

CABINET

13TH DECEMBER 2022

Council-owned Company Governance Framework

Report of: Cllr Glen Sanderson, Leader, Northumberland County Council

Lead Officer : Sarah McMillan, Assistant Service Director, Policy

Purpose of report

The purpose of this report is to propose adoption of a series of principles and expectations in relation to the Council's companies and the governance relationship between the Council and those companies. These steps are to address the recommendations of the Caller Independent Governance Review in the immediate term, and to provide the foundation for decision making and the development of a comprehensive company governance framework for companies wholly or partly owned by Northumberland County Council (NCC) and alternative delivery vehicles.

Recommendation:

That Cabinet establish a governance framework for companies that are wholly or partly owned by the Council by:

- (a) approving the set of principles and expectations in relation to the governance of the Council's interests in companies as set out in Annex A; and**
- (b) authorising the Shareholder Representative in consultation with the Leader and Monitoring Officer, having regard to those principles and expectations, to:**
 - (i) develop a specific governance framework in respect of companies that are wholly or partly owned by the Council for consideration by Cabinet and, where applicable, by Council at the earliest opportunity; and**
 - (ii) make appointments to directorships of any Council owned company board until such time as that specific governance framework is adopted.**

Link to Corporate Plan

This report is relevant to the “How” priority included in the NCC Corporate Plan 2021-2024 to ensure value for money in our services.

Background

1. On 8th June 2022, Solace in Business, led by Max Caller CBE, delivered its Independent Governance Review report to the County Council (“the Caller Review”).
2. To address the recommendations of the Caller Review, the cross-party Member Oversight Group was established by the Council to oversee the delivery of a series of 12 Work Packages comprising 28 Action Plans. An independent “Challenge Board” has been commissioned expressly by the Council to support and challenge the Member Oversight Group and the Council Officers tasked with the delivery of the Work Packages.
3. Recommendation 10.2.6 of the Caller Review to “Establish a rationale for the establishment or continuation of any company under the provisions of the Localism Act 2011” was addressed and satisfied by Cabinet on 17th November 2022 when it approved the Strategic Outline Case criteria for the Establishment or Continuation of a Council-Owned company.
4. This report sets out a first step toward recommendation 10.2.7 of the Caller Review to “Establish a specific governance framework by which, for those companies wholly or partly owned by NCC, their Directors are appointed, reports on performance are presented to a Cabinet Sub-Committee, conflicts of interest are dealt with and risk and how shareholder agreements are ratified, by both the company and NCC”.

Company Governance Framework

5. It is understood that any company wholly or part-owned by the County Council will need sufficient freedom to achieve its objectives in order to thrive. Indeed, the Caller Review states that the Council as Shareholder, supported by its nominated representative “needs to hold the board to account, not to manage its work detail”¹.
6. However, the Council also needs to balance this freedom with retaining effective oversight of the company, thereby protecting its investment and ensuring that trading

¹ Solace in Business, “NCC Independent Governance Review”, 08.06.2022, para 8.48, page 31



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activities are carried out lawfully and in accordance with the authority's ethos and values and continue to support the Council's priorities.

7. The Council must consider how the governance arrangements established to underpin its companies can both reflect the principles of good governance, as set out in best practice guides such as the CIPFA & Solace Framework², and align with the principles and expectations for private sector companies, allowing the company the freedom to succeed, yet ensuring adequate links are maintained between Council and Company to reflect the reality of its ownership. A full and comprehensive review of arrangements is underway and will inform a Governance Framework which will come forward to Cabinet in January 2023. In the meantime, a number of principles are to be adopted which will inform interim changes to move toward Governance arrangement considered to be good practice.

Guiding Principles and Interim Steps

8. Local authority owned companies are subject to a specific legislative framework, particularly those that are to undertake trading activities. Those companies with sufficient local authority shareholding are known as 'local authority regulated companies' and must, for example, declare this in their written communication and meet a number of other requirements.
9. Local authority companies have both advantages and disadvantages and those that are set up are done so for a variety of reasons, key amongst which is the legal restriction that a local authority may only act for a commercial purpose, where it is not otherwise empowered to do by statute, through a company. The reason given for this is so that local authorities and their trading arms are on a level playing field with the private and commercial sector in both a positive and negative way; neither at a disadvantage nor with an outstanding advantage. To exercise the power to establish a company and trade, therefore, a local authority must meet a further set of requirements.
10. Government issued statutory guidance in 2004 in which it is noted that a successful company will be one that works alongside the authority in delivering joint objectives. The authority will have to consider how to balance the need to assist the company to achieve its trading objectives with the principles of transparency, accountability and probity. It goes on to say that it is important that trading companies can operate on an equal footing with their competitors, but it is equally important that they are not used as

² [Delivering Good Governance in Local Government Framework 2016 Edition | CIPFA](#)



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a device for inhibiting legitimate public access to information about local government and local government services.

11. A company is, however, a separate legal entity and must act in its own interests first, over that of the Council, both as a matter of law and in such matters as financial prudence. The Council must recognise that freedom in matters such as dealing with information that might provide others with competitive advantage and in approving the appointment of company directors, which adds a further dimension in respect of the relationship between the company and the Council's executive, overview and scrutiny and audit functions.
12. Based on these issues and having regard to published good practice, a series of principles and expectations are proposed to guide interim governance arrangements as a first step toward a comprehensive governance framework. These principles and expectations are set out in Annex A.

Composition of the Board

13. The Caller Review highlighted issues with the Governance of the Council's Companies, particularly the current composition of the Advance Northumberland Ltd Board, and specifically highlighting skills and training requirements of Board members, the low number of independent non-executive directors (NEDs) and the potential conflicts of interest for elected Member and officer directors.
14. Good practice is that there should be a majority of Independent non-Executive Directors on a company Board, to ensure the skills and experience of Board members is optimum to guide the Company. These appointments should be achieved through open and transparent recruitment and the use of a skills audit. There should also be a strong executive representation, (i.e. from within the Company itself) on the Board. Board skills and expertise can be improved through the effective use of independent directors with both public sector and market specific experience.
15. The size of the board will depend on the company's specific circumstances, but good practice suggests that the optimum size is between five and ten directors.
16. The principles therefore suggest that the Advance Board transition to a structure which sees an increase in the number of independent non-executive Directors to make up at least half of the Board, to provide expertise and skill in leading the Company, allowing commercial and operational agility, whilst retaining assurance in respect of the public investment via one democratically elected member Director and one Council Officer Director.



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Elected Members of the Board

17. The Public Interest Report concerning Nottingham City Council³ highlights the view that “it is not seen as good practice for councillors to be on the boards of local authority companies, with other mechanisms used to ensure that the company meets the Council’s policy objectives”. It goes on to reflect “issues in relation to the expertise and experience of many councillors, and the potential for conflicts of interest between the councillors’ commitment to the interests of the company, which has to override other interests when they are on company ‘business’, and their wider responsibilities as councillors. Having councillors on company boards can lead to a failure to properly separate the two sets of interest – of the company and of the Council”.
18. However, the LLG Code addresses this as that “Whilst it will therefore be the norm that officers, not members, will be appointed as directors, this should not prevent the Council from appointing Members as directors where that is considered to be in the best interests of the company and the Council.” In assessing the options for Northumberland County Council it is proposed that one member and one officer director be retained on the Board. This proposal reflects the ownership of the company, and alongside expertise from independent non-executive Directors, will ensure there are valuable insights from the Council and added assurance that the Company continues to support the ethos and strategic priorities of the council, whilst retaining agility to deliver these.
19. The Council Directors would be required to bring the expertise, skills and experience expected of any non-executive Director. In addition, it should be considered that any company is a separate legal entity from the Council and that the directors of that company derive their authority from the articles of association and the law relating to companies, not their employment with the Council or their elected status as a Member of the Council. As stated in the Government Guidance those “who are appointed directors will participate directly in the activities of the company, and are answerable to the company and have the powers and duties of company directors whilst they do so”. The principles therefore prohibit the appointment of an elected Member as company director from being from within the executive administration – i.e. Cabinet – and the officer from being in a related or ‘commissioning’ role within the Council, thus particularly addressing the concerns of conflicts of interest as raised by the Caller Review.

Remuneration

20. To reflect the effort required, to motivate and attract suitable specialists to bring a positive contribution to the company, Independent non-executive directors are intended

³ <https://www.nottinghamcity.gov.uk/media/2835756/report-in-the-public-interest-rhe.pdf>



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to be remunerated. The initial rate shall be set by each Company Board, based on their business needs but which shall be reviewed by the Shareholder on an annual basis. This single rate shall apply to the individual, irrespective of the number of group companies for which they are directors.

21. An elected Member who is a company director is prevented by law from receiving any remuneration other than a maximum of the level of the “Special Responsibility Allowance” for an equivalent current SRA. The arrangement will also be reflected in the County Council’s SRA scheme.
22. Similarly, no extra remuneration may be paid to a Council employee ‘under the colour of their office’ beyond their pay. An officer acting as a director or officer of the local authority regulated company will therefore see their remuneration for any additional responsibilities dealt with in the course of their usual employment with the Council. These costs, as others provided to the company by the Council, will be paid to the Council by the company as required by law or as appropriate.

Next Steps

23. The interim steps outlined in this report represent the beginning of a transition, with current Company Board Directors stepping back with the recruitment of new Independent non-executive Directors over the coming months, resulting in the reduction of Council Directors on the Board.
24. The Shareholder Representative will communicate the principles and expectations set out in the report and Annex A to Advance Northumberland Ltd, as an existing wholly-owned Company, to take forward the required changes.
25. As the comprehensive review of Governance arrangements continues there may be changes to the principles and expectations set out, which will be captured in future reports to Cabinet.
26. A comprehensive Company Governance Framework building on these principles and expectations will be brought forward for member consideration in early 2023.

Implications

Policy	The proposed principles and expectations seek to take initial steps toward a comprehensive Governance Framework to apply appropriate Governance structures to Council wholly- or part-owned companies so they are in a strong position to support the Corporate Plan priorities.
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Finance and value for money	<p>The proposed Companies Governance Framework seeks to balance Council-owned companies' freedom to deliver its objectives with the Authority's oversight, supporting the Council's priorities and delivering value for money in providing an effective delivery vehicle.</p> <p>To ensure skilled and experienced individuals are attracted to Non-Executive Director roles, and contribute their knowledge and expertise to the delivery of Council priorities, it is proposed that remuneration be awarded.</p>
Legal	<p>The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 confirm that the matters within this report are not functions reserved to Full Council.</p> <p>Local authority companies are defined and made subject to a legislative framework by the Local Government & Housing Act 1989 and The Local Authorities (Companies) Order 1995 together with the relevant provisions of the Local Government Act 2003, Local Government and Public Involvement in Health Act 2007, Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 and the Localism Act 2011. This is in addition to the various companies' legislation that will apply to any local authority companies and their governance in the ordinary sense.</p> <p>External legal advice has been sought on the proposed Company Governance Framework.</p>
Procurement	<p>There are no procurement implications</p>
Human Resources	<p>Not applicable, although it is the expectation of the County Council as shareholder of its companies that open and transparent recruitment to non-Executive Director Board positions is carried out, and in line with Nolan Principles.</p>
Property	<p>There are no Property implications</p>
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	<p>There are no Equalities implications</p>
Risk Assessment	<p>Risks related to company governance were identified in the Caller Review; this report is one of a number which will take forward the</p>



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	Caller recommendations and reduce the risks identified by setting an appropriate Governance Framework in which the roles, relationship and accountability between the Council and its companies will operate.
Crime & Disorder	There are no Crime & Disorder implications
Customer Consideration	There are no Customer Consideration implications
Carbon reduction	There are no Carbon Impact implications
Health and Wellbeing	There are no Health & Wellbeing implications
Wards	All wards

Appendices

Appendix A - Council-owned Company Governance Framework (Dec 2022)

Background papers:

22.06.08 – Solace in Business, Independent Governance Review report to the County Council (“the Caller Review”)

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

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