

City Council (Extraordinary)

27 August 2020

Subject:	Report in the Public Interest on Nottingham City Council's governance arrangements for Robin Hood Energy and Action Plan in response
Interim Chief Executive:	Katherine Kerswell
Portfolio Holder:	Councillor David Mellen, Leader of the Council
Report author and contact details:	Katherine Kerswell katherine.kerswell@nottinghamcity.gov.uk
Other colleagues who have provided input:	Daniel Ayrton, Business Development Manager Bipon Bhakri, Head of Finance (Commercial and Projects) Beth Brown, Head of Legal and Governance Dean Goodburn, Corporate Policy and Performance Officer Richard Henderson, Director of HR and Customer Colin Monckton, Director of Strategy and Policy Laura Pattman, Strategic Director of Finance Malcolm Townroe, Director of Legal and Governance, and Monitoring Officer
Wards affected: All	
Date of consultation with Portfolio Holder: 14 – 19 August 2020	
Summary of issues: On Tuesday 11 August 2020, the Council's external auditor issued a Report in the Public Interest on Nottingham City Council's governance arrangements for Robin Hood Energy Ltd (RHE) (<i>The Report in the Public Interest</i>). The report confirms that setting up the company was a legitimate policy response to seek to address fuel poverty, albeit a hugely ambitious and complex undertaking. The report states that the governance arrangements the Council had in place were not strong enough. In particular, <i>The Report in the Public Interest</i> states that: <ul style="list-style-type: none">• There was an insufficient appreciation within the Council (as a corporate body) of the huge risks involved in ownership of, and investment in, RHE.• There was insufficient understanding within the Council of RHE's financial position, partly due to delays in the provision of information by RHE and the quality and accuracy of that information.• There was insufficient sector (or general commercial), expertise at non-executive Board level.• There was a lack of clarity in relation to roles within the governance structure.• The arrangements did not establish an appropriate and consistent balance between holding to account and allowing the Company freedom to manage, and this worsened as levels of trust decreased and the financial position deteriorated. The Council fully accepts the findings and recommendations of <i>The Report in the Public</i>	

Interest.

The Council is proposing a number of additional actions to further support the external auditor's recommendations, and to secure the necessary improvements required.

The Report in the Public Interest's recommendations will be responded to by way of a detailed Action Plan, as outlined in Appendix 1 of this report.

Accountability for the delivery of the Action Plan will jointly rest with the Leader of the Council, Councillor David Mellen and the Chief Executive designate, Melbourne Barrett.

They will both work closely with the Executive, the Overview and Scrutiny Committee, the Audit Committee, and Chief Officers.

Accountability for each recommendation in the action plan will be clearly identified by lead portfolio holder and individual action by chief officer.

Exempt information: None.

The Local Audit and Accountability Act 2014 governs and prescribes the way in which the Council should handle an external auditor's formal Report in the Public Interest.

Schedule 7 (section 9) of the 2014 Act requires the public to have "access to meetings and documents". It makes clear that a Report in the Public Interest is not to be treated as an exempt item as per Part 5A of the Local Government Act 1972 (the provision that is used for the proper purposes of excluding the press and public).

The meeting to consider the external auditor's Report in the Public Interest and the Council's response – the Action Plan must be conducted in public.

Recommendations:

1. The Council accepts *The Report in the Public Interest* and all of its recommendations, from R1 to R13.
2. The Council agrees the Action Plan appended to this report, noting that the Action Plan includes a response to each of the external auditor's recommendations, as well as a number of additional recommendations. It also sets out both indicative timelines and accountabilities.
3. The Council notes the commitments in the Action Plan to learn from best practice from its partners, from its successful other companies, and from national bodies such as the Local Government Association to support its implementation of the recommendations.
4. The Council requests that the Overview and Scrutiny Committee and the Audit Committee considers and reviews the Action Plan from their differing constitutional positions, once it is approved at this meeting, and give their feedback in a report to the Executive Board at its October meeting.

- | |
|--|
| <p>5. The Council requests that the Executive Board receive a report at its October meeting on the Action Plan. This report will consider the feedback from the Overview and Scrutiny Committee and the Audit Committee. The report will also provide more detail on the recommendations and accountabilities. It will review the initial deadlines suggested in Appendix 1. It will outline the work with suitable external bodies such as the Local Government Association to support the Council in its endeavours. Any costs associated with implementing the recommendations and the delivery mechanism to support this work will also be reported to that meeting.</p> |
| <p>6. The Council notes that a report will be brought back to full Council in September 2021 updating members on the progress on implementing the Action Plan. During that period the Executive will receive quarterly updates on progress. These updates will also be regularly scrutinised by the Overview and Scrutiny Committee and the Audit Committee (having regard to their respective terms of reference).</p> |
| <p>7. The Council commits to a regular and open dialogue with the external auditor and the Ministry of Housing, Communities and Local Government to keep them appraised of the Council's progress in implementing its action plan.</p> |

1 Reasons for recommendations

- 1.1 Nottingham City Council fully recognises the serious nature of *The Report in the Public Interest* being issued. It fully accepts the findings, conclusions and recommendations of the external auditor's report into the governance arrangements for Robin Hood Energy Ltd.
- 1.2 The City Council is required under the Local Audit and Accountability Act 2014 to consider the recommendations of *The Report in the Public Interest* and decide what action to take in response. It is also essential that all decisions made by the Council with regard to its governance arrangements are taken in full cognisance of the report's findings and recommendations
- 1.3 Nottingham City Council adopted the Seven Principles of Public Life, otherwise known as the Nolan Principles, as part of its constitution.¹ The Nolan Principles establish the ethical standards and framework for conduct for all those working and governing in the public sector. These standards are not optional. They are foundational to the Council's Constitution.
- 1.4 The Nolan principles are: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Nottingham City Council added two further principles to this list: respect for others and a commitment to uphold the law. These principles apply equally to elected members as well as to officers. They frame the code of conduct that guides behaviour and governance practice in the Council's constitution.
- 1.5 The external auditor's report highlights how the Council should have paid more regard to the principles of objectivity and accountability in its governance practice of Robin Hood Energy Ltd. The Council may find it helpful to reflect on its overall governance practice in relation to its commitments to the Principles of Public Life in implementing the Action Plan.

¹ Section 6. Nottingham City Council Constitution

- 1.6 In considering the actions required to address the recommendations in the report, it is important to note that some of the actions will require a change in culture and governance behaviour, as well as transactional changes in process and functions.
- 1.7 It will take some time to fully implement all the changes required in the recommendations proposed in the Action Plan. However, the Council has already started to address a number of the issues that are highlighted in the external auditor's report. These actions include:
- Establishment of a fortnightly Robin Hood Energy Steering Group chaired by the Leader.
 - The replacement of the Council's Shareholder Representative.
 - Joint action with the new Chair of the Robin Hood Energy Board, to strengthen the Board with a Councillor who is a qualified accountant and more legal and administrative support and expertise.
 - The suspension of senior staff at Robin Hood Energy.
 - The appointment of industry experts and a new management team to lead the company, to bring a fresh approach to governance.
 - The establishment of a Companies' Governance Executive Sub-Committee to strengthen the Council's approach to governance across the authority.
 - The commencement of a strategic review to consider all options for the future of Robin Hood Energy Ltd.
- 1.8 Some of the actions to address the specific recommendations are also in progress. These are set out in Appendix 1.

2. Addressing the recommendations

- 2.1 The Local Government Act 1999 introduced the duty of "best value" for all local authorities. This duty requires councils to "make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness".
- 2.2 In addressing that duty, the Council needs to be a learning organisation that focuses on improvement and development; a Council that it is open to challenge and which is dynamically accountable for the people it is here to serve – the citizens of Nottingham.
- 2.3 As part of this commitment, the Council will seek support from outside bodies in how it can best respond to the recommendations. It will look to engage with bodies such as the Local Government Association and others to assist with its improvement journey.
- 2.4 Nottingham City Council has been involved in the national peer review programme which is delivered by the Local Government Association. A return visit was due within the next 12-18 months. Consideration will be given as to how a return visit could support the work outlined in Appendix to address the external auditor's recommendations.

- 2.5 Accountability for the delivery of the report will be jointly owned by the Leader of the Council and the Chief Executive designate. They will work closely with the Executive, Overview and Scrutiny Committee, the Audit Committee and chief officers to deliver the Action Plan. Executive portfolio holders have been given specific accountability for the recommendations and the detailed actions required will be owned by a designated chief officer.
- 2.6 Work on the Action Plan will be reported in public to the Executive Board on a quarterly basis commencing from the October Board meeting. The Overview and Scrutiny Committee and the Audit Committee will be regularly engaged from their differing constitutional perspectives with the work on the Action Plan. They will ensure progress is timely, thorough and fulfilling both the spirit and the letter of the recommendations from the external auditor
- 2.7 There will be a report back to full Council in 12 months' time to the September 2021 meeting on progress against the Action Plan.
- 2.8 Feedback will be provided on a regular basis to the external auditor on progress on the recommendations. Regular briefings will also be offered to the Ministry of Housing, Communities and Local Government having regard to the Permanent Secretary's role of Accounting Officer for the Department.
- 2.9 Progress on meeting the recommendations and delivering the Action Plan will also be shown on a dedicated page on the Council's website fulfilling our commitment to transparency and to better inform the citizens of Nottingham of our work on this important matter.
- 2.10 In addition to responding to the specific recommendations in the external auditor's report, the Council will also commit to a number of additional recommendations to improve overall governance and the oversight of Council companies.
- 2.11 The City Council has a diverse portfolio of companies and other subsidiary bodies it either owns or is a co-owner/shareholder in. Where the City Council is the sole owner of a company, it will lead any review working closely with the governing body of that company. Where the authority is the joint owner/shareholder/ partner, it will work collaboratively with other stakeholders to review governance as appropriate.
- 2.12 The Action Plan, together with the additional actions, refer to the Council's companies collectively. The list of company boards that are included within scope are:
- Blueprint Limited Partnership
 - Enviroenergy Ltd
 - Futures Advice, Skills & Employment Ltd (was Nottingham & Nottinghamshire Futures Ltd)
 - Nottingham City Homes Ltd
 - Nottingham City Transport Ltd
 - Nottingham Ice Centre Ltd
 - Nottingham Revenues & Benefits Ltd
 - Thomas Bow
 - Robin Hood Energy Ltd

2.13 More details of the Action Plan, recommendations and the additional actions are set out in Appendix 1.

3. Communication and publication of the report

3.1 In accordance with the requirements of the Local Audit and Accountability Act 2014, and upon receipt of the external auditor's report on 11 August 2020, the Council ensured the report was brought to the attention of the public, elected members and to its partner organisations and stakeholders.

3.2 At 14:00 on 11 August, the Council published the report on the Nottingham City Council website at <https://www.nottinghamcity.gov.uk/public-interest-report/>. There is also a frequently asked questions and answers note to help further understanding about the issue and the report.

3.3 The web page also provides details on how to obtain physical copies of the report. Due to the coronavirus pandemic, arrangements have been put in place for the report to be sent out by post on request.

3.4 The Council issued a Notice in the local paper – the Nottingham Post – on the first available printing, to publicise receipt of the report. Copies of the report were also circulated to all elected members on 11 August.

3.5 The Council issued a press release to ensure the report was brought to the attention of the press and public and proactively contacted 25 partner organisations to share the report.

3.6 All employees of the City Council have been contacted via email to inform them of *The Report in the Public Interest*, along with details of how to obtain a copy. Similar communication has been issued to all 14 associated organisations and the Council's subsidiary companies.

3.7 The Chairs and chief executives / chief officers of all Council companies will be sent a copy of this report, and their full engagement in responding to the recommendations will be sought.

4. Background

4.1 In 2015, Nottingham City Council set up Robin Hood Energy as a 'not for profit' energy company. The original aims of the company were to address fuel poverty, the unfairness of those using 'pre-paid' meters being charged very high prices for their energy and to give an alternative to the 'Big Six' energy providers for Nottingham residents.

4.2 The setting up of a council owned energy company in Nottingham was followed by others in Plymouth and Bristol. The company grew and established 'white label' arrangements with other areas and thus increased the customer base.

4.3 The company was affected negatively by the volatility in wholesale energy markets and by price cap changes by the regulator. The company has 115,000 customers as of August 2020.

5. Other options considered in making recommendations

- 5.1 In accordance with the 2014 Act, the Council has reviewed the recommendations. These have also been reviewed in light of the Nolan principles incorporated as part of our constitution.
- 5.2 In reviewing the recommendations the Council accepts all of them. Therefore, there are no other relevant options other than to accept the external auditor's report and its recommendations.
- 5.3 *The Report in the Public Interest* focusses on improving the governance of the Council. This is entirely aligned with the Council's own Constitution and with its statutory duty of best value and continuous improvement.

6. Financial comments

- 6.1 The proposed response to the external auditor's report will ensure that the Council will operate within best practice standards. This will ensure that the Council's strategic objectives are being met across the companies it has a financial interest in.
- 6.2 The recommendations will have implications for the Council and all of its subsidiary companies, enabling them to operate more effectively and be more accountable to the Council in its role as Shareholder.
- 6.3 The recommendations will require a more corporate approach; this will provide greater visibility and stronger governance across all of the various entities operated by the Council.
- 6.4 Having better and more robust corporate governance will help improve the underlying financial viability of the Council. This approach will provide clarity on what is expected from the Council's companies. It will clarify their key deliverables, which together with an integrated financial and performance reporting schedule, will provide up to date and consistent information so as to meet group-wide deadlines (i.e. the Council's corporate budget/forecast and year-end timetables).
- 6.5 The UK Corporate Governance Code 2018 makes reference to the benefits of clear relationships and integrated business objectives between companies in a group arrangement.
- 6.6 There will be costs associated with implementing the recommendations. At the time of publishing this report these costs are unknown. An update regarding associated costs will be brought to the October Executive Board for consideration and approval.

7. Legal and Procurement comments

- 7.1 *The Report in the Public Interest* ("the Report") is issued under the provisions of the Local Audit and Accountability Act 2014 ("the Act"). The Council must comply with the requirements of the Act in responding to the Report. At the time of writing this report, all of the relevant requirements of the Act have been fully complied with.
- 7.2 Under the provisions of the Act, the Council must decide whether the Report requires the authority to take any action or whether the recommendations are accepted. It must decide what action to take in response to the Report and its

recommendations. The recommendations and proposed actions by the Council are set out in the body of this report and accompanying Action Plan.

- 7.3 After considering the Report and its response to it, the Council must notify the external auditor of its decisions, and publish a notice containing a summary of those decisions which has been approved by the external auditor.
- 7.4 Where the Action Plan or recommendations in this report require amendments to be made to the Constitution, these will need to come back to Full Council for approval.
- 7.5 Any procurement issues that arise out of the recommendations contained within this report, or as a result of subsequent decisions, will need to be addressed in accordance with the Council's Financial Regulations and Contract Procedure Rules.

8. Equality Impact Assessment (EIA)

- 8.1 There has not been an equality impact assessment of this initial response to the external auditor's report.
- 8.2 However, each of the individual actions included in the Action Plan will require an equalities impact assessment produced as part of the work undertaken; and which will need to be considered in respect of any formal decisions to changing governance practice.
- 8.3 Any improvements to governance that arise from the implementation of the recommendations in the action must pay due regard to ensuring that all citizens in Nottingham are able to understand the actions the Council takes in their name, the decisions it makes to spend resources on their behalf, and who is accountable for that action.
- 8.4 Close attention will need to be paid to ensure the Council is as transparent as possible and is as open and engaging with local people as possible through this process of improvement and afterwards in the new practice established.

9. List of background papers relied upon in writing this report

- 9.1 None.

10. Published documents referred to in this report

- 10.1 Grant Thornton Report in the Public Interest August 2020.
- 10.2 Nottingham City Council press release.
- 10.3 Nottingham City Council Constitution.
- 10.4 Companies Governance Executive Sub-Committee Terms of Reference.
- 10.5 Section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.
- 10.6 Statutory Intervention and Inspection, A Guide for Local Authorities, MHCLG (May 2020).

10.7 The UK Corporate Governance Code 2018.

11. Appendices

Appendix 1 Action Plan

Appendix 2 Report in the Public Interest