



City of Westminster Cabinet Report

Meeting or Decision Maker:	Full Cabinet
Date:	12 July 2021
Classification:	General Release
Title:	Governance arrangements for Council owned companies and societies
Wards Affected:	All
City for All/Policy Context:	The recommendations in this report contribute to the overall City for All aims through effective governance arrangements.
Cabinet Member/Lead Member:	Leader of the Council and Cabinet Member for Finance and Smart City
Key Decision:	Yes
Financial Summary:	There are no direct financial implications from this report
Report of:	Gerald Almeroth, Executive Director of Finance and Resources and Tasnim Shawkat, Director of Law

1. Executive Summary

- 1.1 Westminster City Council is committed to maintaining strong and robust governance to ensure the decisions that are taken are made in conjunction with, and in the best interests of, the communities it serves. As part of this commitment, the Council constantly reviews its governance arrangements alongside learning best practice with other authorities to ensure the Council continues to meet its statutory obligations in the best way.
- 1.2 The desire to review the governance arrangements for Council owned companies and societies was considered as activity in the Council owned companies increased. In addition, the Committee on Standards in Public Life

published its report in 2019 on local government ethical standards. The report included a good practice recommendation regarding transparency of each Council's relationship with separate bodies they have set up.

- 1.3 In October 2020, three internal audits were completed for Westco Trading Limited (WTL), Westminster Housing Investments Limited (WHIL) and Westminster Housing Developments Limited (WHDL). The audits highlighted several improvements that could be made in terms of the governance arrangements across all the companies. As Westminster Builds Housing Company starts to increase its investments, it is considered a suitable time to review the governance arrangements for WCC.
- 1.4 The Council is also aware that more recently that external auditors such as Grant Thornton have issued public interest reports where local authority companies have performed poorly and where it was found that governance arrangements were not adequate.
- 1.5 Following this review and the wider focus on local authority governance arrangements, this report outlines some improvements the Council proposes to make with respect to its oversight of its wholly or part owned companies or societies. This includes a governance framework to support continuous good governance practice and transparency.

2. Recommendations

- 2.1 Approve the creation of Shareholder Committee as detailed in this report to ensure that its companies or societies act in the interests of the Council as shareholder and /or lender and contribute to the Council's objectives.
- 2.2 Note the draft Terms of Reference at set out at Appendix 2 and delegate approval of final terms to Executive of Director of Finances and Resources in consultation with the Cabinet Member for Finance and Smart City.
- 2.3 Delegate authority to Executive Director of Finance and Resources to agree final terms and enter into each Memorandum of Agreement with relevant subsidiary.
- 2.4 Delegate authority to Executive Director of Finance and Resources to approve final terms and enter into any Service Level Agreements where corporate functions provide support services to the subsidiaries.
- 2.5 Note that Cabinet Member Terms of Reference will be amended to reflect the above changes including the delegation of all Council decisions in respect of loan provision or grant to companies to the Cabinet member for Finance and Smart City.

3 Reasons for Decision

- 3.1 It is believed that the recommendations proposed will improve the governance arrangements and allow the Council to closely monitor its interest within each of its companies and societies with further clarity, transparency, and reporting.
- 3.2 It will ensure that the Council and its subsidiaries are meeting their legal and statutory responsibilities, are practising good governance and is in a better position to operate its subsidiaries in the future.
- 3.3 The proposed Shareholder Committee will be a sub-committee of the Cabinet and therefore a Cabinet decision is needed.

4 Background

4.1 Review of Current Governance Arrangements

- 4.1.1 The Council has several companies/societies which it either owns or has an interest in, which were formed to deliver council objectives in a more efficient and effective manner.
- 4.1.2 Some of these companies have been dormant/inactive companies and are being considered for recommendation to be wound up and will be considered by Cabinet at a future date. There are however three entities, one of which Westminster Community Homes is a Cooperative and Community Benefit Society (also referred to as a "society") that have significant activity:
 - Westco Trading limited ("WestCo")
 - Westminster Community Homes Limited ("WCH") and
 - Westminster Housing Investments Limited and Westminster Housing Development Limited hereafter referred to as "Westminster Builds".
- 4.1.3 All Westminster companies/societies (also collectively referred to as "subsidiaries") currently have their own boards in place to manage the activities and performance of each subsidiary. The boards are made up of Council representatives with the only exception being WCH which has a non-council representative on its board. The current structure of the Council subsidiaries is specified in **Appendix 1**.
- 4.1.4 There are currently matters reserved in the articles of association of each company/society for shareholder decisions and the Leader of the Council has delegated authority to make shareholder decisions with some specific delegated authorities for the Leader to take decisions relating to WestCo. The Cabinet member for Communities and Regeneration has delegated authority to make shareholder decisions in relation to Westminster Builds and it is recommended that this review enables greater clarity on how shareholder decisions are taken. The normal capital programme approval and individual scheme and project business cases and financing will continue to be part of the

existing Cabinet Member approval process including, capital monitoring expenditure reporting which is reviewed by the Capital Review Group (CRG) monthly and Audit and Governance Committee reporting on a quarterly basis.

- 4.1.5 The Council wants to ensure that good governance and accountability is in place with respect to its Council owned companies and it is keen to learn from other local authorities' experiences. Recent public interest reports from external auditors highlight where, governance arrangements were not strong enough and the recommendations in this report are aimed at covering these areas of risk. Reports produced by internal audit in October 2020 identified some areas for improvement in the governance processes between the companies and the Council, in respect of the UK Corporate Governance Code published by the Financial Reporting Council (the "**Code**"). These included clarity with reporting lines from the companies to the Council, control from the Council as shareholder and assurances that companies are acting within the best interests of the Council. The internal audit reports also highlighted improvements for the governance process, these included the structure of the board, the role of the Chair and training for directors including dealing with potential conflicts of interest.

5 PROPOSALS

- 5.1 The Council is in most cases the majority shareholder in its subsidiaries and should be kept informed of each of its subsidiary's operations and performance. To support the Council in carrying out its role as a shareholder it is proposed that a Shareholder Committee should be established to perform the shareholder function on behalf of the Council across all owned or affiliated companies/societies.
- 5.2 The general legal concept is that shareholders own the company (such as the Council in respect of Council owned companies), whilst directors run companies/societies. The directors of companies are empowered to run the relevant company so long as they do so in accordance with its constitution and in line with their directors' duties. (Some activities, such as amending the constitution of a company, will always require the input of shareholders, by virtue of the Companies Act). If the shareholders do not like how the company is being run by the directors, then it is open to them to remove the directors and replace them with others; directors are required to act independently of the shareholders and utilise their independent judgement to take decisions as to how the company is run.

5.3 **Shareholder Committee:**

5.3.1 The shareholder committee will perform the shareholder's function and lender scrutiny on behalf of the Council for its companies. This committee will consist of 4 members made up of elected Council Cabinet members with Council officer advisors as required,

5.3.2 Cabinet are being asked to delegate specific powers to the Shareholder Committee by way of a terms of reference (Appendix 2) to be included within the constitution. It is currently envisaged that the Shareholder Committee will be convened at least three times a year to provide direction and scrutiny of the subsidiaries business plan, annual reports and performance. The committee will also refer any significant issues of concern for Cabinet consideration and determination as required.

5.3.3 It is recommended that reports from the companies are considered by the Shareholder Committee at general intervals such as a mid- year report and at the end of financial year full report of all the Council owned companies and societies. Cabinet will retain responsibility for the following functions in relation to the Council's companies, partnerships and societies:

- The establishment of any new company, partnership or entity
- The decommissioning/winding up of existing companies, partnerships and entities
- Scheme of delegations to the Shareholder Committee
- Subject to approval of this report, the determination of for the provision of investment of funds or assets or any lending facilities from the Council to the Council's companies, partnerships and societies/charities will be determined by Cabinet Member for Finance and Resources.

5.3.4 Shareholder Committee Membership to be set with four Cabinet Members comprising of the Leader (as Chair), Cabinet Member for Communities and Regeneration, Cabinet Member for Finance and Smart City and Cabinet Member for Housing. This will be kept under review and can be amended as appropriate.

5.4 **Memorandum of Agreement:**

5.4.1 In addition to the establishment of a shareholder committee, it is recommended as good practice that a Memorandum of Agreement is drafted and will apply to all WCC companies/societies. The agreement should contain core terms which could be applied to all the Council's companies/societies and how the Shareholder Committee will interact with the subsidiaries but may well need to contain additional bespoke or modified terms for each company depending on what the company is doing (i.e., what business it is in / markets it trades in etc.) and its size etc.

- 5.4.2 The Memorandum of Agreement will contain a list of "reserved matters" which the company agree will not go ahead without the consent of all the shareholders; these reserved matters will be dealt with by the Shareholder Committee or Cabinet, where Cabinet has retained responsibility for specific matters, as set out in paragraph 4.3.3 above). In essence, this agreement involves the company agreeing to limit their authority to take decisions without input from the company's owners.
- 5.4.3 It is expected that each company or society will enter into a form of agreement with the Council (whether as owner, controller or lender) setting out the basis of the relationship between them.
- 5.4.4 Delegated authority is sought in this report to agree the final terms of Memorandum of Agreement (MOA). Some of the key terms of this are broadly summarised below:
- a) **Business/Conduct of the Company:** provides that the Business of the company (including its objectives) will be as set out in the Business Plans as approved by the Council and that the company will carry out its business in accordance with the MOA, the Business Plans and other parameters agreed with the Council
 - b) **The Board:** will set out broadly how the Board will operate on a day to day basis. The Council (as Shareholder) will have the power to appoint and remove members of the Board in all of its companies
 - c) **Policies:** various policies will be required in order for the operation of the company to be effective; for example where there are potential conflicts of interest a policy can be adopted to provide clarity; the shareholder will also include a requirement for adoption of a remuneration policy;
 - d) **Council Reserve Power:** as well as the specific matters which are always reserved to the Council to decide (as described above in paragraph 4.7.2.2) and which will be set out in a schedule to the MOA, the MOA gives a general power to the Council (as Shareholder Committee) to direct the Board to take action or refrain from taking any action
 - e) **Scheme of Delegation:** sets out how decisions will be made. This will be a separate schedule setting out which decisions will be reserved to the Council as Shareholder and which by the company's Board (and which by the company's management, if applicable)
 - f) **Business Plans:** requires the company to be run and financed in accordance with the Business Plan and sets out how they will be prepared, approved and updated. Each MOA will describe the Business Plan which are to be produced by the company, which will vary depending on the nature of the subsidiary. The MOU will also refer to how performance will be monitored against Business Plans with key trigger events which will require a review of the relevant Business Plan.

5.5 Conflict:

- 5.5.1 Training for Directors and shareholder representative should be provided on an ongoing basis and a protocol should be established which deals with Council decision making and how potential conflicts are to be managed.
- 5.5.2 Directors of companies need to be aware of their statutory duties in relation to conflicts of interest.
- 5.5.3 Under the MOA, each company will be required to adopt a conflicts of interest policy which will align with statutory duties for directors in terms of conflicts of interest. This single policy will support a consistent approach to identifying, recording and managing conflicts of interest across all of the Council's companies.

5.6 Internal Audit

- 5.6.1 Internal audit to include annual review of governance arrangements in the audit plan – report on the review outcomes to the Shareholder Committee and Audit and Performance Committee (along with all other audit reviews conducted). This will include assurance of governance arrangements of subsidiaries in the Annual Governance Statement reported to Audit and Performance Committee.

6. Financial Implications

- 6.1 The Council has a number of active financing arrangements with both Westminster Builds and Westminster Community Homes. For Westminster Builds this consists of both quasi-equity funding and senior debt for specific development schemes. As at the end of 2020/21 outstanding financing into Westminster Builds totalled £19.6m. For Westminster Community Homes this consists of loan financing and Affordable Housing Fund for the provision of affordable housing units. As at the end of 2020/21 total loan financing outstanding into Westminster Community Homes totalled £8.2m.
- 6.2 The proposals set out in this report seek to strengthen and consolidate the financial monitoring undertaken in terms of the Council's subsidiary companies/societies. Key financial monitoring information will be brought together in a performance dashboard for the Shareholder Committee. This will provide a regular snapshot of the financial performance of each company and the group as a whole to support wider decision making. It will also help to raise early concerns about the financial position of any of the subsidiary companies/society and where necessary discuss and agree appropriate actions.

7. Legal Implications

- 7.1 The Council has the power to set up companies or bodies, which they own. Section 1(1) of the Localism Act 2011 introduced the “general power of competence” for local authorities, defined as “the power to do anything that individuals generally may do” and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area. The generality of the power conferred by subsection (1) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.
- 7.2 Section 4(2) of the Localism Act 2011 provides that where, in exercise of the general power, a local authority does things for a commercial purpose the authority must do them through a company.
- 7.3 Section 95 of the Local Government Act 2003 authorises the Council to do for a commercial purpose anything which it is authorised to do for carrying on any of its ordinary functions (other than where it is under a statutory duty to provide that function) however, this power is only exercisable through a company.
- 7.4 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- 7.5 The Local Government Association's (LGA) guide on enterprising Councils, advises Councils that the governance framework should clearly articulate the role of Councillors and scrutiny.
- 7.6 The Committee on Standards in Public Life published 15 recommendations on local government ethical standards best practice. Recommendation 14 states that *"Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place."*
- 7.7 In recent months there has been significant consideration in the local government sector of how a number of Council owned companies have been less than successful. One of the highest profile examples is Robin Hood Energy Limited, a company wholly-owned by Nottingham City Council. Following concerns regarding that company's governance, NCC instructed Grant Thornton UK LLP to conduct a governance review, and a Report in the Public Interest¹ prepared by them was published in 2020 under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.
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- 7.8 The Public Interest Report concluded that: *"Overall, the governance arrangements were overshadowed by [NCC's] determination that the Company should be a success, and this led to institutional blindness within the Council as a whole to the escalating risks involved, which were ultimately very significant risks to public money. Where concerns were raised by some individuals, these concerns were downplayed and the resulting actions insufficient"*.
- 7.9 The proposal to set up a Shareholder Committee, the Terms of Reference as set out and the ancillary arrangements outlined in this report will ensure that the Council not only acts lawfully but also that current guidance and good practice recommendations as mentioned above are followed. The proposals will ensure improved governance of companies or bodies set up by the Council.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact: Gerald Almeroth, Executive Director of Finance and Resources or Tasnim Shawkat, Director of Law

APPENDICES

Appendix 1 – Current structure of the Council subsidiaries

Appendix 2- Draft Shareholder Committee Terms of Reference

BACKGROUND PAPERS: None