

To: Audit and Governance

Date: 22 April 2021

Report of: Head of Financial Services and Head of Law and Governance

Title of Report:

Lessons learned from Public Interest Reports on Robin Hood Energy Ltd and Croydon Council and conclusions from the MHCLG report on Local Authority Interventions

Summary and Recommendations

Purpose of report: To review the recommendations from the auditor on the Public interest reports issued to Nottingham City Council on Robin Hood Energy Ltd and London Borough of Croydon in relation to the Council's financial position and related governance arrangements. In addition, to consider the MHCLG report on cultural failings in local authorities where intervention has taken place. To make recommendations to changes in arrangements in relation to companies and joint ventures within Oxford City Council.

Executive lead members: Cllr Susan Brown, Cllr Ed Turner, Cllr Nigel Chapman

Policy Framework: The Council's Corporate Strategy and Council's Budget

Recommendation: That Committee resolves to:

- 1) Note the content of the report.

1.0 INTRODUCTION

In August 2020 the external auditors, Grant Thornton, issued a report in the Public Interest, (in accordance with s24 Local Audit and Accountability Act 2014), to Nottingham City Council on the failings of its handling of the financial affairs of the Council's Energy Company, Robin Hood Energy Ltd.

In October 2020, the same company of auditors issued a similar report in the public interest to London Borough of Croydon in respect of its financial failings and matters of governance in respect of the council's affairs.

In June 2020 MHCLG published a report on "Addressing cultural and governance failings in local authorities: lessons from recent interventions".

This report examines the recommendations within these reports, identifies learning points for Oxford City Council and also makes recommendations on any changes that should be considered to mitigate the risk of any similar type of issue arising.

The report is divided into three parts for ease of reference as follows :

2.0 EXECUTIVE SUMMARY

1. The Council has reviewed its governance around its wholly owned companies and joint ventures in the light of the 2 recent public interest reports on Robin Hood Energy Ltd and the London Borough of Croydon and also the report on cultural and governance failings published by MHCLG.
2. As part of the governance review, the Council's internal auditors, BDO, have recently undertaken an audit on company and joint venture governance, which is also presented to the Audit and Governance Committee on 22nd April 2021. This report and the Audit report should be read in conjunction with each other.
3. Officers are delighted to report that, having gone through the 3 independent reports, they are of the view that Oxford City Council's governance arrangements around their companies and joint ventures are robust, and this view is supported by BDO in the recent audit. The overall conclusion is that the Council's governance of its companies, oversight, scrutiny, information and decision making arrangements are sufficiently robust to be confident that we are not at risk of the issues highlighted by the public interest reports.
4. Nevertheless there is a need for continuous improvement in arrangements and there are lessons that can be learnt by all local authorities from the experience of Robin Hood Energy Ltd and Croydon Council. This report goes through the recommendations within the 3 independent reports and makes some recommendations for change at the City Council to improve processes and procedures to give even greater confidence in our governance arrangements.

2.1 Good Practice

5. Having reviewed failures elsewhere the Council should note the following aspects of good practice recognised within our existing governance arrangements :
 - The considerable knowledge and expertise in the core business of the companies: knowledge in housing developments, regeneration, and property and expertise in operating refuse and recycling, street cleaning, highways and building works operations built up within Direct Services.
 - Highly skilled and financially astute Members who bring the companies and joint ventures to account through Shareholder and Scrutiny groups.
 - Appointment of Non Executive Directors (NED's) to wholly owned Council companies
 - Healthy challenge by Officer advisors to the Shareholder around the operations of the companies
 - The appointment of a senior Council Officer as a Director at ODS.

- The role of CMT to address areas of concern before being raised with Shareholders.
- Members taking corrective action to financial plans when required e.g COVID 19 and understanding the need to maintain an adequate level of reserves and balances to mitigate risks under the ‘Oxford Model’.
- The tracking of efficiencies through budget monitoring reports.
- The tracking of the implementation of internal audit recommendations by Audit and Governance Committee, made by the Council’s internal auditors BDO and the call for Officers to account for those not implemented in a timely manner.
- All Statutory Officers have a seat at the ‘top table’ at Oxford City Council and having sufficient opportunity and credibility to be heard by colleagues and leaders alike; it was found at Nottingham City Council that statutory officers did not have enough “visibility or traction”.
- Despite the current Corporate Management Team incorporating some interim posts and new appointments, there is evidence that the group works well together as a team and shares and works towards jointly understood corporate objectives.
- Whilst the statutory officers do not hold regular formal governance meetings, they work closely together and regularly meet on a more informal basis.
- Oxford City Council has an effective scrutiny function. The Scrutiny Committee consider Executive reports in advance and can comment upon them, seeking a response from the Executive.
- Recent improvements made in Executive decision making ensure that decisions which should be published in accordance with the constitution are published, and where they are key, are not implemented until a sufficient period of time has elapsed to allow a period for call-in of the decision.
- All Councillors can hold boards to account at the Annual General Meeting held with the wholly owned companies.
- The Council makes use of external advisors on key decisions being made by its joint ventures and companies in order to ensure that the shareholder and council is given appropriate advice

2.2 Recommendations

6. Having reviewed governance failures elsewhere, the following recommendations are suggested to further improve the Council’s processes:

- Need to ensure consistency, as far as possible bearing in mind the differing nature of the businesses, of information presented to Shareholders and Scrutiny of information
- Need to ensure that Members who scrutinise companies and joint ventures and Treasury Management are appropriately trained to understand the risks and the financial returns due from the companies and joint ventures in addition to the flow of money
- Consideration of an annual report by the Monitoring Officer and Chief Financial Officer on the operation of the companies to Audit and Governance Committee

- Risk Management Group to undertake periodic reviews of the risk registers within its wholly owned companies and joint ventures and report to Audit and Governance through the risk management reports
- A paper to shareholders on the operation of loan covenants, what they are and how they operate in the context of loans to joint ventures and OCHL.
- To review the Whistle Blowing policy during 2021

3.0 NOTTINGHAM CITY COUNCIL – ROBIN HOOD ENERGY LTD

3.1 Background

7. Nottingham City Council (“NCC”) set up Robin Hood Energy Limited (“RHE”) in 2015 as a wholly-owned not-for-profit subsidiary, to tackle fuel poverty in the City of Nottingham and provide a realistic alternative to the 'big 6' energy suppliers.
8. Since 2015, the company has reported losses each year with its worst year seeing a loss of over £23m. As of 31 March 2019, RHE had made cumulative losses of £34.4m.
9. The Public Interest Report (“PIR”) found that the losses were caused by a number of factors including volatility in wholesale energy markets, price caps changes by Ofgem and the need to increase the provision for doubtful debts by £2.6m (more than trebling it) following an increase in debtors among other factors.
10. NCC eventually had to make significant additional loans to RHE to keep the energy company from failing. Although the company has since been sold.

3.2 Finance & Governance Weaknesses identified in the Public Interest Report

11. According to the PIR, the company's weak financial position stemmed from a range of factors including:

The setting up and operation of an energy company is "hugely ambitious, given the highly complex, highly competitive and highly regulated markets in which energy companies operate, and the impact which external global factors can have on pricing". Some aspects of RHE – particularly its focus on low tariffs and poorer customers – further increased these risks.

12. Issues to consider in respect of Oxford City Council's companies:

- The Council has a Housing Revenue Account and so has internal expertise in housing. The provision of social housing has been a core service of the Council for many years and indeed housing is a statutory function of Local Authorities. The Council also has staff who have experience in developments which allows the schemes relating to OCHL to be managed in-house.
- The Corporate Property team have a wealth of knowledge relating to the sale and purchase of investment property and the ongoing management of investment assets and are supported by an experienced team of in-house property lawyers. Particularly there are skills within the Council's staff resource

around structuring of corporate vehicles and joint ventures. The team are currently managing a number of hotel assets and are aware of the risks to tenants through the pandemic. Specialist advice on the sector has been sought to bolster the market knowledge.

- Oxford Direct Services Limited is essentially the Council's former Direct Services department moved into a company so there are existing skillsets and local market knowledge that are used in service delivery, these are being supplemented as necessary as the company grows its commercial activities
- The OxWED JV is involved in a regeneration scheme in the centre of Oxford. The Council has in-house regeneration professionals and also the Company and the Council involve external advisors to bring specific skills and a skilled perspective to bear. The Council has commissioned its own specialist advice, independent of the Company's advisors.
- The Council's companies operate in more familiar markets than RHE was to NCC and in the case of ODS new markets is a shareholder matter through the business plan
- Senior Council Officers scrutinise the activities of the companies in their role as senior officers of the holding company (ie the Council) and therefore owners and controllers of its companies. Officers are encouraged to obtain external expertise where necessary, and budget is made available for this, especially where the technical expertise of the Council is conflicted through work for the companies or membership of company boards. This, by way of an example, is already done by the employment of Montague Evans in relation to Oxwed, who act as advisor to the Council's statutory officers in matters relating to the Council and shareholder.
- Members of the Council ensure that the companies and their employees are held to account both for delivery and compliance with the directions of the group holding "company" (the Council). Directors of the companies are appointed by the Shareholder.

13. The governance arrangements which NCC had in place were not strong enough, particularly given the nature of the company and its markets:

Issues to consider in respect of Oxford City Council's companies:

- The governance arrangements at RHE centred on a council officer as a Shareholder Representative; this did not work to protect NCC's interests, the individual officer had insufficient authority and the Council as company owner was insufficiently accountable. At Oxford City Council officers do not act as shareholders. The function of shareholder of the Council's companies is recognised to be an Executive function and the OCC companies report to the Shareholder through the Shareholder and Joint Venture Group ("S&JVG"). The S&JVG is a formally constituted group of senior Executive members supported by Council Officers as their professional advisors.

- The Council's statutory officers are responsible for the governance and finances of the Council and that includes the Council's group of Companies and its associated activities. The statutory officers are ultimately responsible to the Council.
- The Council's companies, do on occasion need reminding that they are subsidiary to the Council. Despite being separate legal entities, as companies wholly (or jointly) owned by the Council they are obliged to take into account and follow the advice of the Council's statutory officers and advisors to the shareholders.

14. There was an insufficient appreciation within NCC (as a corporate body) of the huge risks involved in ownership of, and investment in, RHE

Issues to consider in respect of Oxford City Council's companies:

- The Council Group is more complex than most commercial activities of similarly sized local authorities. It consists of the Council as the parent, three wholly owned companies (OCHL, ODSL and ODSTL), with two subsidiaries (OCHL Investment, OCHL Development), a Limited liability partnership (Barton) and a joint venture (Oxwed) of which the Council holds 50% stake in each. The funding mechanism of these companies can be complex more so in the case of Oxford City Housing Ltd which borrows money from the Council to fund its development activities paying a margin to the Council above the rate at which the Council borrows from Public Works Loan Board ("PWLB"). There is an added complexity where the Council itself, through its Housing Revenue Account ("HRA") purchases affordable housing from OCHL, again through the use of PWLB. Peak borrowing for the Council is likely to be £50 million over the next four years, £125 million for OCHL and £443 million for the HRA.
- Around £11 million has been invested by the Council in its Joint Venture OxWed as part of its 50% share of financing land assembly under a partnership with Nuffield College. The Council has recently agreed to invest a further £1 million in 21/22 to enable this development to progress to the next stage.
- The Companies are required to prepare monitoring reports to both shareholders (at the S&JVG) as the owners of the Company and to Members acting in a scrutiny role (via the Scrutiny Companies Panel ("SCP")). Formally constituted meetings of S&JVG and SCP are held 4 times per annum with ad-hoc meetings as required. The format of reports and expectation of what members and shareholders see, is largely driven by the companies. However, for transparency, such reports go via the Council's Corporate Management Team meetings prior to publication for greater oversight.
- Both committees (S&JVG and SCP) currently include Members who are financially astute and understanding of the financial information they are presented with. This issue would need to be considered further to ensure

this remains the case should the membership significantly change. Both groups are supported by professional officers with financial expertise.

- The Council is the holding company with OCHL, ODSL and ODSTL as subsidiaries and therefore the Council as owner has a right to exert control over the companies. The Council is also the ultimate bearer of the risks associated with the subsidiaries. Control must be commensurate with those risks.
- There appears to be an awareness of the financial risks to the Council given that the medium term financial plan relies to a significant extent on returns generated by the companies, and that this message is regularly and frequently reinforced. However, one issue for the Audit and Governance Committee to consider is whether members need a greater oversight on the flow of money between the companies and joint ventures and the Council, and an exemplification of the risks that are being borne by the Council.

15. There was insufficient understanding within NCC of RHE's financial position, partly due to delays in the provision of information by RHE but also due to the quality and accuracy of that information

Issues to consider in respect of Oxford City Council's companies:

- There are regular monthly meetings between the Council's Chief Financial Officer and the Finance Director at ODS and the Strategic Finance Officer at OCHL
- Regular and robust reporting from the companies into the Council and two way information sharing is key. Shareholders via S&JVG and Scrutiny Members via CSP are presented with monitoring information from companies at their quarterly meetings.
- Information from its wholly owned companies has not always been presented in a consistent format which may lead to a lack of understanding on what members are being advised. There is a need to ensure some consistency on what members of the Council are being presented with by the companies taking into account the risk profile of each of the companies.
- It is necessary to provide members with regular training, as well as informal briefings where helpful, to ensure that members fully understand and appreciate the information that they are being presented in such reports as well as the consequences and risks.
- Each meeting of S&JVG and CSP are attended by the statutory officers, or their deputies, and should include some narrative overview by advisors. The council provides the administration for and clerking of the meetings.

16. There was insufficient sector (or general commercial) expertise at non-executive Board level

Issues to consider in respect of Oxford City Council's companies:

- The skills and expertise of Company Boards is critical to their success and should be reviewed regularly as a matter of good governance practice. This is picked up by Oxford City Council in the annual certificate of assurance issued by the Monitoring Officer for completion by the companies which feeds into the Council's Annual Governance Statement.
- The skills of members of the Board should include sector specific and commercial knowledge. (One of the criticisms about Brick by Brick, owned by Croydon Council, was the lack of Finance Non-Executive Director expertise on the Board).
- As discussed above the functions and sector in which the companies operate are not new or unfamiliar to the Local Authority. There always has been sector specific and general commercial expertise at Board level.
- Senior Council Officers who are Board members of the companies are selected due to their commercial skills and area of knowledge and expertise in their Council role, which provides a good fit with the work of the company. So for example the Board of Barton comprises the Council's Head of Housing, Director of Housing and the Head of Regeneration and Economy, whilst the Board of OxWed includes the Council's Chief Executive, Director of Development and Head of Corporate Property
- It is encouraging that further expertise and resilience has been provided by the three wholly owned companies recently taking on 'non executive directors' ("NED's"); two within OCHL and three in ODSL. These NEDS would appear to bring external expertise in HR, Finance and Housing as well as good general commercial skills and experience at board level.

17. There was a lack of clarity in relation to roles within the governance structure

Issues to consider in respect of Oxford City Council's companies:

- The various roles on the Council and company are clear and are set out in various documentation including the Shareholding Agreement, the S&JVG terms of reference, the Scrutiny protocol and the Council's constitution.
- Care needs to be taken where an individual has a dual role such as an Officer of the Council having a role as Director of a Company and also senior officer of the company to advise the shareholder. Part 3.7(f) of the constitution provides that "*When Council officers are asked to provide advice in a situation where the interests of the Council and the company are not entirely aligned, individual officers should be assigned to advise or represent one side or the other, but should not act for both*".
- Clarity in roles should be maintained within the governance structure. So for example it must be made clear that when the Council's s151 Officer or Monitoring Officer is seeking financial information and assurance they are doing so on behalf of the Shareholder ie the Council.

18. The arrangements did not establish an appropriate and consistent balance between holding to account and allowing the Company freedom to manage, and this worsened as levels of trust decreased and the financial position deteriorated.

Issues to consider in respect of Oxford City Council's companies:

- Both OCHL and ODSL are Teckal companies who derive a procurement exemption status as a result of this. In order to maintain this status the companies must satisfy two key criteria:
 - that no more than 20% of their business should be for organisations outside of the parent i.e Council (known as the functional test), and
 - that the same level of control should be exerted by the parent over the Company as would be exerted over its own departments, (known as the control test).

(Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale, 1999)

- The local authority must control all of the shares in the company and must also exercise effective day-to-day control over its affairs; in other words, the same as the relationship between the council and one of its internal directorates.
- Some key points around Teckal compliance, based on previous cases and court judgments, are:
 - The council has the power to issue directions to the subsidiary on "strategic matters or important issues of policy".
 - If the articles of the LATC say that non-authority board members could be appointed, the council must retain the express right to remove any such directors at any time.
 - The constitution must consider the level of autonomy of the board and the authority must have the power to exert control over the LATC.
 - That the local authority holds all of the share capital in the company will usually (but not always) be indicative of control.
- The status of a subsidiary company in relation to their holding company is clear in that the holding company and its officers can direct and control. When overlaid with the Teckal requirements, this relationship is strengthened and deepened. ODS benefit both from procurement exemptions and from a Teckal exemption with HMRC which allows no corporation tax to be charged on surpluses arising from work performed for the Council. Unless ODS acts as a subsidiary and a Teckal company then it puts both the procurement and tax exemptions at risk with the costs of this ultimately falling on the Council subject to the limited liability status of the companies.
- There is a fine line between robust challenge of the companies and joint ventures and a culture of dis-trust and holding back the commercial approach. The Head of Financial Services has regular meetings with key finance staff within both companies and is observer on the boards of both OCHL. The Head of Finance applies healthy challenge to the workings of the two companies

- On ODS the Council has a nominated Director on the Board who's responsibility is to whilst acting in the interest primarily of the company to be aware of and raise the perspective of the council. The Managing Directors of both wholly owned companies are invited to give quarterly updates to the Councils Corporate Management Team. These updates to CMT also seek to address any issues of concern before they are raised at shareholder meetings.
 - It is necessary to ensure that wholly owned companies act in a way that is commensurate with their status and where applicable, as Teckal companies, and that their objectives and values are aligned with those of the Company, in the same way as the Council.
 - The Council makes use of external advisors on key decisions being made by its joint ventures and companies in order to ensure that the shareholder and council is given appropriate advice
19. Overall, the governance arrangements were overshadowed by NCC's determination that the company should be a success, and this led to "institutional blindness" within NCC as a whole to the escalating risks involved, which were ultimately very significant risks to public money. Where concerns were raised by some individuals, these concerns were downplayed and the resulting actions insufficient.

Issues to consider in respect of Oxford City Council's companies:

- There is a tension between a wholly owned company operating in their commercial field while tied to Policy Objectives of the Council and complying with the accountability requirements of being owned and funded by a public body e.g. publication of accounts, provision of exempt information to commercial lenders. Key policy issues are reserved matters for the Shareholders but the Oxford Model does allow for deviation where it is deemed to be in the interests of the Group.
- The culture should allow for challenge at an officer and member level to ensure good governance and not be seen as a challenge of policy objectives

3.3 Recommendations for Nottingham City Council arising from the Public Interest Report

20. These are set out in Appendix 1 to this report

4.0 LONDON BOROUGH OF CROYDON – PUBLIC INTEREST REPORT

4.1 Background

21. On 23 October 2020 London Borough of Croydon's ("LBC") external auditor Grant Thornton ("GT") issued a Report in the Public Interest ("PIR") concerning LBC's financial position and related governance arrangements.

GT is of the opinion that LBC:

- i) Has experienced deteriorating financial resilience for a number of years
- ii) Has significant issues relating to its financial sustainability
- iii) Has not responded promptly to previous audit recommendations and concerns
- v) And that this needs to be brought formally to the public's attention

4.2 Concerns highlighted in the Public Interest Report

22. Various concerns were raised by the auditor in the PIR as follows:

- Overspends in Children's social care and Adults' social care over a number of years
- Reserves not maintained at a sustainable level
- Reliance on use of capital receipts for transformation expenditure
- Not managing the Dedicated School Grant within existing budgets
- The impact of Unaccompanied Asylum Seeking Children expenditure
- Treasury Management and affordability
- The complexity and risk of the Council's subsidiary company structure
- The Council's culture and governance of its financial decision making

23. Of particular note was the conclusion from GT in the PIR that stated "There has been "corporate blindness" to the seriousness and urgency of the financial situation". This is similar to a finding within the PIR for Nottingham City Council and addressed by Officers above at paragraph 3.2.8. There are no such similar concerns identified by Officers at Oxford City Council.

4.3 Recommendations in the Public Interest Report

24. The PIR made a number of recommendations for LBC to address, which are set out in appendix 2 to this report.

5.0 CULTURE AND GOVERNANCE FAILINGS

5.1 Addressing cultural and governance failings in local authorities: lessons from recent interventions

25. In June 2020 the Ministry of Housing, Local Government and Communities ("MGLGC") published a report, "*Addressing cultural and governance failings in local Authorities: lessons from recent interventions*". They concluded that, based on their experience of supporting and sometimes intervening in local authorities experiencing difficulties, culture and governance is key to the success or failure of the local authority.

Since 2010 the Secretary of State has intervened formally in 4 local authorities:

- Doncaster Metropolitan Borough Council
- London Borough of Tower Hamlets
- Rotherham Metropolitan Borough Council
- Northamptonshire County Council.

There have also been non-statutory interventions in:

- Birmingham City Council, and
- Royal Borough of Kensington and Chelsea
- Nottingham City Council

The analysis shows that the one common characteristic of such interventions is weakness in the local authority's culture and governance.

The culture of a local authority is determined by its shared values and beliefs, how decisions are made, as well as how elected members and officers behave, interact, and carry out their roles.

The governance refers to the way in which an organisation is governed and to what purpose. It encapsulates policies, procedures, the way in which decisions are made and how decision-makers are held to account.

5.2 Recognising indicators of poor culture and weak governance that could lead to failure of the Local Authority

26. There are no clear or unequivocal quantitative measures to assess whether a council has a poor culture, and weak governance can often be intangible. However, from their experience MHLGC considered that the following are potential indicators of a local authority that has problems:

a) **Lack of effective political and/or corporate leadership, including an over reliance on interim statutory officers**

27. The role and behaviour of both political and officer leaders is key to a positive overall culture and governance.

28. In Tower Hamlets at the point of intervention all 3 statutory officer roles were held on an interim basis and permanent recruitment was not planned. In Northamptonshire, all executive directors were replaced, and in some posts more than once, in the 5 years prior to the intervention. The statutory inspection team found that "there was no sense that the group worked together as a team, seeking to share and jointly solve the Council's problems".

29. At Oxford City Council all 3 statutory officers are appointed to the Authority on a permanent basis. One has been in post for several years whilst new are relatively new in post. Two of the three Executive Director posts are currently filled on an interim basis, but permanent recruitment is underway and it is anticipated all Executive Directors will be permanent appointments by the summer. Despite the current Corporate Management Team incorporating some interim posts and new appointments, there is evidence that the group works well together as a team and shares and works towards jointly understood corporate objectives.

30. Political leadership can be ineffective for a variety of reasons including political domination by one party with limited political opposition, weak overview and scrutiny, and a low level of turnover of councillors leading to a sense of parochialism and complacency. Indications from the interventions are that changes at a political level can enable positive operational change and a balance of political class within

the council and a mix of long standing and new members can be advantageous. Democracy is best served where there is a balance between continuity which provides stability, knowledge and expertise, and refresh which provides new ideas and perspectives and can provide constructive challenge.

31. In Rotherham the publication of the Best Value Inspection Report led to the whole Cabinet resigning in 2015. In Birmingham the all-out elections in May 2018, improved stability and underpinned the significant subsequent progress to embed improvements at the Council.
32. At Oxford City Council the Labour Party does have a significant majority but there is a strong and effective opposition, and there is genuine engagement with scrutiny members and an effective challenge and check and balance from the scrutiny function of the Council. The Council is a mixture of long standing and newer members. Political leadership is already robust but all out elections in May 2021, with some long standing members already indicating their intention to stand down, may provide an opportunity for political refresh.

b) Lack of corporate capacity, resulting in a lack of strategic vision and direction, and inadequate internal processes

33. There is currently a lack of capacity at a corporate level at Oxford City Council, primarily due to additional pressures on the corporate management team (and the entire workforce) arising from the Covid-19 pandemic. This issue has been raised with full Council recently by the Chief Executive and plans are being put in place to increase this resilience with permanent appointments being made in the Senior Officer structure.
- 34.
35. However, there is no evidence or concern that this lack of capacity is resulting in a lack of strategic vision and direction; in fact the contrary is true. The Council has developed a new corporate strategy for 2020-2024, and has recently published its revised annual corporate business plan. The Council remains as ambitious as ever and is clear about, and committed to, its strategic goals and direction.

c) Poor and inappropriate Councillor conduct

36. In many of the interventions conflict and distrust among and between councillors and officers was prevalent. This manifested itself in various ways including bullying and harassment, provision of poor quality advice to members, disregard of professional advice by members regardless of quality, or a lack of understanding of how meetings should be conducted.
37. Oxford City Council has a code of conduct for Members, which is part of their constitution. Training is provided on an annual basis on the code of conduct by the Monitoring Officer. The code is adopted by all County wide authorities in Oxfordshire. In reality the Council has a very low number of proven breaches of conduct each year; any complaints and upheld breaches are reported to the Standards Committee on a regular basis to provide accountability and transparency. The Code of Conduct for Councillors is currently under review in the light of the newly published LGA model code and Monitoring Officers across the County are working together to bring proposals to their respective authorities later in the year.

38. Generally political debate in the Council Chamber is appropriate and respectful challenge and meetings are well run. Procedural rules around the running of meetings are under constant review; members have involvement through the Constitutional Review Working Group when significant changes are proposed.

d) Conflict and distrust among and between councillors and senior officers

39. At Oxford City Council, there is a formally adopted Code on Councillor-Officer relations which forms part of the constitution (Part 23) and governs the professional relationship, roles and responsibilities between Members and Officers.

40. Relationships between Officers and Members are generally excellent. Senior Officers have regular meetings with executive portfolio holders which provide clear lines of communication, engagement and accountability. In addition, the Corporate Management Team meet on a weekly basis with senior politicians at the Leader's meeting.

41. Statutory Officers have the ear of both the Chief Executive and the Leader and there is no concern of "institutional blindness" as reported at Nottingham City Council. The PIR into Croydon Council also referred to "collective corporate blindness" to both the seriousness of the financial position and the urgency with which action needs to be taken. The Croydon report was also critical of the statutory officers themselves saying "the statutory officers did not assert their powers". All statutory Officers have a seat at the 'top table' at Oxford City Council and have sufficient opportunity and credibility to be heard by colleagues and leaders alike; it was found at Nottingham City Council that statutory officers did not have enough "visibility or traction".

42. The 'golden triangle' of statutory officers is considered to be critical to ensure good governance within a Local Authority. At Oxford City Council the working relationships between the s151 Officer, the Monitoring Officer and the Head of Paid Service are excellent and based on good communication, shared responsibility and accountability for good governance and mutual support. Whilst the statutory officers do not hold regular formal governance meetings, they work closely together and regularly meet on a more informal basis.

43. An agreed set of shared corporate values which are effectively implemented is essential to maintaining positive organisational culture. In Tower Hamlets, the Commissioners felt that although values were in place, they were "just a piece of paper on the wall" and not adhered to. At Oxford City Council the People Strategy has recently developed Leadership Behaviours and a significant piece of work is ongoing to embed these values and behaviours into the culture of the organisation. The Corporate Leadership Team has recently signed up to a Pledge around values, wellbeing and working practices which is being rolled out across the organisation.

e) The absence of effective scrutiny, transparent and public consultation, and inadequate protections for whistleblowers

44. The overview and scrutiny function is fundamentally important in holding a council's decision makers to account. Effective scrutiny acts as a check and balance on the

executive, helps drive improvement, and can secure the efficient delivery of public service. By contrast a poor scrutiny function often leads to poor quality and ill-focused work and can be indicative of wider governance, leadership and service failure.

45. In Tower Hamlets, although there was an active Overview and Scrutiny Committee, its recommendations were generally ignored by the executive mayor who refused to attend its meetings and answer questions. In August 2017 the then leader of Birmingham, acted against the legal advice of the Monitoring Officer to resolve industrial action and the advice was not made available for public and political scrutiny.
46. Oxford City Council has an effective scrutiny function. The Scrutiny Committee consider Executive reports in advance and can comment upon them, seeking a response from the Executive. Executive members regularly attend Scrutiny Committee when required to do so. The scrutiny function is respected as a valuable function in the check and balance process of holding the executive to account.
47. Another indicator of poor organisational culture is the absence of poor decision-making processes. In Tower Hamlets elected members even resorted to making Freedom of Information requests to obtain information that they were entitled to by virtue of being an elected member of the Authority.
48. Oxford City Council perhaps on occasions lacks a little transparency over officer executive decisions but significant work has been undertaken in recent months to improve this and ensure that all officer executive decisions that should be published in accordance with the constitution are published, and where they are key, are not implemented until a sufficient period of time has elapsed to allow a period for call-in of the decision.
49. A culture of transparency, where staff are actively encouraged to flag concerns or risks, can allow authorities to prevent further failure and welcome reflection when failure does occur.
50. For example at Tower Hamlets Commissioners were repeatedly approached by whistleblowers who raised concerns of possible fraud and maladministration within the Council. Trust in the council's whistleblowing policy and officer's ability to deal with whistleblowers in a confidential manner had completely broken down.
51. Oxford City Council has a whistleblowing policy which has been formally adopted and forms part 25 of the Council's constitution. The policy is transparently available on the Council's intranet and it encourages staff to raise any concerns about anything they consider may be illegal, improper, unethical or wrong, done by officers, councillors, co-opted members, partner organisations or contractors and consultants. The Whistleblowing Policy is due for review in 2021 and a revised policy will be taken through the Council's operational delivery group, and its profile raised amongst the officer body of the organisation. When whistleblowing complaints are received, they are treated appropriately and investigated internally.

6.0 FINANCIAL IMPLICATIONS

52. Good governance and sound financial control is a key requirement of any organisation. In order to exercise this level of assurance in companies and joint ventures where the Council has an interest, although have limited involvement operational oversight of such organisations, officers within these organisations need to brought to account by appropriately trained officers, members and shareholders (where appropriate) within the Council. Not to do so would risk situations as highlighted in the case of London Borough of Croydon and Nottingham City Council whereas undertaking these duties in a diligent manner will at least mitigate the possibility of these failures in governance and financial control occurring.

7.0 LEGAL IMPLICATIONS

53. Grant Thornton (external Auditor) has issued a Report in the Public Interest under *section 24 and Schedule 7 of the Local Audit and Accountability Act 2014* to Nottingham City Council Robin Hood Energy Limited (11/08/2020) and London Borough of Croydon – Financial position and related Governance arrangements (23/10/2020).
54. Until the introduction of the general power of competence (GPOC) under *s1 of the Localism Act 2011* (the 2011 Act) local authorities were restricted in their actions to those permitted by specific functions. *Section 1(4) of the 2011 Act* states that GPOC can be used to do anything that a local authority would otherwise do for a commercial purpose.
55. *Section 4 of the 2011 Act* states that where an activity is carried out for a commercial purpose it must be carried out either through a company under the Companies Act 2006 or through an industrial or provident society.
56. *S12 of the Local Government Act 2003* allows a local authority to invest for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs.
57. *The Local Government Act 1999*, as amended, gives the Secretary of State powers to inspect and, subject to there being sufficient evidence, intervene in a local authority where that authority is failing in its best value duty, namely “to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness”.

8.0 RISK IMPLICATIONS

58. There are no specific risks directly in connection with the recommendations within this report although clearly the whole subject of the report is about the risk appetite of the two organisation and how they responded to and mitigated the risks some of which were all to evident. Strengthening the financial oversight and governance especially in relation to our companies will not eradicate risks but will seek to minimise the number of risks and mitigate the impact of those that materialise.

Name and contact details of author:- Name: Nigel Kennedy / Susan Sale

Job title: Head of Financial Services/ Head of Law and Governance
Service Area / Department: Financial Services
Tel: 01865 252708
e-mail: nkennedy@oxford.gov.uk / ssale@oxford.gov.uk

List of background papers:

- Oxford City Council Constitution
- Grant Thornton Public Interest Report: Nottingham City Council Robin Hood Energy Limited (11/08/2020)
- Grant Thornton Public Interest Report: London Borough of Croydon – Financial position and related Governance arrangements (23/10/2020).

APPENDIX ONE:

Recommendations contained in the Public Interest Report on Robin Hood Energy Ltd included:

1) Review the position of Councillors as Board members, and ensure a full understanding of the role of and legal requirements for Board members.

NCC used Members on their boards. This is not recognised as good practice and led to conflicts of interest as Executive Members also had a role in holding RHE to account.

Consideration should be given to providing Board Members with training about their role and their legal obligations and liabilities, provided by an independent third party. 59.

2) Urgently determine the future of RHE, taking into account the current financial position of NCC.

N/a

3) Ensure that the Board (both Councillors and non-Councillor members) have the experience and knowledge to challenge the management, particularly when operating in a specialised sector.

The Council should consider the role of the Audit and Governance Committee in addition to the Companies Finance Panel (Scrutiny) as in both PIR Grant Thornton find that this is the Member body responsible for oversight of governance. In the case of RHE the Audit Committee should have been better sighted on developing issues in relation to RHE.

The Council's Audit and Governance Committee Chair has asked for a report on these PIR. Suggested that the MO takes a report to the Audit and Governance Committee reporting on the Company Governance each year in March ahead of the Annual Governance Statement which is backward looking. This report should include an assurance statement from the Company Secretary confirming that all statutory filings at Companies House have taken place.

4) Ensure Councillors are provided with the sufficient and appropriate training that is updated regularly.

Councillors to date have not been given any specific training on the operation of the companies. Equally there is no compulsion for members of Audit and Governance Committee to attend finance training generally or training in respect of companies

Consideration could be given to:

- Providing training for Audit and Governance Committee with compulsory attendance for members that sit on the Committee, to include training on the operation of council companies and joint ventures

5) Ensure good definition of roles within the governance structure and ensure that people understand their roles.

The Council should ensure that it continues to manage its conflict of interests with Officers who sit on the Company Boards and also have a role in their Council positions in holding the Council's Companies to account. In any dispute or tension between the Council and their Company they will be considered to be conflicted e.g. Chief Executive, Transition Director; Executive Director- Development. Corporate Management Team has established a quarterly review of its wholly owned companies through reports from the Managing Directors, in order to address any emerging issues prior to their raising at the shareholder group.

6) Scope for conflict of interest is minimised and that there is a clear divide between people in roles of Board members and those who have the responsibility for holding them to account.

NCC used Members on their boards this is not recognised as good practice and led to conflicts of interest as Executive Members also had a role in holding RHE to account.

Officers who act as Board Members may also be involved as professional advisors to those who hold them to account. Where there is a potential conflict of interest individual officers are advised to represent either the company or the Council but not act for both.

7) Risks from companies are included in the overall risk management process for the Council.

The Council operates an internal officer Risk Management Group (RMG), which has previously undertaken risk reviews in various service areas, the corporate risk register and also the risks management of the Council's Leisure operator Fusion. Going forward the RMG should periodically review the risks and the risk management arrangements within its wholly owned companies and report to Audit and Governance accordingly

The RMG should undertake periodic reviews of risks and risk management within its wholly owned companies.

8) Consider the appropriateness of the definition of the shareholder role to ensure NCC's financial interests are protected.

The governance arrangements at RHE centred on an officer as a Shareholder Representative this did not work to protect NCC's interests well and is not something that Oxford City Council has in place. The companies report to the Shareholder through the Shareholder and Joint Venture Group.

9) The Companies Governance Sub Committee (CGSC) continues to meet with companies and that financial information is provided and understood by members and others involved with holding companies to account. If this information is not provided that robust action, with oversight of the s151 officer is taken.

This is a similar issue to those raised above.

Consideration should be given to:

- Training of members
- Verbal updates by the Head of Financial Services and Monitoring Officer to Shareholders and Companies Scrutiny Panel

10) Responsibilities for scrutiny and risk are given sufficient prominence, including giving Audit Committee explicit responsibility for scrutiny of governance and risk management.

The Council should consider the role of the Audit and Governance Committee in addition to the Companies Finance Panel (Scrutiny) as in both PIR Grant Thornton find that this is the Member body responsible for oversight of governance. In the case of RHE the Audit Committee should have been better sighted on developing issues in relation to RHE.

The Council's Audit and Governance Committee Chair has asked for a report on these PIR. I would suggest that the MO takes a report to the Audit and Governance Committee reporting on the Company Governance each year in March ahead of the Annual Governance Statement which is backward looking. This report should include an assurance statement from the Company Secretary confirming that all statutory filings at Companies House have taken place

11) Learn lessons from RHE and undertake a further review of company governance arrangements in particular, to ensure that risks are appropriately flagged and managed and implementation of the more robust monitoring agreed by CGSC.

There was an insufficient appreciation within NCC (as a corporate body) of the huge risks involved in ownership of, and investment in, RHE - The Council at large needs to understand the flow of money through its companies and how the risks of the current arrangements are balanced to avoid any optimism bias.

- ODSL business plan includes efficiencies from the one depot project and the business plan for this project should be detailed and subject to challenge by the Council (both officers and Members) to ensure credibility of the assumptions.
- Risks around ODSL dividend payments need to be balanced i.e. the depot is still to be built and commercial waste income is yet to be secured (Draft Budget Report paragraphs 62 and 63) "***Estimated dividend returns to the Council across the MTFP are based on a split of 'guaranteed income' arising from payments for statutory services and also efficiencies from the single depot, once constructed and unsecured income including efficiency savings which the Company are seeking to drive***"
- In respect of OCHL (Draft Budget Report paragraphs 65 to 70) the Council agreed the Company Business Plan which will expose the Council to significant and increased lending to OCHL. The Council will be

reliant upon dividend payments from OCHL (£5.125m by 2024/25) to meet its MTFS.

- ***The estimated financial returns, namely net interest and dividends from the Housing Company allowing for some risk adjustment, included in the Council's MTFS are as follows:***

Table 1: Revenue Returns to Council 2021/22 to 2024/25				
	2021/22	2022/23	2023/24	2024/25
	£000's	£000's	£000's	£000's
Loans outstanding at year end to Company	77,535	105,832	114,646	65,683
Revenue Returns to Council				
Gross Interest	2,703	3,466	5,914	6,884
Dividends	0	0	764	5,125
Total	2,703	3,466	6,678	12,009

OxWed: The Council approved loans totalling £10.6 million .The loan investment rate is 6.5% with accrued interest to date of approximately £2.3 million with another £3.9 million over the next 4 years. (Paragraphs 70-71 of Cabinet report 9TH December 2020)-

As at 31 March 2020 outstanding loans from the Council to OCHL totalled £13.3 million and accrued interest payable on maturity of the loan and yet to be paid totalled £962k (Budget Repot to Cabinet 9th December paragraph 66).

APPENDIX 2

Recommendations in Public Interest Report for London Borough of Croydon

R1. The Executive Directors need to address the underlying causes of social care overspends:

- R1a in children's social care and take effective action to manage both the demand and the resulting cost pressures
- R1b in adults social care and take effective action to manage both the demand and the resulting cost pressures

The Council doesn't have many budgets that are demand led in a similar fashion to those identified above in Croydon. Homelessness expenditure comes closest but even then there is a higher degree of control that can be exercised by the council. It is fair to say the quarterly financial monitoring report to members provides considerable information on the three main areas of the councils spend namely General Fund, HRA and Capital and corrective action does take place if significant overspends are forecast. One only needs to look at the report on the effects of the pandemic which resulted in pausing of many items of capital and revenue expenditure.

R2. The Council (including Cabinet and Scrutiny and Overview Committee) should challenge the adequacy of the reserves assessment which should include a risk assessment before approving the budget.

The Council receives a detailed report in February of each year when setting the budget on the level of reserves and balances and the robustness of estimates which is a statutory report provided by the Head of Finance under section 25 of the Local Government act 2003. Previously reports have flagged the high level of risk from following the 'Oxford Model' which requires a higher level of balances and reserves to be held, these same reserves having been called upon to mitigate the financial implications of COVID 19.

R3. The Chief Executive should oversee a review of the outcomes achieved from the use of transformation funding to demonstrate that the funding has been applied in accordance with the aim of the scheme.

The Council has always had a good track record of monitoring efficiency savings and increased fees and charges included within its budget but of late this has slipped off the radar. The draft MTFP for 2021-22 to 2024-25 includes around £19m of efficiencies and increased fees and charges over the 4 year period and include £2.5 m of transformational savings spread over 14 projects. These projects are tracked through a Transformation Board and will require around £250k of resources to assist in their implementation which has equally been provided in the budget.

R4. The s151 officer should set out the strategy for applying capital receipts for transformation annually as part of the budget setting process.

The Council has only approved the capitalisation of transformation funding on one occasion and that was to drive out efficiencies in ODS which were to be paid back to the Council through increased dividends. The process subsequently adopted is to report the ongoing results of this funding within the Council's annual Capital Strategy. There is a risk with the capitalisation of transformation funding since if the expected efficiencies are not achieved, the capitalised costs must be charged to revenue. Given the financial issues experienced by ODS arising from COVID 19 this will tracking over the coming months.

R5. The General Purposes and Audit Committee should receive reports on the actions being taken to address the DSG deficit and challenge whether sufficient progress is being made.

Not applicable to the business of the Council

R6. The Executive Director (Children's) needs to review the services provided to UASC and to identify options to meet their needs within the grant funding provided by the Home Office.

Not applicable to the business of the Council

R7. The Executive Director (Children's) needs to identify the capacity threshold for the numbers of UASC that it has the capacity to deliver safe UASC services to.

Not applicable to the business of the Council

R8. The Cabinet reports on the financial position need to improve the transparency of reporting of any remedial action taken to address in year overspends.

The quarterly reports to Cabinet provide adequate information on forecast variations to the original budget set by the Council. Variations to dividends or in the case of OCHL interest returns are also included although these do not always completely align to reports to the shareholder. Remedial action where required is undertaken where adverse variations are reported. Financial reports from the companies are also reported to the shareholder

R9. The Council (including Cabinet and Scrutiny and Overview Committee) need to show greater rigor in challenging underlying assumptions before approving the budget including understanding the track record of savings delivery.

Budget setting assumptions are challenged by the Finance Team, CMT and also Finance Scrutiny Panel cumulating in a meeting with committee in January of each year where officers are held to account.

R10. The General Purposes and Audit Committee must challenge officers on the progress in implementing the Financial Consultant's recommendations to improve the budget setting, monitoring and reporting process and actions to address the Head of Internal Audit's concerns on internal controls.

The Councils BDO report to Audit and Governance on recommendations made to improve internal controls and processes within the authority. Subsequent reports to Committee ensure all recommendations have been implemented.

R11. The s151 officer needs to revisit the Growth Zone assumptions following the pandemic and make recommendations to Cabinet and Council for the continued investment in the scheme.

Not applicable to the business of the Council

R12. The s151 officer should review the financial rationale and associated risks and make recommendations to Cabinet and Council on whether the Revolving Investment Fund should continue.

Oxford City does not have a revolving investment fund. However it does have substantial loans that have been made to OCHL and substantially more in the financial plans. Currently OCHL are accruing debt and loan interest and the Council has received no payments towards these to date due to OCHL not yet being in a profit-making position. The OCHL business plan demonstrates that, if the plans are adhered to, the company overall will be in a position to be making a surplus over the next few years. However each iteration of the OCHL business plan involves development timescales slipping. The OCHL, in line with all debt held by the Council, has to be assessed for impairment (bad debt) which therefore has the potential to adversely impact the future financial position of the Council. The shareholder is responsible for holding OCHL to account for slippages in the housing programme

R13. The s151 officer should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen future due diligence arrangements.

The Corporate Property team have a wealth of knowledge relating to the sale and purchase of investment property and the ongoing management of investment assets. Particularly there are skills around structuring and joint ventures. The team are currently managing a number of hotel assets and are aware of the risks to tenants through the pandemic. Specialist advice on the sector has been sought to bolster the market knowledge

R14. The Cabinet and Council needs to re-consider the Treasury Management Strategy for ongoing affordability of the borrowing strategy, the associated risks and identify whether alternative options can reduce the financial burden.

The Treasury Management Strategy is reviewed on an annual basis and risks and affordability associated with the borrowing in the Council's financial plans are assessed through the treasury performance indicators and in the annual section 25 report on the budget.

R15. The Chief Executive should arrange detailed Treasury Management training to assist Members to better understand and challenge the long-term financial implications of matters reported within the Treasury Management Strategy.

A number of years ago Treasury Management training was given as a package of training for members especially those sitting on Audit and Governance Committee.

Consideration should be given to:

- Offering treasury management training to all members with compulsory attendance for those members sitting on Audit and Governance Committee

R16. The s151 officer should revisit the Minimum Revenue Provision policy to demonstrate that a prudent approach is being taken.

The Finance Team has agreed an approach with its external auditors for its policy on Minimum revenue provision which is considered prudent by the Head of Financial Services (Section 151 Officer).

R17. The Cabinet and Council should reconsider the financial business case for continuing to invest in Brick by Brick before agreeing any further borrowing.

The revised business case for OCHL was presented to Shareholders and Companies Scrutiny panel in December 2020. Quarterly updates of the business plan for both OCHL and ODS should be called for and presented to shareholder and companies scrutiny panel

R18. The Cabinet and Council should review and reconsider the ongoing financial rationale for the Council in the equity investment arrangement with Brick by Brick.

N/A

R19. The s151 officer and monitoring officer should monitor compliance with loan covenants with Brick by Brick and report any breaches to Members.

Loan covenants are restrictions imposed by the lender on a borrower in relation to loans taken out. They range from simply the lender must always stay in profit to the more complicated such as debt to Earnings Before Interest Taxes Depreciation and Amortisation (EBITDA) or EBITDA to interest. Such covenants de-risk the overall loan given to the organisation. In profitable times there are relatively straightforward but where an organisation is not turning a profit as in the case of OCHL this is not possible and one must rely on other factors such as collateral and knowledge of the operations to get some degree of assurance when advancing loans. Such examples of covenants that have been discussed with OCHL include:

- a. Asset Cover (AC)
- b. Interest Cover (IC)
- c. EBITDA (Earnings Before Interest Tax Depreciation and Amortisation)
- d. Debt/unit
- e. Total Debt

In the early stages of OCHL it was appropriate to take more a prudent approach to the imposition of covenants on the loans made to the company. To not do so would have been overly restrictive. However as the company grows and with it the amount of

borrowing from the council, these covenants are more relevant. Recent discussion with OCHL has sought to firm up on the covenants and also begin to seek compliance when the company makes a surplus forecast from 2022-23 onwards.

Consideration should be given to:

- A paper in the new year to shareholders explaining the covenants on loans with OCHL, how they operate and what levels have been agreed with the Council's chief Financial Officer has agreed with OCHL

R20. The Cabinet and Council should review its arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded.

Any developments in the Companies' activity should be in accordance with the approved business plan and the Council needs to consider any proposed changes and the impact these will have on the Council's financial position

The Council should ensure that the Members understand the Group structure and any impact and risks of this in relation to the Council's financial position