

Meeting:	Audit and governance committee
Meeting date:	Wednesday 19 September 2018
Title of report:	Governance arrangements for Hoople
Report by:	Solicitor to the Council

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To outline to the committee the governance arrangements for Hoople to enable the committee to provide independent assurance on the adequacy of the risk management framework, including the internal control of the financial reporting and annual governance processes.

This report provides information to support the Committee in discharging this responsibility.

Hoople is a shared services company, owned by the council and Wye Valley Trust. The company provides back office professional support services to its owners.

Recommendation(s)

That:

- (a) the adequacy of the risk management framework be confirmed.

Alternative options

1. There are no alternative options being considered as this is a factual report provided for information to enable the committee to provide assurance on the robustness of the governance arrangements in place.

Key considerations

2. Hoople was set up by the council as a joint venture company on 8 March 2011 with Wye Valley NHS Trust and the then Primary Care Trust NHS Herefordshire (NHS) to provide “back office” shared support services initially across the three public sector bodies. The detailed business case and arrangements for the shared services company are further described in the Cabinet report of 21 October 2010 and Cabinet member report of 30 March 2011. Following the national NHS reorganisation, the remaining shareholders are the council and Wye Valley Trust with the council holding the majority of the shares.
3. Although the council contract with Hoople is not exclusive, the partnership aims for the company assume that Hoople would be the shareholders’ provider of choice for back office services in relation to human resources, training, finance, revenues and benefits and ICT services.
4. The company is a shared services company within the meaning of Regulation 12 of the Public Contracts Regulations 2015. Provided that the criteria in the Regulations are met, it is lawful for the public sector bodies which own the company to award service contracts to the company without any prior competition. This arrangement is sometimes referred to as a “Teckal company” which is a reference to an EU case which established the legal principles which now underpin Regulation 12. Essentially the three criteria which must be established and maintained throughout the life of the Teckal company, in order to retain the benefit of this exemption from tendering, can be summarised as:
 - (a) The shareholders exert decisive influence and a similar degree of control over the company as they do over their in-house functions;
 - (b) At least 80% of the company’s activities are derived from performing tasks for the shareholders; and
 - (c) There is no private shareholding exercising decisive influence over the company (ie the shareholders are all public bodies).

Hoople’s ongoing compliance with the above criteria is regularly reviewed, including by council managers, the Hoople Board, and the council’s external auditors, who are all satisfied that the current arrangements remain compliant.

5. The legal agreements which brought Hoople into effect include a shared services agreement which describes the role of the shareholders in setting up and managing the company on terms comparable to one of their own in-house functions. The company’s Articles of Association constrain the Board of Directors and any officers of the company to act subject to the terms of a Scheme of Reservation and Delegation put in place by the shareholders. This scheme effectively reserves to the shareholders rights to make decisions on fundamental questions of the company’s strategic direction, ownership and level of indebtedness.
6. The council has two legal mechanisms by which to exert control and receive assurance: (1) the shareholding and representation on the Board of Directors and (2) the annual service level agreement (“SLA”) negotiated between the council and Hoople. Thus, as with any shared services company, the council is both an owner and a commissioner.

Hoople Company Governance

7. A review of the company governance arrangements was undertaken jointly with Wye Valley NHS Trust in 2014/15. The decision of the cabinet member corporate services dated 19 March 2015, established the current company board arrangements to ensure that company strategy is clearly linked to shareholder priorities.
8. The council's Board appointees are at the time of writing, the director of economy, communities and corporate and the cabinet member, contracts and assets. Wye Valley Trust is also entitled to appoint one Director to the Board. The council's interests at shareholder level are represented by the council's Chief Executive. The council's commissioner representative is an Assistant Director. New appointments are in the process of being made to reflect changes in Council structure.
9. Hoople is managed by a Chief Operating Officer who also has direct responsibility for ICT and a management team comprising employees from both Hoople and the Council to ensure close alignment with shareholder priorities.
10. The company has in place a Scheme of Delegation which is reviewed every 6 months to ensure it remains fit for purpose, striking the appropriate balance between the requirement for control and assurance and the need to ensure operational flexibility.
11. Hoople has adopted financial procedure rules and contract procedure rules which are aligned to and consistent with the council's own rules and are reviewed annually.
12. Hoople is managed through the Board of Directors which has delegated a range of operational matters to the Chief Operating Officer as set out in the terms of that appointment. The meetings and conduct of the Board of Directors are regulated by the company's Articles and by company law, including the Companies Act 2006. The company's accounts are prepared and audited in accordance with Companies Act requirements and are treated as part of the council's group accounts. The company is fully subject to the Freedom of Information Act 2000. Board papers have not been routinely published to date but this is currently being reviewed.
13. Hoople operates its own risk register, highlighting risks related to the operation of the business and automatically picking up risks which could impact on the company's ability to deliver its obligations to shareholders under the SLAs. The escalation of risks is done at Board meetings. During the annual cycle of the SLA, the council's commissioner is responsible for ensuring that council risks are raised with Hoople. In turn the Board of Hoople are responsible for raising risks with the council's commissioner as they might arise.

Service Level Agreement with Hoople for services provided to Herefordshire Council

14. The provision of services to the Council is controlled through a Service Level Agreement which is prepared and confirmed annually. The SLA for 2018/19 has been the subject of a review over the first quarter to ensure it closely aligns with Council requirements. It is scheduled to be approved by Cabinet Member decision in September and that decision report sets out the scope and terms of the SLA. The SLA document itself is an appendix to the Cabinet Member decision report.
15. The budget for 2018/19 has been confirmed as £5.184m, as explained below in the Resources section. The services are provided at cost with no profit element. The

services are defined in detail in the SLA but can be summarised as: human resources, training, education and reablement, finance, revenues and benefits and ICT.

16. The performance management arrangements are set out in the SLA in some detail and include the appointment of lead commissioners for council services, quarterly contract review meetings, defined service levels and roles and responsibilities and defined key performance indicators. As well as setting out partnership governance principles to encourage joint working, shared goals and early warning behaviours, the SLA includes, as more formal mechanisms, Corrective Action Plans and Dispute Resolution Procedures.
17. Additionally, the council has adopted a framework for partnerships' governance setting out how we promote high governance standards in the partnerships we enter into and how we monitor the effectiveness of partnership governance arrangements. As a strategic partnership the governance arrangements with Hoople are subject to periodic review and actions are agreed to mitigate any risks identified during the review.
18. The annual governance statement action plan agreed by Audit and Governance Committee in July 2018 includes actions to secure improvement in two areas of the arrangements with Hoople: greater clarity regarding the scheme of delegation between the Council and Hoople; and improvements to the visibility of Hoople Board decision-making.

Community impact

19. In accordance with the adopted code of corporate governance, Herefordshire Council must ensure that it has an effective performance management system that facilitates effective and efficient delivery of planned services. Effective financial management, risk management and internal control are important components of this performance management system. This report provides Audit and Governance Committee with the information needed to enable it to provide independent assurance of the effectiveness of the arrangements in place.

Equality duty

20. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic
This report does not raise any significant implications in respect of the council's duties under the Equality Act 2010.
21. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate

that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty. The council work closely with Hoople to ensure that all the services they provide not only comply with Equality legislation, but that they are proactive in their commitment to the Equality agenda and support the council in discharging its duty

Resource implications

22. There are no resource implications associated with the recommendation.
23. The Hoople SLA for 2018/19 has been approved by each of the lead commissioners of the services provided by Hoople to the council.
24. In line with the council's requirement for efficiency savings the cost of the Hoople SLA for 2018/19 has been set at £5.184m compared to the total value of the SLA for 2017/18 of £5.545m. This represents a reduction in cost of 6.5%. Services are provided to the council by Hoople at cost with no profit element. The currently expected cost of the revised SLA is entirely contained within existing support services budgets.
25. The payments to Hoople are based on an equal profile through the year with payments of £1.296m each quarter.

Legal implications

26. There are no legal implications associated with the recommendation.
27. The legal basis on which Hoople operates is explained in the key considerations section of this report.

Risk management

28. The risk management arrangements established for Hoople are explained in the key considerations section of this report. Below are the key risks, reported with the recommendation to approve the annual SLA, and their mitigation:

Risk	Response
The cost of provision of the service may be higher than anticipated	The council will work with Hoople to stay within the agreed budget while minimising the impact of any increase in costs, looking to improve efficiency across the services or identify service reductions to minimise overall impact; the council may decide to increase its budget for Hoople services
Performance may not meet the SLA	Hoople Ltd has Teckal exemption and Herefordshire Council exercises effective control over Hoople. Service leads address poor performance identified by the KPIs reported quarterly. Poor performance is reported to, and resolution is monitored by, the Chief Operating Officer of Hoople Ltd and Assistant Director for Communities of Herefordshire Council. Continuous poor performance will be reported to the Hoople Board, where resolution will be agreed.
The council does not agree the SLA budget	Payments to Hoople will be delayed until the SLA is agreed. An interim payment for the first quarter of FY 18/19 was agreed on 12 th June 2018 and this approach could be repeated.

Consultees

29. None.

Appendices

None.

Background papers

None identified.