

Executive

24 September 2015

Report of Director of Customer, Business and Support Services

Progress Report: City of York Trading Ltd (Updated Report)

Summary

- 1 This report was presented to Members at the Executive held on 27 August 2015 with an update on the progress of City of York Trading Ltd (CYT Ltd), the council's trading organisation for council services. Members were asked to approve changes to the Shareholder Agreement (see Annex A) and support the company's direction of travel and proposed areas for further business case development. Executive Members agreed to defer the report pending a review of governance arrangements by Group Leaders.
- 2 This report has been updated to cover the outcomes of the review and additional recommendations have been added to improve transparency in relation to governance and the company's key activities.

Recommendations

3. Executive is asked to agree the original recommendations:
 - a. Agree the changes to the Shareholder Agreement.
 - b. Note the progress and growth made to date by CYT Ltd.
 - c. Support the further development of the business including business cases for those areas identified in this report.

Further to the Group Leaders' review Executive is asked to also agree the following recommendations:

- d. Publish all future shareholder committee minutes on the CYC/CYT websites.
- e. Provide an annual report to the Executive on the company performance and operation of the shareholder committee.

- f. Appoint an additional external non-executive Director onto the Board of Directors.
- g. Appoint an additional Councillor onto the Board of Directors.

Reason: To ensure Executive members understand the governance and progress of the council's Trading Company, and are involved in setting the direction of the future business.

Background

- 4. The former Cabinet approved the creation of a Local Authority Trading Company in February 2011. Following a further detailed report to Cabinet in October 2011 CYT Ltd was formed on 18th of November 2011. It is a company wholly owned by the City of York Council as the single shareholder. Trading commenced in June 2012 using the WorkwithYork (WWY) brand to provide agency staff to schools in the area.
- 5. In June 2013 the former Cabinet received a business case for the extension of the supply agency activity, and approved the transfer of all remaining casual staff business from the council to CYT Ltd from 1 September 2013. This work was completed by March 2014.
- 6. During 2014/15 the company commenced trading an Information Technology (IT) offer to a private sector client in York. Prior to this a report to the former Cabinet in July 2013 set out details of the council's ICT service's offer and aspirations for expanding service provision with public service partners and the private sector, through CYT Ltd. The company's Board of Directors has recently heard further details about how the success of the early work is to be built on in future years.

Governance matters

- 7. Further to the presentation of this report on 27 August 2015 and in light of questions received from other councillors and public speakers, Executive asked for a deferral to consider matters relating to the operation of CYT.
- 8. At the Group Leaders meeting held on 3 September 2015 Members received information relating to the operation of the company, and considered specifically the following information:

a. Background and operation

The initial set up and development of the company, and the respective business cases, have all been presented through Executive/Cabinet

meetings, starting in February 2011 and then various occasions since. All major developments have been reported to the Executive.

b. Member involvement and oversight

Members are involved in the following ways:

- major development or expansion of the company – reported to the Executive for approval;
- ongoing monitoring, through the Shareholder Committee, consisting of three councillors nominated by Full Council; and
- Full Council nominates the Chair of the company.

c. Transparency

The company operates in line with legal obligations relating to all companies. The company is subject to the Freedom of Information Act. Regular and detailed reports are presented to the Shareholder Committee.

d. Staff Terms and Conditions

It was noted that staff fall into 2 main groups:

- The core administration team responsible for the sourcing, interviewing, and placement of staff, payroll and all operational matters. This is a mix of staff eight of whom are still employed by the Council (and full costs charged to the company) and eight staff whom the company has recruited directly. The only staff with Performance Related Pay are the latter group.
- The temporary workforce – over 1100 are registered with WWY, with around half in placements with clients at any one time. They are free to register with other agencies, and there is no obligation on their part to accept any work. There should be no difference in the basic rates of pay as WWY pays casual workers in accordance with the council's standard pay and grading system to meet obligations under Agency Workers Regulations. This workforce has access to the employee benefits scheme, and occupational health support, and will soon have pensions and weekly pay.

e. Exclusivity

The following points were discussed:

- WWY cannot meet the full demand of adult care requests and this is known and understood by the council service. In order to try and assist the service WWY has acted (for no fee) as a conduit to provide services through a range of other specialist agencies. The service, however, is now able to work directly with these specialists and is able to choose whether to use WWY or any of the other agencies. Despite this choice WWY still provides some £50,000 per month of social care support.
- Schools using the company are free to use any agency and there is a competitive market for supply teachers.
- Council departments do not employ casual staff directly and are advised to go through WWY in the first instance in accordance with a previous Cabinet decision.

f. CYT Governance review

CYT conducted an internal review of its operation against best practice relating to private companies, using the principles of corporate governance. In most areas the company already complies with the principles, and the only remaining issues are around whether to create an audit committee (which is relevant for very large companies) and whether to have a form of internal audit function (again mainly used in larger companies - the external audit assesses many issues of systems/control). These matters are due to go to the Shareholder Committee in September 2015 for consideration.

g. Opportunities to improve

There has always been a desire to be open and transparent in terms of the operation of the company, hence the governance review, appointment of external directors and full reports to Shareholders Committee. Areas for further transparency were discussed with the Group Leaders who agreed that the following should go forward for Executive consideration:

- **Publish the Shareholder Committee minutes on the CYC/CYT websites**, along with a monitoring summary, recognising some commercial sensitivities.
- Provide an **annual report to the Executive** (and possibly to Audit and Governance Committee) on the company performance and operation

of the Shareholder Committee – this could be presented by the Chair of the Shareholder Committee.

- Appoint **1 to 2 more External Directors**.
- Appoint onto the Company Board an **additional Councillor**.

Performance to date

9. The company's main purpose is to provide professional high quality support services which evolve from City of York Council services. This may be in the form of using the company to deliver services in a different manner (as with the WorkwithYork supply agency), or to use the company to exploit opportunities to trade with other organisations (as with ICT Services).
10. The services provided by the company currently remain focused upon the Work with York brand. This has been the main focus of attention with a view to establishing this service as a sizeable trading organisation with capacity for further growth. Within the first three years the brand has been developed, and WWY now trades effectively with around 50 schools and a range of other clients, with turnover for the period 2014/15 of £5.3m (compared to £2.4m in 2013/14) and operating profit of almost £300k (compared to £125k in 2013/14) . As in the previous year, a dividend to the council as shareholder will be recommended to the Board and the Shareholder Committee in September 2015.
11. The first year of trading IT services to a private sector client has derived a small profit as planned, but the size of this element of the business was very small with a turnover of £100k.

Growth of Existing Businesses

12. The focus for the existing product range in coming years will be to maintain the company's current sector client base and to look to expand significantly into other sectors (other public bodies/private sector) both within and outside of York. There is considered to be significant opportunity to increase the overall turnover of the WWY activity by moving into these areas, and the overall long term development and sustainability of the company will require significant growth. Investment in systems and sales/business development expertise in WWY will support this level of growth in business activity, and the company's Marketing Strategy will focus upon achievement of these new markets.

13. The scale of opportunity for growth lies in surrounding schools, local authorities and private sector, and the company will be seeking to move rapidly into these areas. By 2018, the company aims to have increased its turnover to some £10m having exceeded the previous 2016 target of £4.5 million by the end of 2014/15.

New Product Offers

14. Options for expanding the range of services provided by the company will continue to be considered, including opportunities to trade a wider range of support and other council services through the company. Currently business cases are being developed for:
 - Expanding the IT service offer;
 - Workforce Development (Learning & Development);
 - Services to Schools – the complete offer of schools support services;
 - Webcasting and filming services;
 - Other opportunities arising from the transformation work of the council across all services.
15. The benefits of operating through the company include:
 - ability to develop own identity;
 - ability to trade freely across all sectors;
 - flexibility on pay grades ;
 - performance related pay;
 - business like approach.

Changes to Shareholder Agreement

16. In 2014 the CYT Board and the Shareholder Committee received the results of an internal review of company governance arrangements which identified changes needed to the shareholder agreement covering, for example, the need for external directors on the Board. It also confirmed that the company complies with principles of good governance, for example a chair not involved in day to day management, separate executive directors/non executive directors, and regular reporting on performance. The following paragraphs cover the resulting recommended changes to the Shareholder Agreement.
17. When the council established CYT Ltd it established a Shareholder Committee to regularly review the activities of the company and monitor its performance. A Shareholder Agreement was put in place between the council and the company which set out the roles and responsibilities of the

Shareholder Committee. It also set out certain steps which the company could not take without the approval of the Committee and some which would require Council approval through the Executive. The inclusion of these provisions demonstrates that the council retains sufficient control of the company to maintain the “Teckal” exemption allowing direct contract awards. With the benefit of the aforementioned review the Shareholder Committee has proposed some changes to the shareholder agreement which would support the adoption of the version as set out in the Annex.

18. In summary these amendments:

- Reflect the fact that this is no longer an agreement in anticipation of establishing a new company and accordingly remove obsolete wording.
- Alter the balance between the numbers of executive and non executive directors allowing now a maximum of five of the former (minimum two) and maximum four of the latter (minimum one).
- Make minor wording changes to provisions relating to the appointment of directors but maintaining the principle that the Shareholder Committee approves these appointments.
- No longer make any reference to the Shareholder Committee including the Leader or his nominee.
- Clarify that any decisions required of the Council will not be made by the Committee but will be made under normal Council decision making processes with the Shareholder Committee making recommendations where appropriate.
- Tighten the focus of the Committee’s oversight of the company to the business plan and performance – reflecting the role which the Committee has actually worked on.
- Vary the requirement for the Council to approve the business plan so that such approval is only required where structural changes are proposed or where staff are to be transferred. Other changes would still be overseen by the Shareholder Committee.
- Remove the requirement for formal consent from the Council for a number of specific matters including: incurring material expenditure or capital liabilities exceeding £10,000, sponsoring events or

supporting charitable activities, paying certain remuneration, settling claims and approving the charging policy.

Consultation

19. The Board of Directors of CYT Ltd and the Shareholder Committee have discussed and agreed the changes recommended in this report.
20. These matters have been further discussed at the council's Corporate Consultative Negotiating Committee. Reminders have been given of the mechanisms which ensure Trade Unions will be fully consulted and can raise matters that affect the council's workforce arising from CYT's operations and of the approach to Directors and Shareholder Committee on matters relating to CYT/WWY staff on pay, terms and conditions.

Options

21. Members can choose to agree or to disagree with the changes to the Shareholders Agreement as stated in recommendation a) or propose amendments.
22. There are no alternative options for recommendation b) which asks members to note the progress made by the company.
23. With regard to recommendation c) Members may consider alternative options for business development or disagree that that the business should be developed further in this way. Development of alternative proposals, as with those mentioned in paragraph 14 would be subject to Executive and CYT Board of Directors approval before any business case could be implemented.
24. Members can clearly determine whether to accept recommendations d) to h) which arise from the Group Leaders' review.

Analysis

25. All information is contained in the body of the report.

Council Plan

26. Outcomes achieved by the activities covered in this report help to deliver priorities in the draft Council Plan 2015-19 in support of 'Our purpose is to be a more responsive and flexible council that puts residents first and meets its statutory obligations'.

Implications

27.

a) Financial

The financial health of the business is monitored at an operational level by the Executive Directors, by the CYT Board and the Shareholder Committee. Company performance is currently strong, however to maximise future returns to the shareholder (the council) and to continue to invest in and grow the business to secure its future success the business development opportunities should be pursued. They, however, should only be implemented on the provision and acceptance of sound business cases agreed by the Executive and CYT Board of Directors.

b) Human Resources (HR)

Business cases will need to fully explain the impact of changes on staff and meaningful engagement with the workforce and their representatives undertaken on any proposals. There are no direct HR implications of this report.

c) Equalities

No known implications

d) Legal

Legal Implications are covered in the body of the report.

e) Crime and Disorder

No known implications.

f) Information Technology (IT)

Further development of the IT offer is covered in the body of the report, there are not anticipated to be any impacts on the ICT service provided to the council.

g) Property

No known implications.

h) Other

No known implications.

Risk Management

28. The key risk is that the company fails to maintain its financial and growth position at a time when the council is seeking opportunities to maximise income generation and develop sustainable service delivery options. The controls operated through the make-up of the Company Board and the Shareholder Committee should manage this risk.

Contact Details

Author:

Pauline Stuchfield
AD Customers &
Employees
Tel No.01904 551100

Chief Officer and Executive Member

Responsible for the report:

Ian Floyd
Director of Customer, Business and Support Services

Executive Leader for Finance & Performance

Report Approved

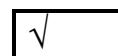


Date 6th August 2015

Specialist Implications Officer(s)

Financial: Ian Floyd
Director of Customer & Business Support Services
Legal: Andrew Docherty
AD for Governance and ICT

Wards Affected: *List wards or tick box to indicate all*



Background Papers:

Cabinet Report - Establishment and Governance of the Local Authority Trading Company 4th October 2011

Cabinet Report- City of York Trading Ltd (CYT)
Business Development - 4 June 2013

Cabinet Report - City of York Trading – ICT Services, 16 July 2013

Executive Report – Progress Report: City of York Trading Ltd, 27 August 2015.

Annexes

Annex A Amended CYT Ltd Shareholder Agreement

List of abbreviations used in the report:

CYT Ltd - City of York Trading Ltd

CYC – City of York Council

IT - Information Technology

WWY - WorkwithYork