- (g) The review of Council companies examined company structures, councillor directorships and board effectiveness. It provided clarity on the current situation and identified a number of areas for consideration including matters relating to the appointment and make up of company boards, the compatibility of the numerous roles held by councillors and the training requirements of board members.
- (h) Training for company directors has been commissioned from external sources and some training has already been delivered. Strong training records will be kept going forward. HR colleagues are working on a competency framework and identifying crossover with areas that would be appropriate for all councillors, such as General Data Protection Regulations, as well as identifying more specialist areas for those in certain positions.
- (i) The terms of reference for the Overview and Scrutiny Committee, Audit Committee and Companies Governance Executive Sub-Committee have been reviewed with input from the Local Government Association and the Chartered Institute for Public Finance and Accountancy. The terms of reference for Commissioning and Procurement Sub-Committee have also been identified for review as a result of the work on the Action Plan.
- (j) A shareholder role description and competency requirements have been drafted for consultation with company chairs and training for the Shareholder Representative is proposed.
- (k) The Council's approach to risk management is also under review.
- (l) Next steps for the programme include:
  - i. a report to Audit Committee on the use of councillors as directors, 18 December 2020
  - ii. an overarching lessons learned report is being produced by 20 December 2020 covering the actions and review findings
  - iii. Full Council meeting to consider the findings and recommendations of the lessons learned report – January 11 2021.

During the subsequent discussion the following points were raised:

- (m) The need to review the Councillors on company boards is recognised but this will need to be a gradual process to avoid disruption.
- (n) The Council has responded positively to the Public Interest Report and has made a good start on implementing the Action Plan which will need to be integrated with the response to the Caller Review. The number of actions is challenging and could benefit from some prioritisation outside of deadlines to avoid a tick box approach and ensure focus lies on the actions that are most important.
- (o) The process needs to be transparent and accountable and therefore it is important that information is presented in as clear a manner as possible. Councillors need to be able to understand and own the process and to be able to focus on the areas of highest importance. There also needs to be an understanding of the impact of the actions taken to ensure they are achieving the desired outcomes.

- (p) There is a need for continuity on company boards to ensure the skills and knowledge obtained by Board Members are retained and put to use. Both a minimum and maximum term are under consideration.
- (q) Reports are being taken to other committees including Overview and Scrutiny and Audit. All meetings are open to view on the Council's YouTube channel and minutes of the meetings will be published.
- (r) Future meetings can examine matters including considerations when decisions are made to become involved in a company and how risk is fully taken into account.

**Resolved to note the report and to request that work is undertaken on the prioritisation of the actions and brought back to the next meeting.**

Nottingham City Governance Improvement Board - January 12<sup>th</sup> 2021

<b>Title of paper:</b>	Governance Improvement Programme - Progress Update and Lessons Learnt	
<b>Director(s)/ Corporate Director(s):</b>	Malcolm Townroe	<b>Wards affected:</b> All
<b>Report author(s) and contact details:</b>	Daniel Ayrton Daniel.ayrton@nottinghamcity.gov.uk	
<b>Other colleagues who have provided input:</b>		
<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	12/01/2021	
<b>Relevant Council Plan Key Theme:</b>		
Nottingham People		<input type="checkbox"/>
Living in Nottingham		<input type="checkbox"/>
Growing Nottingham		<input type="checkbox"/>
Respect for Nottingham		<input type="checkbox"/>
Serving Nottingham Better		<input checked="" type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>On January 11<sup>th</sup> 2020, Council received an update on the progress of the Action Plan in response to the external auditor's report issued in the public interest (PIR), and summary of lessons learnt during the review process.</p> <p>The report is appended to this document for the consideration of the Nottingham City Governance Improvement Board and to provide the opportunity to comment.</p>		
<b>Recommendation(s):</b>		
<b>1</b>	That the Nottingham City Governance Improvement Board consider the appended report to full Council and provide any comment they may have on its content.	

**1 Reasons for recommendations**

- 1.1 The City Council's Action plan requires that an overarching report covering the outcomes of the various reviews be produced in December 2020 and brought to Full Council for consideration.
- 1.2 Council considered the report on January 11<sup>th</sup> 2020.
- 1.3 The purpose of the Improvement Board is to:
  - deliver and drive progress against the PIR Action Plan
  - support improvement in the Council's wider governance arrangements

- ensure that a range of voices, including those independent of the Council, contribute to the development of governance at Nottingham City Council.

1.4 The Nottingham Governance Improvement Board is therefore invited to consider the report and provide any comment its members may have.

## **2 Background (including outcomes of consultation)**

2.1 All relevant background information is included within the attached report to full Council.

## **3 Other options considered in making recommendations**

3.1 None

## **4 Finance colleague comments (including implications and value for money/VAT)**

4.1 Finance comments are included within the report to Council. There are no additional financial consideration arising from this report.

## **5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)**

5.1 Legal comments are included within the report to Council. There are no additional legal consideration arising from this report.

## **6 Strategic Assets & Property colleague comments (for decision relating to all property assets and associated infrastructure) (Area Committee reports only)**

6.1 N/A

## **7 Equality Impact Assessment (EIA)**

7.1 Has the equality impact of the proposals in this report been assessed?

No



7.2 An EIA is not required because this report does not seek any decisions from the Nottingham City Governance Improvement Board.

## **8 List of background papers other than published works or those disclosing confidential or exempt information**

8.1 None

## **9 Published documents referred to in compiling this report**

9.1 Governance Improvement Programme - Progress Update and Lessons Learnt, full Council January 11<sup>th</sup> 2020.

## City Council - 11 January 2021

### Report of the Leader of the Council

#### Governance Improvement Programme – Progress Update and Lessons Learnt

## 1 Summary

- 1.1 In response to the recommendations of the External Auditor in the Report in the Public Interest on Robin Hood Energy (the PIR), Nottingham City Council formally adopted an Action Plan in August 2020, that was subsequently amended in November 2020, setting out a series of actions to address the issues raised by the External Auditor.
- 1.2 A Governance Improvement Programme has been established to deliver the Action Plan. This report provides an update on progress of the programme to date in delivering the actions.
- 1.3 It also captures and sets out the review outcomes and key considerations identified to date, in line with the actions set under Recommendation 10 of the Action Plan.

## 2 Recommendations

- 2.1 To note:
  - a) the progress update;
  - b) the comments of the newly established Governance Improvement Board on the progress to date and the lessons learned, as set out in Appendix 3;
  - c) the comments of the Audit Committee on 18 December 2020 on the review of the appointment of councillors as Directors on Boards of Council owned and controlled companies, as set out in Appendix 4; and
  - d) that amended draft terms of reference for the Overview and Scrutiny Committee are included for approval in the Amendments to the Constitution report on this agenda.

## 3 Reasons for recommendations

- 3.1 The Governance Improvement Programme was established to oversee the delivery of the City Council's Action Plan responding to the PIR concerning the Council's Governance Arrangements for Robin Hood Energy Ltd, and to review the wider governance issues at Nottingham City Council identified in the report.
- 3.2 In response to Recommendation 10 of the PIR which reads; "In addition to those referred to in recommendations above, the Council should apply the lessons from Robin Hood Energy in a further review of its company governance arrangements, in particular to ensure that risks are appropriately flagged and managed, as well as successfully implementing the more robust monitoring agreed by the Companies Governance Executive Sub-Committee", the City Council's Action Plan requires that an overarching report covering the outcomes of the various reviews be produced in December 2020 and brought to Full Council for consideration.
- 3.3 One of the key requirements of the PIR and Action Plan was the establishment of an Improvement Board to oversee delivery and drive progress against the PIR Action

Plan, to support improvement in the Council's wider governance arrangements, and to ensure that a range of voices, including those independent of the Council, contribute to the development of improved governance at Nottingham City Council.

3.4 Included at Appendix 3 are the draft minutes of the first meeting of the Nottingham City Council Governance Improvement Board which include the comments, questions and observations of the Board members at the meeting on 9 December 2020.

#### **4 Background (including outcomes of consultation)**

4.1 The External Auditor published the PIR on Robin Hood Energy in August 2020. The report highlighted a number of areas for improvement, with regard to the Council's governance arrangements for its companies.

4.2 The report also recommended a broader review of the Council's governance and decision making processes be undertaken.

4.3 The findings of the PIR were accepted by the Council and an Action Plan drawn up to address the issues raised. The Action Plan was formally approved by the Council on 30 August 2020. The Action Plan was subsequently amended by Council on 9 November 2020.

4.4 The Action Plan has 13 recommendations from the External Auditor and an additional 3 recommendations from the Council, with a clear set of actions. There is a programme of improvement work to deliver the actions in the plan, with a dedicated Project Management Office to lead delivery of the programme. Dedicated workstream leads cover the key areas, and the council owned companies are involved.

4.5 Following the publication of the PIR into Robin Hood Energy the Ministry of Housing, Communities and Local Government (MHCLG) confirmed its intention to carry out a rapid Non-Statutory Review (NSR) of Nottingham City Council. The review was led by Max Caller CBE, a former local authority Chief Executive, and it commenced on 27 October 2020 and concluded on 27 November 2020 when a report was submitted to MHCLG.

4.6 The report's findings add to and expand on the PIR. The NSR made eight recommendations to the Council and to MHCLG. These include recommendations that the Council should:

- Produce a three-year recovery plan by January 2021 to set out the actions needed to restore the financial viability of its capital programme and revenue budget and implement a more robust medium-term financial planning process. The plan should be overseen by a new Improvement Board established by MHCLG in partnership with the Council and led by a strong, independent chair with sector experience with members appointed as non-executive directors/mentors to support and improve performance.
- Review its constitution within six months to ensure that the roles and responsibilities of members and officers and the framework within which they operate to clearly define decision-making processes, performance management and procedures within the Council.
- Conduct an in-depth assessment of its group of companies during the first year of the Improvement Plan and integrate conclusions within the medium-term financial planning process to determine the future status of each company as part of the council group.

- Produce a clear policy statement within six months which establishes the roles and responsibilities of nominated non-executive directors and shareholder representatives and incorporates it as an element of the Constitution, ensuring that this relationship is clearly defined within all council owned company agreements within a further six months.

4.7 MHCLG have now published the report and provided a written response agreeing with the recommendations of the NSR and outlining their intention to support the City Council by establishing an Improvement and Assurance Board. This body will also provide regular quarterly reports to the Secretary of State.

4.8 Whilst the completion and publication of the NSR findings marks an important transition on the City Council's improvement journey, it is not the start and a number of important steps have already been taken.

4.9 Since the adoption of the Council Plan in November 2019, the leadership of the Council have embarked on a series of significant changes in order to strengthen both the governance and financial stability of the Council, including establishing the Companies Governance Executive Sub-Committee and launching a Strategic Review of Robin Hood Energy resulting in a decision to dispose of the customer book to British Gas.

4.10 There have also been considerable changes to the senior management of the Council following the departure of the previous Chief Executive in April 2020, including the appointment of a new Chief Executive to drive forward Council policy and the appointment of an interim Chief Finance Officer to deliver medium term revenue and capital sustainability.

4.11 The Council has also produced a mid-year budget refresh for the 2020-21 financial year including significant in year savings proposals. Further savings proposals are being developed at pace to bridge the projected budget gap in 2021-22.

## **5 Progress Update**

5.1 The actions to date have been delivered at pace through the Governance Improvement Programme, with robust internal discussion and challenge, including from Audit Committee and Overview and Scrutiny Committee. Going forward, greater external assurance is being sought to improve the robustness, transparency and credibility of the action the Council is taking in response the recommendations of the PIR.

5.2 On 9 December, the newly established Governance Improvement Board met for the first time. The establishment of the Improvement Board is a significant step forward in improving Nottingham City Council's governance and decision making arrangements in response to the PIR, allowing greater transparency, accountability and external scrutiny of the City Council's governance and decision making processes.

5.3 The Governance Improvement Board is a politically balanced committee of Council, established to oversee the delivery of the Action Plan responding to the Report in the Public Interest concerning the Council's Governance Arrangements for Robin Hood Energy Ltd (the PIR) and to review wider governance issues at Nottingham City Council. The Committee is accountable to Council and will provide progress reports to Council every six months.

5.4 The Board's objectives are to:

- steer the implementation of the PIR Action Plan and wider governance improvements;
- monitor progress on the implementation of the PIR Action Plan;
- assess Nottingham City Council's current governance arrangements and identify and make recommendations to Council on areas for improvement;
- review the Constitution in relation to governance improvement and recommend amendments to the Leader in relation to executive matters and to Council for non-executive matters;
- identify best practice and gather views on matters within the Board's remit from relevant internal and external sources, including the appointed co-opted members and members of the Executive, Overview and Scrutiny Committees and the Audit Committee;
- make decisions, including spending decisions relating to non-executive areas of the governance improvement programme; and
- make recommendations to the Executive on executive areas of the governance improvement programme.

5.5 Membership of the Governance Improvement Board consists of 10 members, including two co-opted independent members, Professor Peter Murphy from Nottingham Trent University and Mark Edgell, the Local Government Association's Principal Advisor.

5.6 Professor Peter Murphy has been appointed Vice Chair. In addition to his role as Director of Public Policy at Nottingham Trent University, Peter also has a track record of research focussed on public policy, governance, scrutiny and value for money arrangements of locally delivered services. Peter spent 23 years in Local Government, most recently as Chief Executive of Melton Borough Council and prior to joining Nottingham Trent University, he was a Senior Civil Servant in Whitehall.

5.7 Mark Edgell is an experienced leader and non-executive director with extensive experience of working in local government and the former Leader of Rotherham Metropolitan Borough Council. Mark will add further rigour to the programme in the weeks and months ahead.

5.8 The membership of the Governance Improvement Board consists of four members of the Executive, including the Leader of the Council, the Chairs of both the Overview and Scrutiny and Audit Committees, a representative of the minority political groups and two independent members. Full Terms of Reference (TOR) and membership for the Board are included in Appendix 2.

5.9 The Governance Improvement Board will have a key role to play in providing robust challenge to the Council's improvement programme. The Improvement Board will provide assurance that the actions being taken in response to the PIR are appropriate and credible.

5.10 During the period up to and including December 2020, the actions taken by the Council have focused on reviewing current Nottingham City Council governance arrangements against best practice from a broad range of sources to identify specific areas for improvement and opportunities to strengthen current arrangements.

5.11 Appendix 1: “Governance Improvement Programme – Progress Update” sets out the actions that have been taken against each of the 13 recommendations of the PIR. The outcomes of the review work are summarised below.

## **6 Review**

6.1 Where Nottingham City Council does not have overall board control, it is especially important for reserved matters to be established in a shareholders’ agreement or comparable agreement, as is the case with Nottingham City Transport and Nottingham City Homes.

6.2 Four subsidiaries have 100% of their board comprised of current or former Nottingham City Council officers and councillors, and therefore the Council will need to consider how it strengthens the independent check and challenge identified by the best practice review moving forward. Furthermore, additional sectoral knowledge is required in a Non-Executive capacity on the boards of Enviroenergy and Nottingham Revenue and Benefits to effectively hold management to account.

6.3 Enviroenergy is the subject of strategic review and options appraisals, and additional support arrangements have been put in place during the period of the review. Completion of this review has been highlighted by the NSR as a priority for the Council and progress towards this aim is already underway.

6.4 As a consequence of the work undertaken in response to the PIR, a Strategic Review of Nottingham Revenue and Benefits should be considered as a priority.

6.5 Of the other two companies in which 100% of the board members are either Councillors or Council Officers, one is Robin Hood Energy, which is the subject of the strategic review outlined under recommendation one and has commissioned significant support from industry experts.

6.6 Where Nottingham City Council has appointed directors to company boards, they are overwhelmingly drawn from the elected members rather than Council Officers with only two Officer appointments out of 25 Nottingham City Council appointees.

6.7 The review of best practice identified many examples of Councillors acting as directors for Local Authority controlled subsidiaries, and found no reason to recommend the exclusion of Councillors from acting as directors. There is however, an over reliance on elected members to serve as unpaid directors and the use of Executive Councillors, particularly members of the Companies’ Governance Executive Sub-Committee, gives rise to difficult conflicts of interest that are more challenging to resolve.

6.8 The stated purpose of the Sub-Committee is; “to approve and oversee the Council's strategic objectives across the Nottingham City Council group of companies, and to support the development of the Group in line with the Council's regulations and ambitions”. Three of the five current Councillor members are also directors of subsidiary companies. The Leader of the Council and Chair of the Sub-Committee also holds a directorship on Blueprint, a non-subsidiary company limited by shares.

6.9 Additional measures are needed to improve the quality of record keeping for Councillor development, including training course content and attendance. This is not to say that training hasn’t taken place, and there are anecdotal accounts of such training being delivered, however moving forward the Council should use the corporate training system to manage and record the delivery of Councillor training, including refresher training.

- 6.10 A review of the employment history and technical background of directors other than Nottingham City Council appointees has been conducted, and provides reasonable assurance that appropriate levels of knowledge and experience are present in aggregate in the boards on which they serve.
- 6.11 The review of best practice has emphasised the importance of diversity in the composition of boards in terms of gender, ethnicity, age and length of service. This information was not available in the period of the review. It is recommended that consideration be given to incorporate metrics on board composition and diversity into the company performance monitoring arrangements and that this information be used to inform succession-planning arrangements.
- 6.12 The review of best practice has identified a need for a clear mechanism for exercising the rights and controls of shareholder or member. This has particular relevance to the appointments process for directors, which should be strengthened. It is considered good practice for the role and rights of shareholder and member to be consolidated in an Executive Committee of the Council and it is therefore proposed that the Terms of Reference of the Companies Governance Executive Sub-Committee be amended to this effect.
- 6.13 The current shareholder representative function has been reviewed. While these arrangements are currently sufficient, further consideration will also be given to the capacity of shareholder representatives in the longer term and their role in relation to the shareholder panel identified in the best practice review.
- 6.14 In-house refresher training on the legal duties of company directors has been produced and delivery of the training commenced in November. The training specification for more specialised training provision has been shared with a number of providers and a technical solution is being sought for remote delivery.
- 6.15 As the Council progresses the PIR Action Plan and NSR Recovery and Improvement Plan there is a need to assess, challenge and reset the cultural norms and expectations of Officers and Councillors.
- 6.16 All training delivered has been and will continue to be managed through the City Council's Corporate Training System. This will ensure proper recording of course content, attendance and completion as well as ensure periodic refresher training is undertaken.
- 6.17 A review of the existing Audit Committee Terms of Reference has been undertaken against identified Chartered Institute of Public Finance and Accountancy (CIPFA) best practice. This review found minor differences in respect of reporting which have not affected Audit Committee business. With the exception of independent external members, no other factors were identified from CIPFA best practice.
- 6.18 Notwithstanding the above, the current wording of the Audit Committee Terms of Reference does not adequately set out the relationship with Companies Governance Executive Sub-Committee, Overview and Scrutiny Committee, companies' assurance arrangements, independent members, and other roles which may be held by the Chair. A draft revision has been produced and independent expert advice sought from CIPFA.
- 6.19 The terms of reference for the Audit Committee and Overview and Scrutiny Committee currently allow for members to hold directorships in Council subsidiaries. This is not consistent with best practice and has the potential to undermine the assurance role of

the Committee with regard to Companies Governance Executive Sub-Committee and the companies within the Council group.

- 6.20 When considering changes to the membership and composition of company boards consideration should also be given to ensuring there is a managed transition over time in order to avoid excessive disruption to Council companies.
- 6.21 A review of the existing Overview and Scrutiny Committee Terms of Reference has been undertaken against identified best practice. This review has identified changes to the Terms of Reference that would provide greater clarity on the role of the Committee, particularly in relation to Council owned companies, Companies Governance Executive Sub-Committee and Audit Committee.
- 6.22 In response to LGA feedback, further amendments have been drafted including the addition of reference to risk management.
- 6.23 The Commissioning and Procurement Executive Sub-Committee, although not mentioned in the Auditor's report, has a role in protecting the client interests of the Council and Value for Money, where the Council awards contracts to subsidiary companies. The review of Committee Terms of Reference has therefore been extended to include this Committee.
- 6.24 Following the formal change to Companies Governance Executive Sub-Committee Terms of Reference to enshrine shareholder rights, Shareholder representatives should work with the Committee to establish clear shareholder financial, strategic and policy objectives for each company.
- 6.25 The Council's Corporate Risk Management Framework has been reviewed and updated to incorporate wider risks from the group of companies. The corporate risk register has also been updated to include strategic risks from the group.
- 6.26 Individual company risk registers have been provided for incorporation into the overall framework for risk management.
- 6.27 These currently lean heavily towards financial risks. These should be reviewed again following the establishment of clear shareholder objectives for each company to reflect risks to the broader organisational goals.
- 6.28 In accordance with revised Action Plan agreed by Council on 9 November 2020, at its meeting on 18 December 2020 the Audit Committee considered a report in relation to the appointment of councillors as Directors on Boards of Council owned and controlled companies, and made comments attached at Appendix 4.

## **7 Other options considered in making recommendations**

- 7.1 Nottingham City Council accepted in full the recommendations of the Public Interest Report and has endorsed the corporate Action Plan to deliver the required remedial actions in response. Therefore, no other options were considered.

## **8 Finance colleague comments (including implications and value for money)**

- 8.1 The response to the PIR is being managed within existing resources and as such there is no direct additional cost with the exception of work commissioned through CIPFA on the current and future trading prospects of each Council-owned company and the reasons for holding that interest. A budget of £44,000 has been set aside for this work.

- 8.2 Any further expenditure required as a result of the PIR and NSR will be taken through the appropriate boards for endorsement and once funding identified, through the appropriate constitutional approval process.

Ceri Walters  
Head of Commercial Finance  
23 December 2020

**9 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)**

- 9.1 Any legal issues that have arisen as a result of the PIR have been addressed in previous reports to Council. There are no further legal issues arising out of this report.

Malcolm Townroe  
Director of Legal & Governance  
23 December 2020

**10 Equality Impact Assessment (EIA)**

Has the equality impact of the proposals in this report been assessed?

No

✓

An EIA is not required because the report does not request any formal decision to be taken at this stage.

**11 List of background papers other than published works or those disclosing confidential or exempt information**

- 11.1 None.

**12 Published documents referred to in compiling this report**

- 12.1 Public Interest Report from the External Auditor.  
12.2 Nottingham City Council Action Plan in response to the PIR.  
12.3 Non-Statutory Review Nottingham City Council – November 2020.  
12.4 Letter from the Secretary of State 17 December 2020.  
12.5 Minutes of the Governance Improvement Board meeting held on 9 December 2020.  
12.6 Minutes of the Audit Committee meeting held on 18 December 2020.

**13 Appendices**

- 13.1 Appendix 1 – Progress Against PIR Recommendations  
13.2 Appendix 2 – Nottingham City Council Governance Improvement Board Terms of Reference  
13.3 Appendix 3 – Nottingham City Council Governance Improvement Board Minutes 9 December 2020  
13.4 Appendix 4 – Comments of Audit Committee on 18 December 2020

**Councillor David Mellen**  
**Leader of Nottingham City Council**

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## Appendix 1 – Governance Improvement Programme Progress Update

**Recommendation 1:** *Using the current Strategic Review and other appropriate advice to assist with decision-making, the Council should urgently determine the future of Robin Hood Energy, with options properly evaluated and risks properly assessed. This assessment should also take into account the context of the Council's current financial position.*

In March 2020, prior to the publication of the PIR, Nottingham City Council launched a strategic review of Robin Hood Energy with a view to determining the long term future of the company. At the same time, the company, at the direction of the Council as shareholder, appointed external advisors with significant industry experience to take over the management of the company and support the strategic review process.

The Strategic Review has considered a range of options for the future direction of Robin Hood Energy culminating in the decision to dispose of the customer book through an agreement with Centrica, the parent company of British Gas. This decision is consistent with the aim of resolving the Council's financial exposure while minimising the final cost of doing so.

From the 4<sup>th</sup> of September, Robin Hood Energy began the transfer of its customers to British Gas a process that will conclude in early 2021.

**Recommendation 2:** *The Council should review its overall approach to using Councillors on the boards of its subsidiary companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company Board members.*

Between September and November 2020, the Council has undertaken a review of best practice with regard to Council owned companies alongside a review of the current and historic practice of the City Council. This review identified many examples of Councillors acting as directors for Local Authority controlled subsidiaries and found no reason to recommend the exclusion of Councillors from acting as directors. There is however, an over reliance on elected members to serve as unpaid directors and the use of Executive Councillors, particularly members of the Companies' Governance Executive Sub-Committee, gives rise to difficult conflicts of interest that are more challenging to resolve.

The Lawyers in Local Government Example Best Practice Code states that "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 that is considered to be in the best interests of the company and the Council."

Similarly the 2016 Grant Thornton review of group governance at Birmingham City Council included in its recommendations that "entity boards will

remain a combination of elected members and NEDs.”

In both cases however, the guidance highlights the inability of Councillors to waive any conflict of interest they may have in their role as Councillor, thereby preventing them from participating in any decision making process in relation to the company.

For these reasons, it is not proposed that a blanket restriction on Councillor appointments to Council company directorships be adopted. Instead, it should be considered that restrictions on membership for Executive and Non-Executive Committees with a role in the governance of Council owned companies be drafted into their terms of reference. This is addressed under recommendations six and nine of the auditor’s report and Nottingham City Council’s own recommendation three.

The review has also considered the powers of the Council as shareholder or member to control the composition of company boards through the appointment and removal of directors. The ability to appoint directors is ordinarily laid out in the articles of association for each company. For companies limited by shares, this power is commonly held by shareholders who may exercise it through ordinary resolution. The board of directors themselves may also hold the same power, either with shareholder consent required – for example at the next AGM following appointment – or without consent.

For companies limited by guarantee without share capital, the appointment of directors is often tied directly to membership where each member is able to nominate a certain number of directors. In the case of charitable trust these directors will usually also serve as trustees.

For the Council to maintain effective control of the composition of the company board, the right to appoint must be exclusively reserved by the shareholder or member. A review of the articles of association for all subsidiary companies has been undertaken. This initial review has found five of the eight subsidiary companies whose articles do not exclusively reserve the right of appointment to NCC. It is suggested that the Council should prioritise amending the provisions of these Articles to ensure control of appointments and removals are retained by the Council.

**Recommendation 3:** *Where it continues to use Councillors in such roles, it should ensure that the non-executives (including Councillors) on the relevant board have, in aggregate, the required knowledge and experience to challenge management. This is of particular importance where the company is operating in a specialised sector which is outside the normal experience of Councillors.*

The level of individual knowledge and expertise required of directors will in large part depend on the purpose of their appointment to the board. In the case of Councillors appointed to company boards, they bring significant experience and understanding of their local communities, the Council’s vision for the City and expectations and experiences of citizens. Where a company’s primary areas of operation are concerned with these dynamics, Councillors are able to make extremely valuable contributions to the goals of the organisation. While a Councillor may also bring additional experiences, knowledge and skills from roles outside local democracy, it is questionable whether this can be relied on in the long term as the sole means of bringing industry expertise to the board.

A review of the employment history and technical background of directors other than NCC Councillors and Officers has also been conducted. Nottingham City Homes and Nottingham City Transport both have non-executive directorates including independent non-executive directors with considerable combined experience in property management and housing. Nottingham City Homes also benefits from the inclusion of tenant board members, who are able to provide a valuable alternative perspective to board decisions.

Similarly, the board of Nottingham Ice Centre Limited includes five non-executive directors (other than those who are NCC Officers or Councillors), all of whom have other directorship experience and a range of professional qualifications. It is reasonable to accept that in these companies' sufficient industry skills and experience exists among the non-executive board members to hold the management of the companies to account.

The recently acquired company Thomas Bow has a board consisting of three executive directors, each with considerable experience in the relevant industrial sector, and one Councillor who is also an Executive Councillor. While the required knowledge and skills clearly exist at the board level, the industry expertise is consolidated exclusively among executive directors without a realistic prospect of independent challenge from an industry expert. Consideration ought to be given to the appointment of an independent non-executive director, or to whether NCC Officers with experience in highways construction contracts or similar might provide valuable challenge to the board.

The remaining four subsidiaries have no directors other than NCC Officers or Councillors and on the face of it, are likely to lack the level of sector specific expertise required. It is important to note that one of those companies is Robin Hood Energy, which is the subject of the strategic review outlined under recommendation one and has commissioned significant support from industry experts.

The remaining two companies are Enviroenergy and Nottingham Revenue and Benefits. Enviroenergy is itself the subject of strategic review linked to the Council's district heating infrastructure and waste processing arrangements. The strategic significance and complexity of the overarching project is well understood by the Council and has also been identified by the NSR as a strategic priority for the Council.

As part of the Council's response to the broader question of Council owned companies raised under Nottingham City Council's own recommendation one and reiterated by the NSR, Nottingham Revenue and Benefits has been identified as a priority for a Strategic Review in 2021.

Control of the appointment and removal of directors as outlined under recommendation 2 is also of importance here.

**Recommendation 4:** *Where Councillors are used in such roles, the Council should ensure that the Councillors are provided with sufficient and appropriate training, which is updated periodically.*

Regardless of the varying roles different directors may have, it is essential that all NCC Councillors and Officers are equipped with the basic core competencies and understanding of the legal duties and liabilities associated with their position.

Advice on the core competencies and training required to effectively discharge the duties of directors has been sought from appropriately qualified

external bodies which, alongside guidance found in the review of best practice, has been used to produce a list of training requirements.

A review of training records for Councillors and Officers serving on company boards has been undertaken to identify any previous training that would meet these requirement either in full or in part. Whilst there are instances of training and professional development that would certainly contribute to being an effective board member, there is limited evidence of training to enable them to fully and effectively execute the duties of directors.

This is not say that training hasn't taken place, and there are anecdotal accounts of such training being delivered, but the record keeping of attendance and course content does not provide a robust basis to form a judgement on the sufficiency of such training. The gap is partly explained by Councillor training records having only transferred to the Corporate system in 2018, however, in the absence of a clear record it is recommended that all Councillors serving in the role of company directors regardless of whether it is a wholly owned subsidiary.

A training and development framework for Councillors serving in the capacity of directors has been produced. This is a tiered approach building on the foundational skills developed by Councillors through existing induction and refresher training with additional training covering:

- The role of a company director
- Legal obligations for directors
- Company structures
- Board effectiveness
- Risk Management
- Corporate culture and corporate social responsibility

A training specification has been produced and proposals sought from three well established and well regarded bodies with relevant experience. It is anticipated that this training will be commissioned and rolled out from the end of January 2021, subject to contract.

As an immediate measure, Nottingham City Council has developed and delivered its own internal training course for Councillors acting as directors.

***Recommendation 5:*** *The Council should ensure that all elements of its governance structure, including the shareholder role, are properly defined and that those definitions are effectively communicated to the necessary individuals.*

The elements of the Council's governance structure are set out in the Council's constitution. In particular, the Terms of Reference for Committees which sets out the distinctions between Executive, Non-Executive and Scrutiny functions and the roles of different Committees with regard to decision making.

Reviews have been undertaken of the Terms of Reference for Audit Committee, Overview & Scrutiny Committee and Companies Governance Executive Sub-Committee. A redraft of the Audit Committee Terms of Reference has been produced and at the time of writing further advice and

challenge was being sought from CIPFA with a view to bringing a version for formal adoption to Council in early 2021.

A review of the existing Overview and Scrutiny Committee terms of reference has been undertaken against identified best practice. This review redrafted the Terms of Reference in order to provide clarity on the role of the committee, particularly in relation to Council owned companies, CGESC and Audit Committee. A draft of the proposed Terms of Reference for Overview & Scrutiny Committee has been presented to and accepted by the Committee and is appended to this report for formal adoption as detailed in the recommendations of this report.

The review of best practice has identified a need for a clear mechanism for exercising the rights and controls of shareholder or member. This has particular relevance to the appointments process (for Councillor and Officer directorships), that should be strengthened. It is considered good practice for the role and rights of shareholder and member to be consolidated in an Executive Committee of the Council and for this reason consideration should be given to amending the Terms of Reference of the Companies Governance Executive Sub-Committee accordingly.

A redraft of the Terms of Reference has not been produced at this stage in order that any changes also take into consideration the findings of the recently published NSR, however, it is proposed that the following addition be made to the purpose of the Committee:

“To discharge the executive functions of Shareholder, Member or Guarantor of companies within the Nottingham City Council Group and companies in which Nottingham City Council holds shares or membership rights.”

In addition it is proposed that the following additions be made to the listed responsibilities of the committee in its terms of reference:

Consider matters reserved to the Council for shareholder approval, such as:

- Varying Articles of Association
- Varying ownership and structure including the formation of subsidiaries to any company
- Variations to shares (number of, rights, etc.)
- Entering contracts that; have a material effect on NCC Council business (including other companies within the group), are outside of the business plan or do not relate to the business, or are significant in relation to the size of the business, the business plan, etc.
- Material legal proceedings outside of ordinary business
- Adopting and amending business plans each year and strategic plans (3 years)
- Appointment, removal and the remuneration of directors (members of the company board)
- Selection of the chair of the board
- Appointment of auditors
- Issue of dividends

In parallel, the role of the Shareholder Representative (as distinct from shareholder) has been considered at Companies Governance Executive Sub-Committee on the 20<sup>th</sup> of October 2020, and a subsequent draft role description and competency requirements produced.

The Commissioning & Procurement Executive Sub-Committee, although not mentioned in the Auditor’s report, has a role in protecting the client interests of the Council and VfM, where the Council awards contracts to subsidiary companies. Proposals will also be developed and brought forward for the

Commissioning & Procurement Executive Sub-Committee.

**Recommendation 6:** *When allocating roles on Council-owned organisations to individual Councillors, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them.*

In response to recommendation six of the external auditor's report, Nottingham City Council has reviewed its process for appointments to company boards. The review process has also highlighted the potential to minimise the scope for conflicts of interest through restrictions on membership in the Terms of Reference of key Committees.

The use of membership restrictions in this way has been presented to Audit Committee for discussion on the 18<sup>th</sup> of December 2020. The Committee has concurred with the view that restrictions on membership should exclude Executive Members who hold directorships from membership of Companies Governance Executive Sub-Committee.

In addition Audit Committee have given a view that where practical, Executive Members ought not hold directorships in Council companies whose primary activity falls within the scope of their portfolio. In relation to this point, the Committee has requested further clarification of the role of Portfolio Holders in relation to companies of this kind and the proper alignment of company's policy objectives to those of the Council.

Appointment / nomination to Outside Bodies is a Local Choice Function and NCC has determined that it is an Executive Function. Appointments / nominations are therefore approved by Executive Board, an Area Committee or, for in-year changes, the Director for Legal and Governance. Executive Board is responsible for the majority of approvals with Area Committees being responsible for nominations / appointments to Outside Bodies that operate exclusively within their area.

While these provisions provide a framework for the general case of appointments to Outside Bodies, they do not address the specifics of exercising the shareholder rights to appoint to a company board. In the case of an appointment made by the existing board of directors (where they have the right to do so), the above provision would have little or no effect.

It is proposed that the nominations and appointments process for Directors of all NCC companies be rationalised. This should include a record of the decision to indemnify Officers or Councillors appointed as directors.

By virtue of the Local Authorities (Indemnities for Members and Officers) Order 2004, officers or members may be indemnified by the authority for actions undertaken for or at the direction of the authority (within certain limitations), including in any role they take as the director of a Council company. While there is specific insurance provision for a range of eventualities there is no explicit communication or confirmation of the indemnification offered by the Council to the individual.

It is also recommended that a robust system for recording the decisions of the shareholder/member, including appointments and nominations of

directors, be established. In addition it is recommended that the details of all decisions for appointments and current board memberships be published on the Council website.

**Recommendation 7:** *The Council should ensure that risks relating to its companies are considered for inclusion in its overall risk management processes, with appropriate escalation and reporting, rather than being seen in isolation.*

On the 24<sup>th</sup> of November the City Council approved a refreshed Corporate Risk Management Framework, including risk registers for each Council Company and an integrating strategic risks from the company group as a whole into the high level corporate risk register.

In light of the NSR findings and subsequent Recovery and Improvement Plan, effective risk management will continue to be a central consideration for the Council and the Corporate Risk Register will remain under continual review.

**Recommendation 8:** *As the new arrangements for monitoring companies are rolled out alongside the Companies Governance Executive Sub-Committee (CGESC), the Council should ensure that financial information is provided in accordance with its requirements and is fully understood by the Sub-Committee and others involved in holding the companies to account, and that robust action, with the oversight of the s151 officer, is taken if suitable information is not provided.*

The Companies Governance Executive Sub-Committee has established clear reporting mechanisms for each company in the group. This includes the changes to the Corporate Risk Management Framework referred to under recommendation 7 alongside key indicators of financial performance.

The Committee is advised by the Section 151 Officer, Monitoring Office and Chief Executive to support them in holding companies to account and ensuring full compliance with these reporting requirements.

In addition to these arrangements, consideration has been given to introducing additional controls including the establishment of an Officer Shareholder Executive to sit alongside the Companies Governance Executive Sub-Committee as well as the introduction of Company Loans protocol to scrutinise the borrowing requirements of individual companies. The NSR has identified similar requirements and it is proposed that these considerations be further developed through the implementation of the Recovery and Improvement Plan.

**Recommendation 9:** *Within the new arrangements involving the Companies Governance Executive Sub-committee, the Council needs to ensure that responsibilities for scrutiny and risk management are given sufficient prominence, including giving the Audit Committee explicit responsibility for scrutiny of governance and risk management across the group.*

As outlined under recommendation five, the City Council has reviewed the terms of reference for Overview and Scrutiny Committee, Companies Governance Executive Sub-Committee and Audit Committee as well as bringing forward proposals to further review the Terms of Reference for the Commissioning & Procurement Executive Sub-Committee.

The review of the existing Overview and Scrutiny Committee redrafted the Terms of Reference in order to provide clarity on the role of the committee, particularly in relation to Council owned companies, CGESC and Audit Committee. Input was sought from the LGA on the draft and, as a result of their feedback, further amendment was made, including the addition of reference to risk management.

The draft has been taken to Overview & Scrutiny Committee on 9<sup>th</sup> December 2020 and is brought forward for approval at this meeting of full Council.

At the time of writing redraft of the Audit Committee Terms of Reference has been produced and at the time of writing further advice and challenge was being sought from CIPFA with a view to bringing a version for formal adoption to Council in early 2021.

**Recommendation 10:** *In addition to those referred to in recommendations above, the Council should apply the lessons from Robin Hood Energy in a further review of its company governance arrangements, in particular to ensure that risks are appropriately flagged and managed, as well as successfully implementing the more robust monitoring agreed by the Companies Governance Executive Sub-Committee*

The production of this report for consideration by full Council is intended to respond to recommendation 10 of the PIR. In light of the recently published NSR, the broader findings and lessons learnt will naturally feed into the Recovery and Improvement Plan. Consideration should be given to the extent of overlap between the Action Plan in response to the PIR and the Recovery and Improvement Plan in response to the NSR.

**Recommendation 11:** *As part of this review, the Council should consider the appropriateness of the definition of the shareholder role adopted in the 2019 report and give it an emphasis on protection of the Council's financial interests alongside other elements.*

As outlined under recommendation five, the role of the Shareholder Representative (as distinct from shareholder) has been considered at Companies Governance Executive Sub-Committee on the 20<sup>th</sup> of October 2020, and a subsequent draft role description and competency requirements has been produced for consideration.

Shareholder Representatives are in place for seven of the eight subsidiaries. During the period of the review the current Interim Director of Strategic Finance has been appointed Shareholder Representative for Nottingham Revenue and Benefits to replace his predecessor. While these arrangements are currently sufficient, further consideration will also be given to the capacity of shareholder representatives in the longer term and their role in relation to the shareholder panel identified in the best practice review.

***Recommendation 12:*** *The Council should use the experience of owning RHE to consider whether there are any lessons for its wider governance, particularly in relation to the 'checks and balances' which need to be in place, including the need for a stronger monitoring and scrutiny function and moving to a culture in which challenge of political priorities and how they are being implemented is seen as a positive.*

Nottingham City Council has already started the process of reviewing and improving its system of governance and internal control. The City Council's response to the PIR details the actions the City Council is taking and will take up to June 2021.

The subsequent report of the NSR team builds on findings and recommendations of the external auditor, and as a result there is significant overlap in the actions and activities required by both. In order to streamline management and reporting arrangements and maximise the efficient use of limited resources consideration should be given to which activities are best managed and delivered through Governance Improvement Programme and which would be better rolled into the overall Improvement Programme.

The Nottingham City Council Constitution has been the subject of review since October, following the adoption by full Council of the Action plan in response to the PIR.

This work focuses primarily on the Committee structure and functions and on the their Terms of Reference. This work will now continue alongside a comprehensive rewriting of the whole constitution with the aim of simplifying it and enabling the Council to make effective decisions and implement the broader change programme at the rate required.

This work will create greater separation and independence between the Executive and Non-Executive roles within the constitution and strengthen the roles of the Overview & Scrutiny Committee and Audit Committee.

The NSR has highlighted the need to bring greater clarity to different roles of Councillors and officers, and their responsibilities to the organisation as a whole. To this end it is proposed that a new Member Officer Protocol be adopted to help set a common set of shared expectations for officers and Councillors.

**Recommendation 13:** *The Council should ensure that it reflects the financial pressures arising from RHE alongside those from covid-19, demand-led services and other areas to produce balanced and achievable financial plans for the current year and for the medium-term, without disproportionate, unsustainable reliance on one-off measures.*

The Council has passed a revision to the in-year budget bringing forward £12.5m of savings proposals and further proposals facilitated by accepting 113 VR applications, with a full year impact £2.3m.

Work on the 2021/22 budget is now well advanced and a proposed budget will be submitted to the Council's Executive Board in January 2021, to commence the formal consultation process. Once adopted, the budget will be monitored through the introduction of new budget oversight procedures to ensure savings are both tracked and delivered. These will ensure that both members and officers are clearly sighted on the budget and the key risks surrounding it and have a joint responsibility for managing these.

The 2021/22 budget will also contain the rolling three year MTFs and clearly set out the parameters against which this will be managed and delivered. In addition Nottingham City Council will develop a Debt Management Strategy which will manage the Council's overall debt downwards over MTFs time horizons.

#### **Additional Officer Recommendations:**

The Action Plan prepared by the Council in response to the PIR included three additional recommendations made by Officers and agreed by Council. The additional recommendations (shown below for reference) were planned to take place between January and June 2021.

In light of the recently published NSR the actions proposed in relation to these recommendations need to be reviewed to avoid duplication or abortive work. In particular the NSR includes the recommendations that NCC should:

- “conduct an in-depth assessment of its group of companies during the first year of the Plan and integrate their conclusions within their medium-term financial planning process”; and
- “produce a clear policy statement within 6 months which established the roles and responsibilities of nominated non-executive directors and shareholder representatives and incorporate it as an element of the Constitution”.

These recommendations when taken with the broader aims of the proposed Recovery and Improvement Plan are likely to subsume and supersede the Officer recommendations listed below:

**NCC 1 - Review of Council's approach to the ownership of companies:** The Council has a range of companies totally in its ownership and some owned jointly with others. These companies have developed over time and further are planned to be created during this period of office as outlined in the Council Plan. In the light of the findings of this report the overall approach of the Council to its relationship with its companies could benefit from a review.

**NCC 2 - Review of effective governance practice in NCC companies:** The Council has a number of companies which have had effective governance over a number of years and which have involved elected members on the boards. As part of this improvement work it is important to understand what has made those council companies and Boards effective and how any learning can be applied to other council companies and the other recommendations in this Action Plan.

**NCC 3 - Review of membership of the Audit Committee:** As a solution to the pressures from the reduction in public funding of services, the Council either owns or has a major interest in a considerable number of companies. It has also pursued a policy of in-house commercialisation of some services. As such the company and commercial trading risks it carries are more that would normally be expected for a local authority.

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### **Comment of Audit Committee on 18 December 2020 in relation to a report on the appointment of councillors as Directors on Boards of Council owned and controlled companies**

At its meeting of 18 December 2020, the Audit Committee was asked to consider, before the formal consideration by Council in January 2021, a report on the appointment of councillors as Directors on Boards of Council owned and controlled companies.

The Committee was asked to consider the following specific recommendations:

1. That Audit Committee note the work undertaken so far on the review of the use of Councillors on company boards; and
2. That Audit Committee provide any comment they may have for inclusion in the final review due to be considered by Full Council in January 2021.

The Committee considered this report in detail, recognising the important role that such companies play in assisting the Council in the delivery of its services and in supporting its finances.

The Audit Committee welcomed the work being undertaken and the need for clarity and consistency in the role of members when acting as Directors. The Committee noted that when acting as a Director of a Company, an elected member must act solely in the interests of that Company as set out in Company law.

The Committee noted and endorsed work being done to establish an overarching commercial strategy to reflect:

1. the reasons why the Council wishes to utilise an interest in companies as a route to service delivery and financial stability; and
2. arising from that strategy, decisions on whether to retain/divest/invest in individual companies according to their fit with the strategy.

The Committee wanted to stress the importance of good governance, openness and transparency in the way the Council conducts its business with its companies and particularly the need to avoid both the reality and the perception of damaging conflicts of interest when elected members serve on Committees.

With this in mind, the Committee approved three specific recommendations:

1. That Executive Board members should not serve as a member on the Board of any Company which comes within the remit of their portfolio;
2. That members on the Companies Governance Executive Sub Committee should not serve as Directors on any council-owned company (as this Committee directly oversees the activities and performance of all such companies);

## Appendix 4

3. That there is a relationship between Portfolio Holders and Shareholder representatives and that this relationship should be exercised through the normal Portfolio Holder briefings.

The Committee discussed and noted that the shareholder function is a Council function discharged by the Companies Governance Executive Sub Committee and that the Shareholder Representative of each company fulfilled this function on behalf of the Council.

The Committee noted that the role of independent members on company boards was a matter for companies to determine through their Articles of Association (agreed by the Council) but that the Companies Governance Executive Sub Committee had oversight into company performance including the skills composition of boards and the behavioural characteristics of companies towards their parent.

The Committee stressed the importance of induction and regular update training for members and officers to ensure that each can fulfil their respective roles. In particular, Audit Committee stressed that the role of officers in highlighting departure from accepted practice was important, and as such, that there was a need to refresh training, including whistleblowing.

On a related training point, as part of the review of why the Council holds companies, the Committee stressed the need to understand how the Council procures from these companies as well as wider aspects of procurement.

On behalf of Audit Committee members

Nottingham City Governance Improvement Board - January 20<sup>th</sup> 2021

<b>Title of paper:</b>	Director Training and External Support to the Governance Improvement Programme	
<b>Director(s)/ Corporate Director(s):</b>	Malcolm R. Townroe – Director of Legal and Governance	<b>Wards affected:</b> All
<b>Report author(s) and contact details:</b>	Daniel Ayrton daniel.ayrton@nottinghamcity.gov.uk	
<b>Other colleagues who have provided input:</b>	Dionne Screaton - Solicitor Gareth Sayers – Development & Change Manager Dean Goodburn – Policy & Performance Officer	
<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	12 January 2021	
<b>Relevant Council Plan Key Theme:</b>		
Nottingham People		<input type="checkbox"/>
Living in Nottingham		<input type="checkbox"/>
Growing Nottingham		<input type="checkbox"/>
Respect for Nottingham		<input type="checkbox"/>
Serving Nottingham Better		<input checked="" type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>The External Auditor published a Report in the Public Interest (PIR) on Robin Hood Energy in August 2020. The report highlighted a number of areas for improvement, including around Governance arrangements, both of city council owned companies, and more widely.</p> <p>The findings of the PIR were accepted by the Leadership of Nottingham City Council, and an Action Plan drawn up to address the issues raised - the PIR and Action Plan were formally endorsed at Full Council at the end of August.</p> <p>The Action Plan has 13 recommendations from the External Auditor and an additional three further recommendations from the City Council, with a clear set of actions underneath.</p> <p>A number of actions in the plan call for external advice, guidance on best practice, and support, including specifically from the Local Government Association (LGA). Use of external support satisfies a number of objectives in delivering the outcomes for the Action Plan:-</p> <ul style="list-style-type: none"> <li>• External assurance and challenge of Nottingham City Council's response to the PIR.</li> <li>• Access to sector specific best practice and experience across a range of areas related to local authority governance.</li> <li>• Help the authority identify different options for improving the aspects of company governance identified in the PIR.</li> <li>• Additional credibility and robustness to the work of the Governance Improvement Programme and the Council's governance arrangements going forward.</li> <li>• The LGA can provide a specific local government perspective on how local authorities can ensure effective governance of wholly and partly owned council companies.</li> </ul>		
<b>Recommendation(s):</b>		
<b>1</b>	That the Nottingham City Governance Improvement Board note the update on internally	

	delivered training to Councillors serving as directors of Council companies.
<b>2</b>	That the Nottingham City Governance Improvement Board approve expenditure of up to £15,000 on external support from Local Partnerships as outlined in the body of the report and delegate authority to spend to the Director of Legal & Governance in consultation with the Strategic Director of Finance.
<b>3</b>	That the Nottingham City Governance Improvement Board approve expenditure of up to £15,000 on external support from the Chartered Institute of Public Finance and Accountancy (CIPFA) as outlined in the body of the report and delegate authority to spend to the Strategic Director of Finance.
<b>4</b>	That the Nottingham City Governance Improvement Board approve further expenditure of up to £23,000 on externally delivered specialist training for Councillors serving as company directors as outlined in the body of the report, and delegate authority to spend to the Director of Legal & Governance in consultation with the Director of Strategic Finance and Director of Human Resources & Customer.

## **1 Reasons for recommendations**

- 1.1 **Recommendation 1:** The Action Plan sets out the need for ensuring all Councillors serving as directors of Council companies receive appropriate support and training to enable them to discharge their duties effectively. A review of existing training records undertaken between September and October 2020 identified that the record keeping of training for Councillors prior to 2018 had been inconsistent, and for this reason delivery of in-house refresher training ahead of externally sourced training was prioritised.
- 1.2 **Recommendation 2:** The Action Plan requires Nottingham City Council to seek external guidance on a range of issues including but not limited to:
- Assurance/Review of City Council practices and proposals to improve those.
  - Advice and examples of best practice from local government.
  - Specific support for work streams on areas such as training.
  - Support with an over-arching review of governance arrangements.
- 1.3 External guidance and support has already been provided. This has included:
- Provision of a Mentor for the Chief Executive
  - Support to the Nottingham City Council Governance Improvement Board.
  - All Portfolio Holders have been offered Councillor Mentors.
  - Independent challenge and review of our work on revised Committee Terms of Reference.
  - Independent review of our progress on delivering the Action Plan in response to the PIR.

- 1.4 The LGA have offered to fund 50% of the cost of additional consultancy advice from Local Partnerships, a joint venture partnership between the LGA and HM Treasury. A specification for this work has been produced along with a call off arrangement for additional guidance. The cost to Nottingham City Council for this work will be between £11,500 and £13,000.
- 1.5 **Recommendation 3:** A specification for specialist training for Councillors serving as company directors was produced between September and October 2020 and a number of training providers approached. Two providers have submitted proposals with prices ranging from £3,400 to £11,500 per cohort.
- 1.6 This range of prices is reflective of differences in the proposals with regard to cohort size and the duration of training. Given the scope and complexity of the training requirement specified by Nottingham City Council the higher value proposal is considered the most suitable. This is based on a smaller cohort of between 16 and 20 individuals. For this reason, the approval sought includes a contingency of £11,500 for an additional cohort.

## **2 Background (including outcomes of consultation)**

- 2.1 As part of the work undertaken for the Action Plan between September and November 2020, the composition and membership of Council company boards was reviewed. There are currently 30 Councillors holding directorships on the boards of companies in which the Council is either a shareholder or member.
- 2.2 The Companies vary in legal structure, with some limited by shares and others limited by guarantee. There is also a variance of ownership with a mix of wholly owned subsidiaries, jointly owned companies, companies to which the Council has a majority ownership or in some circumstances, a minority stake.
- 2.3 A review of training records for Councillors and Officers serving on company boards has been undertaken to identify any previous training that would meet these requirement either in full or in part. Whilst there are instances of training and professional development that would certainly contribute to being an effective board member, there is limited evidence of training to enable them to fully and effectively execute the duties of directors.
- 2.4 This is not say that training hasn't taken place, and there are anecdotal accounts of such training being delivered, but the record keeping of attendance and course content does not provide a robust basis to form a judgement on the sufficiency of such training. The gap is partly explained by Councillor training records having only transferred to the Corporate system in 2018, however, in the absence of a clear record it is recommended that all Councillors serving in the role of company directors receive additional training.
- 2.5 As an immediate measure, recognising the likely lead times for externally sourced training, Nottingham City Council has developed and delivered its own internal training course for Councillors acting as directors.
- 2.6 Between November 2020 and January 2021, Legal Services colleagues delivered internal refresher training to 26 of the 30 Councillors identified acting as Directors on the Companies with which the Council has a stake in.
- 2.7 Training was provided as a refresher briefing session on the understanding that more detailed training by external providers is being investigated.

## 2.8 Training content captured:

- the role of Directors in the context of Companies;
- the role of Shareholders/Members and Shareholder representatives;
- different types of Companies which the Council has involvement in;
- key Director duties;
- the importance of personal liability; and
- conflicts of interest.

2.9 Feedback from the 26 directors that have attended was positive, for the most part with the reflection being that it was a good reminder of director's duties.

2.10 It did identify that there were some gaps or discrepancies in paperwork received and guidance offered to Directors upon initial appointment and therefore access to information, knowledge and experience varied. All Directors expressed to some extent, a requirement for additional support when acting as Directors of Companies connected to the Council.

2.11 Advice on the core competencies and training required to effectively discharge the duties of directors has been sought from appropriately qualified external bodies which, alongside guidance found in the review of best practice, has been used to produce a list of training requirements.

2.12 A training and development framework for Councillors serving in the capacity of directors has been produced. This is a tiered approach building on the foundational skills developed by Councillors through existing induction and refresher training with additional training covering:

- The role of a company director
- Legal obligations for directors
- Company structures
- Board effectiveness
- Risk Management
- Corporate culture and corporate social responsibility

2.13 A training specification has been produced and proposals sought from three well established and well regarded bodies with relevant experience, with the intention that this training will be commissioned and rolled out from the end of January 2021, subject to contract.

2.14 Two providers have submitted proposals with prices ranging from £3,400 to £11,500 per cohort. This range of prices is reflective of differences in the proposals with regard to cohort size and the duration of training. Given the scope and complexity of the training requirement specified by Nottingham City Council the higher value proposal is

considered the most suitable. This is based on a smaller cohort of between 16 and 20 individuals. For this reason, the approval sought includes a contingency of £11,500 for an additional cohort.

- 2.15 The preferred proposal meets the specification for the training and would be delivered over two days. Each day will be split into three sessions lasting 90 minutes and will be delivered remotely.
- 2.16 The provider has recommended limiting cohorts to a maximum of 16 participants in order to maximise the value to all attendees. For this reason two cohorts would be required to cover all current Councillors and Officers acting as directors.
- 2.17 An alternative proposal in which all 30 required attendees complete the training as a single cohort. The proposal would aim to cover same broad content in a single day of training split between two three hour sessions.
- 2.18 The Head of HR & Organisation Development has been consulted on the supplier proposals and is of the view that delivering remote training to such a large group would likely undermine the ability of participants to fully engage with the course content. In addition, it is not seen as realistic to cover the required content in sufficient depth in the time allowed.
- 2.19 An additional benefit of the preferred proposal is that, with additional training it can be used towards formal accreditations including:
- Certificate in Company Direction
  - Diploma in Company Direction
  - Chartered Director (having completed Certificate and Diploma plus experience).
- 2.20 In addition to seeking external support for training, the Action Plan sets out the need for broader support and external advice. A number of actions in the plan call for external advice, guidance on best practice, and support, including specifically from the LGA.
- 2.21 External sources of information, guidance and best practice examples has been used extensively in the undertaking of all review work between September and December 2020. In addition the LGA has already provided considerable support to the City Council, demonstrating the strength of the sector and the willingness of our partners to collaborate and help us in our improvement journey.
- 2.22 This has included:
- Provision of a Mentor for the Chief Executive
  - Support to the Nottingham City Council Governance Improvement Board.
  - All Portfolio Holders have been offered Councillor Mentors.
  - Independent challenge and review of our work on revised Committee Terms of Reference.
  - Independent review of our progress on delivering the Action Plan in response to the PIR.

2.23 The additional support for which spending approval is sought will provide further “check and challenge” to improve credibility and transparency, and additional assurance to the Nottingham City Governance Improvement Board of progress towards fully implementing the recommendations of the PIR.

2.24 The Action Plan includes a further eight actions requiring specific support from external organisations and in particular the LGA. These are summarised below:

Action Ref	Rec Ref	Action	Deadline
AR04.8	AR4	External sources will provide the specialist training.	30/01/2021
AR05.3	AR5	External advice and best practice will be sought to define officer roles / functions that communicate and safeguard the interest of the Council in relation to the effective corporate governance of individual council companies.	30/01/2021
AR11.3	AR11	External advice and best practice will be sought to define officer roles / functions that communicate and safeguard the interest of the Council in relation to the effective corporate governance of individual council companies.	30/01/2021
AR12.1	AR12	An overarching review of the Council’s wider governance arrangements will be commissioned following advice from the LGA and other relevant external bodies.	31/03/2021
AR12.2	AR12	External advice and best practice models will be considered alongside an in-depth assessment of council practice to date	31/03/2021
OR01.2	OR1	Seek out external advice on the best practice model of council ownership of local authority controlled companies and managing the risks and benefits they present.	30/06/2021
OR02.1	OR2	Seek out external guidance on independently assessing effective company governance and use this to assess the governance practice of all Council owned companies.	31/03/2021
OR03.2	OR3	Seek out external advice of best practice models of Audit Committees in local government that could bring additional support to how the council is dealing with the risks it is facing	31/01/2021

2.25 An initial scope has been provided to Local Partnerships, a joint venture consultancy company between the LGA and HM Treasury with expertise in a range of subjects including Local Government Commercialism and reorganisation, and assurance.

2.26 Local Partnerships have advised that completion of the works within scope will required 20 days of consultancy advice. An additional 6 days has also been planned as a contingency to cover ad hoc work required in support of the broader Governance Improvement Programme.

2.27 The LGA has offered to part fund this package of support, meeting 50% of the cost that would normally be payable by the Council. The total amount requested for approval is therefore £15,000 including the contingency.

2.28 In addition to the support requirements identified above, additional specialist support has been identified to support the Audit Committee in particular with regard to the PIR

Action Plan. A scope for this work has been agreed with the Chartered Institute of Public Finance and Accountancy (CIPFA).

2.29 This scope includes:

- A review of the Terms of Reference of the Audit Committee in consultation with the Chair taking into account best practice in the local government sector and any recent recommendation e.g. the Redmond Review, identifying gaps and areas for improvement.
- Suggest how to clarify responsibilities and remit with other governance groups including Overview & Scrutiny, Executive Board and the Companies Governance Sub-Committee and provide training to Audit Committee members accordingly
- Recommend how the effectiveness of the Audit Committee could be improved and suggestions on what type and how assurances can best be received by the Audit Committee

2.30 CIPFA will also set out proposed training for Annual Financial Reporting. The scope of the training will cover the roles of members of the Committee in respect of:

- Financial reporting and financial performance
- Financial resilience - strategic Financial Management including borrowing

2.31 The cost for delivering this work is £12,675. The approval sought in this report includes a contingency of approximately 20% within the total of £15,000.

### **3 Other options considered in making recommendations**

- 3.1 The Action Plan and report of the external auditor both place great emphasis on the value of an external perspective and the benefits of seeking specialist advice. The action plan also explicitly requires the use of external advice in a number of actions. Therefore there is no valid option that does not require the approval for expenditure of this kind.
- 3.2 Throughout the review work to date, extensive use has been made of published best practice advice and documented guidance and while both instructive and informative to a broad approach, this guidance will be of limited further use in the practical development and implementation of changes specific to the Nottingham City Council context.

### **4 Finance colleague comments (including implications and value for money/VAT)**

- 4.1 To be reported verbally at the meeting.

### **5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)**

- 5.1 The proposals contained in the report raise no significant legal issues and are supported. Procurement of an external training provider has been undertaken in accordance with the Council's internal constitutional requirements. Delivery of this additional external training will build on the training that has already been delivered by Legal Services.

Malcolm R. Townroe – Director of Legal and Governance – 12 January 2021.

**6 Strategic Assets & Property colleague comments (for decision relating to all property assets and associated infrastructure) (Area Committee reports only)**

6.1 N/A

**7 Equality Impact Assessment (EIA)**

7.1 Has the equality impact of the proposals in this report been assessed?

No



7.2 An EIA is not required because the report does not refer to new or changing policies.

**8 List of background papers other than published works or those disclosing confidential or exempt information**

8.1 None

**9 Published documents referred to in compiling this report**

9.1 Public Interest Report from the External Auditor.

9.2 Nottingham City Council Action Plan in response to the PIR.