



Report To:	Council
Date:	11 December 2024
Subject:	Public Sector Partnership Services (PSPS) – Governance
Purpose:	To facilitate a number of required updates to PSPS governance arrangements.
Key Decision:	No
Portfolio Holder:	Councillor Graham Marsh, Deputy Leader of the Council
Report Of:	James Gilbert, Assistant Director - Corporate
Report Author:	James Gilbert, Assistant Director - Corporate
Ward(s) Affected:	N/A
Exempt Report:	Appendix A. Not for publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972. The document contains legally privileged information.

Summary

In 2024 the Local Government Association undertook a scheduled Corporate Peer Challenge at Boston Borough Council. In that Peer Challenge the following recommendation was made:

‘Take external advice on the PSPS Board governance to seek assurance to ensure that structures reflect good practice’.

PSPS has taken legal advice (Appendix A) on behalf of the Councils and that advice makes a series of recommendations that are for the founding Shareholders of PSPS, East Lindsey District Council and South Holland District Council, to consider acting upon. The advice also refers to Guidance, produced by Local Partnerships, on behalf of Government, that relates to good practice for Local Authority Trading Companies (LATCo).

This report brings forward a series of the actions that are required to address the matters identified.

Recommendations

- Council terminates the appointment of its Independent Non-Executive Director on the PSPS Board with immediate effect (and instructs PSPS to enact the termination), to enable the governance arrangements and recommendations relating to the Independent NEDs to be considered further and in partnership with the other founding shareholder.
- That, in line with legal advice (Appendix A), the Local Authority Company Review Guidance, and the content of this report, and subject to a similar decision by the other founding shareholder, the Council authorises the Chief Executive to update the Articles of Association as might be required, and delegates authority to the Chief Executive, in consultation with the Leader of the Council, to sign the revised document(s).

Reasons for Recommendations

The legal advice recommends that the wider Board governance arrangements require further consideration by the founder shareholders, to ensure conflicts of interest risks are removed to enable the effective operation of the Board of Directors of PSPS.

The current governance arrangements limit the role and responsibilities of the NED appointment(s) to such extent they may not be able to perform this role effectively. The Council also needs to consider its Board Director appointments to ensure best practice is adopted.

Other Options Considered

None – given the legal advice that has been received, it is important that the governance matters identified are resolved at the earliest opportunity.

1. Background

- 1.1 PSPS is a local authority trading company wholly owned by Boston Borough Council, East Lindsey District Council and South Holland District Council. The company is governed by Articles of Association, a Joint Venture Shareholder Agreement (JVSA) and various Service Level Agreements. The Councils are responsible for the appointment of a Board of Directors.
- 1.2 As founding shareholders for PSPS, East Lindsey District Council and South Holland District Council have several matters reserved for them within the JVSA, including the ability to appoint one Independent Non-Executive Director each to the PSPS Board of Directors. In 2024, both Councils exercised this ability and made appointments.

2. Report

2.1 Following the recommendation (below in italics) through the Boston Borough Council Peer Challenge legal advice has been sought:

'Take external advice on the PSPS Board governance to seek assurance to ensure that structures reflect good practice'.

2.2 The advice received also refers to a document commissioned by Government entitled 'Local Authority Company Review Guidance'. This document is seen as a toolkit to support the good governance of wholly or partly owned council commercial entities, including companies like PSPS. There is a link to this document in 'Background Documents'.

2.3 This report deals with three matters raised in the legal advice and covered in the guidance:

- 1) the requirement to review and update the Articles of Association.
- 2) the role requirements of the Independent Non-Executive Directors.
- 3) future Board Member appointments.

Independent Non-Executive Director role

2.4 This is a matter reserved for East Lindsey District Council and South Holland District Council within the PSPS governing documents, as the founding shareholders.

2.5 Legal advice (Appendix A) identifies a risk in effective operation of the Independent Non-Executive Director roles and responsibilities, based on independence and risk of conflict of interest. The advice received recommends that as a priority the Articles of Association be updated so roles and responsibilities are documented, clear and understood by all parties – the Council, the company, and both the Council's Board Directors/ Independent Non-Executive Directors.

2.6 In addition, the advice recommends that the founding shareholder Councils ensure that Independent Non-Executive Director appointments are fully independent of any direct or indirect connection to the shareholders and PSPS, to avoid conflicts of interests. Whilst such connections were considered as part of the recruitment of the Independent Non-Executive Directors, the advice recommends the Councils reconsider this in the context of the Local Authority Company Review Guidance, particularly given there could be scenarios when the Independent Non-Executive Directors are required to take the lead if potential conflicts of interest arise in the wider Board. Conflicts of interest also needed to consider previous relationships or roles performed for the shareholders, as well as current or future matters.

2.7 To allow for the work to address 2.5 and 2.6 to be undertaken, Council is asked to terminate its current Independent Non-Executive Director appointment via PSPS. Further consideration would be given to the requirement for an Independent Non-Executive Director appointment once this work has been completed.

2.8 The recommendation to terminate the Independent Non-Executive Director appointment is no reflection on the work the Council's Non-Executive Director has performed since joining the Board earlier in 2024 and it is recognised that they may be disappointed by this course of action.

2.9 The report recommends a delegation to the Chief Executive, in consultation with the Leader of the Council, to amend the Articles of Association, to incorporate the updates required.

Council Member appointments to the Board

2.10 At all times, as Board Members, the legal duty is to take decisions in the best interests of the company.

2.11 To protect the company, Councils and Board Members themselves, the Council is asked to note the Local Authority Company Review Guidance around Board Member representation. This will help avoid placing members in a position where a conflict of interest might arise, or where they feel they have 'two hats' to wear – one for the company and one for their role in the Council.

2.12 Whilst it isn't proposed that alterations are to be made to the Board appointments, it is important that when appointments are next considered, those appointments are made in the context of the Guidance (pages 17 to 19).

3. Conclusion

3.1. PSPS is a successful trading company that has delivered significant benefit to the Councils since its formation, both in terms of financial efficiency and service delivery. It is important the company continues on its successful journey for the remainder of its contract period and fundamental to that is its Board of Directors. As such, it is in the interests of the Councils to consider action based on the legal advice received and resolve the matters identified.

Implications

South and East Lincolnshire Councils Partnership

None

Corporate Priorities

None

Staffing

None

Workforce Capacity Implications

None

Constitutional and Legal Implications

Legal advice has been sought and is appended to this report at Appendix A.

The decisions within the report are appropriate and in line with constitutional arrangements.

Data Protection

None

Financial

None

Risk Management

This report seeks to address a number of matters raised via the legal advice attached at Appendix A.

Stakeholder / Consultation / Timescales

N/a

Reputation

None

Contracts

The Council has a contract with PSPS. Amendments will be required to the company's Articles of Association.

Crime and Disorder

None

Equality and Diversity / Human Rights / Safeguarding

None

Health and Wellbeing

None

Climate Change and Environmental Implications

None

Acronyms

PSPS – Public Sector Partnership Services
JVSA – Joint Venture Shareholder Agreement

Appendices

Appendix A – legal advice

Background Papers

Local Authority Partnership advice - https://localpartnerships.gov.uk/wp-content/uploads/2023/07/Local_Partnerships_Local-authority_company_review_guidance_2023_edition.pdf

Chronological History of this Report

A report on this item has not been previously considered by a Council body.

Report Approval

Report author:	James Gilbert, Assistant Director - Corporate
Signed off by:	Rob Barlow, Chief Executive
Approved for publication:	Councillor Graham Marsh, Deputy Leader of the Council