

Companies Governance Executive Sub-Committee – 19 January 2021

Subject:	Governance Improvement Programme – Progress Update and Lessons Learnt		
Director:	Director of Legal and Governance		
Portfolio Holder:	Leader of the Council		
Report authors and contact details:	Malcolm Townroe – Director of Legal and Governance Malcolm.townroe@nottinghamcity.gov.uk 0115 876 4332 Daniel Ayrton, Business Development Manager Daniel.ayrton@nottinghamcity.gov.uk 0115 876 1830		
Other colleagues who have provided input:	Connie Green – Solicitor Connie.green@nottinghamcity.gov.uk 0115 876 5029		
Key Decision	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Subject to call-in
			<input type="checkbox"/> Yes
			<input checked="" type="checkbox"/> No
Reasons:	<input type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £1,000,000 or more
taking account of the overall impact of the decision			<input type="checkbox"/> Revenue
			<input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes
			<input checked="" type="checkbox"/> No
Total value of the decision: Not applicable			
Wards affected: Relevant to all wards	Date of consultation with Portfolio Holder: December 2020		
Relevant Council Plan Key Theme:			
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"/>
Summary of issues (including benefits to citizens/service users):			
1. This report and corresponding appendices provide the Sub-committee with the same update as provided to Full Council for its consideration on 11 January 2021. Any resolutions by Full Council after its consideration of the report will also be provided to the Sub-committee at its meeting on 19 January 2021.			
2. This is an update 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.			
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.			
3.This report further 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.			
Exempt information: None			

Recommendations:

To note the following:

- 1** the detail of progress made as contained in this report and corresponding appendices; and
- 2** that the same report content has been submitted for full Council consideration at its meeting on the 11 January 2021 with the following recommendations having been made:
 - (i) that the report be noted;
 - (ii) the comments of the newly established Governance Improvement Board on the progress to date and the lessons learned, as set out in Appendix 3
 - (iii) 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
 - (iv) 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.

The outcomes of full Council consideration against the above recommendations will be reported to the Sub-Committee at its meeting.

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 to 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 recommendation

- 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/VAT)

- 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 including 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. Social value considerations

- 10.1 Not applicable.

11. Regard to the NHS Constitution

- 11.1 Not applicable.

12. 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.

13. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

13.1 None.

14. Published documents referred to in compiling this report

14.1 Public Interest Report from the External Auditor.

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

14.3 Non-Statutory Review Nottingham City Council – November 2020.

14.4 Letter from the Secretary of State 17 December 2020.

14.5 Minutes of the Governance Improvement Board meeting held on 9 December 2020.

14.6 Minutes of the Audit Committee meeting held on 18 December 2020.

15 Appendices

15.1 Appendix 1 – Progress Against PIR Recommendations

15.2 Appendix 2 – Nottingham City Council Governance Improvement Board Terms of Reference

15.3 Appendix 3 – Nottingham City Council Governance Improvement Board Minutes 9 December 2020

15.4 Appendix 4 – Comments of Audit Committee on 18 December 2020