

Report to:	COUNCIL
Relevant Officer:	Neil Jack, Chief Executive
Relevant Cabinet Member:	Councillor Simon Blackburn, Leader of the Council
Date of Meeting:	20 September 2017

RELATIONSHIPS WITH COMPANIES

1.0 Purpose of the report:

- 1.1 To consider the proposals with regard to the Council's role with its wholly owned companies.

2.0 Recommendation(s):

- 2.1 To note that the Chief Executive will be designating a lead officer to work on behalf of the shareholder with the Council's wholly owned companies, from within the senior/ chief officer management structure.
- 2.2 To appoint a Shareholder's Advisory Board under section 102(4) of the Local Government Act 1972, with the terms of reference as at Appendix 7(a) and with a membership of three Labour members and one Conservative member.
- 2.3 To consider the recommendations of the Independent Remuneration Panel regarding an appropriate level of allowance for the appointed members.
- 2.4 Subject to 2.2 above, to agree that the Chairman of the Board be an Executive member and Council be asked to consider that nomination at the meeting.
- 2.5 Subject to 2.2, 2.3 and 2.4 above, the Monitoring Officer be authorised to update the constitution accordingly.

3.0 Reasons for recommendation(s):

- 3.1 To act in an advisory capacity, on behalf of the shareholder to ensure there is democratic accountability with regard to the five companies, providing accountability, influence and challenge.

- 3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

3.3a To have the development of the relationships at an officer level, but this would limit member involvement from the Council's perspective.

3.3b To form a holding company to act on behalf of the Council into which the Council could transfer all the shareholdings it has with the separate companies. The Council would only have to deal with the holding company. This though it is considered would not address the concerns about 'democratic deficit' and there is a key issue, with this option, regarding Blackpool Transport Services Limited, which is governed by provisions in the Transport Act 1985, particularly in relation to control (sections 72 and 73 refer).

3.3c Whilst it contains no express prohibition to a Council exercising such control through a holding company, it is difficult to read the relevant provisions as meaning anything other than a requirement that the Council itself directly controls the transport company. Therefore a holding company is not an option which is recommended.

4.0 Council Priority:

4.1 The proposals help the Council achieve both its priorities. 'The economy: Maximising growth and opportunity across Blackpool' and 'creating stronger communities and increasing resilience'.

5.0 Background Information

5.1 In February 2012, the then Scrutiny Committee set up a Scrutiny Panel to review the relationship between the Council and Blackpool Transport Services Limited. Research had shown that a Shareholders Panel at other publicly owned Transport Companies had strengthened and clarified the relationship between the Council and the Transport Company in those areas.

5.2 Following this scrutiny review on 24 October 2012, the Executive reviewed the governance arrangements for the companies that the Council owned at that time to bring some standardisation to them and any future wholly owned Council companies. This led to a review of all of the articles of association for the companies, the introduction of independent non-executive directors on all the companies and an informal Shareholder's Panel to oversee this review and develop the relationship with between the companies and the Council. This Panel was chaired by the Leader of the Council, but was predominantly officer based and has met sporadically in the last 12 to 18 months due to scheduling issues, in particular with the increase in companies and competing commitments of attendees.

- 5.3 Since the report to the Executive in 2012, two further wholly-owned companies have been set up (Blackpool Entertainment Company in May 2014 and Blackpool Housing Company, which started trading in August 2015). All of the articles of association have been reviewed and updated and each Board now has a balance of independent and Council non-executive directors. A governance framework is now in place and each company has an Audit Committee and an Appointments and Remuneration Committee. Non-Executive Directors of the Boards are also entitled to receive a remuneration.
- 5.4 As part of the budget agreed by Council in 2017, there were proposals for two additional companies relating to Social Care and Culture. As part of the three-year budget there were also proposals around a possibility of a wholly-owned company in later years for some services from the Community and Environmental Services Directorate, should a business case support them. These business cases have yet to be brought forward for review, but it is considered that now is the time to consider how the 'democratic deficit', which could be a factor in setting up and operating this number of wholly-owned companies, can be addressed.
- 5.5 The shareholder links with the company have been predominantly the Chief Executive and Leader of the Council, however as the number of companies has grown and with competing commitments then a review has been undertaken to seek greater accessibility to the Council by the companies and increase member involvement in the shareholder side to make sure there is no 'democratic deficit' in the overall strategic direction of the companies.
- 5.6 It should be recognised that all companies are subject to company law and in particular, all directors are subject to various duties under the Companies Acts.

These are listed below:

- act in the best interests of the company
- act within the powers of the company
- promote the success of the company
- exercise independent judgement
- avoid conflicts of interest
- not to accept benefits from third parties
- declare any proposed transactions or arrangements with the company and
- exercise reasonable care, skill and diligence.

With regard to councillors who are appointed as directors, they are not there to simply do the Council's bidding. They are just as much bound by the duty to act in the best interests of the company, as independent or executive directors. The shareholder has a role to provide strategic oversight/ direction for the companies and hold them to account for their performance but should not get involved in the day-to-day decision making of the different companies.

- 5.7 In helping achieve greater accessibility to the Council's senior/ chief officer core, the Chief Executive is looking to identify a senior/ chief officer to act on his behalf in liaising with the companies and it is hoped this will strengthen relationships even further and help co-ordinate the involvement of the companies in the wider agenda for the town. (This could not be the Director of Governance and Partnerships as he has a conflict of interest in that he acts as company secretary for the companies).
- 5.8 Over the years, there has been the involvement of scrutiny and also the informal shareholders panel, which have had some member involvement. In order to help strengthen the 'democratic involvement' it is proposed that a Shareholder's Advisory Board be set up act as an advisory body as referred to earlier in the report. It is suggested that this is made up of four elected members, with an Executive member as a chairman, with then two further Labour members and a Conservative member.
- 5.9 It is suggested that the Board meets with each company's representatives on two occasions per year, from a strategic and advisory perspective and proposed terms of reference are attached at Appendix 7(a).
- 5.10 It is envisaged that the meetings of the advisory board would need to be on a frequent basis to undertake the terms of reference outlined at Appendix 7(a). In addition to attendance at meetings, members of the Board would need to have a clear understanding of the role of the shareholder and the work of the company, to be able to provide appropriate challenge, influence and advice. This would involve training and preparation prior to meetings. It was therefore considered that an additional special responsibility member allowance may be relevant to be paid to those who serve on the committee.
- 5.11 The Independent Remuneration Panel has met to consider a proposed allowance and its recommendations are attached at Appendix 7(b).
- 5.12 Does the information submitted include any exempt information? No

List of Appendices:

Appendix 7(a) – Draft Terms of Reference

Appendix 7(b) – Report of the Independent Remuneration Panel

6.0 Legal considerations:

- 6.1 The Advisory Board would be a committee of the Council under the Local Government Act 1972, as a strategic/ advisory body. However, it needs to be recognised that the actual discharge of the functions of the shareholder would remain with the Executive.

6.2 Whilst the general rule relating to the Appointment of Committees in section 102 of the Local Government Act 1972 (ref: section 102(1)) is that committees are to be formed for the purpose of discharging functions, Section 102(4) also states that: a local authority may appoint a committee...to advise the appointing authority or, where the appointing authority operates executive arrangements, any executive of that authority...may on any matter relating to the discharge of their functions, and any such committee...may consist of such persons (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities.

6.3 This provision is given to the Council and not the Executive, even though it may be a committee set up to advise the Executive.

7.0 Human Resources considerations:

7.1 None other than the Chief Executive designating a Senior/ Chief Officer as the lead officer for liaising with its companies.

8.0 Equalities considerations:

8.1 None

9.0 Financial considerations:

9.1 Should the recommendations of the Independent Remuneration Panel be agreed, there will be a cost of £8,750 with regard to additional members' allowances, for a full year, which can be met from the contingency budget.

10.0 Risk management considerations:

10.1 The proposed designated officer and Advisory Board will provide a more focused resource in the development and achievement of the Council's vision and priority outcomes.

11.0 Ethical considerations:

11.1 None.

12.0 Internal/ External Consultation undertaken:

12.1 The Independent Remuneration Panel has been consulted on this proposal and its report is attached at Appendix 7(b).

13.0 Background papers:

13.1 None