



WARRINGTON Borough Council



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Report Supporting the Call-in of Cabinet's Decision (Forward Plan No. 040/22)

The decision relates to a Grant and an Increased Annual Management Fee for LiveWire CIC

Thursday 19 January 2023, Report Version 2

Supporting Councillors: **Carol Benson** (Culcheth, Glazebury & Croft); **Kath Buckley** (Lymm South); **Ghazala Chapman** (Appleton); and **Rob Tynan** (Rixton & Woolston)

Contents

- 1 PURPOSE
- 2 CONFIDENTIAL OR EXEMPT
- 3 INTRODUCTION AND BACKGROUND
- 4 ACCESS TO INFORMATION
- 5 SUBSIDY CONTROL ACT 2022
- 6 CALL-IN ASSESSMENT
- 7 TRANSPARENCY
- 8 FINANCIAL CONSIDERATIONS
- 9 RISK ASSESSMENT
- 10 EQUALITY AND DIVERSITY / EQUALITY IMPACT ASSESSMENT
- 11 CONSULTATION
- 12 RECOMMENDATION
- 13 BACKGROUND PAPERS

1 PURPOSE

- 1.1 To present to the Scrutiny Committee a summary of information regarding Cabinet's decision (Forward Plan No. 040/22) and provide recommendations, based on a new analysis of the details, which can be passed back to Cabinet if required.

2 CONFIDENTIAL OR EXEMPT

- 2.1 This report is not exempt or confidential.

3 INTRODUCTION AND BACKGROUND

- 3.1 This call-in relates to a decision involving financial support for two separate organisations, LiveWire CIC and Culture Warrington. It would have been better to have considered these two decisions separately; this call-in relates to the LiveWire component of the decision. If the recommendations of this call-in are accepted, then Cabinet should reconsider its decision as two separate items.
- 3.2 Section 6 in Cabinet's Part 1 report suggests that key elements of a Restructuring Plan are available; however, this is contradicted elsewhere. The reality is that the decision to subsidise and restructure LiveWire provides no details of the mandatory Restructuring Plan nor does it specify the amount of subsidy grant.
- 3.3 The contradictions between Section 6 and the rest of the report might lead a reader to wonder if a Restructuring Plan was due to be available but was not ready in time.
- 3.4 To show democratic accountability, both the Restructuring Plan and the amount of the grant should have been made clear before Cabinet's decision was made.
- 3.5 The timeline of the call-in is as follows:

Date	Event
Mon 9 January 2023	Cabinet decides to give a new grant to LiveWire and increase the value of LiveWire's annual management fee
Tue 10 January 2023	Decision is called-in by Cllrs Balding, Benson, Jervis, Critchley
Thu 19 January 2023	Date of this report
Mon 30 January 2023	Date scheduled for the Scrutiny Committee meeting

4 ACCESS TO INFORMATION

- 4.1 The Cabinet meeting of 9 January 2023 dealt with this decision in two parts. A Part 1 report was presented to Cabinet in a public meeting which was broadcast at the time and is available to view on the WBC website.
- 4.2 At the discretion of the Chair, it is usual for Borough Councillors to be permitted to attend the Part 2 meeting on the understanding that they accept its confidential nature. On 9 January 2023 all councillors who were not members of Cabinet, including the Leader of the Opposition, were required to leave the room before Part 2 of the meeting.

5 SUBSIDY CONTROL ACT 2022

5.1 The Cabinet decision delegates authority for the approval of a grant, to be drawn down as per need and subject to compliance with the Subsidy Control Act (SCA). This might seem like a practical measure, avoiding Cabinet going into the details of the decision, but there are problems with this; (1) Cabinet is not properly informed about the decision it is taking, (2) delegated officers don't yet have a plan to comply with the SCA and (3) The terms and conditions applicable to the grant and the management fee increase are not specified in the Cabinet papers.

5.2 More information is available on the Subsidy Control Act 2022 through the following links. The Act can be viewed here:

<https://www.legislation.gov.uk/ukpga/2022/23/enacted>

The Statutory Guidance for the United Kingdom Subsidy Control Regime is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117122/uk-subsidy-control-statutory-guidance.pdf

- 5.3 Although there is much to read in the legislation and guidance, the principles of the Subsidy Control Act are relatively simple and are stated as follows:

Principle A: Subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).

Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.

Principle C: Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy.

Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.

Principle E: Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.

Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition and investment within the United Kingdom.

Principle G: Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on competition and investment within the United Kingdom, and international trade and investment.

6 CALL-IN ASSESSMENT

- 6.1 In assessing whether to request a call-in of a Cabinet decision, there are a limited number of reasons that can be used in WBC. The following paragraphs are grouped by the allowable call-in reasons provided in this request. Each paragraph suggests a separate justification for Scrutiny Committee Members to refer this item back to Cabinet.

Due consultation and the taking of professional advice from officers.

- 6.2 Expert legal advice is required to adhere to the requirements of the Subsidy Control Act (SCA) and this advice cannot be given to Cabinet without a Restructuring Plan.
- 6.3 Expert financial advice is also required before making this decision and this advice cannot be given to Cabinet without a Restructuring Plan.

- 6.4 According to its Annual Report, LiveWire has over 400 employees and the report to Cabinet suggests that no consultation has taken place with the employees of LiveWire. This is a serious omission and WBC should regard consultation as good practice when considering a Restructuring Plan.

A presumption in favour of openness.

- 6.5 Given the potential size and duration of the additional financial support to LiveWire, the lack of transparency and openness is both inappropriate and unjustified.
- 6.6 The scale of the proposed grant requires disclosure in the Part 1 papers. The SCA requires that WBC must publish details of any grant, including the amount. Not being open about this now invites criticism of the council and may cause delays in reaching the end of the necessary consultation process.

Clarity of aims and desired outcomes.

- 6.7 Without details of the planned restructure for LiveWire there can be no understanding of the required outcome.
- 6.8 The aims are not clear.

Having considered the financial implications and any risk involved in the decision.

- 6.9 A proposed value for the subsidy of LiveWire is not given, just a maximum amount. Hence the financial implications cannot be described as “considered” by Cabinet.
- 6.10 The necessary Restructuring Plan for LiveWire has not been prepared, nor has an assessment of the SCA Section 20 Requirements.
- 6.11 Without a Restructuring Plan there can be no certainty that the amount of subsidy is appropriate. The LiveWire contract is not renewable until 2027, so if the subsidy is over-generous then funds will have been earmarked away from more needy causes within the Borough; if the subsidy is not enough, then further subsidies are not allowed for five years, putting LiveWire at risk again.

Having explained what if any viable options were considered.

- 6.12 Viable options for supporting Warrington’s Leisure Services have not been considered. There are two significant options in the following paragraphs, but there may be others. Within each option there are a series of significant choices which impact Health and Leisure Services which should also be considered (“optioneered”).
- 6.13 One alternative option is to bring the LiveWire services “in house” so that WBC would take over running the LiveWire services, as it did in 2012. The financial implications for this alternative option have not been specified or discussed in the report put to Cabinet.
- 6.14 Another alternative is to tender the services of LiveWire. This would confirm the costs and scope of services that could be provided by other suppliers.

Giving reasons for the decision.

- 6.15 Insufficient reasoning has been given to justify the specific levels of financial support proposed. Warrington's residents need to be assured that these significant proposals are a good use of their Council Tax payments.
- 6.16 The proposed maximum amount of a grant to LiveWire is not made public, although a figure is given to Cabinet as part of its decision. This has an obvious problem with lack of openness, particularly as the actual figure must be disclosed before the subsidy can be made. In addition, it increases the period of uncertainty for challenge of the subsidy. Organisations who may wish to challenge any subsidy have a limited period in which to do so.

Note: An interested party generally has one calendar month to apply to the Tribunal for a review of the subsidy or scheme. A calendar month runs from the relevant date: that is, the date the subsidy is uploaded to the government database, or the date the interested party first knew, or ought to have known, of the subsidy decision. This period of uncertainty cannot start until the subsidy details including the amount are disclosed.

7 TRANSPARENCY

- 7.1 Statutory Guidance for the UK Subsidy Control Regime provides guidance on Transparency (Chapter 12) states.
- *Subsidy transparency is a fundamental part of the UK's subsidy control regime. Most importantly, subsidy transparency is needed to enable interested parties to view subsidies to decide if they want to challenge a subsidy before the Competition Appeal Tribunal where the interested party believes the subsidy may not meet the subsidy control requirements. This promotes open and fair competition across the UK's internal market.*
 - *In addition, transparency promotes accountability and enables the public to see how public money is spent. This is expected to result in better subsidy design and improved policy decisions.*
 - *The transparency rules require public authorities to upload details of both subsidy schemes and subsidy awards to the subsidy database. Transparency obligations apply regardless of any information that a beneficiary believes is commercially sensitive. Public authorities should consider reminding potential subsidy beneficiaries of the transparency obligations in this context. This will ensure that beneficiaries are aware that any information which they may consider commercially sensitive may have to be uploaded.*
 - *Public authorities have a statutory duty to upload details of the subsidies they provide. In addition, the sooner a subsidy is made transparent the sooner the limitation period on judicial review on subsidy control grounds will finish – that is, the sooner the public authority uploads details of a subsidy, the sooner there will be legal certainty that the subsidy cannot be challenged on subsidy control grounds. Public authorities may therefore wish to make accurate database entries for subsidies well in advance of the statutory deadline.*
- 7.2 As details of the subsidy must be made publicly available there is no justification for not including these details in the decision-making process.

8 FINANCIAL CONSIDERATIONS

- 8.1 Cabinet's decision increases the Annual Management fee paid to LiveWire from a certain amount £XXXX. The increase is £1,328,000 per annum and there is a one-off grant with a maximum value of a certain amount £YYYY.

9 RISK ASSESSMENT

- 9.1 Although there is a discussion of legal risks, the reports to Cabinet on the LiveWire decision do not provide a broad analysis of other risks. This is a technique often used by WBC for significant decisions. WBC uses a tabular format to present this analysis including the perceived levels of risk, seriousness, and possible mitigations. The Items below describe some risks that could have been included in a Risk Assessment table. A full analysis by officers would provide a more comprehensive set for consideration before making a Cabinet decision.

- 9.1.1 The increased management fee for LiveWire may not be enough to cover increased costs for the next five years. One reason given for the requirement to increase the annual LiveWire management fee is that costs have increased with inflation and the management fee is fixed. Consideration could be given to linking the management fee in some way to inflation, the national living wage, or another appropriate index but this is not discussed.
- 9.1.2 The one-off grant to LiveWire may be too much or not enough, either putting LiveWire at financial risk or not achieving good value-for-money. A figure for the one-off grant needs to be settled (not just a maximum value) and it should be justified in a published Restructuring Plan.
- 9.1.3 COVID-19 or other health emergency.
- 9.1.4 The number of LiveWire memberships is variable depending on:
the underlying demand for fitness and leisure services;
the affordability of the services; and
the competitive offers available in Warrington.

To mitigate against the chances of being uncompetitive, WBC could consider tendering LiveWire's Membership Services as a check-and-balance on whether Warrington is getting the best value for residents.

- 9.1.5 Failure to find a route to suitably re-structure LiveWire risks a decline in healthy lifestyles in Warrington, resulting in increased costs to treat ill-health for WBC. This would go against WBC's first core pledge "*Our residents live healthy, happy and independent lives*". Investment in health messages provides viability benefits to LiveWire and other local fitness providers.
- 9.1.6 Delay in providing financial support to LiveWire may put at risk the immediate services delivered by LiveWire (including statutory services) but this is not discussed.
- 9.1.7 The decision to allow LiveWire to participate in WBC's energy procurement scheme risks the Council being open to challenge that this is a hidden subsidy if other

organisations are not also given this opportunity. Details of the scheme should be made available for scrutiny.

9.1.8 Livewire is a significant user of gas and a large contributor to Warrington's Carbon footprint. WBC chooses not to count this as part of its own carbon footprint even though it owns LiveWire buildings. This is an opportunity for a Restructuring Plan to consider new options to address climate change with an action plan for leisure facilities. The risk is that WBC will not meet its Climate Emergency strategy.

9.1.9 The inadequate scrutiny by Cabinet of WBC decisions, due to those decisions being over-delegated, risks the imposition of a poor Restructuring Plan that is very unpopular with residents.

10 EQUALITY AND DIVERSITY / EQUALITY IMPACT ASSESSMENT

10.1 The provision of health services, to which LiveWire contributes, is a key part of WBC's work to address many issues associated with equality and diversity within Warrington. This gives even more reason to ensure that Cabinet's decision is made properly and with full details of the facts.

11 CONSULTATION

11.1 Conservative Councillors are very grateful for briefings with officers. Any inaccuracies or incompleteness in this report are the responsibility of the author.

12 RECOMMENDATION

12.1 A grant cannot be provided to LiveWire until a Restructuring Plan is agreed so, if for no other reason, it seems sensible for Cabinet to delay its decision on Forward Plan No. 040/22.

12.2 It is recommended that the WBC Scrutiny Committee asks Cabinet to reconsider its decision, taking into consideration the points made in this report.

13 BACKGROUND PAPERS

13.1 More information is available on the Subsidy Control Act 2022 through the following links. The Act can be viewed here:

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13.2 The Statutory Guidance for the United Kingdom Subsidy Control Regime is available here:

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