

Approval of contractual arrangements with Hoople Limited and the creation of a new Shareholder Committee

Meeting: Cabinet

Meeting date: 12th January 2023

Report by: Cabinet member Finance, Corporate Services and Planning;

Classification

Open

Decision type

Key

This is a key decision because it is likely to be significant having regard to the strategic nature of the decision; and / or whether the outcome will have an impact on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Wards affected

(All Wards);

Purpose

To consider and approve legal arrangements to manage and regulate the relationship between Hoople and the Council and to agree the terms of reference for a Shareholder Committee to improve the governance of Companies or other arrangements that the Council is involved in.

Recommendations

That:

- a) Cabinet approve the terms of the new Services Agreement between the Council and Hoople Limited substantially in the form set out in Appendix 1;**

- b) Cabinet note that Hoople Limited have been consulted on the Service Agreement.**
- c) Cabinet agree the Terms of Reference for the Shareholder Committee and nominate the Membership of a Shareholder Committee of Cabinet set out in Appendix 2;**
- d) That Cabinet recommend to Council changes to the Constitution to strengthen the governance framework to enable Audit and Governance Committee to have effective oversight of the governance of the Shareholder Committee; to extend the terms of reference of Scrutiny in relation to the operation of the Shareholder Committee, and to be explicit about the powers to set up the Shareholder Committee.**
- e) The Deputy Section 151 Officer and the Monitoring Officer following consultation with the Cabinet Member for Finance, Corporate Services and Planning are authorised to finalise the Hoople Services Agreement and to take all operational decisions with regard to the implementation of the above recommendations.**

Alternative options

To not agree to make the changes recommended in this report. However this is not recommended as it would not improve the governance of the various companies and arrangements the Council has and it would not help to better manage contractual arrangements with Hoople Limited.

Key considerations

1. Introduction and Background

Hoople Limited

- 1.1.** The Council is a shareholder in Hoople Limited (“Hoople”) along with Wye Valley NHS Trust and Lincolnshire County Council. Hoople, as a limited company, is a distinct legal entity in law with a separate legal personality from the Council.
- 1.2.** Hoople currently benefits from the exemption under Regulation 12 of the Public Contracts Regulations 2015 (PCR). This exemption allows the Council to commission services from Hoople without the need to comply with other provisions of the PCR regulations which would entail the triggering of extensive procurement requirements.
- 1.3.** The Council historically entered into a Service Legal Agreement (“SLA”) with Hoople to provide certain services to the Council. Hoople provide the following services through the SLA:
 - a) IT Services**
 - b) Finance Services**

- c) Revenues and Benefits Services
- d) Human Resources, Payroll and Recruitment Services
- e) Training & Education Services
- f) Building Services and Facilities Management Services

1.4. Currently, Hoople provides services in the following additional area:

- a) Hoople Care

1.5. The number of services provided by Hoople and the growth and the complexity of the relationship is not reflected in the current SLA. There is therefore a need to more strongly formalise the arrangements and relationships involved to better manage the risks and to monitor delivery outcomes for Herefordshire Council as shareholder. Therefore, the Council has revisited the umbrella/core terms and the current service level agreements. The proposed arrangements have been tailored more formally for individual services, through what are referred to as Work Packages in the Services Agreement proposed by this report. To reflect this greater formality the terminology will move from Service Level Agreement (as currently) to Services Agreement to reflect the formal contractual nature of the relationship. Whilst the Services Agreement is in an advanced form there are technical elements that need further consideration and advice from external lawyers and agreement with Hoople. Statutory Officer delegations are therefore being sought to facilitate changes.

1.6. There are two broad issues being considered in this report relating to the relationship between the Council and Hoople:

- a) The increase in services provided by Hoople which are not captured in the current SLA. This is, it is proposed, to be formalised through a Services Agreement and
- b) To better establish stronger, structured governance arrangements for the Council as shareholder in companies by the creation of a formal member led Shareholder Committee. This Committee will have a broader remit in that it will consider various companies and other arrangements that the Council is involved in apart from Hoople. The other shareholders of Hoople will manage the relationship with Hoople through their own governance arrangements.

1.7. The Council commissioned external lawyers, Pinsent Masons to provide specialist guidance on the Service Agreement and the Shareholder Committee. This approach will help mitigate against some of the problems some other Councils have found with complex company arrangements. The approach, as much as possible, takes into account best practice in relation to such public sector companies.

1.8. The Council and Hoople are separate legal entities, distinct from each other although there is a relationship through the Council's shareholding of Hoople and Director appointments. These arrangements are regulated by company law. The Services

Agreement seeks to manage and regulate the relationship between the Council and Hoople in the following key areas (this is not an exhaustive list):

- a) It identifies clearly Hoople's obligations to the Council.
- b) Structures the way services can be requested and delivered.
- c) Requires a Statement of Works.
- d) Structures and identifies contract management arrangements- including structured and planned meetings.
- e) Identifies clear change request procedures.
- f) Payment processes.
- g) Insurance arrangements.
- h) Liabilities.
- i) Termination clauses (subject the initial 5 year contract period).
- j) Access arrangements for the Council to audit and inspect Hoople's accounts.
- k) Dispute resolution arrangements.

1.9. The draft Services Agreement is attached at **appendix 1** of this report.

1.10. Whilst the main Services Agreement will have template work packages for each service delivered by Hoople, the detail in terms of what will be delivered will be in the Work Packages. Each distinct service will have its own work package. These Work Packages will be completed in full collaboration with the newly appointed Work Package owners.

2. Shareholder Committee

2.1. There have been a series of high profile Local Authority owned company failures in recent years many of which have had serious consequences for the Local Authorities and the citizens impacted by their services. The Council's shareholding in relevant companies represents an ownership or part ownership stake in that entity so effective oversight by the Council as Shareholder is vital to ensure the proper stewardship of public funds. The proposals for a Committee of Cabinet to act as shareholder in relation to current and future wholly or part council owned companies is considered to be an appropriate response to the lessons learnt from other Local Authority failures and is considered good practice to ensure effective governance and the proper separation between the role of directors, shareholders, investor and commissioner.

2.2. The Shareholder Committee's terms of reference are broad and will enable the Committee to improve and structure shareholder engagement by providing oversight review of relevant Companies or arrangements; oversight of decisions; monitoring risk; identifying good practice and ensuring that the entity can be held to account for delivering on its objectives and various other matters.

2.3. To be clear, whilst this report seeks to better formalise and regulate the Council's relationship with Hoople, the scope of the Shareholder Committee is much wider and it will manage and regulate various companies and other relationships for example Cyber Quarter Limited and Hereford Enterprise Zone. The proposed terms of reference of the Shareholder Committee are attached at **appendix 2**.

- 2.4. The Shareholder Committee approach is proposed to be member led and ensures strong, structured and transparent governance arrangements of relevant legal entities and arrangements. It is proposed that the Shareholder Committee will form part of the overall governance arrangements for the Council in relation to companies and other legal entities which are wholly or partly owned or controlled by the Council (including where such control comes about indirectly, such as via a loan agreement). Consequently, the Shareholder Committee will be subject to the Council's normal scrutiny arrangements, which will strengthen overall accountability and its governance arrangements will be overseen by the Audit and Governance Committee.
- 2.5. Through its governance arrangements and the processes and guidance it uses the Council will be able to ensure that there is a strong focus on managing conflicts of interests between members on the Shareholder Committee (or its advisors) of relevant Companies . Furthermore, it is recognised that office holders (e.g. Directors) whether members or Officers, are fully supported in their roles by Monitoring Officer guidance and relevant training of all participants. In order to strengthen the overall governance framework regarding the formal establishment of a Shareholder Committee, it is proposed that changes to the constitution are recommended to Council to clarify Audit and Governance Committee's oversight of the Shareholder Committee's governance, together with changes to Scrutiny terms of reference to enable it to scrutinise the operation of the Shareholder Committee. It is also good practice for the Constitution to contain an explicit power enabling the Executive to set up sub-committees. The Monitoring Officer will, following Cabinet's approval of this report, take a report to Full Council seeking the changes outlined above.
- 2.6. It is proposed that the Shareholder Committee is composed of four Cabinet Members, to be appointed by Cabinet.
- 2.7. Substitutes will be allowed to cover for absence or where the meeting context requires the presence of another Cabinet member, so long as they are members of Cabinet (the Executive). The Shareholder Committee will be exercising decisions relating to the Council's role as member, owner, lender or other position of significant control over a subsidiary where the decisions are the responsibility of the Shareholder Committee.
- 2.8. The appointment of Directors to Companies is an important role for the Shareholder Committee. It is possible for Members and Officers to be appointed to Directorships of Companies but this should be related to the Offices they hold at the Council, so that their appointments cease when they no longer hold the relevant role. The discharge of the Director role is highly technical and carries with it certain legal obligations and potentially personal liabilities outlined in company and the common law. It is important that the Council is clear on the reasons for appointing particular Members or Officers to relevant companies and that they hold the relevant skillset and receive the necessary training and support to fulfil their responsibilities. The Council will therefore appoint to Director roles those with the relevant competencies and abilities supported by relevant guidance and training. Therefore, an internal guidance and policy document will be prepared on the rationale and need for particular Member and Officer representation on relevant

companies together with the training and support they will be given to discharge their roles.

- 2.9. It is important to note that Directors have separate duties, in company law, to the Companies they represent. This is distinct to the duties or obligations they have to the Council as member or employee. Many but not all liabilities can be mitigated by insurance or Council indemnities. Therefore adequate insurance will be maintained for relevant Council appointed Directors, supported by Indemnities approved by the Council which are already in place. The Companies themselves will need to maintain insurance policies protecting Directors. Guidance will be provided to Officers and Members by the Monitoring Officer.
- 2.10. The Shareholder Committee will be advised by the Section 151 and the Monitoring Officer (or their nominated Deputies).
- 2.11. The Shareholder Committee will be implemented as soon as legally possible if approved given the need to establish the committee; align powers with the constitution and for Democratic Services to develop a cycle of meetings.

Community impact

3. The Council's County Plan 2020 to 2024, identifies the need for the Council to use its resources wisely for the benefit of the Communities it supports. Clear, objective and measurable requirements through a Services Agreement Hoople will support this strategic objective. Further, structured, open and transparent management of the Council's shareholder responsibility will support the management of risk, best practice and value for money.

Environmental Impact

4. This is a decision on back office functions and process and will have minimal direct environmental impacts. However, consideration has been made to minimise waste and resource use in line with the Council's Environmental Policy.
5. The environmental impact of this proposal has been considered through the service specification and includes appropriate requirements on the contractor/delivery partner to minimise waste, reduce energy and carbon emissions and to consider opportunities to enhance biodiversity. This will be managed and reported through the ongoing contract management.
6. The development of this project has sought to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance.

Equality duty

7. 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 and persons who do not share it.

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 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. Our providers will be made aware of their contractual requirements in regards to equality legislation.

The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.

8. Where a decision is likely to result in detrimental impact on any group with a protected characteristic it must be justified objectively. This means that attempts to mitigate the harm need to be explored. If the harm cannot be avoided, the decision maker must balance this detrimental impact against the strength of legitimate public need to pursue the service change.
9. Hoople will, in the delivery of its obligations be required to have regard to the equality duty, both contractually and in practice.

Resource implications

10. There are no additional financial implications arising directly from this decision, as this is simply looking to better structure the agreement with Hoople. There are some minor additional costs of servicing the shareholder Committee.

Legal implications

11. The main legal implications of this report are contained within the body of this report.
12. Ensuring that all shareholders are able to exercise strategic control over the direction of the company is vital and is a requirement of the Companies Act 2006.
13. In so far as Hoople continues to comply with the requirements the council can utilise the current Regulation 12 PCR exemption to award contracts to Hoople without going through a procurement process and there will be no limitation on the nature of the contract that can be awarded or on what the subject matter of that contract can be.
14. The proposed contractual structure between Hoople and the council facilitates a relatively straightforward contractual relationship with adequate levels of oversight and contractual management to maintain a strong working relationship between the council and Hoople.

Risk management

15. Approving the recommendations in this report will reduce and mitigate risks to the Council. The Hoople relationship will have a stronger, more defined contractual basis upon which delivery requirements can be better and more effectively monitored and delivered.
16. The Shareholder Committee will further mitigate risk by ensuring that the Council's management of its shareholder obligations is structured, open and transparent. Furthermore this area will be subject to Scrutiny in the normal way which will better manage risk.

Consultees

Hoople Limited; Various internal consultees. Hoople is broadly supportive of the proposals on the Service Agreement.

Appendices

- Appendix 1 – draft services agreement
Appendix 2 – shareholder committee – draft terms of reference

Background papers

Legally Privileged Legal Advice External Solicitors
29/11/2022 January version

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	Click or tap here to enter text.	Date Click or tap to enter a date.
Finance	Rachael Hart	Date 06/01/2023
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Approved by	Francis Fernandes, Head of Legal Services	Date 06/01/2023

Please include a glossary of terms, abbreviations and acronyms used in this report.