

## AUDIT & GOVERNANCE COMMITTEE

Report subject	<b>Review of BH Live contractual and governance arrangements</b>
Meeting date	9 September 2021
Status	Public
Executive summary	This report updates Members on the contractual and governance arrangements between BCP Council and BHLive and BHLive Enterprises, which provides a range of leisure, conferencing and cultural services on behalf of the Council.
<b>Recommendations</b>	<p><b>That Audit &amp; Governance Committee:</b></p> <ol style="list-style-type: none"> <li><b>1. Notes the origins of and background to the BH Live contract and partnership with the Council</b></li> <li><b>2. Considers the arrangements for managing and monitoring the partnership, making recommendations as necessary.</b></li> </ol>
Reason for recommendations	To continually improve the contractual relationship with BH Live and ensure appropriate levels of governance are in place to monitor, influence and support future performance and service development.
Portfolio Holder(s):	Councillor Mohan Iyengar, Portfolio Holder for Tourism, Leisure and Culture,
Corporate Director	Kate Ryan, Chief Operations Officer
Report Author	Chris Saunders, Service Director for Destination & Culture.
Wards	All Wards
Classification	For recommendation to Cabinet where appropriate.

## 1. Background

1.1 In July 2020, the BCP Audit & Governance Committee considered a report making recommendations to improve the governance and contractual relationship with BH Live. This report contained information on the history, purpose, contract and organisational structure within BH Live - see Appendix 1 for details. Recommendations to the committee included:

*(a) Clarity over the role and expectations of councillors who are members of BH Live Boards:*

### **Update -**

- During the height of the COVID crisis Board Members were briefed by BH Live's global accounting partner Mazars on their responsibilities with regards to continued trading and business as a going concern.
- All BH Live board members are provided with an induction pack which includes director responsibilities and conflict of interest advice.

*(b) BH Live annual report to Overview and Scrutiny Board:*

**Update -** BH Live's 'Business Plan' 2021/22 was presented to BCP Overview & Scrutiny Board and Cabinet/Council during April 2021 as part of a combined paper on the management & development of leisure centres.

*(c) BH Live financial reporting is on an 'open book' basis:*

**Update -** Due to the severe impact of COVID, measures were put in place to agree open book accounting and a financial support package to provide assurance that BH Live is in a viable, sustainable financial position and able to fulfil its contractual responsibilities.

*(d) Contract management arrangements established by BCP Council are embedded:*

**Update** –contract governance arrangements were updated to reflect urgency of the situation at the height of the COVID-19 pandemic and are laid out in 2.7. As the leisure market begins to stabilise, further changes to arrangements are proposed to reflect the evolving circumstance and partnership requirements.

As part of this recommendation the Chair of Audit & Governance was asked to fulfil the role of independent observer of the BH Live board on a temporary basis.

## 2. Background

2.1 BCP Council has a 25-year legal agreement (LACSA 2010-2035) with BH Live for the provision of Leisure, Arts and Cultural Services. The contract falls within the area of responsibility of the Tourism, Leisure and Culture Portfolio Holder and is managed by the Council's Destination & Culture Service.

2.1.1 BH Live manage 3 leisure centres, the Bournemouth International Centre and Bournemouth Pavilion under the LACSA.

2.1.2 The Council retains ownership of and has Landlord repairing responsibilities for the buildings and facilities. BH Live is responsible for maintenance and fixtures and fittings (which in large venues such as the Bournemouth International Centre and Littledown leisure centre add up to a substantial commitment).

- 2.1.3 In total, the Council owns 8 leisure centres, 3 which are managed and operated by BHLive who also manage other local facilities at Queens Park, Corfe Mullen and Bournemouth School which are not part of the Council contract. Everyone Active (SLM) run a further 3 centres in Poole, and the YMCA have a long lease for the leisure centre in Broadstone. The remaining site at Two Riversmeet in Christchurch is run in-house. A report to Cabinet on 14 April 2021 titled 'Management and Development of Leisure Centres' set out the arrangements in respect of these sites.
- 2.2 Part 2 of the LACSA relates to the 'Independence of the Trust' and recognises that the BH Live was established as a company limited by guarantee with exclusively charitable purposes and that the Council fully acknowledges the independence of the Trust. It also recognises that whilst the Council and the Trust have common objectives and agree to work in partnership, this does not in any way limit the Trusts ability to enter into any other arrangement with any other organisation.
- 2.3 This independence has enabled BH Live to enter into contractual arrangements with other local authorities and organisations outside of the Bournemouth area, with mixed success. Over recent years BH Live has exited many of these contracts however it has retained leisure and cultural services contracts in Portsmouth and Croydon. A primary concern for the Overview & Scrutiny Board was that the Council may inadvertently subsidise any losses incurred on these contracts.
- 2.4 Part 9 of the LACSA relates to the 'Monitoring Regime' in place at the start of the contract. As with many partnerships and service contracts, the governance arrangements often evolve over time, responding to changes in working practises, business needs and key personnel.
- 2.5 Before Local Government Reform in April 2019 regular meetings were held with the Portfolio Holder at that time, the Council's lead officer and BH Live Chief Executive to monitor performance and resolve any issues such as prioritisation of repairs, opportunities for funding, etc. The Council's lead officer has changed several times over recent years, after a series of reorganisations and in the run-up to Local Government Reform. The contract was historically managed from an asset perspective, focusing primarily on the financial relationships and the investment requirements of the buildings rather than through a health, activity or economy lens.
- 2.6 More recently there have been several additional considerations taken into account, including the:
- Growth of BH Live and the addition of regional contracts
  - Formation of BCP Council in 2019 and subsequent changes in political leadership
  - Changes to the Council's officer leadership structure and new arrangements established to monitor and manage the contract under the Head of Leisure Services
  - Change in BH Live senior leadership structure with a CEO and new directors for Leisure and Conferencing & Events
  - COVID-19 pandemic and unprecedented impact on the business
  - Negotiation and agreement of a financial support package for BH Live for 20/21 - 23/24

2.7 The table below outlines the revised governance arrangements:

<b>Function</b>	<b>Information</b>	<b>Regularity</b>
<b>Point of contact</b>	Client lead – BCP Head of Leisure - co-ordinates input of Council services inc. finance, legal and property services. Covers programming, facility management, comms, projects/investments. Supports the PFH and Directors on Strategic Partnership Board and BCP Members on BH Live Boards.	As required
<b>Facility Management</b>	Asset maintenance, health & safety, building surveys.	Weekly or as required
<b>Financial reporting</b>	Submission of BH Live management accounts for review by BCP Finance.	Monthly – open book
<b>Partnership Liaison</b>	Operation and maintenance issues reviewed in line with the leisure contract and service specification. Includes: monitoring memberships; programming; customer behaviour and feedback; inventory management; quality standards and accreditations.	8 per year
<b>Strategic Partnership Board</b>	Overall performance is reviewed by senior representatives and the PFH. Future service strategy, programmes, projects and capital investments are jointly reviewed and agreed.  Meetings co-ordinated / synchronised with BH Live Board meetings to ensure cohesion and approvals in place on key issues e.g. capital investments.  Attendance at meetings continually reviewed to ensure it remains focused and able to evolve the partnership.	Quarterly
<b>Political Oversight</b>	BH Live Business Plan presented to elected Members.	Annually

## 2.8 Performance Updates

Performance updates have previously been considered by a Council committee on an annual basis. Links to previous reports:

[2017 Performance Update - Economy & Tourism O&S](#)

[2018 Performance Update - Environment & Economy O&S](#)

[2019 Performance Update - Environment & Economy O&S](#)

2020 No report due to COVID

[2021 Business Plan – Overview & Scrutiny Committee](#)

## 3. Board Memberships

3.1 BCP Councillors on the main and subsidiary boards:

### **BH Live Board (main)**

Councillor Stephen Bartlett and Councillor Mohan Iyengar  
Councillor John Beesley (Board Observer)

### **BH Live Enterprises Board (subsidiary):**

Councillor Stephen Bartlett and Councillor Jackie Edwards

- 3.2 These appointments were originally set up to provide the Council with some measure of influence over decision-making and insight into BH Live's position and direction, whilst respecting its organisational independence. Members are selected to the Boards through the Nomination process.
- 3.3 The COVID pandemic highlighted the potential conflicts of interest that Councillors holding positions on the BH Live Board and its subsidiaries may face, where they have a duty to act in the best interests of the company or trust, but also have a duty to the Council and BCP residents.
- 3.4 The Committee may wish to consider the potential conflict and to make such recommendations as it sees fit to Cabinet on whether Councillors should continue to undertake roles as Members of the Boards of BH Live and BH Live Enterprises.
- 3.5 Another consideration is whether to continue with the role of Board Observer. The Observer does not have an official role on the board but attends meetings and reports back informally to the Leader of the Council and Portfolio Holder. The role was created to strengthen governance arrangements during a period of immense change and Covid-19 and helps to facilitate co-operation and understanding between the organisations. Going forward, and as things settle down this has the potential to blur the lines of accountability and communication between the Councils contract management officer function, board members and the role of BCP Councillors.

#### **4. Summary of Financial Implications**

- 4.1 BH Live was established to not only deliver a wide range of services to the community, but to make substantial financial savings on Business rates and VAT etc for the Council through its Charitable status.
- 4.2 The contract provides for an annual service fee to be paid by BH Live to the Council, reviewed every three years and adjusted for RPI and efficiency provisions. The fee started at £439k in 2010/11, in 2014/15 was £941k and rose considerably to £1.8 million in 2019/20.
- 4.3 Due to the significant impact of COVID the Council agreed to a financial support package for BH Live. The package and the agreement for future service fees (2021-2024) has considerable resource implications for BCP Council and is intended to help the reserves to be rebuilt after being decimated by COVID closures.
- 4.4 Joint management of assets is undertaken in accordance with each parties' obligations under the lease. BCP asset maintenance is guided by the contract management arrangements laid out in section 2.7 and co-ordinated by the Property FM Team. with an annual budget allocation of approx. £0.5m/yr.
- 4.5 The Chief Executive for BH Live will be present at the meeting and will be able to provide an update on their trading and commercial position, however it is likely this will need to be held in private session due to the sensitive nature of the information.

#### **5. Summary of Legal Implications**

- 5.1 Provision of leisure centres is not a statutory duty for the Council, however a reduction in provision will lead to a consequential negative impact on the wellbeing of residents which may increase demand for other Council services.
- 5.2 Before accepting an appointment to an outside body, councillors should check the legal status of the organisation to which it is proposed they are appointed, the capacity in which they are to be appointed, the purpose of the appointment / organisation and how this relates to the Council's functions and objectives, the relationship between the Council and the body, and the likelihood and extent of any conflicts of interest.
- 5.3 Councillors should also bear in mind the requirements of the relevant organisation's governing instrument, e.g. the articles of association, the financial status of the organisation (and the additional risks which can arise where an organisation is facing financial difficulties), its governance and decision-making arrangements, including the management of risk, any potential liabilities and whether they will be insured against any such liabilities (beyond any statutory immunity).
- 5.4 Councillors should also be mindful of the fact that whilst conflicts of interest may be authorised in some contexts (e.g. the directors in a private limited company may authorise them to vote on a matter notwithstanding a conflict), conflicts of interest cannot be authorised in the same way in a public law context. Should a potential conflict of interest arise, the councillor should seek advice from the Monitoring Officer. If a conflict is identified and / or there is a real risk of the decision being challenged on grounds of predetermination or bias, then they will need to declare the conflict of interest and may be advised not to participate in the vote depending on the nature and extent of the conflict.
- 5.5 Councillors must also always comply with the Council's Code of Conduct and there may be circumstances where their duties under the code are inconsistent with their duties in their role as appointee to an external body (e.g. a director must act in the best interests of a company whereas the Code of Conduct would require a councillor to uphold the Nolan principles). Again, should any concerns arise in that regard, the councillor should seek the advice of the Monitoring Officer.

## **6. Summary of Human Resources Implications**

- 6.1 Although not a statutory service, councils play a strategic role in determining and driving local economic priorities to increase economic growth, job creation and make local areas attractive places to live and work.
- 6.2 BH Live is a major local employer with 1300 staff (pre-COVID) within the BCP Council area representing over 250 full time equivalent jobs.

## **7. Summary of Sustainability Impact**

- 7.1 This report focuses on the governance of BHLive and whilst this has no direct impact on sustainability it should be noted that the buildings BHLive operate on the Council's behalf use high levels of energy for heat, light and air conditioning and there is an opportunity to improve the building energy efficiency through future investment and good governance.

## **8. Summary of Public Health Implications**

- 8.1 The facilities and services provided at leisure centres form a vital part of the BCP Council area's leisure, sports and cultural infrastructure and support the strategic priorities of the Council. They enable residents and visitors to lead active healthy & enriched lifestyles, participate in a wide range of activities and play a key role through direct initiatives such as exercise referral schemes. As such, any changes to provision can have implications on public health and well-being which should be considered as part of decision making.

## **9. Summary of Equality Implications**

- 9.1 Given this report focusses on the governance issues there are no direct equalities issues.
- 9.2 The BHLive website gives details of the management team the board members and the Gender pay gap report.

## **10. Summary of Risk Assessment**

- 10.1 Improving the contractual relationship with BH Live and ensuring that appropriate levels of governance are in place to monitor, influence and support future performance and service development supports the Council's commitment to helping residents lead active and fulfilled lives.

### **Background Papers**

1. 15<sup>th</sup> January 2020 - Cabinet minutes - Review of Leisure Centre Management  
LINK:  
<https://democracy.bcpCouncil.gov.uk/ieListDocuments.aspx?CIId=285&MIId=3725&Ver=4>
2. 30<sup>th</sup> July 2020 – Audit & Governance Committee minutes - Review of BH Live Contractual and Governance Arrangements. LINK:  
<https://democracy.bcpCouncil.gov.uk/documents/g4352/Public%20reports%20pack%2030th-Jul-2020%2018.00%20Audit%20and%20Governance%20Committee.pdf?T=10>
3. Officer decision in respect of the covid financial support package for BH Live  
<https://democracy.bcpCouncil.gov.uk/documents/s22069/Officer%20Decision%20Record.pdf>
4. 14<sup>th</sup> April 2021 Cabinet minutes – Management and Development of Leisure Centres. LINK:  
<https://democracy.bcpCouncil.gov.uk/documents/s24326/Management%20Development%20of%20Leisure%20Centres.pdf>

### **Appendices**

1. 30<sup>th</sup> July 2020 – Audit & Governance Committee Report - Review of BH Live Contractual and Governance Arrangements