



## **CORPORATE GOVERNANCE COMMITTEE - 16 SEPTEMBER 2024**

### **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 update the Committee on 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 five reports<sup>1</sup> in relation to the governance and 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 County Council as Accountable Body (including the loan to the Freeport) and lead Local Authority (LA) the governance arrangements and incorporation and the authorisation for appointment of the Council's board member. In addition, the Cabinet<sup>2</sup> approved a loan to the Freeport as advised in the report to this Committee in November 2022.
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 established as an incorporated body.
4. *LGPS and LGPS Central* - The LGPS 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

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<sup>1</sup> 15 December 2020, 22 June 2021, 17 September 2021 and 26 April 2022 10 February 2023 .

<sup>2</sup> 27 May 2022

5. *EMSS* - Leicestershire County Council and Nottingham City Council established a joint committee called the 'East Midlands Shared Services' (EMSS) in 2011. EMSS oversees the development of a programme of shared services including 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 has been 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 significant governance role. The Committee received information in relation to each of the bodies mentioned in paragraph 1 at its meeting in November 2022 as follows:

<b>Body</b>	<b>LCC role</b>	<b>Role and purpose</b>	<b>Governance arrangements</b>
East Midlands Freeport	(1) Member of the proposed company.  (2) 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.  The role of the Accountable Body is further developed in the Memorandum of Understanding (MOU) between DLUHC, the County Council, the Freeport and the three Billing LAs. This is in standard form and addresses the working relationship between the respective parties as referred to below.
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 <sup>3</sup> of the six relevant LA members <sup>4</sup> .  ESPO Consortium Agreement and Constitution including the servicing authority arrangements.

<sup>3</sup> A joint committee may be established in accordance with section 102 of the Local Government Act 1972.

<sup>4</sup> The county council and Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council and Peterborough City Council

ESPO Trading Ltd	Member (LAs are Shareholders in the Company)	Trading vehicle for non-public sector bodies and public sector bodies not listed in the relevant regulations <sup>5</sup> enabling public sector trading.	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.
EMSS	Member and Employing Authority	Provision of shared services including Human Resources, Payroll and Finance Transactional Services.	Joint Committee <sup>6</sup> of Nottingham City Council and the County Council.
LGPS	Administering Authority	Scheme Administrator and Manager of the Leicestershire LGPS Fund	Statutory scheme <sup>7</sup> which requires a Local Pension Board to assist the Administering Authority in its role.
LGPS Central	Member	Local Government Pension Scheme Central Investment Pool.	Joint Committee <sup>8</sup> of eight midlands based LGPS funds <sup>9</sup>
Active Together	Member and host for the partnership	Public/Voluntary sector partnership to promote physical activity in the LLR area.	Hosted Partnership by LCC, supported by LAs across LLR. The hosting arrangements are contained in a partnership agreement.

### **Governance Arrangements**

8. There has been no significant change to any of the arrangements set out above since the Committee last received its report on this issue.

### **Freeport Accountable Body**

9. The initial government guidance required a single LA (or mayoral Combined Authority) to act as the Accountable Body for a Freeport and the Accountable Body is required to be a member of the Freeport. The Accountable Body is accountable

<sup>5</sup> Local Authorities (Good and Services) (Public Bodies) Order 1975

<sup>6</sup> A joint committee may be established in accordance with section 102 of the Local Government Act 1972.

<sup>7</sup> 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.

<sup>8</sup> A joint committee may be established in accordance with section 102 of the Local Government Act 1972.

<sup>9</sup> Leicestershire, Cheshire, Shropshire, Staffordshire, West Midlands, Derbyshire, Nottinghamshire and Worcestershire

for the delivery and administration of Freeport Seed Capital and Capacity Funding grants and for ensuring the good functioning of the Freeport Governing Body.

10. Since this issue was last considered by the Committee negotiations have been concluded in relation to a Memorandum of Understanding (MOU) 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 MOU was completed on 6<sup>th</sup> December 2023 and addresses:
  - a. The governance requirements for the Freeport (including membership and subcommittees).
  - b. The Accountable Body's role in relation to any government grant, including monitoring and reporting against the use of these funds.
  - c. The duty of the Accountable Body to maintain records including project plans and risk registers and to use best endeavours to ensure the freeport operates in line with appropriate levels of transparency, propriety and inclusivity, abiding by the Nolan Principles.
  - d. The designation of the tax site areas for the purpose of local retention of business rates tax and the role of the public sector members in applying the pooled business rate fund in accordance with an agreed strategy reflecting the objectives of the Freeport as set out in the Full Business Case and the MOU.
  - e. Accountability to DLUHC for the management of the retention of Business rates.
  - f. Ways of working.
  - g. The Freeport's duty to manage risk and security, data and intellectual property and
  - h. Financial arrangements, including the seed capital funding grant in line with the Full Business Case subject to quarterly project, financial, and financial risk reporting to DLUHC.
  - i. The duty to ensure compliance with procurement requirements when undertaking procurement for the Freeport and the Freeport's duty to comply with Subsidy control requirements.
  - j. The Freeport's project delivery including milestones, tax site operation, commitment to net zero, commitment to innovation, regeneration and levelling up, skill and workforce development, trade and investment.
  - k. Performance management, assurance, and evaluation in accordance with the DLUHC frameworks<sup>10</sup> in relation to which the Accountable Body must collaborate with DLUHC.
  
11. DLUHC undertake an annual performance and assurance review of the Freeport's operations, including a governance review. This took place on 7<sup>th</sup> March (attended by the Chief Executive, Director of Law and Governance, Head of Finance and the external legal advisor on behalf of the Accountable Body). Although formal feedback is still awaited, understood to have been delayed by the General Election, it is not expected that this will identify any significant remedial issues.

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<sup>10</sup> DLUHC - The Freeports Framework, Performance Management, Security Audit and Assurance Process for Freeports in England (October 2022). And UK Freeports Programme Monitoring and Evaluation Indicators and Guidance (October 2022).

12. A security and Compliance Advisory Subcommittee has been established to ensure security and illicit activity risks are being identified and managed. The Council's Head of Internal Audit and Assurance Service undertakes the role of EMF security and illicit activities risk lead thereby offering an additional assurance in relation to this risk for the Accountable Body.
13. The statutory officers from the Accountable Body, Head of Finance and the external legal advisor continue to meet regularly to ensure the Council's interests as a member and as Accountable Body are protected. Significant and / or key decisions will be referred to Cabinet in the usual way.
14. The Council's insurers have been notified of the Council's role in relation to the Freeport and appropriate cover is in place, as required.
15. There has been a delay in completing the balance of the formal governance documents required to support the Freeport (Members' Agreement, Articles of Association, Tax site Operator's Code of Conduct and undertaking, Occupier's Code of Conduct and undertaking, Accountable Body Agreement, Security agreement etc). The delay has been purposeful in light of the requirement to engage with DLUHC to develop a lawful subsidy control scheme. That process has taken longer than expected but is now completed and all parties are working towards completion of the formal agreements at the board meeting in September 2024.
16. Following the election of an 'East Midlands' Mayor in May 2024, membership of the Combined Authority (CA) on the Freeport Board is under consideration. As a reminder, two of the Freeport tax sites are in the CA area, one in Leicestershire. The new Government's approach to Freeports in policy terms is not yet known.

#### ESPO Servicing Authority

17. There has been no change in the governance arrangements for ESPO or ESPO Ltd since the last report to the Committee save for a change in the appointment of the Consortium Secretary which role is now undertaken by the Director of Law and Governance in the place of the Chief Executive.
18. The strategic oversight of ESPO and its operations (and those of the company) is achieved through the Management Committee comprised of two elected members from each of the consortium councils. The County Council's representatives on the Committee are currently Mr J. Poland CC and Mrs M. Wright CC. The Committee meets quarterly and is supported by a Finance and Audit Subcommittee which meets twice a year. Each Management Committee receives a comprehensive Director's report which includes any governance issue arising. Operational oversight is achieved through an Officers group which meets quarterly chaired by the Assistant Director of Corporate Resources.

#### EMSS

19. There has been no significant change in the governance arrangements for EMSS since the last report to the Committee. EMSS operates through a joint committee

established with Nottingham City Council and which consists of elected member representative from both authorities. The County Council's representatives on this Committee are currently Mr L. Breckon CC and Mr J. Poland CC. This Committee oversees and monitors performance of the Service and has met on a quarterly basis. The EMSS joint Committee resolved at its meeting in March 2024 to reduce the meeting frequency to three times p.a. although quarterly performance reports will still be provided. The County Council's Scrutiny Commission also receives an annual report setting out the work and performance of EMSS during each financial year. The report was presented to the Commission on 4 September 2024.

20. The Terms of reference for the Committee were reviewed at its meeting on 18<sup>th</sup> March 2024 in accordance with the requirements of the Partnership Agreement and some adjustments to the timescales for budget approval as well as the meeting frequency issues referred to above and approval of the rules for the conduct of the EMSS joint meetings.
21. This Committee received a report at its last meeting in May 2024 from the Head of Audit and Risk on the EMSS audits that are undertaken by Nottingham City Council Internal Audit Service (NCCIA). The report provided the delayed Head of Internal Audit Opinion for 2022-23, confirmed that the four audits for 2023-24 had also been delayed and informed that for 2024-25, NCCIA intended to limit its work to just follow-up audits in respect of those recommendations made as part of 2023-24 reviews. The Group Assurance & Audit Governance Manager at Nottingham City Council gave his observations. This Committee's concerns in relation to this were noted and the issue was discussed further by the EMSS Joint Committee at its meeting in June 2024 at which it was agreed that 2024-25 will be the last year in which Nottingham City Council provides the internal audit service to EMSS. It has been resolved that both councils will work in partnership with EMSS over the coming year to explore delivery options for an audit provision for EMSS from 1 April 2025. For 2024-25 Nottingham City Council will continue to manage the EMSS audit plan through internal provision including use of agencies and will keep EMSS and the County Council advised of any deviations or changes to audit plan timelines. This Committee will be presented with a report on the Interim Head of Internal Audit Opinion for 2023-24 and plans for 2024-25 at the meeting.

#### Administering Authority (LGPS) and LGPS Central

22. 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.
23. The LP Committee's principal aim is to consider pensions matters with a view to safeguarding the interests of all Fund members. The Members who sit on the Committee are under a fiduciary duty and 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. The LP Committee has revised its Terms of Reference at its meeting on 8<sup>th</sup> March 2024 and reviewed its training policy at its meeting on 19 June 2024 and save for this there has been no change in the arrangements for the Committee.

24. 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. The Committee meets quarterly and also has a separate annual meeting to consider strategic issues relevant to the Fund.
25. 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.
26. The Local Government Pension Scheme (LGPS) Regulations require that Leicestershire County Council in its capacity as Administering Authority establishes a Local Pension (LP) Board. In contrast with the LP Committee which focuses on investments, 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.
27. 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. The Fund provides a range of training opportunities for Committee and Board Members, including subscription to an on-line knowledge and understanding training tool provided by the Fund's Actuary. The Fund's Committee and Board Members are encouraged to complete the modules, with completion rates published as part of the annual report.
28. At its meeting on 17 April 2024, the LP Board received a report from the Council's Internal Audit Service on its work conducted during 2023-24 and planned for 2024-25. Because of the County Council's statutory duty to administer the Pension Fund, should any High Importance internal audit recommendations occur following pensions audits, they would also be reported to the Corporate Governance Committee.
29. The pension fund accounts form part of the County Council's and as such are subject to external audit by Grant Thornton and are reported to the Local Pension Committee and 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. This Committee received the External Auditor's report on the Fund at its meeting in May 2024.

30. The 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. These eight Pension Fund's have c£56bn of assets. Pooling these assets should improve cost efficiency and improve investment returns.
31. LGPS Central as at 31 March 2024 has £19.7bn of the eight Pension Funds assets under stewardship via various investment vehicles.
32. LGPS Central is managed by a Board of Directors which is responsible for the day to-day management and operation of the pool. It is currently made up of five non-executive directors (NEDs) one of whom is the chair, and the Deputy Chief Executive Officer (CEO). The Executive Committee comprises new Chief Executive Officer (CEO), Deputy CEO, Chief Legal, Compliance and Risk Officer, Chief Commercial Officer and Chief People Officer. The duties of the non-executive directors are to provide independent oversight and challenge to the executive directors.
33. Central is authorised and regulated by the Financial Conduct Authority, as an asset manager. The company is internally audited by KPMG LLP and externally audited by Deloitte LLP.
34. An Internal Audit Working Group (IAWG) comprising representatives from the eight participating member LAs has received a Type 1 Control report being an assurance report on internal controls/procedures at a fixed point in time. This will be reviewed by the IAWG but also by each Council's external auditors as part of their work on the Pension Fund accounts.
35. The Leicestershire Pension Fund is a stakeholder from two different perspectives:
  - co-owner of the company (shareholder) and;
  - a recipient of investment services.

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

36. The supervisory body of LGPS Central is the Shareholders' Forum, which includes representatives from each of the eight pension funds. The Forum meets at least twice a year to agree certain reserved matters; this normally precedes general meetings of the company.
37. The LGPS Central is supported by 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 representative 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.

38. 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 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

39. Sport England through numerous grant mechanisms aids the partnership through the County Council as 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;
  - ensures all LCC procurement practices are adhered to;
  - provides ongoing support in the development and delivery of the AT partnership objectives;
  - ensures and supports appropriate project and policy development e.g. project plans and risk registers;
  - ensures the Board operates in line with transparency, propriety and inclusivity standards.
40. 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. Since the last report to the Committee the Director of Public Health has stood down as the Chair of the Board and this role is currently undertaken by Mr Andy Reed OBE. The Director of Public Health has an advisory role reflecting the council's commitment as a funding partner. Further scrutiny via the Business Oversight and Audit group is supported by the County Council's Public Health Business Development.

41. It is expected that the annual report of the Director of Public Health to the Health Overview and Scrutiny Committee in the autumn will include commentary on physical activity which touches on the work of the AT partnership.

### **Resource Implications**

42. 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**

43. The governance arrangements for these external organisations are all bespoke and subject to careful monitoring on an ongoing basis. Many of the issues relating to the external bodies referred to in this report and their governance arrangements are captured in the Annual governance statement presented to this committee. It is proposed that future reporting to this committee be by exception to reflect any significant changes in governance only.

### **Recommendations**

44. The Committee is asked to note the contents of the report and to agree to receive future reports on any significant changes in the governance arrangements for the bodies detailed herein as appropriate.

### **Background papers**

LCC Constitution

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

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

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

[Report to the Corporate Governance Committee 21 November 2022](#)

### **Circulation under the Local Issues Alert Procedure**

None

### **Equality Implications**

There are no Equality implications arising from this report.

### **Human Rights**

There are no Human rights implications arising from this report.

**Officer to Contact**

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