

**SCRUTINY CO-ORDINATION COMMITTEE, SCRUTINY REVIEW PANEL -
GOVERNANCE OF OUTSIDE BODIES**

Report of the Strategic Head of Service & Monitoring Officer (Legal and Democratic Governance)

1. INTRODUCTION AND PURPOSE OF REPORT

- 1.1. At the Scrutiny Co-ordination committee meeting held on the 27 July 2020 it was resolved that the Committee would undertake a Scrutiny Review entitled “The Scrutiny of Outside Bodies”.
- 1.2. Initial scoping meetings have taken place between the Monitoring Officer and the Chair of the Scrutiny Co-ordination Committee (the Chair) on 21 October 2020 and 29 January 2021. Due to the additional demands placed on officers due to the Covid Pandemic and in particular the delivery of the elections, the Scrutiny Review has not progressed as quickly as had been hoped.
- 1.3. It has been agreed between the Chair and the Monitoring Officer that the Scrutiny Review would focus more narrowly on the scrutiny of the *governance* of Outside Bodies (including how financial performance is scrutinised) and not just the scrutiny of Outside Bodies more generally.
- 1.4. The Governance of the following Outside Bodies is the subject of the Scrutiny Review:-
 - 1.4.1. Totally Local Company Limited - Contributors Committee;
 - 1.4.2. Stockport Homes Limited - Member Committee; and
 - 1.4.3. Life Leisure – Funding Committee;
- 1.5. While the term ‘outside bodies’ has been used within the title of the review, this is perhaps a misnomer in this context as the relationship between those organisations within the scope of the review is different than that of most true ‘outside bodies’ with which the Council otherwise has a connection. This is because the Council has either a controlling interest in the companies concerned, or where most of the assets of the company are in the ownership of the Council. However, it is used in this context as a ‘catch-all’ or as a convenient badge to describe the variety of organisations with which the Council has an arms-length or partnership relationship and reflects the differing nature of their connection with the Authority.

2. COMPOSITION OF THE PANEL

- 2.1. The Scrutiny Co-ordination committee is made up of the Chairs of the five Scrutiny Committees. As the chairs of these committees are currently occupied wholly by members of the Liberal Democrat Group, members of the other parties were invited to take part to ensure that the composition of review had representation from across the political spectrum. The following members agreed to take part in the Scrutiny Panel Review:-

- 2.1.1. Cllr Carol McCann- Heald Green Independent Ratepayers;
 - 2.1.2. Cllr [To be confirmed]– Conservative Group;
 - 2.1.3. One of Cllrs Amanda Peers or Cllr Matt Wynne – Labour Group
- 2.2. Members of the Outside Bodies and the Chairs of the Funding, Contributors and Member Committees (currently Cllr Roy Driver, Cllr John Taylor, and Cllr Wendy Wild respectively) will be invited to take part in the Scrutiny Review.

3. BACKGROUND TO OUTSIDE BODIES

The Committees

- 3.1. Stockport Sports Trust (Life Leisure) was incorporated on 15 October 2001 and reports to the Funding Committee. It is not owned by the Council and the Council has no shareholding in it. The Funding Committee meets quarterly and its members are:-

Councillor Roy Edward Driver (Chair)
Councillor Helen Foster-Grime
Councillor Mike Hurleston
Councillor Carole McCann
Councillor John McGahan
Councillor Tom McGee
Councillor Wendy Meikle

- 3.2. TLC was incorporated on 13 June 2006 and reports to the Contributors Committee. The Council owns all the shares in TLC. The Contributors committee meets quarterly and its members are:-

Councillor John Taylor (Chair)
Councillor Anna Charles-Jones
Councillor Christine Corris
Councillor Mike Hurleston
Councillor John McGahan
Councillor John Pantall
Councillor Matt Wynne

- 3.3. Stockport Homes Limited was incorporated on 29 August 2002 and reports to the Member Committee. Stockport Homes is an Arms' Length Management Company owned by the Council. The Member Committee meets quarterly and its members are:-

Councillor Wendy Wild (Chair)
Councillor Brian Bagnall
Councillor Christine Corris
Councillor John McGahan
Councillor Wendy Meikle
Councillor Amanda Peers

Background to the establishment of the committees

- 3.4. Each of the Contributors, Funding and Member Committees were established as part of the governance arrangements between the Council and the outside bodies concerned.

The Contributors Committee

- 3.5. In 2006 the Executive (now Cabinet) gave approval to the establishment of Stockport Direct Services as a wholly owned company of the Council (at the time named Solutions SK, but subsequently renamed TLC). The governance arrangements for this were considered by the Executive in July 2006 where it was agreed to exercise its control as a shareholder through a 'shareholder agreement' and operated through a shareholder committee (the Contributors Committee).
- 3.6. This is governed by a Memorandum and Articles of Association. The Articles of Association provide for governance of the Company through a Board of Directors. There is a further Contributors Agreement which governs the relationship between TLC, the Council and a Contributors Committee which represents the interests of the Council as Shareholder.
- 3.7. Originally, the Contributors Committee comprised the Leader of the Council and the other members of the Cabinet. These arrangements were amended in 2012 to establish the committee on a more politically representative basis.

The Member Committee

- 3.8. In 2005 the Council set up an Arm's Length Management Organisation, ALMO, for its housing function. This was in the form of a wholly owned company of the Council limited by guarantee and with the Council as its sole member. The arrangements between the Council and Stockport Homes is set out the Management Agreement between the two organisations.
- 3.9. The management of the ALMO is by way of its board of directors. The Council could not have any active control in the management of the company but did have limited reserved powers to approve the business plan, authorise borrowing or changes to the company arrangements and, ultimately, to replace the Board if the company did not operate effectively.
- 3.10. Historically the Executive exercised all the obligations of the Council Member, but in 2013 it was agreed to set up a cross-party Member Committee to exercise the role of Council Member.
- 3.11. The Member Committee therefore acts as the mechanism for the Council to exercise its rights as the owner of the company.

The Funding Committee

- 3.12. The Council entered into an agreement with Stockport Sports Trust in 2002 for the management of the Council's leisure facilities. Life Leisure is a trading name of the Trust.

- 3.13. At the Council Meeting in April 2013 it was announced that following a review of the relationship between the Council and its partner organisations, the Council would seek to establish a Funding Committee to monitor the performance of Life Leisure.
- 3.14. The draft terms of reference for the Committee were considered by the first meeting of the Funding Committee in June 2014, before its approval by the Executive in July and the Council Meeting in September 2014.

4. GOVERNANCE OF THE OUTSIDE BODIES

The Council's Constitution

- 4.1. It is important to note that there is a necessary limit to and delineation of the powers and functions that can be exercised by the Council through its committees and those that are reserved to the Boards of those organisations. Indeed, the role of the Member and Contributors Committee are set out in legal agreements entered into by the Council with Stockport Homes and TLC respectively.
- 4.2. The Council's constitution at Part 2 Article 10 sets out the roles of the committees as follows. 10.01(a), (b) and (c) relate to Contributors Committee, Member Committee and Funding Committee respectively.
- 4.3. Paragraphs 10.02 to 10.07 relate to all three of the Committees
- 4.4. The relevant paragraphs relating to the Contributors Committee are below:-

10.01 General role of the Committee

(a) Contributors Committee *(Totally Local Company)*

1. *To appoint and dismiss the Board.*
2. *To hold the Board to account.*
3. *To receive and agree the Business Plan.*
4. *To receive financial monitoring reports and accounts.*
5. *To approve the cessation of existing business areas and approve new areas of business.*
6. *To approve any proposals to change the Company's Capital Structure or corporate structure*

- 4.5. The relevant paragraphs relating to the Member Committee are below:-

(b) Member Committee *(Stockport Homes)*

1. *To appoint and dismiss the Board.*

2. *Review the performance of Stockport Homes*
3. *Monitor and oversee the Delivery Plan and each Annual Service Improvement Plan.*
4. *To receive financial monitoring reports and accounts.*

4.6. The relevant paragraphs relating to the Funding Committee are below:-

(c) Funding Committee *(Life Leisure)*

The Committee shall not in any way fetter the Life Leisure Board's ability to make decisions in line with their responsibilities as company directors and their obligations as a registered charity.

All Company information disclosed to the Committee which is of a sensitive commercial nature shall be treated in the strictest confidence and shall not be disclosed to any third party without the express consent of the Company Managing Director.

1. *To understand the Life Leisure Board's use of the Council's financial support, and to propose to the Board outcomes that could be delivered with that financial support. (Life Leisure are obliged to provide such information as the Council may reasonably require to demonstrate how the funding has assisted in maintaining or improving community recreation services. They are also obliged to submit unaudited accounts within 6 months of the end of Life Leisure 's financial year (audited within 10 months), identifying the expenditure for which the funding was provided).*
2. *To receive Life Leisure's Partnership Delivery Plan. (The Plan requires Council approval, not to be unreasonably withheld or delayed. This is submitted three yearly in October for the next 3 years commencing on 1st April in the following year. If the Plan is approved funding is to be made available for the 3 years).*
3. *To consider and approve or otherwise as necessary the Partnership Delivery Plan. (The Plan is a detailed service delivery plan setting out Life Leisure's proposals for the 3 year period. Life Leisure's pricing policy must be included in the Plan, and it should identify clearly how it will ensure facilities remain accessible to all sections of the community and safeguard concessionary rates for identified target groups. The Plan should include how Life Leisure contributes to improving the social, community and personal outcomes for the Borough and its people).*
4. *To discuss what, in the Council's view, Life Leisure's Community Partnership Plan should contain, and to comment in due course on the Board's proposals.*
5. *To comment upon matters proposed by the Board concerning the use of, activities within, or occupation by any third party, of any of the Company's premises leased from the Council.*

6. To receive the unaudited and audited Company accounts annually and to make representations as to the activities of the Company which the Council would like to see implemented (having regard to the likely cost to the Company).
7. To receive on a quarterly basis performance and trading information of the Company.
8. To receive any Company proposals to cease existing business areas and/or enter new areas of business and to comment as appropriate.
9. To receive any proposals to change the Company's corporate status, its memorandum or articles of association, its means of delivering its services, or matters concerning its charitable status and to comment as appropriate.
10. To receive advance notice of any Company matters which may be of potential risk and which affect the economic, social or environmental well-being of the Borough, and to offer views prior to the Company entering any commitment.

4.7. The following paragraphs relate to each of the Committees:-

10.02 Procedures

The Council Meeting Procedure Rules (Part 5 PR1) apply to meetings of the Committee to the extent indicated in Rule 26 of those rules.

A 'public question time' will be held at meetings in accordance with the agreed Code of Practice (Part 6 CP5)

Any Councillor who is a member of the Committee may request the Proper Officer to place an item on the agenda subject to giving ten clear days' notice prior to the meeting. The item must relate to the business of the Committee and will normally be placed at the end of the agenda.

10.03 Composition

The Committee will be appointed annually by the Council Meeting on the following basis:-

2 Liberal Democrat councillors, 2 Labour councillors, 2 Conservative councillors and 1 Independent Ratepayer councillor.

10.04 Membership – casual vacancies

Where the Council Meeting has determined the allocation to different political group of seats on the Committee then, where a casual vacancy occurs, the councillor nominated by the political group entitled to fill that vacancy will become a member of that Committee on the day following receipt of notice to that effect by the Chief Executive.

10.05 Access to Information

*The Committee will comply with **Access to Information Rules (Part 5 PR7)***

10.06 Quorum

Business shall not be transacted at a meeting of the Committee unless at least one quarter of the membership is present. Provided that in no case shall the quorum of the Committee be less than 2 members.

10.07 Substitutes

Substitutes are permitted. Members can appoint their own substitute from within their group provided that they inform Democratic Services prior to the commencement of the meeting.

A member wishing to arrange a substitute for a particular meeting is not required to give a reason for his or her proposed absence.

A notice to the effect that a member will not be able to attend a meeting may be withdrawn only with the agreement of the arranged substitute member (if any).

The Contributors Committee – Totally Local Company

- 4.8. There is also a Contributors Agreement between Stockport Metropolitan Borough Council and TLC entered into in 2013. Paragraph 9 sets out the purpose of the Contributors Committee and is at Appendix 1. The Contributors Agreement refers to the Contributors Policy (also known as the Shareholders Policy) which sets out the role of the Contributors Committee. This is at Appendix 2.
- 4.9. The Contributors Committee is a committee of cross party representatives of the Shareholder, Stockport Metropolitan Borough Council. The role of the Council as owner is to ensure that the Board of TLC and staff are fit for purpose, approve business plans and monitor progress against the business plan via Contributors Committee.
- 4.10. The Contributors Committee is not a decision making body that can take decisions on behalf of the Cabinet or the Council. The Shareholders Policy refers to recommendations being made to the Cabinet regarding decisions (emphasis added):-

“The primary function of the Contributors Committee will be to oversee the business development and direction of the Company, analysis the workings of the Company and make recommendations to the Executive as to how any decisions requiring the exercise of shareholder powers should be made”.

- 4.11. The Contributors Committee should receive updates on TLC’s performance from TLC’s Board of Directors and the Contributors Committee should be able to share any issues and concerns with the Board at the Contributors Committee meetings.
- 4.12. The Board of Directors of TLC is different to the Contributors Committee and should be independent of it. The Contributors Committee should have a monitoring role and not to become involved in direct management issues relating to TLC.

The Member Committee – Stockport Homes

- 4.13. Stockport Homes Limited is an Arms’ Length Management Organisation (ALMO).

- 4.14. In 2016 the Council and Stockport Homes Limited entered into an Agreement for the delivery of housing management and other services, also known as the Memorandum and Articles management Agreement. A copy of the agreement is at Appendix 3. A link to the draft agreement is here:

<http://democracy.stockport.gov.uk/documents/s77416/Memorandum%20and%20Articles%20Management%20Agreement%20-%20Stockport%20Homes%20-%20Draft%20Agreement.pdf>

- 4.15. The agreement provides for the Council to monitor Stockport Homes Limited's performance under the agreement by following the Monitoring Process (contained at Annex 2 of the Agreement).
- 4.16. The Monitoring Process provides for wider strategic housing performance reports to continue to include Stockport Homes Limited performance data to go to the Cabinet via Scrutiny.

The Funding Committee – Life Leisure

- 4.17. Life Leisure is different from TLC and SHL in that it is a corporate body that is entirely independent from the Council. It is a company limited by guarantee in which the Council has no right to appoint board members, and no rights equivalent to those of a shareholder or a member of the company, notwithstanding that the Council is Life Leisure's major customer and local authority funder.
- 4.18. Life Leisure is also registered as a charity. To preserve its status as a charity, and the tax treatment that applies to charities, it is important that the board of Life Leisure is, and is seen to be, independent of Council control.
- 4.19. Arrangements with Life Leisure are documented in:
- 4.19.1. the 2002 transfer agreement which transferred the operation of leisure / recreation services to Life Leisure from the Council (including a transfer of staff);
 - 4.19.2. the 2002 partnership funding agreement which set out the means by which the Council and Life Leisure would agree funding terms for three year periods of service delivery by Life Leisure (the **Partnership Delivery Plan** referred to in the Constitution) up to 31 March 2022;
 - 4.19.3. further additional funding arrangements made in respect of Brinnington Park (a grant agreement dated 2018) and Grand Central (a deficit funding arrangement);
 - 4.19.4. leases of the Council's leisure facilities;
 - 4.19.5. dual use agreements in respect of Priestnall and Bramhall, where the facilities are co-located with a school; and
 - 4.19.6. additional agreements awarded to Life Leisure following procurement procedures under which the Council buys certain services, such as physical activity referral and fall prevention services.
- 4.20. The Constitution contains more detailed terms of reference for the Funding Committee than the other two Committees. However, the terms of reference stop short of expressly making Funding Committee a committee that is delegated any of

the Council's powers in respect of leisure and recreation services generally, or the Council's relationship with Life Leisure in particular.

- 4.21. The Funding Committee is therefore not formally constituted as a committee with powers delegated to it that can take decisions, exercise any of the powers or carry out any of the functions of the Council or the Cabinet pursuant to s101 of the Local Government Act 1972. Accordingly, the Funding Committee is not a decision making body that can take decisions on behalf of the Cabinet or the Council.

5. Examples from other Local Authorities

- 5.1. The Centre for Public Scrutiny has provided a guidance document called "Commercialisation and scrutiny: a practical guide for councillors". A link to the document is here:-

<https://www.cfgs.org.uk/wp-content/uploads/Commercialisation-2020.pdf>

- 5.2. Many councils have council owned companies and below is a small selection of examples of how they undertake scrutiny of those companies (with many more available through open research methods on the internet):-

5.2.1. Oxford City Council –

<https://mycouncil.oxford.gov.uk/documents/s35459/Scrutiny%20protocol%20for%20wholly%20Council-owned%20companies.pdf>

5.2.2. South Oxfordshire District Council –

<http://democratic.southoxon.gov.uk/documents/s20573/Council-owned%20delivery%20vehicle%20-%20Scrutiny%20Report%20South-%2029%20September%202020.pdf>

5.2.3. Gravesham Borough Council -

<https://democracy.gravesham.gov.uk/documents/s47561/2.%20Appendix%20One%20-%20Review%20of%20proposed%20council-endorsed%20trading%20co.%20Report.docx.pdf>

5.2.4. Nottingham City Council's public interest report and recommendations re Robin Hood Energy –

<https://www.nottinghamcity.gov.uk/publicinterestreport>

6. CONCLUSIONS AND RECOMMENDATIONS

- 6.1. The Scrutiny Committee is asked to consider how it might make a positive contribution to the governance of the Council's partner organisations and to determine the following aspects of the Review:

- The scope of the review.
- The aims of the review.

- The objectives of the review.

BACKGROUND PAPERS

There are none

Anyone wishing to inspect the above background papers or requiring further information should contact Vicki Bates on telephone number Tel: 0161 474 3219 or alternatively email vicki.bates@stockport.gov.uk