



CORPORATE GOVERNANCE COMMITTEE - 21 NOVEMBER 2022

GOVERNANCE ARRANGMENTS - EXTERNAL BODIES

REPORT OF THE CHIEF EXECUTIVE, DIRECTOR OF CORPORATE RESOURCES AND DIRECTOR OF LAW AND GOVERNANCE

Purpose of report

1. The purpose of this report is to advise the Committee of the governance arrangements for the external bodies in relation to which the County Council (LCC) has a key role. This includes:
 - East Midlands Freeport (the Freeport)
 - Eastern Shires Purchasing Organisation (ESPO)
 - Local Government Pension Scheme (LGPS) and LGPS Central
 - East Midlands Shared Services (EMSS)
 - Active Together

Policy Framework and Previous Decisions

2. *East Midlands Freeport* – the Cabinet has received four reports¹ in relation to the progress of the Freeport covering support for the bid, the development and submission of the Outline Business case and Full business case, the role of the Leader as the Council’s representative and member on the interim Freeport Board and the role of the County Council as Accountable Body and lead Local Authority (LA).
3. *ESPO and ESPO Trading Ltd* – ESPO was established as a joint committee set up in accordance with the Local Government Act 1972 and the Local Government Act 2000 in 1988. Following the decision of the ESPO Management Committee in 2018, ESPO Trading Ltd was incorporated.
4. *LGPS and LGPS Central* - The LGPS Regulations (“the Regulations”) established Leicestershire County Council as the Administering Authority for the Leicestershire Pension Fund, with responsibility for managing and maintaining the Fund. LGPS Central was formed in response to the Government’s requirement for individual pension funds to pool assets and started operating in April 2018
5. *EMSS* - Leicestershire County Council and Nottingham City Council established, in autumn 2011, a joint committee called the ‘East Midlands Shared Services’ (EMSS). The EMSS oversees the development of a programme of shared services including

¹ 15 December 2020, 22 June 2021, 17 September 2021 and 26 April 2022.

Human Resources, Payroll and Finance transactional services.

6. *Active Together* – is a partnership that promotes Physical Activity and Sport across Leicestershire, Leicester and Rutland (LLR). The partnership is supported by all of the LAs across LLR and hosted by Leicestershire County Council since 2007.

Background

7. Members of the Committee requested information in relation to the role of the County Council vis a vis outside bodies where the Council has a governance role. This report is prepared in response to that request.
8. There are a number of different models for these bodies which in summary are as follows:

Body	LCC role	Role and purpose	Governance arrangements
East Midlands Freoport	(1) Member of the proposed company. (2) Lead LA and Accountable Body.	Private/Public partnership to promote economic benefits and growth in the area and region.	To be incorporated as a private Company limited by guarantee underpinned by Articles of Association and Members agreement setting out the arrangements between the members and between the members and the company. Memorandum of understanding to be developed into a legal agreement covering the role of the Council as Accountable Body.
ESPO	(1) Member (2) Servicing Authority	Public Sector Purchasing organisation and supplier of goods and services to the public sector operating as a consortium.	Joint Committee ² of the six relevant LA members ³ . ESPO Consortium Agreement and Constitution including the servicing authority arrangements.
ESPO Trading Ltd	ESPO Member (LAs are Shareholders in the Company)	Trading vehicle for non-public sector bodies and public sector bodies not listed in the relevant regulations ⁴ enabling public	Private Company limited by shares underpinned by Articles of Association and a Shareholder's Agreement pursuant to powers in s 4 Localism Act 2011 and s 95 Local Government Act 2003 to trade for profit.

² A joint committee may be established in accordance with section 102 of the Local Government Act 1972.

³ The county council and Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council and Peterborough City Council

⁴ Local Authorities (Good and Services) (Public Bodies) Order 1975

		sector trading.	
EMSS	Member and Employing Authority	Provision of shared services including Human Resources, Payroll and Finance Transactional Services.	Joint Committee ⁵ of Nottingham City Council and the County Council.
LGPS	Administering Authority	Scheme Manager of the Leicestershire LGPS Fund	Statutory scheme ⁶ requiring a Local Pension Board to assist the Administering Authority in its role as scheme manager.
LGPS Central	Member	Local Government Pension Scheme Central Investment Pool.	Joint Committee ⁷ of eight midlands based LGPS funds ⁸
Active Together	Member and Chair lead for the partnership	Public/Voluntary sector partnership to promote physical activity and sport benefits and growth in the LLR area.	Hosted Partnership by LCC, supported by LAs across LLR. The hosting arrangements are reflected in a signed Host /Partner agreement.

Governance Arrangements

9. The detailed governance arrangements for the bodies referred to are all individually negotiated but in broad terms the implications are as follows:

Accountable Body (Freeport)

10. The Government guidance requires a single LA (or mayoral Combined Authority) to act as the Accountable Body for a Freeport. With the primary customs site being within East Midlands Airport, which is located in Leicestershire, it was agreed that the County Council should fulfil this role and the Council took on this role from April 2021. The key duties include:

- receiving and managing Government funding and monitoring/reporting against the use of these funds being accountable to the Department for Levelling Up, Housing and Communities;

⁵ A joint committee may be established in accordance with section 102 of the Local Government Act 1972.

⁶ Sched 3 part 1 LGPS Regulations 2013 require the County Council to maintain a pension fund and operate as an administering authority for the fund.

⁷ A joint committee may be established in accordance with section 102 of the Local Government Act 1972.

⁸ Leicestershire, Cheshire, Shropshire, Staffordshire, West Midlands, Derbyshire, Nottinghamshire and Worcestershire

- upholding procurement practices;
 - providing effective support to the Freeport Board in delivering its objectives;
 - maintaining appropriate project documentation e.g. project plans and risk registers;
 - ensuring the Board operates in line with transparency, propriety and inclusivity standards;
 - publishing relevant papers, minutes and a register of interests; and
 - acting as a single point of contact for Government officials.
11. Negotiations are ongoing in relation to the terms of a Memorandum of Understanding (MOU) to be agreed between the Secretary of State for Levelling Up, Housing and Communities, the County Council as the Accountable Body, the Freeport governing body and the Billing LAs responsible for the collection of business rates within the Freeport Tax sites. The purpose of the MOU is to govern the working relationship between the respective parties covering the areas identified above and the proposed ways of working. The MOU will in due course when the terms are agreed be formalised in a legally binding agreement.
 12. As accountable body LCC agreed to provide up front funding for the set-up phase of the Freeport. This upfront funding totals £2.5m of which £716,000 was drawn down in 2021/22. The majority of the balance is expected to be used in the coming financial year. The Heads of Terms of the Loan are based on an interest rate of 9.5% above base rate reflecting the low credit rating and collateralisation of the Freeport. A rate at this level is required to avoid any subsidy control issues. The loan will be repaid from the retained business rates funding the Freeport will receive and is scheduled to be paid in 6 half yearly instalments beginning on the 1st April 2024. However, if funds are available in advance of this date the loan can begin to be repaid earlier.
 13. In accordance with Government guidance, the Accountable Body has membership of the Freeport Board. As the work on the Freeport progresses further consideration will be given to how the Accountable Body role will be managed within the Council's governance arrangements; it is expected that this will be through a subgroup comprising the three statutory officers and/or their representatives reporting to the Cabinet at regular intervals and as required.
 14. The Council's insurers have been notified of the Council's role in relation to the Freeport and arrangements are being put in place to ensure appropriate cover is available, as required.

Servicing Authority (ESPO)

15. ESPO is a public sector buying organisation operating as a Local Government committee, jointly owned by six local authorities (namely the County Council and Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council and Peterborough City Council). As it is not a separate legal entity its functions are performed through Leicestershire County Council, which acts as the Servicing Authority to the joint committee. ESPO's main objective is the provision of a professional, comprehensive value for money purchasing, contracting and supplies service for its member authorities and other public bodies under the provisions of the Local Authority Goods and Services Act 1970. It does so by

providing access to a catalogue containing nearly 27,000 product lines and over 150 framework solutions.

16. The Consortium agreement includes the Constitution of ESPO, and this includes a Schedule setting out the functions of the Servicing Authority⁹; this covers arrangements for staff, the provision of support services, contractual and property arrangements, insurance, performance monitoring etc. Strategic oversight is achieved through the Management Committee comprised of elected members from all consortium councils. The Committee comprises two members from each constituent authority. The Committee meets quarterly and is supported by a Finance and Audit Subcommittee which meets twice a year. In addition, the Management Committee is supported by an officer advisory group - ESPO Chief Officer Group comprising senior officers (mostly Senior Officers from Finance, Legal or Procurement). This Group is chaired by the County Council's Assistant Director of Finance. The County Council's Chief Executive and Director of Law and Governance act as the Consortium Secretary and the Chief Executive has line management responsibility for the Director of ESPO.
17. Most local government and private companies (of a certain size) are required by law to have an annual audit by external chartered accountants. ESPO, as a joint committee set up under Section 102 of the Local Government Act 1972, is not legally required to have an audit. However, the Management Committee has concluded that there are significant benefits to undertaking one as it gives a level of independent assurance to various stakeholders (the public, Management Committee, HMRC, banks, staff etc.) over our financial statements and it supports our wider governance arrangements. ESPO's 2020/21 external audit was undertaken by Grant Thornton and the Financial Statements and audit findings report were approved by the Management Committee in June 2022.
18. Following a tender exercise in early 2022, which was supported by the Chief Officer's Group, ESPO's external auditor was changed to Fortus Audit LLP. Fortus has undertaken the external audit for 2021/22.
19. In addition, Leicestershire County Council's Internal Audit Service (LCCIAS) provides internal audit activity to the ESPO. LCCIAS conforms to the Public Sector Internal Audit Standards (the PSIAS) revised with effect from April 2017. The PSIAS require the Head of Internal Audit Service (HoIAS) to produce a risk based plan of work and an annual report including an annual opinion on the overall adequacy and effectiveness of ESPO's control environment (i.e. its framework of governance, risk management and control). In June 2022, the Management Committee was informed that substantial assurance is given that ESPO's control environment overall has remained adequate and effective.

ESPO Trading Limited (ETL) and Eduzone

20. To continue to grow ESPO for the benefit of its members ESPO's Management Committee decided to explore alternative markets (potential customers that are not public bodies). These fall into two groups:

⁹ schedule 3 ESPO Consortium Agreement

- a. customers that are not contracting authorities, such as private sector organisations, charities and others in the voluntary sector, using alternative powers to trade through a separate company; and
 - b. those that are contracting authorities but not public bodies, such as central government departments, who would only be able to be charged on a cost recovery basis unless a company is used.
21. In 2015/16 the ESPO Management Committee set a target to achieve a surplus of £6m by 2020/21. Whilst most of this (£4million) will be achieved by growth rate based on ESPO existing core business, new projects and initiatives will be needed to deliver the target surplus. These include:
 - Creation of a Private Trading Arm (ESPO Trading Ltd (ETL))
 - Automation in Warehouse (in progress)
 - Personalised Procurement Service (PPS) (marketing activity)
 - International sourcing (business as usual buying activity)
 - Mergers and acquisitions (reviewed as opportunities arise)
22. ETL is one of the key projects intended to drive future growth. Through it, ESPO intends to exploit the opportunity to trade in current products and services, through its existing infrastructure, but to new markets and customers. It will also allow ESPO to trade with confidence with organisations with a public sector ethos, but which are not designated as 'Public Bodies' under the Local Authority (Goods and Services) Act 1970.
23. In 2017 via ETL ESPO purchased a private sector business, Eduzone, which was focussed on trading with early years providers particularly private nurseries. The Eduzone part of the business has progressed well and whilst the ETL has made progress this was less than anticipated due to Covid restrictions affecting sales. Nevertheless, the business has generated a surplus of approximately £70,000.
24. ETL is a separate legal entity, distinct from the local authorities that comprise ESPO's joint committee. The Company's operations, whilst related to those of ESPO, is not governed by the Consortium Agreement. Instead, the Companies Act 2006 and the Company's articles of association and a shareholder agreement regulate the relationship between the local authorities who are shareholders in the Company. The shareholders of the Company, (i.e. the member constituent authorities) will through the ESPO Management Committee take the key strategic decisions of the Company.
25. The activities of the Company are restricted to those agreed in a business plan that the shareholders review and update when they determine. Control of the company is split between the shareholders and a board of directors. The board of directors is responsible for the day-to-day management of the company. It comprises of up to five officers employed by the shareholders, three representing ESPO, one nominated by Leicestershire County Council, and one nominated by the remaining shareholders (currently Norfolk). Each category of director must be present for the board to be quorate. The board is also supported by a non-executive director who is independent of ESPO.

26. Similarly, Eduzone is a separate legal entity, wholly owned by ETL. Its board of directors comprises of one representing ESPO, one nominated by LCC and ETL's nominee by the remaining shareholders.
27. The shareholders agreement also describes how:
- the directors will determine the distribution of the Company's profits as dividends to shareholders;
 - the financial information to be provided to shareholders;
 - the limitations on shareholders' ability to transfer shares to others and the potential for shareholders to be required to transfer shares if they cease to be members of ESPO's joint committee or act in breach of the shareholders' agreement;
 - the mechanism for settling any dispute;
 - arrangements, should the company be wound up.
28. The County Council (on behalf of ESPO) and ETL has entered into a management agreement under which the Council provides all the services and goods to the Company.

EMSS

29. In a similar way to the arrangements for ESPO set out above, EMSS operates through a joint committee with the following remit:
- a. To oversee and provide strategic direction for the development, implementation and on-going operation of EMSS;
 - b. To ensure the effective delivery of the shared service functions in accordance with the terms of the agreement;
 - c. To monitor the effectiveness of those arrangements and make recommendations to the Member Authorities, e.g. in the event of any changes to legislation, developments in best practice or the requirements imposed on Member Authorities;
 - d. On an annual basis, to agree a three year business plan for EMSS including:
 - service delivery, service development and financial objectives;
 - performance improvement and efficiency targets;
 - staffing;
 - business continuity planning;
 - risk management;
 - e. To set annual capital, revenue and staffing budgets for EMSS and (no later than 1 December in each year) submit these to the Member Authorities for approval as part of the business plan;
 - f. To monitor the operational performance of EMSS on a quarterly basis;
 - g. To ensure service delivery is in accordance with the key performance indicators and agreed national, regional and local priorities;
 - h. To ensure effective action is taken to remedy any under-performance in the delivery of services;
 - i. To monitor the financial performance of EMSS through quarterly reports and monthly updates;

- j. To determine the arrangements for support services in agreement with the Host Authority (Nottingham City Council) and in consultation with the Head of Shared Service;
 - k. To produce an annual report to the Member Authorities by no later than 30 June in each year covering the performance of EMSS in the 12-month period ending on the preceding 31 March;
 - l. To co-operate with and participate in Overview and Scrutiny exercises of the Member Authorities into the activities of EMSS;
 - m. To review the operation and effectiveness of the shared service arrangements at least every two years, consider ways in which the Shared Services partnership can be expanded and make recommendations to the Member Authorities as appropriate.
30. Two elected members of the County Council are members of the joint committee alongside two members from Nottingham City Council and this is serviced by officers from both councils.
31. Unusually for a joint committee the supporting roles are shared between the two member authorities. The County Council performs employee and ICT related support, whereas Nottingham City Council performs finance, legal and procurement support.
32. EMSS is subject to external audit through both Council's normal audit arrangements. The internal audit function is undertaken by Nottingham City Council Internal Audit (NCCIA), which reports routinely to the joint committee and shares report with the County Council. A report on the internal audit work undertaken at EMSS by NCCIA for 2021-22 and planned work for 2022-23 is to be considered elsewhere on the agenda for this meeting.
33. At its meeting on 9 November 2022, the Scrutiny Commission also received a report, 'East Midlands Shared Service Annual Performance Update'.

Administering Authority (LGPS) and LGPS Central

34. Leicestershire County Council is a scheme manager as defined under the Public Service Pensions Act 2013 (and any associated legislation). The County Council has delegated the responsibility for decisions relating to the investment of the Fund's assets to the Local Pension (LP) Committee.
35. The LP Committee's principle aim is to consider pensions matters with a view to safeguarding the interests of all Fund members. The Members who sit on the Committee act on behalf of the beneficiaries of the LGPS and in this way have a similar role to trustees in primarily protecting the benefits of the LGPS members, overseeing the direction of investments and monitoring liabilities.
36. This LP Committee comprises of five County Council members, two from Leicester City Council, two members representing the District Councils, one representative of De Montfort/Loughborough Universities and three non-voting staff representatives. In order to ensure continuity, staff representatives, who are chosen at the Fund's Annual General Meeting, are appointed to the Committee for a three year period but arrangements have been made to ensure that at least one staff representative place becomes available each year. This Committee sets the overall investment strategy

for the Fund and will deal with all investment governance issues. The Committee meets quarterly and also has a separate annual meeting to consider strategic issues relevant to the Fund.

37. The LP Committee has delegated certain functions to an Investment Subcommittee which consists of six voting members (the Chair, Vice Chair, one other elected member of the County Council, the Universities representative and one member representing each of the City and District Councils, all of whom are members of the LP Committee) and one non-voting staff representative. The Subcommittee's role is to consider action that is in-line with the strategic benchmark agreed by the Committee and to take a pro-active approach to the Fund's investments. It also deals with 'tactical' issues associated with implementing the strategy, such as investment manager appointments and the timing of asset allocation changes. The LP Committee and Investment Subcommittee receive investment advice from independent consultants Hymans Robertson LLP. Other consultants will also be utilised if there is felt to be an advantage to this.
38. The Local Government Pension Scheme (LGPS) Regulations require that Leicestershire County Council in its capacity as Administering Authority establishes a Local Pension (LP) Board. The purpose of the Board is to assist the Authority in securing compliance with the Regulations, other legislation relating to the governance and administration of the LGPS, the requirements imposed by the Pension Regulator in relation to the LGPS and to ensure the effective and efficient governance and administration of the LGPS.
39. The LP Board comprises of six representatives - three employer representatives who are all elected members (two from the County Council and one from Leicester City Council) and three employee representatives (all scheme members). The Administering Authority retains ultimate responsibility for the administration and governance of the Scheme.
40. At its meeting on 4 May 2022, the LP Board received a report from the Council's Internal Audit Service on its work conducted during 2021-22 and planned for 2022-23. The report was also received by the Committee at its meeting on 10 June 2022. Because of the County Council's statutory duty to administer the Pension Fund, any High Importance internal audit recommendations would be reported to the Corporate Governance Committee.
41. The pension fund accounts form part of the County Council's and as such are subject to audit by Grant Thornton and are reported to the Corporate Governance Committee. The external auditors also review the pension fund's annual report that is presented at the annual general meeting for the benefit of scheme members.
42. Government instigated 'pooling' of pension funds in 2015 with the publication of criteria and guidance on pooling of LGPS assets. Administering authorities formed their own groups and eight asset pools were formed. In response LGPS Central, a private company limited by shares, was formed that is jointly owned by the eight Midlands-based Local Government Pension Funds (Leicestershire, Cheshire, Shropshire, Staffordshire, West Midlands, Derbyshire, Nottinghamshire and Worcestershire) who will invest via the pool. The pool will manage and invest over £40 billion of investments for the eight Councils to reduce costs, improve investment

returns and widen the range of available asset classes for investment.

43. LGPS Central is managed by a Board of Directors that are responsible for the day to-day management and operation of the pool. It is currently made up of four non-executive directors (NEDs), the Chief Executive Officer (CEO) and the deputy CEO. The duties of the three non-executive directors are to provide independent oversight and challenge to the executive directors.
44. LGPS Central is authorised and LGPS Central Limited is authorised and regulated by the Financial Conduct Authority, as an asset manager. The company is audited by Deloitte.
45. The Leicestershire Pension Fund is a stakeholder from two different perspectives:
 - a. a co-owner of the company (shareholder) and;
 - b. as a recipient of investment services.

These interests are managed through the Shareholders Forum and the Joint Committee.

46. The supervisory body of Central is the Shareholders' Forum, which focuses on shareholder issues. The shareholder forum includes representatives from each of the eight pension funds. Collective discussions take place at Shareholders' Forum, which meets at least twice a year to agree certain reserved matters; this provides a greater degree of control than for most private companies. The Shareholders' forum normally precedes general meetings of the company, this allows discussion in advance of decisions being made at the meeting.
47. The County Council has established a joint committee in accordance with section 102 of the Local Government Act 1972. The purpose of the Committee is to enable representatives from the eight authorities to meet, ask questions of the operator of the Investment Pool and challenge the performance of investments and investment managers. One elected member representatives of each of the eight funds sit on the LGPS Central Joint Committee which provides oversight of the delivery of the objectives of the pool, the delivery of client service, the delivery against the LGPS Central business case and to deal with common investor issues. The joint committee also provides assistance, guidance and recommendations to the individual councils, taking into consideration the conflicting demands and interests of the participants within the pool. The joint committee does not have delegated authority to make binding decisions on behalf of the participating councils.
48. The Heads of Internal Audit at the respective eight pension funds have established an Internal Audit Working Group (IAWG). The IAWG's main aim is to develop a co-ordinated and collaborative internal audit response to the new arrangements operating within the asset pool which has involved consultation with all Partner Funds Internal Audit functions, External Audit Partners, the Practitioners Advisory Forum and LGPS Central Ltd. A collaborative approach has been favoured in developing assurance over the new asset pooling arrangements operating within LGPS Central

Active Together

49. The Board of the Active Together (AT) Partnership approves and endorses both the AT Partnership Strategy and Business Plan. The Board membership is determined as part of a comprehensive terms of reference with both an open and nominated route. The County Council has a place on the Board as a host. The current AT Chairman of the Board is the County Council's Director of Public Health. Further scrutiny via the Business Oversight and Audit group is supported by the County Council's Public Health Business Development Manager.
50. Sport England through numerous grant mechanisms aids the partnership through the host authority. The arrangements with Leicestershire County Council to oversee and manage all grants and finance has proven to be an effective tool for unlocking national resource. In order to access Sport England resources, the AT Partnership also needs to meet the criteria of the UK Code for Sports Governance which sets out the levels of transparency, diversity and inclusion, accountability and integrity that are required from those organisations who seek, and are in receipt of, UK Government and National Lottery funding from UK Sport and/or Sport England. On behalf of the Active Together Partnership, Leicestershire County Council:
- receives and manages all partner and grant funding, including all monitoring & reporting against the use of these funds (being accountable to the Department for Levelling Up, Housing and Communities) to the respective partner bodies;
 - all LCC procurement practices are adhered to ;
 - provides on going support in the development and delivery of the AT partnership objectives;
 - ensure and supports appropriate project and policy development while ensuring e.g. project plans and risk registers;
 - ensuring the Board operates in line with transparency, propriety and inclusivity standards;
51. A partnership agreement exists between the AT board and Leicestershire County, while non legally binding, outlines the spirit and parameters of the Partnership. The purpose of the Partnership agreement is to govern the working relationship between the respective parties

Resource Implications

52. The County Council has only a small number of arrangements where it has a key governance role for an external organisation. It is recognised that it is important to invest in good governance to minimise the risk of financial and reputational issues that several local authorities have faced in recent years.

Conclusions

53. The governance arrangements for these external organisations are all bespoke and subject to careful monitoring on an ongoing basis.
54. As the arrangements can be varied from time to time, further updates will be provided to this Committee when any significant changes are made as appropriate, including the East Midlands Freeport as this is progressed.

Recommendations

55. The Committee is asked to:

- (a) note the contents of the report and comment on the current governance arrangements for the bodies detailed herein;
- (b) note that further updates on the governance arrangements for these bodies and any new similar such bodies established will be provided to the Committee as appropriate.

Background papers

LCC Constitution -

<https://politics.leics.gov.uk/ieListMeetings.aspx?CId=1187&info=1&MD=Constitution>

Report to the Scrutiny Commission 9th November 2022 – East Midlands Shared Service Annual Update

<https://politics.leics.gov.uk/ieListDocuments.aspx?MIId=6872>

Circulation under the Local Issues Alert Procedure

None

Equality and Human Rights Implications

There are no Equality or Human rights implications arising from this report.

Officer to Contact

Lauren Haslam, Director of Law and Governance

Tel: 0116 305 6240

Email: lauren.haslam@leics.gov.uk

Chris Tambini, Director of Corporate Resources

Tel: 0116 305 6199

Email: chris.tambini@leics.gov.uk

Neil Jones, Head of Internal Audit Service

Tel: 0116 305 7629

Email: neil.jones@leics.gov.uk