



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Governance and Audit Committee

24 January 2024

Report of Councillor Philip Knowles,
Cabinet Member for Corporate
Governance and Licensing

LeisureSK Limited – Board of Directors

Report Author

Graham Watts, Assistant Director (Governance and Public Protection) and Monitoring Officer

 Graham.watts@southkesteven.gov.uk

Purpose of Report

The Governance and Audit Committee is requested to consider a recommendation from the Culture and Leisure Overview and Scrutiny Committee regarding a 'Vote of No Confidence' in the Board of Directors.

The Governance and Audit Committee is also requested to consider making appointments to the Board of Directors further to the resignations of Councillor James Denniston, Councillor Charmaine Morgan and South Kesteven District Council Corporate Director Nicola M^cCoy-Brown.

Recommendations

That the Governance and Audit Committee:

1. Considers a 'Vote of No Confidence' in the Board of LeisureSK Ltd recommended by the Culture and Leisure Overview and Scrutiny Committee.
2. Considers making appointments to the Board of Directors on LeisureSK Limited to vacancies on the Board.

3. **Recommends an amendment to the Council’s Constitution, for clarity, to include the removal of Directors of Council-owned Companies under the terms of reference of the Council’s Governance and Audit Committee.**

Decision Information	
Does the report contain any exempt or confidential information not for publication?	No
What are the relevant corporate priorities?	Growth and our economy Healthy and strong communities
Which wards are impacted?	All wards

1. Implications

Taking into consideration implications relating to finance and procurement, legal and governance, risk and mitigation, health and safety, diversity and inclusion, safeguarding, staffing, community safety, mental health and wellbeing and the impact on the Council’s declaration of a climate change emergency, the following implications have been identified:

Finance

- 1.1 There are no financial implications arising from this report. Directorships of Council-owned companies do not offer any remuneration.

Completed by: Richard Wyles, Chief Finance Officer

Legal and Governance

- 1.2 It is strongly recommended that Cabinet Members or Statutory Officers of the Council are not appointed as Directors of Council-owned companies given their roles on ‘Council-side’ decision-making and the personal responsibilities Statutory Officers hold in the interests of the authority.
- 1.3 The Articles of Association for LeisureSK Ltd provide the Council with the ability to appoint and remove Directors from its Board. The Council’s Constitution is silent on the removal of Directors to Council-owned companies, with provision for appointments being included within the terms of reference for the Governance and Audit Committee. There is currently no alternative provision in the Constitution to remove Directors, which is contradictory to the Articles of Association for LeisureSK Limited. Given that the Governance and Audit Committee has the power to appoint Directors, it is reasonable to expect that the Governance and

Audit Committee also has the power to remove Directors in accordance with the Articles of Association for LeisureSK Limited. To ensure clarity, the Committee is recommended to consider rectifying this in the Council's Constitution.

- 1.4 The requirements of the Companies Act 2006 in respect of company Directors is set out in the body of the report.

Completed by: Graham Watts, Assistant Director (Governance and Public Protection) and Monitoring Officer

2. Background to the Report

- 2.1 Three vacancies have recently arisen on the Board of the Council-owned company, LeisureSK Limited, in addition to a vacancy which has not been filled by the South Kesteven Coalition Group since the beginning of the municipal year. The Governance and Audit Committee is requested to consider making appointments to fill these vacancies.
- 2.2 The Governance and Audit Committee is also invited to consider a 'Vote of No Confidence' in the existing Board of LeisureSK Ltd from the Culture and Leisure Overview and Scrutiny Committee.

3. Key Considerations

- 3.1 Councillors James Denniston, Charmaine Morgan and Nicola M^cCoy-Brown have resigned from the Board of LeisureSK Limited. Debbie Roberts (The Council's Head of Corporate Projects, Performance and Climate Change), who was only appointed to the Board on 29 November 2023, and David Monkhouse (Non-Executive Director) continue to oversee the operational and financial performance of the company as existing Directors. The Company is currently quorate in accordance with the provisions of the Companies Act 2006 and its own Articles of Association, which specify that at least one Director must be appointed to the Board. The quorum for meetings of Directors, where decisions can be taken relating to the Company, is two Directors.
- 3.2 A vacancy for a Councillor from the South Kesteven Coalition Group was still in place at the last meeting of the Governance and Audit Committee. At that meeting, a period of two weeks was provided in order for the vacancy to be filled by the SK Coalition Group via delegated authority granted to the Group Leader earlier in the year. No appointment from the South Kesteven Coalition Group was made during this period, so this vacancy remains on the Board, together with the three further vacant Director positions. This means that there are currently four vacancies on the Board.
- 3.3 The Governance and Audit Committee is therefore invited to consider any nominations for appointment to the Board of LeisureSK Limited.
- 3.4 The Council's Culture and Leisure Overview and Scrutiny Committee considered an item on LeisureSK Limited at its meeting on 9 January 2024 and agreed to

submit a 'vote of no confidence' in the Board to the Governance and Audit Committee. This was in response to a request for an additional management fee from the Council and concerns regarding the company's management and performance. The Governance and Audit Committee is invited to give due consideration to the 'Vote of No Confidence'.

- 3.5 It should be noted that James Denniston resigned from the Board prior to the Cultural and Leisure Overview and Scrutiny Committee's 'Vote of No Confidence', whereas Councillor Charmaine Morgan and Nicola M^cCoy Brown confirmed their resignations subsequent to the Overview and Scrutiny Committee.
- 3.6 Under the Companies Act 2006 a private company must have at least one Director. The Articles of Association for LeisureSK Ltd also specify that the minimum number of Directors for the company is one, however, a quorum for any Directors' meetings is two. In circumstances whereby a quorum cannot be achieved for a meeting of Directors, no decisions can be taken by the Directors of the company.
- 3.7 Should the Governance and Audit Committee take a decision to remove all Directors from the LeisureSK Ltd Board without appointing at least one Director in their place, the company will be in breach of some of the provisions of the Companies Act 2006 relating to Directors. This would make it extremely difficult for the company to be able to operate, with no Directors in place to manage the company's day to day affairs. The company would also be unlikely to be able to comply with any of its contractual or statutory obligations.
- 3.8 A company with no Directors would therefore be in breach of the Companies Act 2006 and the Secretary of State could make a direction under Section 156 of the Act. The direction would specify:
- The statutory requirement the company appears to be in breach of;
 - What the company must do in order to comply with the direction;
 - The period within which the company must comply with the direction;
 - The consequences of the company failing to comply with the direction.
- 3.9 It should be noted that the Council's Statutory Officers would not automatically take over responsibility for the company should no Directors be appointed and it is strongly recommended that they do not intervene in the company.

4. Other Options Considered

- 4.1 The Governance and Audit Committee could opt not to make further appointments to the Board of LeisureSK Limited.
- 4.2 The Governance and Audit Committee could remove Directors from the Board of LeisureSK Limited. In such a scenario, the Committee is strongly recommended to ensure that a sufficient number of replacement Directors are appointed to ensure that the company is quorate and not in breach of the Companies Act 2006.

5. Reasons for the Recommendations

- 5.1 To ensure that LeisureSK Limited is properly constituted in terms of Board membership in order that it is quorate, can take decisions and operate in accordance with the Companies Act 2006 and its Articles of Association.