



Ms Gwen Swinburn

Office of the Chief Executive

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Ref: SH/MH

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5 October 2015

Dear Ms Swinburn

City of York Trading

I am writing in response to your emails dated 28/9/15 and 30/9/15 regarding City of York Trading (CYT). I will respond to each of your questions here.

Background

Full Council agreed to create a limited trading company on the 15th February 2011. The initial scope of CYT was to trade services from the Customer and Business Support Services Directorate (CBSS) and therefore the directors of the company were initially drawn from this Directorate. The Company was set up to comply with the regulatory requirements of the Companies Act 2006 and additionally with the regulatory regime for local authority companies under the Local Government and Housing Act 1999. In the context of your questions, CYT is a limited company that has the powers to trade services, employ its own staff and make remuneration in line with that agreed by its Shareholder's Committee. This is entirely in line with other local authority trading companies.

Payments to Directors

On 20th October 2014, the CYT shareholder committee comprising Cllr Semlyen and Cllr Mcilveen considered a proposal for remuneration of

Chief Executive: Steve Stewart

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Executive Directors. The proposal is annexed to this document. The Committee approved the recommendation. The affected Directors were excluded from this discussion.

The Shareholder's Agreement entered between the Company and the Council as sole shareholder said that the shareholder committee: "shall be the means by which the Council shall..... exercise the functions flowing from its ownership of the shares". The Shareholder Committee was clearly therefore the appropriate body to indicate the Council's wishes on this matter.

The Shareholder Committee met again on 15th January 2015. Its membership had then been changed to Cllr. Linsay Cunningham, Cllr. Paul Healey and Cllr. Ian Cuthbertson. This Committee approved the minute of the previous meeting recording the recommendation to pay the two Directors.

The proposal was considered and approved by the CYT Board, chaired by council leader Cllr D. Williams, on 19th February 2015. Neither the Managing Director nor the Operational Director was present when the proposal was discussed and agreed. At the Board Meeting on 12th February 2015, this decision had been deferred given that only one non officer non-Executive Director was present at that meeting.

CYT paid £6000 to the Managing Director and £3000 to the Operational Director in March 2015 for their work undertaken on behalf of the company, in their own time, during financial year 13/14. CYT reported a healthy operating profit of £100k for this period. The amounts were gross and paid to the Directors by CYT and are a matter for the company and the individuals. There are no pension liabilities to the council. No other payments have been made to CYT Executive Directors.

Both the CYT Managing Director and Service Director have waived their entitlement to payment for the 2014/15 tax year.

Consultation

The two previous Leaders of the council (James Alexander and Cllr D Williams) and previous Chief Executive (Kersten England) were aware that CYT were considering the issue of remuneration for CYT Executive Directors. The company was expanding rapidly and the responsibilities on the Managing Director and Operational Director were increasing. The Leader and Chief Executive recommended that Legal and HR advice was sought. The proposal was properly considered by the Shareholder

Committee and CYT Board based on that advice. There was a significant level of discussion around the proposal to remunerate CYT Executive Directors however it is recognised that through a technicality, an officer decision should have been recorded to complete the sign off process.

Declaration of interest

There is no requirement in either the law or the officer code of conduct for an Officer to declare at a meeting of the Executive the fact that the Council has appointed them to an outside body. The fact that the Council had appointed Mr. Floyd to the role of managing director of the company was well known to those who were tasked with decision making and, in any event, the shareholders agreement annexed to the published report lists the names of three current Officers who were directors.

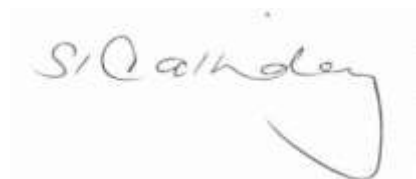
I note from reviewing the webcast from Executive that as part of his presentation to Executive that Ian Floyd states he is a director of CYT. Notwithstanding the above, the two Directors had already waived their right to further payment ahead on the September meeting of Executive.

Governance Changes

As you are aware, Cllr Stuart Rawlings, as Chair of the CYT Board has announced that changes will be made to the governance arrangements for CYT. Proposals will be brought to Executive in due course. In addition, a process will shortly commence to recruit an external Managing Director for CYT Ltd.

Finally, in the interests of transparency, a full account of the background to the payments to CYT Executive Directors will be made to the Audit & Governance Committee.

Yours sincerely

A handwritten signature in black ink that reads "S. Halliday". The signature is written in a cursive style with a large, sweeping flourish at the end.

Stewart Halliday
Assistant Director Transformation & Change

Attached:

Shareholder Committee Minutes
Proposal to remunerate Executive Directors.

Attendees: Cllr A.Semlyen
Cllr N.McIlveen
Ian Floyd
Pauline Stuchfield
Karen Bull

Additional Attendees: Emily Clarke (minutes)
Mark Bennett

Apologies: Cllr J.Alexander

Minutes

Item	Subject	Action
1.	<u>Introduction and apologies</u> Apologies from Cllr Alexander followed by introductions.	
2.	<u>Approval of previous minutes, actions and matters arising (attached)</u> Previous minutes were approved.	
3.	<u>CYT Finance & Performance Summary (presentation)</u> The presentation was discussed including explanations of figures and updates on Business plan in terms of marketing and social media. Updated on staffing matters and staff engagement and wellbeing. Figures and feedback were given on ICT at CYT.	
4.	<u>Shareholders Dividend</u> IF outlined the proposed dividend as recommended by the Board. Whilst it was for the Board to agree, the Committee could either accept this, or ask the Board to reconsider. The Committee agreed the dividend of £29,000.	
5.	<u>Revised Governance arrangements (paper attached)</u> IF outlined a paper that had gone to the Board, looking at best practice	

	<p>in the Governance of companies, and the review of CYT against this. In general the company was compliant in most matter.</p> <p>IF explained however that there was a need to bring in upto 2 non Executive Directors (from outside of CYC). Board agreed proposal, and that discussions take place with potential new non Executive Directors. It was also agreed that some small form of payment would be acceptable to the non CYC non Executive Directors, and that IF would seek the shareholder committee agreement via email to Committee Members, once he was able to confirm proposed names, and any remuneration details.</p>	
6.	<p><u>Shareholders Agreement (paper attached)</u></p> <p>The committee considered the report on changes required to the shareholder agreement, and agreed the recommendation to</p> <ul style="list-style-type: none"> • It is therefore recommended that the minimum number of executive directors be reduced to two. • It is considered that there would be advantage in increasing the number of non executive directors on the Board. • Accordingly it is recommended that the maximum number of non- executive directors should be lifted to five. • The recommended option is to amend the wording so that the decision making power rests with the Directors (as permitted by the Company Articles) but should only be exercised where in accordance with a recommendation of the Committee. • To achieve this it is recommended that, rather than obtaining the written consent of the Council, the Board should be prevented from taking the steps listed other than in accordance with a recommendation of the Committee. • It is recommended that these meetings be with the Executive Directors with an option for the meetings to be called with the full Board if required. • It is recommended that the shareholder committee recommend to the Council and the Board that the recommendations in this report be implemented. <p>Noting also that the full agreement would require amendment to incorporate the main identified changes.</p>	
7.	<p><u>AOB – HR Report (to follow by confidential email) for Members only</u></p> <p>Consideration was given to the report which set out a proposal for the two CYT Exec Directors to be remunerated for this responsibility. CYT would make the payment directly to the Exec Directors and the payment would increase if company profits exceeded £300k and £500k. The proposal was supported and it was agreed that the payments should be made after the accounting of the financial year has taken place each year and would be paid in lump sum, starting in the 2014/15 financial year.</p> <p>The shareholder committee recommend the proposal to the CYT board.</p>	

	It was noted that CYC should be formally consulted on this proposal.	
	<u>Date of Next Meeting</u> TBC	

Report to CYT Shareholder Committee

Proposal for Remuneration for Executive Directors

20th October 2014

City of York Trading Ltd was established in 2011 has developed fairly rapidly, in 2013/14 CYT had a turnover of £2.39m and profits of £100k.

The Director structure of the company is split (in line with normal private sector operation) between Executive Directors and Non Executive Directors.

The Executive Directors are responsible for the day to day running of the company and for development of business strategy. Essentially they are tasked with the normal responsibilities of the MD/Chief Executive of a private company and Operational Directors.

For CYT the two Executive Directors are;

- **Ian Floyd** – Managing Director, who is ultimately responsible for the running of the company. This role also covers the Companies financial arrangements. This role covers all activity of the Company, and would therefore cover any other services put through the company.
- **Pauline Stuchfield** – who is the Operational Director, reporting to Ian. Pauline directly manages the Work with York operations and administrative team.

There are in support of this Non Executive Directors. These meet every 2 months (but have no operational responsibilities) to review the business plan, performance, and strategy. The Non Executive Directors are Cllr Williams, Tracey Carter and Andrew Docherty.

Remuneration Considerations

The Non Executive Director roles are limited in terms of their overall time commitment, and responsibility, involving essentially only some 6 meetings per year. As such no remuneration is considered appropriate.

The two Executive Directors invest significant amounts of commitment and time in the running of the company, in addition to their contracted role with CYC. This is no different from running any company with a significant turnover. This covers all facets from business planning, performance, profit, business development, marketing, ensuring the governance (eg accounts) and staff communications etc.

These are both significant contributions. In time there is huge potential for the Company to grow and develop, which will clearly be driven forward by the two Executive Directors.

In considering remuneration there are the following issues to be considered;

- 1) Business case for remuneration
- 2) Who should pay the remuneration
- 3) The scale of remuneration
- 4) Whether any should be linked to profitability, to provide incentive
- 5) General form of agreement between CYC and CYT Ltd

1) General Case for Remuneration

The broad case for remuneration to the Executive Directors is as follows;

- To reflect the contribution, and additional responsibility, for running what is now a sizeable company
- To provide incentive to grow the company, and in particular to invest further time and commitment in the development of the company

In doing so the Council ultimately gains from the growth and development of the company, in the form of additional growth/profit in the company. All costs would be charged as a cost to the Company.

2) Who should pay the remuneration

HR and Legal advice has been taken on this issue and it is recommended that the Directors should hold separate contracts of employment for their role with CYC and as a Director for CYT.

CYT would make a payment direct for the Director role with the company. Both CYC and CYT would need to give consideration to whether there would be any implications upon their ability to fulfil their contracts with CYC or CYT and how to deal with any potential conflict of interest. This will require good governance, transparency and open dialogue between CYC and CYT. The mechanisms to ensure this happens are already well established and working effectively.

3) Scale of remuneration

In 2013/14 the company had a turnover of £2.39m and profits of £100k. Based upon current operational levels it is proposed that the following basic amounts are paid;

- Managing Director £6,000 (to reflect the overall responsibility for all matters to do with the Company)
- Operational Director £3,000 (reflecting the Work with York element)

These two amounts represent less than 0.4% of turnover. These amounts are considered essential as part of ensuring motivation and commitment towards growing a successful business.

4) Growth Element

It is suggested that the agreement be established to cover potential growth in the company, up to a level beyond which the overall agreement may require further review due to scale of operation.

- If gross profit (excluding Director remuneration) for the proceeding financial year exceeds £300,000, then the amount payable will be increased by 100% of the base amount for both Directors for the following year.
- If gross profit (excluding Director Remuneration) exceeds £500,000 for the proceeding financial year then the payments will be further increased by another 100% of the base amount

It is unlikely that the above £500,000 figure would be reached for some years, and it would require very significant expansion of the business activities (around 4 times current volumes), and turnover of around £10million. Details of any future inflationary increases may also need to be considered.

5) Agreement between the Council and the Company

The Chief Executive of CYC has been consulted on the proposal and HR and legal advice has been taken.

The Shareholder's committee does not have the authority to approve this proposal but can make a recommendation to the CYT Board. The proposal also needs the approval of Council.

Financial Implications

The agreement will have no direct financial cost on the Council, as all costs will be met from the CYT.

Summary

The proposal seeks to reward the Directors for the additional contributions made to the running of a successful company, and to provide incentive to grow the company. It seeks to ensure retention of Directors who understand the business and have developed commercial skills.

It provides a staged basis to cover for, and provide incentive to develop, the growth of the company for the foreseeable future.

The payments are relatively modest in terms of the overall turnover and profit of the company, but move the rewards mechanism to one based upon performance and profit.