

Executive

28 April 2016

Report of the Chief Executive

City of York Trading – Public interest Report

Summary

1. This report provides a summary of the actions the Council have either taken or are planning in order to address the 10 specific recommendations in the Public Interest Report. The recommendations are set out within this report following agreement of the Public Interest Report at Full Council on 24th March 2016.

Background

2. This report is submitted in response to the Public Interest Report issued by Mazars, the Council's External Auditor, on 26th February. This is included in the Full Council papers of 24th March 2016. The Recommendations in the Public Interest Report were welcomed and approved by Council at that meeting, after a full debate in which elected Members (included the Leader, Deputy Leader and Chair of City of York Council Trading Company CYT) reiterated the role of CYT in recruiting and retaining quality staff whilst ensuring front line services profit and thrive. Most importantly, they emphasised the Council's ongoing commitment to fair and transparent governance. Changes had already been introduced to ensure CYT Shareholder's meetings took place in public. In furtherance of this commitment, this report proposes further steps to balance and enhance transparency and openness within an effective and appropriate operating framework. These include revisions to the Council Procedure Rules. In addition to the revisions implemented at the start of the current Municipal Year and the Council's Webcasting Protocol.

Recommendations

3. The Executive is asked to:
 - (i) note and agree the actions the Council is taking and proposes to take in order to address the Auditor's recommendations in their report, as set out in paragraph 9 below onwards;

- (ii) refer to Audit & Governance Committee for consideration the changes suggested in paragraph 23 below to both the Council Procedures Rules and the Council's Webcasting Protocol, in the interests of clarity and transparency of approach.

Reason: In order to address the recommendations highlighted in the Public Interest Report.

Council Approval of the Payments

- 4. R1 The Council should take steps to rectify the omission of the Council approval for the payments made to the two directors of City of York Trading Ltd in March 2015 for work for the company in 2013/14.
- 5. CYC response - The two directors have voluntarily agreed to repay the payments made to them. Therefore no further action is required. The External Auditor has agreed with this. In the interests of public clarity and transparency, the letter received from the Auditor on this point is attached at Annex 1 to this report.

Governance Arrangements

- 6. R2 Where the Council envisages a role for a committee within a Council-owned trading company to fulfil a Council function, as appears to have been the case with the Shareholder Committee of City of York Trading Ltd, the Council should ensure that the Constitution is amended to reflect this role and that the composition of the Committee is consistent with the Council's decision making and governance arrangements.
- 7. R3 The Council should review its approach to the establishment and governance of Council-owned companies to ensure that it fully reflects good practice and the lessons from this report.
- 8. R4 In the light of the conclusions of the review recommended in R3, the Council should prepare specific guidance to members and officers on their involvement in Council-owned companies.
- 9. CYC response to Recommendations R2/R3/R4 - The Council continues to review the governance of its companies, including consideration of opportunities presented by trading some of its activities through external trading companies. Further reports will be taken to June's Executive which will set out the proposals to create a governance structure to oversee the activity of its current and future external bodies in which the council has an interest.

10. R5 The guidance recommended in R4 should address the conflict of interest risks likely to arise where members and officers hold both Council and Council-owned company roles (unpaid and paid) and set out clear advice on how these should be managed. The guidance should also specifically address how the conflict of interest risks should be managed where the Council officers involved hold one of the three Statutory Officer roles of Head of Paid Service, Chief Finance Officer and Monitoring Officer.
11. CYC response – The recommendation will be addressed when drafting new guidance once R2/3/4 have been completed.
12. R6 The Council should review its arrangements for ensuring that internal legal advice is followed, and that any instances where such advice is not followed are identified.
13. CYC response - This will be managed within the Council's constitutional procedure and where legal advice is prescriptive it will be followed. Legal advice being a judgement based on risk and informed legal opinion. There may be occasions on which more than one legal opinion is valid and the Council will always have the option to seek additional legal advice as appropriate. Having obtained the most informed legal opinions available, the Council will choose to follow such advice as it deems prescriptive at that time.
14. R7 Where there are unusual or sensitive transactions such as the remuneration to Council officers for their work as for a Council-owned trading company, particularly where they take place for the first time, the Council should bring the matter to the auditor's attention during the audit.
15. CYC response – this will be picked up as part of the Council's Statement of Account procedures and any issues discussed with External Audit, see also 17 below.
16. R8 Where senior Council Officers receive remuneration for their work for a Council-owned trading company; the Council should recognise this as a related-party transaction and disclose it in the notes to the financial statements.
17. CYC response –Council Officers will no longer receive payments of this nature with immediate effect.

Register of Interest

18. R9 The Council should update the officer register of interest form and guidance notes to require disclosure of the value of any remuneration received for an individual officer's role in a Council owned trading company.
19. R10 the Council should review its systems for ensuring that all annual returns are received for the officer register of interests.
20. CYC response to recommendations R9/R10 - New procedures are being put in place to ensure that staff at grade 10 and above complete an annual register of interests declaration. The form and guidance will also be updated to reflect best practice in local government. This will be completed and implemented by 30th April 2016. Responsibility will rest with individual officers for complying with the requirement to complete an annual declaration. In addition, the Chief Executive or a member of their staff will monitor these arrangements.
21. As a result of the issues raised in the Public Interest Report, the subsequent discussions, including debate at the Council meeting, and the legal advice received, it has been agreed to review:
 - the Council Procedure Rules; and
 - the Protocol for Webcasting Filming and Recording of Council meetings.

Council Procedure Rules:

22. In the interests of openness and transparency, it is suggested that Council Procedure Rule 14.7 be revised, as follows, to reflect appropriately the balance between freedom of speech and effective management of the meeting. Proposed deletions are show in italics:
23. In exercising his or her public participation rights a member of the public is entitled to express views, positive or negative, about the performance of the Council but must not:
 - Say anything which is defamatory or discriminatory;
 - *Criticise or* make any personal attack on an officer;
 - Disclose confidential or exempt information including personal information *about an individual without that person's consent.*

Webcasting Protocol

24. In an effort to ensure the Council is fully transparent about arrangements for editing the content of webcast or filmed Council meetings, it is proposed that paragraph 7 of the existing 'Protocol for Webcasting, Filming & Recording of Council Meetings', be revised as follows by adding the following provision to the end of paragraph 7:
25. "The Chief Executive will, in consultation with Group Leaders, make the final decision on editing any webcast or filmed material to be broadcast or published in connection with any Council meeting."
26. Annex 2 to this report sets out the full wording of the existing Protocol for Members' ease of reference.
27. Audit & Governance Committee has a role in considering changes to the Council's Constitution and any protocols or procedures it contains. Whilst the Webcasting Protocol is not a constitutional document, given the public nature of the protocol, it is still considered highly appropriate for Audit & Governance Committee to review the proposed change in the interests of both transparency and consistency. The Executive is asked to recommend both the changes outlined in paragraph 23 above to Audit & Governance Committee in May 2016 for consideration and referral to Council in July 2016, as appropriate.
28. The Executive will also make progress reports to the Audit and Governance Committee, where appropriate, seeking their comments in relation to the actions arising from the Public Interest Report and, in turn, the Committee's comments will be reported back to Executive for decision on the recommendations to Council if required.

Contact Details

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**Report
Approved**

✓

Date 19/04/2016

Wards Affected: **All** ✓

For further information please contact the author of the report

Annexes

Annex 1 - Letter received from External Auditors in relation to Directors payments

Annex 2 - Protocol for Webcasting, Filming and Recording of Council Meetings