**Heart of the South West LEP Board**

**March 11th 2024**

**Chief Executive's Report agenda item 8**

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## 1. Summary

This is an additional Board meeting primarily to review:

i) any outstanding actions relating to the transition
ii) agree with the Accountable Body on the treatment of assets; and then
iii) if these have been satisfactorily covered move to the next stage regarding possible company wind-up arrangements.

Therefore, as an extra meeting, we have not included the normal update papers but, having looked at the transition plan, it remains important that we continue to deal with the Director's responsibilities sequentially per the workstreams agreed upon at the last Board meeting ie:

**Workstream 1 - Functions** – largely covered in the transition plan (agreed by the UTLAs and government and endorsed by the LEP (through the Chair) on January 31st, 2024.

**Workstream 2 - Assets** – to be agreed upon by the LEP and the Accountable Body. Government guidance confirms this is a local decision but should be agreed by March 31st, 2024 but can be executed later. Discussions indicate that with the recommendation to appoint a liquidator and the need to complete full novation of all assets before any wind-up this will indeed be the case.

**Workstream 3 - Wind-up and Staffing**

Assuming we can agree on how assets are to be treated, Directors are comfortable that we have dealt with the work in an orderly manner and have therefore either discharged their duties or have a plan to do so – we can then move onto a discussion about possible closure and wind-up.

However, it does seem likely that Board Directors will need to meet again to review the work of the liquidator (assuming that's the route we go).

## 2. Possible Conflicts of Interest – relating to assets

For some time, (it has come up at previous meetings), I have had concerns about possible conflicts of interest of some Directors. I have therefore asked the

LEPs Monitoring Officer to advise if they think any arise and how they might best be dealt with. Through the Chair, we will advise accordingly on this.

**3. Annual Performance Statement**

As part of our ongoing functions, the Partnership is required to complete to the Government an annual performance statement (included elsewhere on the agenda).

As part of this submission, the Chief Exec (as in previous years), is required to complete an Annual Performance Statement (along with the Accountable Body) confirming their satisfaction that the LEP functions and expenditure have been carried out and completed per the Assurance Framework.

Due to concerns, I have raised over several months, I did not feel able to do so this year – the Chair did based on the advice from the S151 officer, indicating my reservations.

On this basis, the Chair has asked me to set out to the Board my concerns.

Firstly, I am only an advisor to the Directors and this Board and I first raised these concerns on the back of Ashford's advice last October. I am also not an Accountant or a lawyer. I might not be right – my issue is that the concerns haven't been fully addressed (through recommended further legal and accountancy advice).

Partnerships are based on core principles and at the core of this Partnership is that it is business-led and our work (the functions) are delivered through a Community Interest Company (CIC) on behalf of the whole HOTSW community – established in 2014. We state this in both our Company Articles and the Partnership's Assurance Framework.

The core principle of a CIC is the asset lock (safeguarding the assets on behalf of the whole community). A CIC should hold its assets on behalf of the whole community and should the functions of this company cease or the company close, these assets, through an asset lock structure, can be transferred to other appropriate bodies with the agreement of the Regulator.

I have spoken with previous HotSW LEP Chairs and former HotSW Chief Executives and they are clear that the asset lock was the underpinning reason for setting up the Partnership governance through a CIC - hence that is directly referred to in both our Companies Articles and the Partnerships Assurance Framework. Therefore, how the Partnership treats its assets must be consistent with its Assurance Framework.

Specifically, a fundamental component of CICs, is that on closure they are not allowed to distribute assets to their 'shareholders', as would say, a Company Ltd by Guarantee – but that is exactly what is being proposed with little binding power on how that money or assets will be used/treated in the future.

The justification for this is that it has now been confirmed by the S151 officer that the company has no legal interest in the assets.

Although to some this was a surprise, and despite for many years being advised to the contrary and the LEP's name being on all the legal agreements (along with the Accountable Body), I don't think any Directors particularly contest this opinion, and it is backed by legal advice. We are, where we are.

However, I continue to have concerns about whether the Accountancy Treatment ie that the CIC (through which the partnership's functions are administered) has no legal ownership of the assets is consistent with the Assurance Framework and Articles that all the functions of the Partnership should be delivered through a CIC ie the CIC should have at least some ownership/interest in the assets for the Assurance Framework to be complied with.

I'm not saying it is, I'm not saying it isn't - but this is not a new issue. It was identified in the initial Ashfords advice (which recommended further independent opinion be taken and again in the TLT advice (setting out the Director's duties and responsibilities circulated to the Board in December) as follows:

**Current assets**

1.1 We note that there is a degree of uncertainty around the status of certain projects/programmes that the Company is managing with legal and financial aspects of the same being undertaken by the Council as accountable body (the "**Council**"). In particular, the Growth Deal, Local Growth Fund, Growing Places Fund and Getting Building Fund have been structured on the basis that the Council enters into funding/grant agreements with grant recipients "on behalf of" the Company which suggests that the Company is in effect the counterparty and therefore the beneficiary of any obligations under such agreements.

1.2 Given the Company is a community interest company, this gives rise to the question as to whether the benefit of such funding/grant agreements can be seen to be an "asset" for the purposes of the asset lock which all community interest companies ("**CICs**") are subject to. The asset lock is designed to ensure that the assets of any CIC are used for the benefit of the community and provides that any assets must either be retained for community purposes or if they are transferred out of the relevant CIC, any transfer must be for (i) full market value, (ii) to another asset locked body specified in the CIC's articles; (iii) to another asset locked body with the consent of the Regulator of Community Interest Companies or (iv) is made for the benefit of the community.

1.3 A further component to this is that currently the Company is dormant on the basis that it has no significant accounting transactions[1]. It may be that the benefit of funding/grant agreements do not amount to significant accounting transactions which require entry into the Company's accounting records and we would

[1] See section 386 Companies Act 2006 which contains details around where significant accounting transactions have to be entered into the relevant company's accounting records.

recommend that professional accountancy advice is taken on this point. Naturally, if it is determined that such funding/grant agreements do not amount to "assets" from an accounting record perspective, we consider that it is arguable that the asset lock will not apply in any instance where the Company seeks to assign/novate such agreements to a particular local authority in line with any agreed integration plan. It may be prudent also to take soundings from the Office for the Regulator of Community Interest Companies on any proposal to assign/novate the funding/grant agreements in order to provide comfort that the asset lock would not be applicable in such circumstances.

1.4 We would also recommend that professional accountancy advice is taken on the status of any cash assets including whether such cash assets are held by the Council "on behalf of" the Company and if so, whether such cash assets amount to assets that require entry into the Company's accounting records. It may be that given the Council has financial responsibilities owing to its status as an accountable body for the Company, such cash assets do not have to be recorded in the Company's accounting records.

Despite these recommendations from the lawyers, I do not believe we have taken further legal or accountancy advice on this issue – I haven't seen it if we have - and therefore in my view, it remains unresolved.

Consequently, I continue to have concerns that the Partnership is not proceeding in accordance and consistently with its Assurance Framework and Directors with their Articles and therefore could be subject to legal challenge, etc. As a result, based on this opinion/clarification on asset ownership and my concerns I felt I couldn't knowingly complete the APR this year.

To summarise, to proceed on the basis that the Company has no interest in the assets feels difficult to reconcile with our stated Articles and Assurance Framework which clearly sets out the work of the Partnership should be delivered through a CIC. Therefore I have concerns that the Accountancy Treatment that has led to this may not have been correct (and through wind-up needs to be addressed) to avoid potential legal challenges.

We have tried to cover some of this through an indemnity. Whilst I think an indemnity is sensible, it doesn't yet cover this particular issue and I'm also not sure it reflects well on Directors not to address an identified concern.

We could potentially pass this issue on to the Liquidator to resolve. However, if I were the Liquidator, assuming we go down that route, I think I would want to request further legal advice on this issue before opining on it (and placing my professional insurance on it). I have no problem with that as a way forward (but it could take months).

It is important to understand this is not directly about whether the LAs are appropriate vehicles to transfer the assets to – they may well be. If that is what the Directors want to see happen – but it is about going through the right

process and dealing with the assets in accordance with our long-standing Partnership principles.