

# FAMILY OF COMPANIES CORPORATE GOVERNANCE FRAMEWORK



## 1. BACKGROUND

Plymouth City Council's Family of Companies (FoC) consists of 20 companies, which operate for varying purposes. The Council has various statutory powers to enable it to set up a company or companies, which may take various forms. Whilst this report refers to Council-owned Companies the governance arrangements apply equally to any vehicle the Council may incorporate or otherwise establish under its statutory powers.

The provisions described in this report apply to the existing Family of Companies and any similar vehicles that the Council sets up or in which it decides to participate. Any Council-owned Company must be managed effectively, and the Council must ensure that it delivers the objectives for which it was established. There must also be transparent and robust governance in place for any Council-owned Company so that the Council has effective and appropriate oversight of its activities.

Council-owned companies are generally established where it can be demonstrated that the new entity has the capacity to deliver financial savings with limited financial outlay and minimal exposure to risk.

## 2. EFFECTIVE CORPORATE GOVERNANCE

Corporate governance of the Family of Companies should:

- involve a set of relationships between a company's management, its board, its shareholders and other stakeholders;
- provide the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance;
- provide the company with sufficient freedoms to achieve its objectives; and
- ensure that the Council retains sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.

The Council-owned companies, however established should adhere to the same principles of governance and controls over conduct as the Council itself. The objective in implementing effective governance is to achieve a successful company which works alongside the Council in delivering joint objectives. The Council must consider how to balance the need to assist the company to achieve its trading objectives within the principles of transparency, accountability and probity.

## 3. RECOMMENDATIONS AND REASONS

### 3.1 Decision Making and the Shareholder Committee/s

The rights and duties as a member of the company will generally be exercised as an executive responsibility. This means that decisions to be taken by the Council as a member of the company (as shareholder) fall to be decided on by the Leader or may be delegated to a cabinet member or officer. These decisions will be subject to key decision processes and access to information rules, call-in and review by overview and scrutiny committee.

The Council's constitution should make provision for this decision-making process and the relevant delegations. It is recommended that the Monitoring Officer makes the appropriate amendments to the Scheme of Delegation following finalisation of the recommendations contained within this report and that the document included at Appendix E is appended to the Constitution to formalise the governance processes for the Family of Companies.

Decisions taken by the executive are "reserved matters", as opposed to decisions which are left to the company to be made by the Board. They include such matters as appointment of directors, approval of the company's business plan and certain financial matters. They should be described in either a shareholder agreement or the company's Articles of Association. In practical terms this means that either the Leader or the person delegated to take decisions on reserved matters will be present at Board meetings to vote on such matters. It is this role which can give rise to conflicts of interest if the Directors of the company are not carefully selected to ensure that are entirely separate from the shareholder representative.

There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting any changes made as the Company has developed, in the shareholder's agreement, or the company's governing articles of association. If there is only one shareholder a shareholder agreement may not be necessary, however, it is essential that an agreement is documented as to which decisions are to be taken by the Board of the company without the approval of the shareholder and which will be reserved matters which will require shareholder approval.

The executive shareholder responsibility may be delegated to a committee, or committees depending on the number of companies and the size and complexity of each company, rather than to an individual. If this is the case, there must be a Terms of Reference drawn up and a suitable number of elected members identified to sit on the committee. This report recommends the establishment of at least one Shareholder Committee to undertake the shareholder role as described above on behalf of the Leader. An other consideration is whether the larger more operational companies, such as Delt, Plymouth Active Leisure and CaterEd have their own committees due to larger volume for work that may be required by these companies.

Because the role of shareholder is an executive function, it is normal for Cabinet members to be appointed to Shareholder Committees. However, the Leader may delegate his shareholder function to members as he sees appropriate. The Committee may be made up as follows:

- i. The Leader or alternative executive member;
- ii. Such other members appointed by the Leader (at least two);
- iii. The Service Director for Finance (s151 Officer) (or deputy)
- iv. The Monitoring Officer (or deputy)

Draft Terms of Reference for the Shareholder Committee are included with this report at Appendix B

### **3.3. The Shareholder Representative**

The council must have a designated “shareholder” to represent and protect its ownership of each of the Family of Companies. Although the Leader is designated as the Council’s Shareholder this role may be delegated to Officers as the Leader sees fit for each of the Family of Companies. The process for appointing a shareholder representative should be set out in the Council’s constitution which should also detail how the shareholder reports on the exercise of their delegated powers.

It is recommended that for each Council-owned Company the Council will appoint a shareholder representative who will have sufficient experience, skills and capacity to be able to discharge their duties effectively and will have no actual or potential conflict of interests. For example, they will not be in a client role relating to the services provided by the Company, nor have any responsibilities for the Council as lender. The shareholder representative is intended to operate as a conduit between the Council and the Company.

A Shareholder Officer Group is in the process of being established which will consist of the Shareholder representatives for each company, along with the Council’s Section 151 Officer, the Monitoring Officer and any other officers as considered appropriate. Draft Terms of Reference and a Shareholder Representative Role profile have been drafted for consideration at the first meeting of the Shareholder Officer Group on 9 September 2024. The draft Terms of Reference are included at Appendix B.

The main purposes of the Shareholder Officer Group will be:

- Acting as the custodian of the Shareholder’s interests in the Company;
- Establishing with the Shareholder Committee the outcomes that the Council requires of its Family of Companies, and testing the group entities against these;
- Building and maintaining an effective and transparent relationship between the Shareholder and the Company;
- Ensuring each Company has the right level of challenge and support from the Shareholder;
- Establishing and maintaining a group environment and culture for the Family of Companies;
- Preparing, gaining approval, and implementing a commercial strategy for the Family of Companies.

### **3.4 Appointment of Directors and Conflicts of Interest**

The company’s board of directors is answerable to the Shareholder/s, in accordance with the company’s Articles of Association. It is recommended that each company board should consist of between 3 and 8 directors, according to practicalities and dependent on the circumstances of each company. The Council should be represented on the board of each of its companies.

Given the nature of their roles, and the likelihood of conflicts of interest, certain officer and councillor positions should not be appointed as directors:

These include:

- Statutory Officers
- Cabinet Members whose portfolio relates to the aims of the company
- Corporate and Service Directors whose service areas relate to the aims of the company
- Any elected member appointed to the Shareholder Committee if established
- Officers appointed to the Shareholder Group/Board

The process for the appointment and renewal of directors should be set out in the Articles of Association for each company, which should state those appointments which are wholly reserved to the Council.

Appointments should be based on a review of the skills, qualifications, diversity, and other attributes required for the role. A Director Role Profile has been drafted and will be used to create a pipeline of Directors by inviting expressions of interest from a pool of officers who wish to undertake the role as a development opportunity. This recruitment process will be undertaken by the Director of HR and OD and the Monitoring Officer.

Those who are appointed directors will participate directly in the activities of the company, are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, this requirement in a company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.

It should therefore be the norm that officers, not members, are appointed as directors, but this does 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, for example, based on the skills and expertise of the particular member. If members of the Council are appointed as directors of a company, the following should be considered:

- conflicts of interest may be waived by a company but, never in the decision making of the Council;
- the Council Member / company director will always have a conflict of interest when it comes to their role as a councillor that must be resolved and resolved in the favour of the company;
- a Member, as director, therefore, must not be a party to making a decision of the Council affecting the company, but may provide evidence or advice to the Council on the company's behalf when invited to do so;
- The Councillor Code of Conduct applies to a Member's activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict should be notified to the company secretary and to the Council's monitoring officer;
- The only monies or other remuneration to be received by the Member in connection with the directorship will be as a special responsibility allowance (SRA) given by the Council.

All directors should receive training in technical and corporate governance matters, including, managing conflicts of interest alongside ensuring that the board functions effectively. (See 3.5 below).

Appointments of a Council officer as a company director will be made on basis of the relevant post or office of the Council, not as an individual. This should be reflected within each of the companies' articles in that if any one of the Council appointed directors ceases to be an employee, office holder or Member of the Council, as applicable, then they automatically also cease to be a director of the company. For this reason, the officer director will be remunerated by the Council not the Company.

A Conflict of Interests Policy has been drafted to support Directors and Shareholders and this is included with this report at Appendix D.

### **3.5 Training for Members and Officers**

Governance arrangements should seek to ensure that there is sufficient induction, training and other materials in place so that members of the Council in their role as part of the executive or of overview and scrutiny, officers of the Council associated with these duties and all directors of the companies understand:

- their legal duties;
- stewardship of assets;
- the provisions of the governing documents;
- how to ensure that the Board functions effectively;
- the external environment; and
- the total structure of the organisations and the venture being undertaken.

It is essential that existing and prospective Company board members are competent and have sufficient knowledge to undertake the role. The role profile for Directors supports those appointed in developing an understanding of their legal duties, however all Directors/prospective Directors will be expected to undertake training and assessment to a suitable standard. The recommended standard is that of the Institute of Directors' Competency Framework and there are number of organisations who can provide such training, including CIPFA.

It is recommended that the Shareholder Officer Group plays a role in organising suitable training for all of those involved with the Family of Companies and maintains a review of training requirements going forward.

It is good practice for the Council to liaise with the Chair of the board of each of the companies to determine what skills and expertise would best serve the board and the company. Again this is a role that could be undertaken by the Shareholder Officer Group.

### **3.6 Scrutiny of the Shareholder Function**

It is recommended that the Overview Scrutiny and Management Committee is responsible for the scrutiny of executive decisions in relation to the Family of Companies. This would effectively mean that OSMC would scrutinise the work of the Shareholder Committee and its decisions, or those of the Leader where he has taken decisions directly. It would be for OSMC to make recommendations to the Shareholder Committee on Family of Company matters. It may be that OSMC can invite Family of Company representatives to attend meetings to provide information to support the scrutiny of the executive shareholder function in relation to each company. This would not extend to the scrutiny of the Council-owned company itself and its performance.

A Family of Companies Governance Framework document is in the process of being drafted and will be finalised once the matters set out in this report have been confirmed. This document will be a guidance document for all those involved with the Family of Companies and will be reviewed on an annual basis by the Shareholder Officer Group to ensure that it remains relevant.