CITY OF WOLVERHAMPTON COUNCIL

Arrangements for monitoring of linked bodies – Monitoring Officer presentation to Resources and Equalities Panel

June 2022



wolverhampton.gov.uk

Background - Linked Bodies (1)

- Local authorities can own/control certain types of companies/other bodies such as limited liability partnerships (“Linked bodies”) and indeed in certain circumstances they need to in order to act lawfully
- There are a significant number of different approaches adopted by Local Authorities – as at 2018 it was estimated that there were over 740 Local Authority companies in the UK, with the largest percentage relating to property/investment.

Background - Linked Bodies (2)

- The types of bodies include:
  - Trading companies
  - Certain joint ventures with other organisations
  - Property companies
  - Service provision companies including so called “Teckal” companies (which avoid the need for local authorities to go through the procurement rules when contracting with a local authority controlled service provision company provided that certain tests are met)

Background - Linked Bodies (3)

- The legal framework makes it clear that Local Authorities can use Linked Bodies, under the Local Government Act 2003 and then widened through the Localism Act 2011.
- Grant Thornton in their 2018 study identified that there were a number of reasons for the rise in Local Authority including:
  - the decline in popularity of outsourcing to the private sector.
  - increased funding pressures on local authorities leading to use of trading powers to reduce the net burden on the budget and use of other innovative methods to reduce costs

Background - National issues - types of vehicles used

- There a number of different approaches that can be taken including:
  - Wholly owned companies by one authority
  - Wholly owned companies by a collection of authorities
  - Joint venture companies with input by the private sector as well as one/a number of local authority companies
  - Limited Liability Partnerships provided that not used to trade commercially (as under the law trading can only be carried out through Limited Companies)

Background – National issues – trading powers (1)

- In the case of trading companies a number of measures (covered in the next slide) are in place through the Local Government Act 2003 the reasons for these are that it:
  - Ensures a level playing field between local authorities and private sector companies.
  - Means that local authorities do not receive the tax advantage they would otherwise have had over private sector companies.
  - Results in greater transparency arising from the company law requirements. This is useful for the purposes of avoiding subsidy control restrictions (which has replaced state aid restrictions following the UK's departure from the EU)
  - means that there is greater protection for the council taxpayer and the monies paid to the public purse as a result of limited liability.

Background – National issues – trading powers (2)

- In the additional hurdles for trading companies include:
  - approval of the establishment of the Company by the Council
  - requires an authority to prepare a business case supporting the exercise of the trading power. The authority must approve this business case. This requirement ensures that authorities manage risks effectively.
  - prohibiting authorities from subsidising their trading activities on a continuing basis
  - prohibiting authorities from trading in services (other than to other local authorities) that they have a statutory duty to provide

Background – Control (1)

- Critically in the case of each linked body established by the Council best practice shows that there should be
  - A shareholder agreement between the Council and the linked body defining the arrangement
  - A business case
  - A business plan setting out the key performance indicators and expected financial performance
  - Governance arrangements to monitor the compliance with the shareholder agreement/business case/business plan

Background – Control (2)

- Whilst a linked body should have a certain amount of autonomy to act and deliver within the agreed parameters the Council as shareholder has some critical powers including
  - Power to appoint remove/directors
  - Approval/rejection of business plan
  - Power to wind up the linked body

Background – Wolverhampton position

- What “linked bodies” does CWC have? These are listed on the following slides – critically for each there is
  - a shareholder agreement/contract between the Council and the linked body defining the arrangement;
  - A business case and a timetable on refreshing the business plan – including business plans setting out the key performance indicators and expected financial performance and
  - Governance arrangements to monitor the compliance with the shareholder agreement/business case/business plan

Background – Wolverhampton position

1. **Wolverhampton Homes -** Wolverhampton Homes is the Council's Arm's Length (Housing) Management Organisation (ALMO) and is a company wholly owned by the Council.

– The control of the ALMO is through the Board which has representatives drawn from 1/3 council, 1/3 tenants and 1/3 independent. There is a Management Agreement between the Council and Wolverhampton Homes which sets out the contractual and governance arrangements between the parties, performance of the agreement with Wolverhampton Homes is regularly monitored.

– The agreement with Wolverhampton Homes and compliance with it is subject to a detailed review by the Council in 2022 to ensure that it remains fit for purpose and value for money as there is a break clause in the agreement in 2023.

Background – Wolverhampton position

2. **WV Living** - City of Wolverhampton Housing Company Limited – this is a wholly owned trading company set up under the powers in the Local Government Act 2003 and is known as WV Living focused on developing properties within the City to meet the Council's aspirations in terms of available housing.

Background – Wolverhampton position

3. **Yoo Recruit Limited** – this is a wholly owned trading company set up under the powers in the Local Government Act 2003 and provides staffing to the Council and other bodies.

4. **Help 2 Own** – this is a limited liability partnership that was jointly established with the West Midlands Combined Authority in 2021 to pilot an an affordable housing product that helps to address the issue that many potential buyers who are in work have in raising the deposit to secure a mortgage.

This is the subject of a number of legal agreements which sets up the contractual and governance arrangements between the relevant parties.

Background – National – challenges that have arisen

- Whilst the vast majority of Local Authority Linked Bodies have worked well and have assisted in the delivery of key services/development of important facilities etc there have been issues with some such bodies including those in
  - Nottingham City Council
  - London Borough of Croydon
- As always it is critical that we learn the lessons from other authorities and indeed that is what we have done.

Background – National – challenges that have arisen

- Lessons from Nottingham City Council – Robin Hood Energy
- General view from Auditors (Grant Thornton) on RHE (in August 2020 report) was
  - *More generally, 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.*
  - *This reflects the above 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 – and it appears that this occurred in relation to the expectation that the Council would continue to fund RHE indefinitely.*

Background – National – challenges that have arisen

- Lessons from London Borough of Croydon – Brick by Brick public interest report by Grant Thornton see here - and failures led to a section 114 notice issued in 2020 –
  - *A rapid review into the council's finances and governance said that Brick by Brick has not delivered on expectations, with the town hall having managed the endeavour "extremely poorly". "The council should immediately strengthen its oversight of Brick by Brick (BBB) by improving communication, monitoring contract information and development milestones and having experienced non-execs on the BBB board," it added. Ministers ordered the review after Croydon Council issued a Section 114 notice in November last year, putting a freeze on all non-essential spending, after it accumulated a £66m budget deficit. Auditors revealed that the authority had lent Brick by Brick £200m since 2015 without receiving any dividends or interest in return.*
  - *The company formed a major part of the council's plans to borrow another £500m over three years, today's review said.*
  - *Lead reviewer Chris Wood said: "Members of both parties [Labour and Conservatives] and senior officers have reported to us the existence in the past of an 'inner circle' of the (then) leader and three cabinet members, who exercised a great deal of control of the council's finances and championed the cause of the council's commercial activities including Brick by Brick."*
  - *Inside Housing 2.2.21*

Wolverhampton position – governance arrangements

- Overall for all linked bodies there has been increased oversight included in the Council's Annual Governance Statement taken to Audit and Risk Committee each year and now also monitored and reported back to the Committee on a 6 month basis
- Overall Monitoring Officer has confidence that the relevant rules are being complied with and that there is good oversight in each of the linked bodies
- Agreed that at least every two months an update would be provided on those bodies either owned by the Council or with potentially large liabilities to the Council to Cabinet members/Leader of the Opposition going through:
  - Budget
  - Compliance with business plan KPIs
  - Future plans

Wolverhampton position – governance arrangements

- Importantly External Auditors happier with approach on Council Owned/Involved Bodies – not least partly due to the updates oversight covered.
- Important to note that Council accounts for 2020-21 were unqualified by external auditors and detailed questions were asked about how we manage our relationships with linked bodies, in the light of challenges in other authorities.
- We expect detailed questions will be asked by Auditors in 2022 as part of the Audit of the 2021/22 accounts based on the issues that have taken place in other authorities.
- We will be bringing a detailed report on each of the relevant Linked Bodies to the relevant Scrutiny Panel to ensure that there is transparency on the Governance arrangements for each body.
- Each of the Linked Bodies is subject to a detailed review of arrangements at least every 3 years.

Wolverhampton approach – specific bodies

- **WVL –** In 2020/2021 a detailed review took place of the governance of WVL – led to changes including appointment of
    - Non exec Director with experience of the relevant sector
    - New Business Plan
    - Strengthening of Shareholder Board and Transparency
    - Clear Blue water between the bodies
  - WV Living's accounts are audited separately by external auditors and an unqualified opinion was provided on the accounts for 2020-2021, a copy of which will be published on the Council's website
  - Critically borrowing from the Council to WVL has been serviced throughout and has significantly reduced to current levels being £5 million and likely to reduce further.
  - WVL's assets (which the Council has charges over) significantly exceed the Council's lending

Wolverhampton approach

- **Yoo Recruit -**
  - Yoo Recruit's accounts are audited separately by external auditors and an unqualified opinion was provided on the accounts for 2020-2021, a copy of which will be published on the Council's website .
  - An internal review of the Council's approach and need for Yoo Recruit has been carried out and will be reported to Cabinet and the Resources and Equalities Panel, later in 2022
  - Subject to the decisions made by Councillors Yoo Recruit will update their business plan
  - Currently Yoo Recruit's performance is reviewed by officers and reported to cabinet members and the leader of the opposition through the regular monitoring of linked bodies.

Wolverhampton approach

- **Wolverhampton Homes**

  The Council's internal auditors also provide the internal audit service for Wolverhampton Homes.

  They were able to provide reasonable assurance that the Company had adequate and effective governance, risk management and internal control processes, and this was reported through their Audit and Business Assurance Committee.

  The agreement with Wolverhampton Homes is subject to a detailed review by the Council in 2022 to ensure that it remains fit for purpose as there is a break clause in the agreement in 2023

  A detailed report will be brought to the relevant Scrutiny Panel

Wolverhampton approach

- **Help 2 Own**
  - Help 2 Own was only established in 2021.
  - The Council and the WMCA instructed and obtained detailed external advice in order to ensure that the arrangements are fit for purpose and will protect the interests of each body and deliver the proposed outcomes. The partnership is subject to external audit.
  - A review of the way governance works for all linked bodies including Help 2 Own will be carried out in 2022/23 and will be reported to the relevant Committees including the Council's Audit and Risk Committee.
  - The operation and governance of Help 2 Own continues to be reported on regularly to Cabinet members and the Leader of the Opposition.

Conclusion

- **Monitoring Officer conclusion**
  - Linked Bodies are likely to continue to operate to assist local authorities with budgetary challenges and to find innovative ways of working
  - CWC has robust measures in place to check and challenge how the linked bodies operate
  - Those measures will continue to be reviewed and reported on to Councillors including relevant scrutiny panels
  - CWC has good governance in place for its linked bodies

wolverhampton.gov.uk

Not Protectively Marked