

Title of report: Appointments to Shareholder Committee

Meeting:	Cabinet
Meeting date:	Thursday 21 December 2023
Cabinet member:	Cabinet member finance and corporate services
Report by:	Director of Governance and Law
Report Author:	Head of Legal Services

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

To appoint four members of Cabinet to the Shareholder Committee.

Recommendation(s)

That:

- a) Four named members of Cabinet are appointed to the Shareholder Committee; and**
- b) That the terms of reference of the Shareholder Committee is changed so that future appointments are made by the Leader.**

Alternative options

1. Not to make appointments to the Shareholder Committee – this is not recommended as the responsibilities and requirements as a shareholder of companies must be performed within the Council. Further, the Council has awarded contracts to its owned companies (whether wholly or jointly owned) without a full tender but relying on Regulation 12 exemption in the Public Contract

Regulations 2015. This exemption remains but the Council must demonstrate that it continues to exercise decisive influence over the strategic objectives and significant decisions of the company. The Shareholder Committee plays an important part in this influence.

Key considerations

Appointments to Shareholder Committee ('Committee')

2. The Council exercises control and influence over its local authority trading companies in a number of ways:
 - a. It appoints directors to the Board who (subject to their own duties to the company) can ensure that matters of relevance to the Council are achieved;
 - b. The Council is a shareholder in the companies and has powers and rights under Companies Act 2006 similar to any shareholder. Where the company is jointly owned, an agreement has been entered into with the other shareholders on matters such as sharing of information, strategic direction, business planning and reporting; and
 - c. The Council purchases services from the Company under contract and the terms of the contract set out precisely what and how services are delivered to the Council. This can include additional reporting and other requirements above what is strictly necessary for a contract for services.

It is through the combination of these governance functions that the necessary influence is maintained.

3. The Committee undertakes the functions set out in paragraph 2.b. The [Terms of Reference](#) were agreed by Cabinet on 12 January 2023. The Committee [appointed new directors](#) to the Board of Hoople Ltd and Cyber Quarter Limited on 18 April 2023 and these appointments have now completed and the appointees have started to undertake the Directorship duties.
4. The Committee will shortly need to receive reports from the Directors in relation to matters such as company performance, budgets and delivery to the business plan. This reporting is part of the governance function that maintains the necessary influence over the companies.
5. As the administration of the Council has changed, new appointments will need to be made to the Committee.
6. The recommendation is that Cabinet appoint four members of Cabinet to the Committee.

Terms of Reference and Appointments

7. Appointments to the Committee is considered to be a simple administrative matter. It currently is reserved to full Cabinet. It is considered that delegating appointments to the Leader as an individual Cabinet member decision would improve the appointments process and make it more flexible and efficient.

Community impact

8. There is no direct community impact by the appointment of Cabinet members to the Committee.

Environmental Impact

9. There is no direct environmental impact by the appointment of Cabinet members to the Committee.

Equality duty

10. The public sector equality duty requires the Council to consider how it can positively contribute to the advancement of equality and good relations, and demonstrate that it is paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on the internal decision making within the Council, we do not believe that it will have an impact on the Council's equality duty.

Resource implications

11. The Committee duties will be performed as part of the members existing roles and portfolios and there will not be any additional resource costs. Any time used for Committee duties will need to be a factor in relation to the Cabinet Members delivering to their existing roles and portfolios.

Legal implications

12. The Council must demonstrate influence over the companies for the Council to rely on the exemption in Regulation 12 of the Public Contracts Regulations 2015. The role of the Committee actively demonstrates the application of this influence.
13. If the necessary influence cannot be demonstrated, then any contract award to a local authority owned company (or the continuation of an existing contract) would need to follow a fully compliant tender process under the Regulations.

Risk management

14. The risks have been identified as follows:

<u>Risk / opportunity</u>	<u>Mitigation</u>
The Council does not demonstrate the necessary influence	Legal advice is that the Council is operating a governance framework that is recognised as being as thorough as possible within the local authority context.
Cabinet does not appoint a Committee	The necessary influence is weakened but some control is maintained through Directors appointments to the Board and the contract.
The members of the Committee or the Directors of the Board do not understand their roles	A guidance document has been prepared that sets out what is required by Committee and how the Directors should deliver that. The same document pulls together all the various decision making so there is a single point of reference. The meetings of the Committee will be supported by Head of Legal Services. Directors have access to Head of Legal Services for guidance.

Consultees

None

Appendices

None

Background papers

None

Report Reviewers Used for appraising this report:

Governance	Click or tap here to enter text.	Date Click or tap to enter a date.
Finance	Click or tap here to enter text.	Date Click or tap to enter a date.
Legal	Sean O'Connor	Date 08/12/2023
Communications	Luenne Featherstone	Date 23/10/2023
Equality Duty	Click or tap here to enter text.	Date Click or tap to enter a date.
Procurement	Lee Robertson	Date 24/10/2023
Risk	Kevin Lloyd	Date 24/10/2023

Approved by	Claire Porter	Date 08/12/2023
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