



Review of Governance Arrangements for Bristol City Council's Subsidiaries

2019/20

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The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Council or any weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

Value for money approach

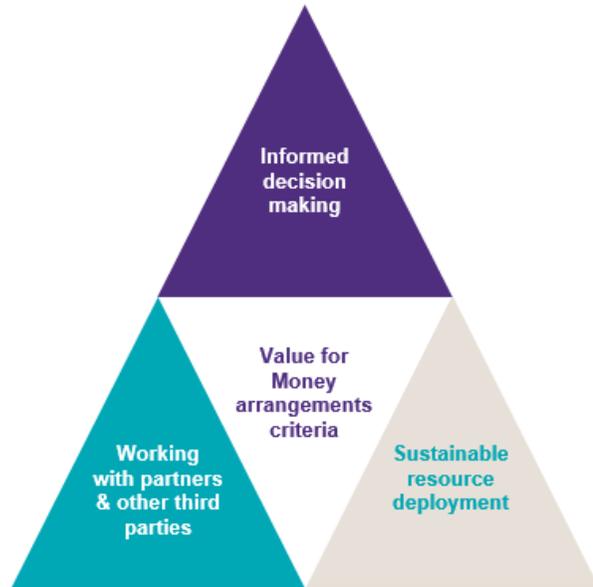
Background to our VFM approach

The NAO issued its guidance for auditors on Value for Money work in November 2017. The guidance states that for Local Government bodies, auditors are required to give a conclusion on whether the Authority has proper arrangements in place to secure value for money.

The guidance identifies one single criterion for auditors to evaluate:

“In all significant respects, the audited body takes properly informed decisions and deploys resources to achieve planned and sustainable outcomes for taxpayers and local people.”

This is supported by three sub-criteria, as set out below:



Significant VFM risks

Those risks requiring audit consideration and procedures to address the likelihood that proper arrangements are not in place at Bristol City Council to deliver value for money.

During the course of our work we identified three significant risks. This report considers the following significant risk:



Governance arrangements for the Authority's subsidiaries

Bristol City Council (the Council) made changes to the governance arrangements in place over its subsidiary companies in 2019/20.

We will review:

- the governance structure, roles and responsibilities of the Mayor, Committees and Boards involved for the Holding Company and its subsidiaries to ensure proper governance;
- how the Authority is monitoring planned returns and any action taken to ensure they continue to deliver value for money to the Authority; and
- informed decision making based on key decisions made in 2019/20 to ensure they were based on sound understanding and reliable information and data. We will consider:
 - the quality of supporting documentation and business decisions provided to decision makers;
 - training, support and guidance provided to decision makers; and
 - the performance monitoring arrangements to ensure decision makers understand performance against agreed objectives (both shareholder and Board) and the contribution made to the Authority's wider strategic objectives.

Scope

This review focuses on the events and arrangements in place during 2019/20 and does not consider the decision to establish Bristol Energy Limited (BE) in 2015 or the decision made to sell in 2020/21.

Our focus has been on arrangements within the Council and not within the separate legal entities, only in so much as they provide assurance to the Council and impact on the overall governance arrangements.

Use of formal auditor's powers

This report provides a summary of the work we have completed to enable us to conclude on the significant value for money risks identified.

In addition, we are considering our wider responsibilities and have yet to decide if we will issue a public interest report. A public interest report would enable us to focus on arrangements and events outside of the 2019/20 financial year and wider issues outside of the defined scope of the value for money risk assessment.

Executive summary

Overall findings and conclusion

Based upon our review of the governance arrangements and decision making processes at the Council relating to Bristol Energy Limited (BE) in 2019/20, we propose a qualified, 'except for' conclusion subject to completing the remaining work on the other value for money risks we identified in our 2019/20 Audit Plan. In our opinion, the Council's arrangements for economy, efficiency and effectiveness were adequate, except for arrangements for 'Informed Decision Making' and the following principles:

- understand and use appropriate and reliable financial and performance information to support informed decision making and performance management including where relevant, business cases supporting significant investment decisions; and
- manage risks effectively and maintaining a sound system of internal control.

The particular findings that have led us to this conclusion are:

Arrangements for communicating key inputs to Cabinet from the Shareholder Group and Bristol Holding Limited, as well as the outcomes of scrutiny from the Overview and Scrutiny Management Board (OSMB), were inadequate. This input was important as the complex nature of the energy industry, and the specialist knowledge and expertise required, needed to be properly taken into account in supporting Cabinet's decision-making.

As a result, the information and papers provided at the January 2020 Cabinet did not clearly state the risks faced by BE, or provide sufficient robust information to enable Cabinet to make an informed decision.

More specifically:

- Cabinet was not formally made aware of concerns raised at the Shareholder Group, including the fact that the Independent Shareholder Advisor was recorded as being unable to support the business plan;
- the business planning and decision making process was prolonged so that information and advice obtained at the early stages of the process became out of date in a highly volatile energy market, such as the exempt financial report was out of date and was based on an earlier version of the business plan that had been provided to the Shareholder Group in November 2019;
- the public papers did not include a risk assessment and, whilst the exempt version of the business plan included a list of risks and their mitigations, contrary to accepted practice, these risks were not scored or assessed against the likely impact and did not feature prominently in the report; and

- the report from Bristol Holding Limited stated that both BE and Bristol Holding Limited remained concerned that it would not take much to drive BE into a situation that may require additional shareholder funding and/or collateral. As this report was included in exempt session, it was not contained within the main body of the papers provided to Cabinet but was included within the appendices and, as such, its messages were more difficult for Cabinet to consider.

In our opinion, and supported by subsequent events, BE's business plan represented an overly unrealistic view of how BE might perform. BE's potential role in the City Leap partnership also appears to us to have been misjudged, as it was erroneously considered to be fundamental to the success of City Leap. Initially considering BE to be a 'non-negotiable' part of City Leap restricted consideration of the business plan options for BE, including its sale. Whilst previous consideration had been given to the sale of BE, this was not actioned until BE was in severe financial crisis and no other options were available.

In addition, during 2019/20 the Council's Audit Committee had not always been sufficiently sighted on developments and information relating to the governance arrangements and risks in relation to BE. The Audit Committee is responsible for providing independent assurance on the governance and risk management framework and in order to discharge their responsibilities effectively, Audit Committee members should have had a closer involvement with the issues relating to the Council's investment in BE during the year.

The situation has been compounded by the fact that some information and decisions, such as decisions made by the Shareholder Representative (Deputy Mayor), are not routinely published. In our opinion and based on practice elsewhere, we consider that these decisions could be published by the Council. This approach, which restricts access to information, some of which does not need to be confidential, is creating concerns that the Council is not as open and transparent as it could be and should now be addressed within its governance arrangements.

Our recommendations for improvement are set out on the following page.

Executive Summary

Recommendations

Recommendation 1: Discussions and decisions made within exempt committee meetings should be recorded.

Recommendation 2: Public reports should be consistent with the issues and concerns raised within exempt papers. The exempt papers should only provide confidential information which cannot be discussed within the public sessions.

Recommendation 3: Cabinet reports relating to Bristol Holding Limited's companies which include exempt information should be improved. Exempt papers, should clearly identify and quantify the risks and advice provided by the Shareholder Group and any relevant independent advisors as well as the clear views of Bristol Holding Limited.

Recommendation 4: The Council should ensure Cabinet decisions are based upon more timely and current information.

Recommendation 5: The Council should update the articles of association and shareholder agreement to reflect the strengthened role of Bristol Holding Limited. The terms of reference for all elements and functions of the governance structure should be in place and updated.

Recommendation 6: The Council should agree and consider if the client function role is appropriate for each of its companies and document the role and responsibilities for those companies where it is agreed.

Recommendation 7: Consideration should be given to the role of the Executive Chair of Bristol Holding. This should include if this role is appropriate going forward, and does it ensure independence of the chair and reduce potential conflicts.

Recommendation 8: The Council should minimise the potential for conflicts of interest, such as the role of the Executive Chair, elected members and officers. To facilitate this, the Council should develop a conflicts of interest policy to ensure potential conflicts in relation to Council owned companies are identified and managed appropriately. This could be incorporated within a company's handbook.

Recommendation 9: The Council should develop a mechanism to enable the Audit Committee to be sighted on potential exempt issues within their role and responsibilities and legal duties.

Recommendation 10: The Council should consider publishing all reserved matter decisions relating to its companies and consideration should be given to how elected members access to confidential information relating to reserved matter decisions could be improved.

Recommendation 11: Appropriate training should be provided on a regular basis to elected members who are involved in the Council's owned companies, in relation to decision making, scrutiny and the Audit Committee. This should include sector specific training, roles and responsibilities in relation to Council owned companies and potential conflicts of interest.

Recommendation 12: The Council should improve the risk management arrangements to ensure that all key risks are identified and clearly reported to Cabinet.

Background

Background

The Council began to develop its commercial opportunities in 2015 and established Bristol Waste Company Limited (Bristol Waste) shortly followed by BE. Bristol Holding Company Limited was established with Bristol City Council as the sole shareholder, with Bristol Waste and BE established as subsidiaries. BE began trading on the open market in February 2016. BE was set up by the previous Council Mayor and the governance arrangements have developed and changed over the years from its inception.

BE was created as an ethical company, to reduce social inequality whilst improving environmental performance and to invest in renewable energy and low carbon projects as a trusted local energy supplier. BE was not wholly motivated by profit and was required to deliver social value. In its original business case it was expected to make a satisfactory return on investment of 12% by its fifth year of operation. Its intention was to be a company that the City could be proud of whilst generating in time a revenue stream that could be invested in the City.

The intention was that BE required working capital advances from Bristol City Council until it was able to make a profit. This support was estimated to be until 2016 or 2018 and be in the region of £1-£2m per annum. The outline business case estimated that the total amount of funding at risk following the launch of BE would be a maximum of £4.2m. Annual trading surpluses were also estimated to be between £1-£8m by 2020.

Table 1 illustrates that although BE had grown in both customer numbers and revenue, it has been unable to provide a surplus with cumulative losses of £47m by 31 March 2020. By 31 March 2020 the Council's financial commitment had increased to £36.5m in the form of shares and a maximum potential exposure from parent company guarantees (PCG) of up to £17.6m.

In 2018 the Council began to develop its City Leap Partnership, a series of energy and infrastructure investment opportunities to assist in the delivery of a carbon neutral City by 2050. This partnership required a range of investors/partners to provide this investment. From an early stage of the City Leap Partnership BE's involvement was considered mutually beneficial. For the Council, BE demonstrated the Council's credentials in the energy market as well being able to act as the energy provider for the partnership. For BE, the City Leap Partnership provided the opportunity to minimise the financial risk to the Council's investment and provided new financial prospects for BE. However, as time progressed, although it was recognised that the City Leap Partnership could progress with or without a council-owned energy company, and as market conditions became tougher BE was increasingly considered as not viable without City Leap.

Table 1: Financial results and commitments

Bristol Energy financial results					
	2016/17	2017/18	2018/19	2019/20	2020/21
	£m	£m	£m	£m	£m
Turnover	13.7	52.5	76.2	102.3	
Profit/(Loss)	(8.4)	(11.2)	(12.2)	(15.2)	
Meter points	58,129	120,752	165,000	168,000	
Council financial commitments					
Shareholding – ordinary	3.7	5.6	7.2	9.1	
Preference shares	8.3	16.6	21.5	27.4	
Total	12	22.2	28.7	36.5	
Financial commitment	15.8	31.3	31.3	*37.7	
Parent Company Guarantees (PCG)	8.6	10.4	17.6	17.6	
PCGs issued	3.8	6.95	16.7	15.4	
PCG exposure	1.9	4.5	14.9	14.3	
Other funding				**2 ***1.2	****2

• The remaining £1.2m has been authorised by Cabinet but had not been drawn down as at August 2020
** Innovation funds

*** Contract award for City Leap
**** Emergency funds should an unplanned insolvency scenario emerge

Summary of events and key decisions

In order to understand the governance arrangements in place and events that took place we have set out the key points since 2017 following BE being established in 2015. We have not identified all meetings and discussions that took place, but have focused on the reserved matter decisions that were taken in 2019/20.

Business planning and performance

In January 2017 Cabinet approved the 2017/18 business plan for BE within the exempt session of the meeting. This included agreement of total funding of £31.3m, of which 80%, £10.4m was through the form of parent company guarantees, and the remaining 20% cash collateral was part of the £31.3m total cash investment figure. The business plan was approved within the expected timeframe, so that an agreed business plan was in place ahead of the financial year which it covered.

Later that year the Council engaged external consultants to consider the future options for BE and their recommendations to achieve profitability. In October 2017 the external consultants reported to the Shareholder Group. A shortlist of options were provided which included selling the business, although it was considered that the sale of BE at this stage was not appropriate as the sale would not recover the Council's investment to date of £19.8m. The Shareholder Group concluded that there were no simple solutions to increase profitability and that action was required by management to consider the options proposed.

In January 2018 BE's 2018/19 business plan was rejected pre-Cabinet as it required an increase in funding to a maximum of £44.8m and PCG in the region of £40m. In order to help and support BE additional external consultants were engaged. The findings were reported in August 2018. It was agreed that BE should reduce costs through a strategic restructure and transformation. The opportunities that City Leap could provide to BE were also identified, such as additional revenue through diversification into energy services. As a result, interim business plan proposals were approved in September 2018, increasing the maximum PCG exposure to £17.6m, with funding to remain capped at £31.3m.

Simultaneously the Council was developing its City Leap Partnership and began its soft market testing to find partners. Its prospectus was launched and it was made clear to potential partners that the Council expected BE to be integral to the Partnership.

Later that year additional support was commissioned to assist in BE's transformation and to assist in delivering the recommendations identified earlier in the year, the aim being to produce a more credible business plan and improve profitability whilst also delivering social value. This transformation resulted in an increased turnover of staff, at both executive level and in middle management and also led to the resignation of the Managing Director in December 2018.

2019/20 business plan

In late 2018 BE began to develop its 2019/20 business plan and delivered a presentation to OSMB in its exempt part of the meeting.

This presentation included an update on the consultancy engagement, City Leap development and progress on the 2019/20 business plan ahead of Cabinet's meeting in April 2019.

In early 2019 the Shareholder Group held detailed discussions on BE's business plan and the opportunities that City Leap provided. Discussions noted that City Leap could proceed with or without BE and that it was a great opportunity to solve BE's cash flow issues. However, it was recognised that BE's performance would need to improve to enable this to be achieved.

The record of the Shareholder Group Extraordinary meeting stated that "*All members in the meeting acknowledged that BE is not viable with just its core business, and some expressed concern around investing more on the basis of the business plan as it stands alone*". Concerns were also raised that there was insufficient time to give the business plan due consideration and that too much emphasis was being placed on finding a solution for BE within the business plan.

The options for selling BE were also discussed but not progressed. It was around this time that BE became a non-negotiable 'red line' requirement within the City Leap programme. Previously a soft market testing exercise had been undertaken and the Council made it clear to potential partners that it expected BE to be integral to City Leap.

On 1 April 2019 OSMB reviewed BE's business plan, followed by Cabinet the next day. OSMB recognised that BE seemed to be taking a more positive direction and was taking control of the financial situation but raised concerns over the volatility of the market and the length of time it would take to breakeven, even under the best case scenario. The majority (four out of seven members) considered there were too many risks to continue to fund BE.

On the 2 April 2019 Cabinet was provided with a public facing business plan, a confidential business plan and a summary of the discussion at OSMB. An exempt financial report was also provided which suggested that a positive EBITDA might be possible in 2023/24 but that if the worst case was to materialise the funding requirement might be £60m and the EBITDA loss would continue to be around £8m per annum.

Whilst the finance report provided did include some scenario planning, in our view it did not clearly set out the assumptions made and the risks faced by the Council. It stated that a number of scenarios had been modelled and referred the reader to the business plan. The report did not quantify any financial risks other than stating that the worst case scenario could see the cumulative funding requirement reaching £60m in 2023/24. We note that the finance report identified that the Shareholder Group had concluded that the opportunities and synergies for BE's involvement in the City Leap Partnership must be explored, including the options to make BE more financially sustainable.

Despite the concerns raised by OSMB, Cabinet approved BE's business plan for 2019/20, three months after the normal time for approving the business plan.

Summary of events and key decisions

2019/20 business plan continued

It was also at 2 April 2019 Cabinet meeting that Cabinet agreed to proceed with the procurement process to identify a strategic partner for the City Leap Partnership. This approval included additional innovation funds of £2 million.

A detailed document was provided that included the structural options for the City Leap Partnership. The preferred option was to establish a joint venture which would include a City Leap Partnership Company and that BE would be transferred from Bristol Holding Limited to the City Leap Partnership Company. The decision to include BE was based upon the benefits that BE would provide and the cost to the Council of not including BE. The report also considered the cost to the Council should BE not be included. The report concluded that the financial benefit to the Council was greater if BE was included within the partnership.

It should be noted that whilst we were provided with a copy of the note from OSMB to the April 2019 Cabinet, we were unable to confirm the level and extent of discussion undertaken at OSMB or Cabinet, as details of the meetings were not recorded within the exempt part of the meeting.

Recommendation 1: Discussions and decisions made within exempt committee meetings should be formally recorded.

2020/21 business plan

Following the strengthened and extended role of Bristol Holding Limited, the Bristol Holding Board reviewed and required changes to be made to BE's business plan in October 2019 ahead of discussion with the Shareholder Group.

The Shareholder Group, unlike previous years, only reviewed the business plan once in November 2019 in a formal meeting and required further work to be completed prior to its finalisation. We are told that a robust discussion was held and that the Independent Shareholder Advisor was unable to support the business plan. The Shareholder Group recorded a list of actions required to complete the business plan and the Council's Director of Finance concluded that, on this basis, she required further assurance. We understand further discussions were conducted via email but, Bristol Holding Limited was responsible for ensuring the appropriate due diligence was undertaken and that the actions were completed for the next iteration of the business plan.

OSMB reviewed the business plan in December 2019 during public session and did not require more detailed discussion within an exempt session. The business plan was introduced by the Executive Chair of Bristol Holding and a summary provided by the Managing Director of BE. The Shareholder Representative also attended the meeting.

The business plan was provided to Cabinet for approval on 21 January 2020. The papers to Cabinet included a cover report, and public and exempt versions of the business plan.

In addition a confidential finance report was provided from the Council's Interim Finance Business Partner and a report from the Executive Chair for Bristol Holding Limited.

Cabinet did not receive an update/report from the Shareholder Group and were therefore not formally made aware of the concerns raised at the Shareholder Group or if those concerns were resolved. No formal referral was made from OSMB and the Cabinet papers did not record that OSMB were consulted and the outcome of that discussion.

The report from Bristol Holding Limited clearly stated that BE faced significant risks/challenges and that both BE and Bristol Holding Limited remained concerned that it would not take much to drive the company into a situation that would require additional shareholder funding and/or collateral. Details were provided of the circumstances which could lead to additional funding being required, such as poor debt recovery and insufficient growth in customers and that the market risks would be difficult to mitigate, such as, further energy supplier failure and regulatory change risk, whereby Ofgem industry-wide change might drive additional collateral requirements on BE and the Council. It also stated that the company has launched a range of recovery plans but did not provide any detail. Whilst this report was provided, Bristol Holding Limited continued to support the business plan.

The supporting report to Cabinet did not include a risk assessment. We are aware that risks were included in the exempt version of the business plan and highlighted in the report from Bristol Holding Limited. However the risks identified within the exempt business plan were not scored, leaving it unclear as to their estimated likelihood and impact.

It is significant that the confidential finance report, provided by the Council's Interim Finance Business Partner at the time it was presented to Cabinet, was out of date and was based on an earlier version of the business plan as provided to the Shareholder Group in November 2019. It only provided a high level review and stated that the '*Financial Models and calculations underpinning the Business Plans were not available at the time of this report. As this limits the degree of financial scrutiny that can be undertaken, access to these reports is required to enable this report to be finalised*'. In our view, this significantly undermined the quality of this advice and should have been updated for Cabinet.

The approval of BE's business plan by Cabinet was agenda item 18 of 22, of which there were 14 key decisions including the Council's 2020/21 budget. Our review of the webcast identified that there were no questions or comments made and the business plan was approved without any challenge. No recording or minutes are held for the exempt session of the meeting, so we are unable to confirm if the business plan was challenged in this session, although from discussion with officers we understand that it was not.

Both the business planning process for 2019/20 and 2020/21 illustrate that the Shareholder Representative sought advice from the Shareholder Group and Bristol Holding Limited and that scrutiny was provided by OSMB. However, the indications are that whilst this advice might be considered within the Shareholder Group it has not been considered or acted upon by Cabinet. This was compounded by the way that the information and key risks were included within the Cabinet papers.

Summary of events and key decisions

Therefore, we consider that the information and papers provided at the January 2020 Cabinet meeting did not clearly state the risks faced by BE, or provide sufficient robust information to enable Cabinet to make an informed decision. In our opinion, and supported by subsequent events, it also represented an overly unrealistic view of how BE might perform.

Recommendation 2: Public reports should be consistent with the issues and concerns raised within exempt papers. The exempt papers should only provide confidential information which cannot be discussed within the public sessions.

Recommendation 3: Cabinet reports relating to Bristol Holding Limited's companies which include exempt information should be improved. Exempt papers, should clearly identify and quantify the risks and advice provided by the Shareholder Group and any relevant independent advisors as well as the clear views of Bristol Holding Limited.

Recommendation 4: The Council should ensure Cabinet decisions are based upon more timely and current information.

Six days after Cabinet approved BE's business plan (**27 January 2020**) the Deputy Mayor (Shareholder Representative) was informed that BE was experiencing a significant cash flow crisis and would no longer be able to meet its business plan objectives with immediate action required to ensure it could meet its financial objectives and prevent a negative cash position. From this point, Bristol Holding Limited's Executive Chair and Finance Director were heavily involved in supporting BE to resolve the immediate cash flow position and to establish a viable way forward.

Through support from Bristol Holding Limited and by earlier access to funds from the Council, the immediate cash crisis was alleviated. The work undertaken highlighted that BE was very likely to need further cash in March and August 2020 and at this stage this was likely to be above the funding cap previously agreed by Cabinet.

BE's financial position had been impacted by:

- a reduction in the wholesale price of gas and electricity by around 30%;
- declining customer retention;
- competitors' offering customers low prices which provided little if any profit; and
- inadequate cash management.

At the end of February 2020 the Shareholder Group was informed of the situation and in March 2020, Cabinet was formally updated on the situation facing BE. External advisors who were already commissioned by Bristol Holding Limited to support the City Leap Partnership were engaged to find a sustainable solution.

The external advisors completed two reviews:

- Phase 1 – a review of BE's short-term cashflow forecast. The report identified that without further funding from the Council, BE would be insolvent (as a result of its inability to pay its debts as they became due) and funding above the £7.7 million agreed cap would be required.
- Phase 2 – support for BE Board to identify solutions and to provide an options analysis. The report identified the medium term funding requirement, with £1.44m expected over the following six weeks and a further £5.7m in August 2020 as a contribution towards the ROC payment. Four options were considered, with an accelerated sale requiring the lowest level of funding, although if a sale could not be achieved then additional funding might be required to avoid insolvency. Additional funding was approved only if it was as a result of a supplier of last resort.

In March 2020, BE's Managing Director (MD) resigned. The MD had been in post since August 2019, having previously held the post of Finance Director since August 2018. An interim MD was appointed by the Shareholder Representative, who was considered to be more experienced in dealing with the situation in hand.

In addition, the Council's Audit Committee requested additional information to provide assurance on the governance arrangements of BE in March 2020. This was prompted by elected members becoming aware of the findings raised by the external advisors in the first phase of their work. A detailed response was provided in May 2020 in response to concerns raised by the Audit Committee.

In April 2020 the procurement process was paused as a consequence of BE no longer being a viable option for the City Leap Partnership and also to address other issues within the procurement process. The bidders were updated on developments relating to the situation that BE was then in. The following month the procurement process was restarted to reflect the material difference in BE's circumstances.

Following the two reports provided by the external advisors, Cabinet agreed in June 2020 to proceed with the accelerated sale of BE.

Summary of events and key decisions

Other reserved matters

A range of decisions which fall below the key decision threshold can be made by the Shareholder Representative (the Deputy Mayor – Finance, Governance, Performance and Culture) and the Constitution sets out the decision making process.

In 2019/20 these reserved matters decisions included:

- issue of shares;
- appointment of BE Non-Executive Directors and the Managing Director;
- appointment of the auditors; and
- license approval for gas shipping.

Advice was provided to the Shareholder Representative by Council Officers and the Shareholder Group. The decisions were made outside the Shareholder Group. A record was produced for each decision and part way through the year the documentation was improved to ensure a record of supporting information and sources of advice was maintained. These decisions were not published on the Council's website. We understand this is in line with the Council's approach on delegated decisions which is to not publish delegated decisions made by Senior Officers or Portfolio Holders.

The Deputy Mayor updates the Mayor through weekly briefing meetings, these meetings are not recorded. These updates will include both key decisions, other reserved matters and other items of interest or concern.

In order to promote a more open and transparent culture we recommend that the delegated decisions made by the Shareholder Representative should be published. See recommendation 10.

Governance arrangements

Governance Structure

The chart opposite illustrates the governance structure in place during 2019/20. Clear roles and responsibilities to support the governance structure, as set out opposite, are essential to ensure effective decision making and to ensure all those involved understand their role. This should avoid duplication and enable those involved to understand the role and responsibilities of others.

An effective governance structure should also be supported by guidance and agreed legal documentation. The Council does not have an agreed protocol or companies handbook in operation. In addition, we have found that the articles of association and shareholder agreement require updating and do not reflect the agreed changed roles and responsibilities of Bristol Holding Limited. Although terms of reference are in place for some of the functions, these are not up to date, as discussed later.

Recommendation 5: The Council should update the articles of association and shareholder agreement to reflect the strengthened role of Bristol Holding Limited. The terms of reference for all elements and functions of the governance structure should be in place and updated.

Roles and Responsibilities

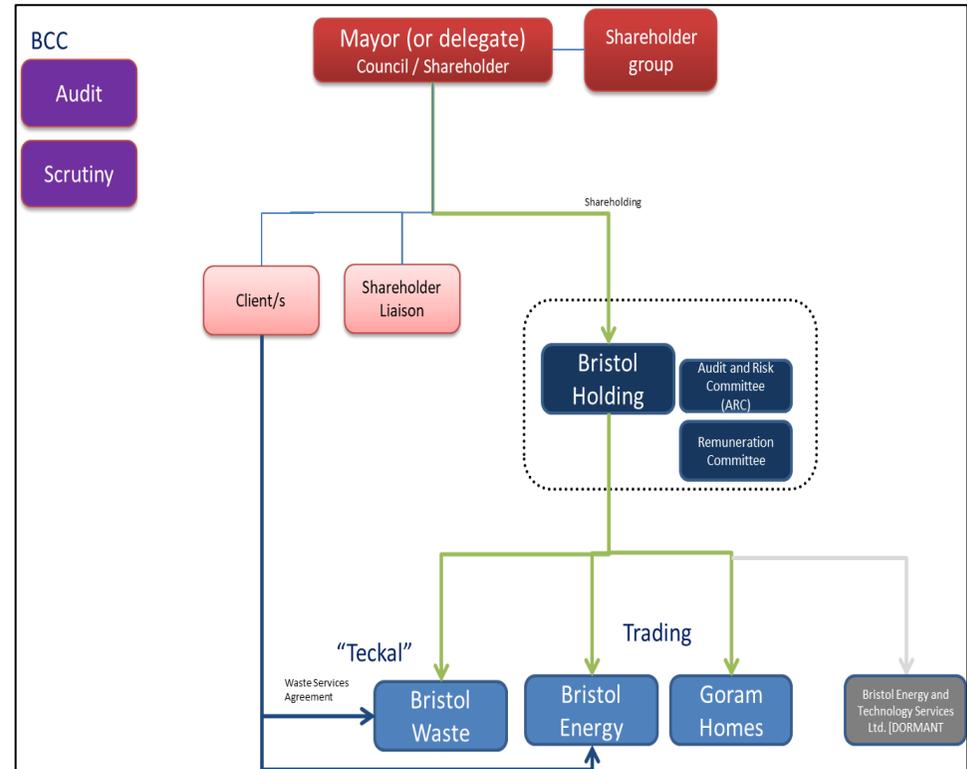
Mayor and Deputy Mayor (Shareholder Representative)

Bristol City Council has a mayoral model of governance and decisions relating to companies are, ultimately, the responsibility of the Mayor. Shareholding is an executive function and in 2017 delegated authority was given to the Deputy Mayor – Finance, Governance, Performance and Culture, who acts as the Shareholder Representative.

Key decisions are made in Cabinet and other reserved matter decisions are made by the Deputy Mayor. Weekly briefing sessions are held with the Deputy Mayor. These sessions are recorded and key Officers from the Council attend.

The current structure means that the Shareholder Representative was responsible for making a large number of delegated decisions, not just for BE but for all the Council owned companies. For key decisions the Shareholder Representative is also responsible for updating the Mayor and Cabinet. Although advice is provided by the Shareholder Group and Bristol Holding Limited, this creates a situation where one individual is responsible for a large amount of decisions. This is unlike decision making for commercial companies outside local government where decisions would not be made by one individual but by the company board.

Governance Structure



Governance arrangements

Shareholder Group

The aim of the Shareholder Group is to provide advice to the Deputy Mayor. The meetings are not public but are recorded and minutes are taken. The role and membership of the Shareholder Group has changed in 2019/20, as the role of Bristol Holding Company Limited has been expanded. Since January 2020 the frequency of the meetings has been reduced from monthly to quarterly and it is the Council's intention that the Group should be more strategic.

Membership of the Shareholder Group is set out in its terms of reference, which was developed by the Council. In addition to the Deputy Mayor, the Group should consist of:

- at least two members of the Cabinet in addition to the Deputy Mayor;
- at least one independent person providing relevant expertise;
- the Chair of Overview and Scrutiny Management Board (OSMB), observer only;
- the Head of Paid Service;
- Section 151 officer;
- Monitoring Officer;
- Director of Commercialisation and Citizens / Shareholder Liaison Director; and
- any other individuals, as considered appropriate by the Deputy Mayor.

Our review of the minutes identified that only one member of the Cabinet attends in addition to the Deputy Mayor.

The terms of reference for the Shareholder Group is also now out of date (last updated 20 September 2019) and does not take account of the changed role of the Group, resulting from the strengthened role of Bristol Holding Limited.

The terms of reference also refer to a Companies Handbook, although this document is as yet to be produced by the Council.

Client and shareholder liaison functions

The Council has not produced terms of reference for these two functions.

The role of the client function lacked clarity because the Council does not commission services directly from BE and, as a result, a contract or SLA was not required.

Recommendation 6: The Council should agree and consider if the client function role is appropriate for each of its companies and document the role and responsibilities for those companies where it is agreed.

The shareholder liaison function support the shareholder and provide the link between the shareholder and Bristol Holding Company Limited/BE and the shareholder and the Council.

Bristol Holding Limited and Bristol Energy Limited

In April 2019 Cabinet agreed to strengthen the role of Bristol Holding Limited and to support this new role through the appointment of an Executive Chair. Additional resources were provided to Bristol Holding Limited to enable it to oversee the operation and performance of its subsidiaries and therefore reduce the role of the Shareholder Group.

Bristol Holding Limited and its subsidiaries began to operate a strengthened group structure, with Bristol Holding Limited ensuring delivery of BE's performance and objectives. This included centralised resources and structures, such as the new Audit and Risk Committee and the Remuneration Committees. The Shareholder representative appointed the Executive Chair in August 2019 and two Non-Executive Directors shortly afterwards.

An elected member was also appointed as a third Non-Executive Director in November 2019, followed by a Company secretary.

The appointment of the Executive Chair (an individual who carries out the responsibilities of the chair of the board and the chief executive/managing director of the company) is not good practice and does not follow [The UK Corporate Governance Code – July 2018](#). The Council provided the following reasons for this appointment in the report to Cabinet in April 2019:

- the use of Executive Chairs is more common in government entities; and
- it may be more appropriate in an environment where the shareholder has direct control of the Executive Chair, and is comfortable with the governance implications.

We do not consider that these reasons justify the lack of independence that an Executive Chair would have and the possible conflict of interest in responsibilities. In our experience local authorities often struggle to balance the level of control and commercial freedoms whilst operating in a political environment. An independent chair is important to ensure the success of local authority companies.

Recommendation 7: Consideration should be given to the role of the Executive Chair of Bristol Holding. This should include if this role is appropriate going forward, and does it ensure independence of the chair and reduce potential conflicts.

We do, however, acknowledge that the strengthened role of Bristol Holding Limited was invaluable in supporting BE during its cash flow crisis in early February 2020. The Executive Chair and the Finance Director were heavily involved in supporting BE and validating the position to the Council.

Governance arrangements

Bristol Holding Limited and Bristol Energy Limited continued

In previous years the Council has had its officers on company boards. The Council has moved away from this approach and considers that elected members are the preferred option. The main reason for this is that elected members operate with a democratic mandate.

BE also had an elected member operating as a Non-Executive Director appointed in August 2018. Subsequently, the elected member was appointed to Cabinet as portfolio holder for Waste, Commercialisation and Regulatory Services. Although the Council recognised that this situation was not ideal, the approach taken was to consider each possible conflict of interest situation as it arose.

It is not uncommon for elected members to be found on the boards of local authority companies, but it is generally not considered good practice due to potential conflicts of interest that may arise and their potentially limited commercial experience. Elected members are able to provide challenge but are unlikely to have or be able to compensate for the experience and knowledge that others might bring. The energy business is highly specialist and requires extensive specific knowledge to be able to effectively contribute. We do however recognise that the appointment of elected members can be balanced by the appropriate selection of other board members.

Conflicts of interest can arise when the Council, the Council owned company, officers and elected members have differing roles and responsibilities. Existing arrangements indicate that it is highly likely that conflicts of interest will occur, therefore it is important that the governance arrangements provide effective mechanisms for identifying and dealing with potential conflicts.

Recommendation 8: The Council should minimise the potential for conflicts of interest, such as the role of the Executive Chair, elected members and officers. To facilitate this, the Council should develop a conflicts of interest policy to ensure potential conflicts in relation to Council owned companies are identified and managed appropriately. This could be incorporated within a company's handbook.

Audit Committee

The Council's Audit Committee has a responsibility to provide independent assurance on the governance, risk management framework and the associated control environment operating across the Council. To some extent this will include the Council's owned companies, although this is not included or clarified within the Council's Audit Committee terms of reference.

In order to discharge these duties the Council's Audit Committee received the minutes of Bristol Holding Limited's Audit and Risk Committee, Companies' annual governance statements and also received updates from external audit and internal audit relating to any relevant work they have carried out.

Concerns have been raised relating to access to confidential information, because a proportion of papers were viewed to be commercially sensitive and, as such, could not be easily viewed. This has since been discussed by the Audit Committee and a response provided by the Monitoring Officer as to the legal basis on which the Audit Committee have access to information.

In order to discharge their responsibilities the Audit Committee should have sight of issues relating to the Council's governance arrangements. We recognise that information which is commercially sensitive cannot be publicly available and access needs to be restricted, but the Council needs to find a way to balance the legal and commercial sensitivities to enable Audit Committee to operate effectively. This should not be all exempt papers but only those relevant to the Committee role and responsibilities. We are aware that some Councils achieve this by the Monitoring Officer holding briefing sessions with the Chair and Vice Chair of the Audit Committee.

Recommendation 9: The Council should develop a mechanism to enable the Audit Committee to be sighted on potential exempt issues within their role and responsibilities and legal duties.

Overview and Scrutiny Management Board (OSMB)

As set out in the Council's Constitution, OSMB is authorised to scrutinise decisions and actions which are the responsibility of the Mayor or Executive and to scrutinise governance arrangements at both the strategic and local level. The terms of reference do not mention companies owned by the Council, but are sufficient to cover all reserved matters and key decisions, as these are the responsibility of the Mayor or Cabinet, or are delegated to the Deputy Mayor.

OSMB has had the opportunity to scrutinise key decisions made by Cabinet regarding BE, performance, both mid and year end and has provided its response to Cabinet. These responses have been confidential and, if they were discussed by Cabinet, the minutes and meetings were not recorded.

OSMB's ability to scrutinise reserved matters has been restricted as it has not routinely been made aware of these decisions. These decisions are made by the Deputy Mayor, in line with the scheme of delegation, but are not routinely published on the Council's website.

Recommendation 10: The Council should consider publishing all reserved matter decisions relating to its companies and consideration should be given to how elected members access to confidential information relating to reserved matter decisions could be improved.

Governance arrangements

Overview and Scrutiny Management Board (OSMB) continued

These decisions relate to the issue of funds and appointment of members of the Board, which will become public following notification to Companies House. In our opinion, this is not in line with the philosophy of open and transparent decision making, or with our experience of other local authorities which own companies. It also reduces the opportunity for OSMB to scrutinise these decisions, or to scrutinise the governance arrangements.

Training

Induction training was provided a number of years ago to the elected member who sat on the BE Board, but has not been provided in recent years. Formal training has not been provided to elected members involved in the scrutiny function, although advice is available from officers who attend meetings. The energy market is a highly complex and regulated market which requires specialist knowledge and, as such we consider that training would have benefited those involved in the decision making process and scrutiny.

Recommendation 11: Appropriate training should be provided on a regular basis to elected members who are involved in the Council's owned companies, in relation to decision making, scrutiny and the Audit Committee. This should include sector specific training, roles and responsibilities in relation to Council owned companies and potential conflicts of interest.

Managing risk

The number of occasions when the Council has commissioned external advisors to consider solutions and options for BE illustrates that the Council has to an extent understood the risk that BE posed. However, we consider that the risks were not fully appreciated by Cabinet for a number of reasons:

- the risk posed to the tax payer by BE was not separately documented and was subsumed in the corporate risk register within the risk 'long term commercial investments and major projects' which included other projects such as Colston Hall;
- the commercial sensitivity of the information meant that risks were not clearly identified and scored in reports and was either contained less prominently within the appendices or was not provided; and
- the complex nature of the industry resulted in it being more difficult to understand the information and mitigations being provided, resulting in information provided by BE being more difficult to challenge.

As discussed earlier in our report, this was compounded by the view that the City Leap Partnership would mitigate the risks in this area and provide a financial lifeline to BE.

In addition, as the Council did not identify any prior warning of the significant deterioration in BE's financial position and cash crisis, this outcome suggests that the Council did not have effective risk management arrangements in place. These arrangements could be improved, for example by more clearly stating and evaluating the risks and mitigations, ensuring information is up to date and as current as possible and providing specialist advice direct to Cabinet.

The decision making process was prolonged, and although the process was no longer than for any other significant Council decision, the energy market is highly volatile. Advice was sought, but it was obtained some time before the business plan was approved, resulting in it being out of date at the point of decision, for example the Shareholder Group reviewing the business plan two months before the Cabinet. This exposed the Council to significant risks. This should be addressed through recommendation 4, either ensuring timely information is provided or possibly by reducing the length of time of the decision making process.

Recommendation 12: The Council should improve the risk management arrangements to ensure that all key risks are identified and clearly reported to Cabinet.

Action plan

	Assessment	Recommendations
7	 (High)	<p>Consideration should be given to the role of the Executive Chair of Bristol Holding. This should include if this role is appropriate going forward, and does it ensure independence of the chair and reduce potential conflicts.</p> <p>Management response</p> <p>The revised Bristol Holding arrangements were intended to be reviewed. The Governance Review has been commissioned and the role of Executive Chair, independence and potential conflicts will be considered as part of the planned review. The Executive Chair post was filled on a fixed term basis in order to facilitate a revised approach if deemed appropriate as a result of this review.</p> <p>Responsible Officer Timing</p> <p>Chief Executive By October 2021</p>
8	 (Medium)	<p>The Council should minimise the potential for conflicts of interest, such as the role of the Executive Chair, elected members and officers. To facilitate this, the Council should develop a conflicts of interest policy to ensure potential conflicts in relation to Council owned companies are identified and managed appropriately. This could be incorporated within a company's handbook.</p> <p>Management response</p> <p>The Council has in place procedures for declarations of interests for elected members and officers and proactively considers conflicts of interests on an ongoing basis. A formal Conflicts of Interests Policy is intended to be developed, along with supporting guidance, which will be incorporated into the company handbook which we have been developing. Training for elected members who are directors includes conflicts of interests and this element of the training will be further developed.</p> <p>Responsible Officer Timing</p> <p>Director: Legal & Democratic Services April 2021</p>
9	 (Medium)	<p>The Council should develop a mechanism to enable the Audit Committee to be sighted on potential exempt issues within their role and responsibilities and legal duties.</p> <p>Management response</p> <p>In the Access to Information report presented to the November 2020 Audit Committee, it was acknowledged that the Audit Committee has a responsibility to ensure that key representations to the external auditors as part of the external audit are accurate and complete in line with ISA260 and other standards. The Audit Committee should be able to access such information, including exempt information, that is reasonably necessary for them to discharge this duty. The report also provided the Audit Committee with an overview of the legal framework relating to access to information by Members of the Council, including access to exempt information.</p> <p>We will continue to ensure that Audit Committee have the ability to see exempt information which is reasonably necessary for them to carry out their legal duties.</p> <p>Responsible Officer Timing</p> <p>Director: Legal & Democratic Services Ongoing</p>

Action plan

	Assessment	Recommendations								
12	<p style="text-align: center;">● (High)</p>	<p>The Council should improve the risk management arrangements to ensure that all key risks are identified and clearly reported to Cabinet.</p> <p>Management response</p> <p>Steps have been taken during 2020/21 to strengthen the risk management framework in the Council and across the Council's subsidiaries and continues to be advanced in order to move further towards risk maturity and seamless embedding of risk management. Whilst ensuring its suitability and effectiveness, further consideration is being given to greater alignment with the risk matrix adopted by the Council and its subsidiaries, in terms of scoring, likelihood and impact to facilitate ease of collation and consistency in reporting.</p> <p>We propose that going forward the risk will be incorporated in the reports to Cabinet and where the lack of alignment prevents this, the full details will remain in the Business Plan and the significant risks and potential Council impact will be summarised in the officer comments to the report.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Responsible Officer</td> <td style="width: 50%;">Timing</td> </tr> <tr> <td>Director: Legal & Democratic Services & Director of Finance</td> <td>February 2021</td> </tr> </table> <p>Subsidiary and Investment risks will be disaggregated from the 'long term commercial investments and major projects risk' (CRR1) and separately identified and management actions reported on quarterly within the Corporate Risk Management Reports. This will ensure the continuous overview and monitoring currently being undertaken by the Shareholder Group can be more visible.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Responsible Officer</td> <td style="width: 50%;">Timing</td> </tr> <tr> <td>Director: Finance</td> <td>2021 Quarter 4 Report & Ongoing</td> </tr> </table>	Responsible Officer	Timing	Director: Legal & Democratic Services & Director of Finance	February 2021	Responsible Officer	Timing	Director: Finance	2021 Quarter 4 Report & Ongoing
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