
Appendix 1

From: Andy Wood, Corporate Director Finance & Procurement
Geoff Wild, Director Governance & Law

To: Governance and Audit Committee Trading Activities Sub-Committee – 27 April 2016

Subject: Protocol relating to companies in which KCC has an interest

Classification: Unrestricted

Previous and Future Pathways:

- 1) Governance and Audit Committee Trading Activities Sub-Committee – 27 April 2016
- 2) Governance and Audit Committee – 27 April 2016.

Electoral Division: All

Summary: To report on a review of the existing protocol relating to companies in which KCC has an interest (the Protocol)

INTRODUCTION

1. As the Council's Facing the Challenge programme progresses with a focus on commissioning outcomes, the use of alternative service delivery models may require the creation of more companies owned in whole or part by the Council.
2. This review has been undertaken to determine whether substantive updates and amendments are required to the Protocol to ensure that its terms continue to be appropriate, whilst ensuring that requisite controls and governance frameworks are in place in relation to how KCC companies are established and operated.
3. The review has been conducted by officers in Finance and Procurement and Governance and Law.
4. The Protocol was last reviewed by the Governance and Audit Committee Trading Activities Sub-Committee in July 2012.
5. Any comments about this review made by the Governance and Audit Committee Trading Activities Sub-Committee Members will be reported to the main Committee at its meeting later today.
6. A copy of the current version of the Protocol is attached as **Appendix A**, with recommended amendments shown using tracked changes.

PROPOSED AMENDMENTS

7. It is proposed that a small number of amendments are made to the current Protocol. The reasoning behind the substantive changes are set out below. The numbering refers to the clause numbering in the Protocol:

2.

- Reference is now made to the toolkit, which has been written since 2012 to inform officers of the options around creating an alternative service delivery model.
- It is now made clear that officers must take appropriate technical advice before a company is set up.
- Clause 2 has been reformatted but the key change is that any company set up cannot trade until the business case and governance arrangements have been examined by the Governance and Audit Committee Trading Activities Sub-Committee.

4.

- There may be occasions, especially in the case of a joint venture, where for commercial reasons the Council will not be able to insist on what is included in the articles of association. This clause has been amended to make it clear that it applies only if the Council has that control.
- The amendment to Clause 4(a) reflects the fact that there may be circumstances where it may not be appropriate to have Sessions House as the registered office, especially if the operational base of the company is not there. However, it is recommended that this is controlled carefully by requiring the approval of the Monitoring Officer and the Section 151 Officer before any alternative address is selected.

5(a)

- The governance structures for a number of companies owned by the Council incorporate a Shareholder Board with significant KCC officer and Member representation. It is recommended that such a Board, if there is one, should nominate who is appointed to represent the Council on the Board of Directors.

7(d).

- This clause has been simplified to make it clear that if a company decides to adopt its own policies it must, before it starts trading, give assurance to the Governance and Audit Committee Trading Activities Sub-Committee that adequate policies and procedures are in place.

9.

- The existing Protocol is designed to be retrospective and to apply to companies already in existence, which may have been set up without all the safeguards in place as required by the Protocol. However, this may not always be possible and so it is suggested the words “so far as is reasonably practicable” are added.

11.

- This clause has been updated to refer to the correct bodies and again it is suggested that this clause is only applicable where the Council has a controlling interest in the company.

RECOMMENDATION

8. It is recommended that Members

(a) consider the amendments detailed in Appendix A and recommend their acceptance to the Governance & Audit Committee and

(b) note that the Protocol and Guidance should continue to be reviewed bi-annually, unless fundamental changes (for example, legislative changes) necessitate a review during the intervening period.

Background Papers

Report Authors

James Pigott
03000416577
James.Pigott@kent.gov.uk

Keith Bramfit
443000415877

Keith.Bramfit@kent.gov.uk