

# Business Support Overview and Scrutiny Committee

Briefing note 4/21

- Date:** 16 August 2021
- Briefing paper to:** All Members of the Business Support Overview & Scrutiny Committee
- Purpose:** To advise members of the Committee on the membership of other Local Authority Trading Companies.

## Background

At its meeting on 22 August 2019, as part of the discussion on an update report on Medway Commercial Group, the Committee requested a briefing note on the membership of other Local Authority Trading Companies (LATCo's), in particular the extent to which elected members are appointed to the Board and how common it is for a member to chair the Board.

## Advice and Analysis

The governance structures of the Council's two LATCo's have evolved over several years, as we've learnt lessons from our own experiences and those of other local authorities. The current structures are outlined below.

The Chartered Institute of Public Finance (CIPFA) has also been looking into the structure of LATCo's nationally and is planning to issue some best practice guidance in due course. Following this would be an opportune time for Medway Council to review its own LATCo governance structures.

The Board of Directors for Kyndi Ltd. comprises one ex-officio executive director (Chief Executive Officer) and four non-executive directors. The Council's non-executive director appointments for this municipal year are Councillor Howard Doe (Chairman) and Councillor Rupert Turpin. The Board appointed two independent non-executive directors in early 2020, Steven Hughes, telecoms and commercial experience, and Ashley West, financial and business turnaround experience.

The Council's Chief Finance Officer is the appointed Medway Council corporate client for Kyndi and attends board meetings, with the responsibility to safeguard the single shareholder interests of Medway Council and act as a strategic conduit between Medway Council and Kyndi on business development opportunities between the two parties.

The MDC Ltd. Board comprises two Council appointed directors (both Cabinet Members) and two non-executive directors. The company also operates via two

subsidiaries. Medway Development Company (PRS) Limited is chaired by Councillor Doe and Medway Development Company (Land and Property) Limited is chaired by Councillor Gulvin.

The Assistant Director for Regeneration is the appointed Medway Council corporate client for MDC Ltd. and attends board meetings.

As requested by the Committee, officers have undertaken some work to ascertain how other local authorities have structured their company boards and attached at Appendix 1 is a schedule outlining the board structures of a number of other LATCo's.

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## Local Authority LATCo

Local Authority	Nature of LATCo	Board Structure
Central Bedfordshire	'New Vista' Housing Development Company	The Board comprises two executive directors (councillors) and two Council directors (officers). Also recruiting a Managing Director and an independent Chair for the Board. The Executive Member for Corporate Resources and Deputy Leader is the nominated shareholder but not a Board member.
Telford and Wrekin	'NuPlace' Property Company	There are three directors, all drawn from the senior management team and no one receives additional remuneration. NuPlace has no employees but reimburses the Council for services at a market rate. Whilst Cabinet Members are not directors of the company, three of them sit on a Housing Investment Programme Board, alongside senior officers, that oversees the Council's wider housing activities, including setting the strategic direction for NuPlace and prioritising other Council housing activities.
Leicester	Two companies, both dormant – the 100% Council owned housing company was overtaken by the abolition of the HRA borrowing cap and the energy company (owned 50/50 with the County), which failed.	The company directors are all drawn from the senior management team. The housing company is wholly owned, the energy company 50/50 with the county council, which also nominates officers.  In light of the issues experienced with Robin Hood Energy, Leicester has reviewed its governance arrangements. This includes proper training for officers and councillors acting as directors. They have also decided that a separate person should represent the Council at the annual shareholder and members meeting. Too often the director finds themselves representing the Council, which is really a conflict of interest.
Wokingham	Housing Companies and an ASC Operational Company	The housing companies sit under a holding company, comprising four non-executive directors (three councillors and one officer) and subsidiaries generally made up of four to five non-executives (two councillors and two or three external experts).  The ASC operational company does include executive directors on the board.
Birmingham	A large number of companies, wholly owned, associates and investments.	Annually a report is presented to Cabinet detailing the nominations to outside bodies, this is where the officer and member board and/or trust appointments are either made or ratified. Birmingham doesn't have a set structure for members, officers, executives or non-executives, as each company requirement is reviewed

		<p>individually. Two companies are FCA registered and for them to have Member directors, which could change frequently, would not look good with the FCA, so for these companies all directors are drawn from senior management.</p> <p>Some companies will have executive directors on the board, but not all. This tends to reflect the holding in the company; eg. where the council is 100% owner then the boards will be largely non-executive. This in particular may be where third party NEDs are brought in, as it is unreasonable to expect Members to have commercial expertise in some of these arenas. It's also a good way to balance the make-up of the board, gender, race, age etc. Where there are executive directors on the board then the Council would look to make appointments or have reserved matters which require Council approval only – eg. directors salaries.</p> <p>Officer selection is from director level down to grade 7 (top of the non-JNC grades), with appointments based according to skill and expertise.</p> <p>Birmingham have set up a Cabinet Committee for Group Company Governance, to oversee company performance, note board changes, oversee a training schedule for all nominees and provide a forum in which group matters and best practice can be discussed and applied with Council wide legitimacy. Having this Member led group has assisted with improvements to process and compliance across the board.</p> <p>Member nominations are made by each party group and can be a mix of cabinet members and backbenchers, depending on the expertise or particular interest of the Members.</p>
Blackpool	Eight trading wholly owned companies (excluding subsidiaries)	<p>In terms of membership, the majority comprise seven non-executive directors - four directors recruited from the business sector with three council directors (Cabinet members and backbenchers).</p> <p>The only exceptions are the transport company which (under the Transport Act 1985) is required to have executive directors on the Board (three) in addition to the seven non-executive directors, and an ALMO which manages the Council's housing stock and which includes tenant directors on the Board. Only one</p>

		company has senior officers of the Council on the Board, however this is likely to be reviewed going forward.
Bournemouth, Christchurch and Poole	'Tricuro' owned jointly with Dorset Council for the provision of adult social care day centres, residential and reablement services.	<p>BCP Council has a trading company (Tricuro) owned jointly with Dorset Council for the provision of adult social care day centres, residential and reablement services.</p> <p>The company leadership team reports to the Board with oversight by an Executive Shareholder Group (ESG). The ESG sets strategic direction with some decisions specifically reserved for it.</p> <p>The composition of the Board is as follows:</p> <ul style="list-style-type: none"> <li>• Independent Chair</li> <li>• Three non-executive directors (external 3rd parties)</li> <li>• Managing Director</li> <li>• HR Director</li> <li>• Finance Director</li> </ul> <p>...together with an Executive Shareholder Group of 10 councillors, comprising up to five from each local authority and but including the Cabinet Member for Finance, the Cabinet Member for Adult Social Care.</p> <p>The relationship with officers is as service commissioners, although they will be able to exercise some influence through their Cabinet members.</p>
Peterborough	One 100% Council company	The Board comprises two Members and one Council officer. The remainder of the Board are the LATCo's executive officers. Now considering independent directors.
Kent County Council		<p>No Members on company boards, because the political imperative is deemed to be incompatible with the directors duties under the Companies Act. A separate shareholder board imparts the shareholder strategy and investment vision to the Chairman and Chief Executive of the business in question. KCC eventually created a holding company to</p> <p>portfolio manage all of its businesses under a governance protocol, with tightly defined reserved matters. There is a single KCC officer on the holding company board who reports to the Council's Head of Paid Service. KCC also mandates the use of internal audit function on a 'right to roam' basis that gives further oversight</p>

		and control and a dotted line from the company CFO into the Council's Section 151 Officer.
Ashford Borough Council	Property Company	Three non-executive directors, comprising two senior officers and an external on the Board and no Members. The Leader was originally on the Board, but stepped down on advice.
Sevenoaks	One company	Members are not on the board. Instead, there is a Trading Board (the Cabinet), which essentially fulfils the role of shareholder.
Maidstone	'Maidstone Property Holding Ltd.'	The Board consists of Council officers only.
Tunbridge Wells BC	'Tunbridge Wells Property Holding Ltd.'	Two backbench Members and an officer. In setting up the company, the aim was to avoid appointing Cabinet members to avoid conflicts of interest at meetings. All posts are unpaid and no individual holds shares in the company.
Swale District Council	'Opportunities for Swale Ltd.'	Directors consist of the project organisation and an officer of the Council. No members on the Board.
Folkestone and Hythe	Various companies	The Boards consists exclusively of Members, except in one instance where they also include two officers.
Gravesham Borough Council	One company	Board consists of three Members (two Labour and one Conservative) and three Council officers. An officer of Gravesham BC acts as the Company Secretary. The Chair is a Cabinet Member and the other two directors are backbench Members.