

Corporate Governance and Standards Committee Report

Ward(s) affected: n/a

Report of Director of Resources

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## **Review of various Corporate Governance and Standards related matters:**

- **Councillors' Code of Conduct**
- **Social Media Guidance for Councillors**
- **Best Practice Recommendations of the Committee on Standards in Public Life**

### **Executive Summary**

Arising from a number of concerns raised by councillors since the 2019 elections in relation to ethical standards, communications, and transparency, the Committee at its meeting in November 2019 established a cross-party task group, including a co-opted parish representative and an independent member of this Committee, with a wide remit to consider, review and make recommendations in respect of these matters.

The terms of reference of the Task Group, which were reviewed by the Committee at its last meeting, are as follows:

To examine, review, and report back initially to this Committee on the following matters:

- (a) the Councillors' Code of Conduct, including the policy on acceptance of gifts and hospitality by councillors;
- (b) the 15 best practice recommendations of the Committee on Standards in Public Life contained within its Report on *Local Government Ethical Standards*
- (c) the Council's guidance on the use of social media by councillors;
- (d) the revised draft Protocol on Councillor/ Officer Relations
- (e) the effectiveness of internal communications between officers and councillors; and
- (f) proposals to promote transparency, and effective communications and reporting, including the Council's Communications Protocol.
- (g) review of anomalies in the Constitution

The Task Group currently comprises:

- Councillor Deborah Seabrook (chairman)
- Councillor Liz Hogger
- Councillor Ramsey Nagaty
- Councillor Nigel Manning
- Councillor James Walsh
- Mr Murray Litvak (co-opted independent member of this Committee)
- Julia Osborn (co-opted parish representative)

The Task Group has met on six occasions since it was established and has considered and reviewed (a) to (d) above, although at the time of writing this report, the Task Group had not finalised its review of the Protocol on Councillor/Officer Relations.

This report therefore addresses and makes recommendations on the review of:

- the Councillors' Code of Conduct,
- the Social Media Guidance for Councillors, and
- the 'Best Practice Recommendations' of the Committee on Standards in Public Life

Some of the recommendations can only be agreed by full Council or the Executive, whilst others can be agreed by this Committee. The recommendations are listed below.

#### **Recommendation to Council** (6 October 2020)

- (1) That the draft revised Councillors' Code of Conduct, as set out in **Appendix 3** to this report, be adopted and implemented with immediate effect (this incorporates CSPL Best Practice Recommendations 1 and 2).
- (2) That parish councils in the borough be invited to consider adopting at the earliest opportunity the revised Code of Conduct set out in **Appendix 3**, with such modifications as they deem necessary.
- (3) That the Monitoring Officer be authorised to prepare, maintain and make available for inspection at the Council's offices and online a revised register of councillors' interests to comply with the requirements of the Localism Act 2011 and of the Council's revised code of conduct.
- (4) That the Council agrees that the code of conduct should normally be reviewed every four years during the year following the Borough Council Elections, with any such review involving formal consultation with parish councils within the borough (CSPL Best Practice Recommendation 3 refers).
- (5) That the Council's Arrangements for Dealing with Allegations of Misconduct by Councillors ("the Arrangements") be amended as follows:
  - (a) paragraph 7.3 (g) iii) to read: "Whether the complaint appears to be *trivial*, malicious, vexatious, politically motivated or 'tit-for-tat'"
  - (b) paragraph 7.4 (6) to read: "The complaint appears to be *trivial*, malicious, vexatious, politically motivated or 'tit-for-tat'"

- (c) paragraph 7.10 to read: “The decision of the Monitoring Officer, or Assessment Sub-Committee (as the case may be) shall be recorded in writing, and a decision notice will be sent to the Complainant and the Subject Member within 10 working days of the decision. *The Independent Person shall be given the option to review and comment on allegations which the Monitoring Officer (or Assessment Sub-Committee) is minded to dismiss as being without merit, vexatious, or trivial.* The decision notice will summarise the allegation, give the decision of the Monitoring Officer or Assessment Sub-Committee, and the reasons for their decision. There is no right of appeal against the decision of the Monitoring Officer or Assessment Sub-Committee.”
- (d) Substitute the following in place of paragraph 31 of Appendix 3 to the Arrangements (Procedure and Powers of the Corporate Governance and Standards Committee and Hearings Sub-Committee): “*The Monitoring Officer will also arrange for a decision notice to be published as soon as possible on the Council’s website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied..*”

(CSPL Best Practice Recommendations 2, 8, and 9 refer).

- (6) That no change be made to the Arrangements in respect of CSPL Best Practice Recommendation 6: that councils should publish a clear and straightforward public interest test against which allegations are filtered.
- (7) That the Council notes that the role of the Monitoring Officer includes providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority, and agrees that the Monitoring Officer should be provided with adequate training, corporate support and resources to undertake this work (CSPL Best Practice Recommendation 12 refers).

#### **Recommendation to Executive (22 September 2020)**

- (1) That the draft revised Social Media Guidance for Councillors, as set out in **Appendix 4** to this report, be adopted.
- (2) That the Council should report on separate bodies it sets up or which it owns (e.g. Guildford Borough Council Holdings Limited and North Downs Housing Limited) as part of the annual governance statement, and that such bodies should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place (CSPL Best Practice Recommendation 14 refers).

#### **Recommendation to Committee**

- (1) That the Council’s code of conduct be readily accessible to both councillors and the public in a more prominent position on the Council’s website and available for inspection at the Council offices (CSPL Best Practice Recommendation 4 refers).
- (2) That, notwithstanding the duty of all councillors to ensure that their register of interests (including gifts and hospitality) is kept up to date, the Democratic Services and Elections Manager be requested to prompt councillors to review their register of

interests on a quarterly basis (CSPL Best Practice Recommendation 5 refers).

- (3) That the Committee notes that, by having a shared pool of seven Independent Persons jointly appointed by Guildford and six other Surrey councils for the four-year period 2019-23, the Council complies fully with CSPL Best Practice Recommendation 7: Local authorities should have access to at least two Independent Persons.
- (4) That the Monitoring Officer be requested to provide an indicative estimate of timescales for investigations and outcomes within the guidance on the Council's website in respect of making a complaint under the Councillors' Code of Conduct (CSPL Best Practice Recommendation 10 refers).
- (5) That the Committee agrees that CSPL Best Practice Recommendation 11: "Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances" is a matter for individual parish councils, but that there should be no impediment for a clerk to make a formal complaint about the conduct of a parish councillor.
- (6) That the Councillor Development Steering Group be requested to look at extending training opportunities to parish councils wherever possible and encouraging parish councillors' attendance at any such opportunities in the future (CSPL Best Practice Recommendation 12 refers).
- (7) That the Committee notes that by having procedures already in place in the Council's Arrangements to address any conflicts of interest that might arise when undertaking a standards investigation, the Council complies fully with CSPL Best Practice Recommendation 13.
- (8) That the Committee notes that by having frequent meetings with political group leaders where the Managing Director is able to discuss various matters including, where necessary, ethical standards issues, the Council complies fully with CSPL Best Practice Recommendation 15.

Reasons for Recommendation:

- To address various corporate governance and ethical standards related concerns raised by councillors.
- To address the 15 Best Practice Recommendations of the Committee on Standards in public Life in their report *Local Government Ethical Standards (January 2019)*

**Is the report (or part of it) exempt from publication? No**

**1. Purpose of Report**

1.1 To report to the Committee on the outcome of the consideration by the Corporate Governance Task Group of the review of:

- the Councillors' Code of Conduct (see paragraph 4 below),

- the Social Media Guidance for Councillors (see paragraph 5 below), and
- the 15 Best Practice Recommendations of the Committee on Standards in Public Life (see paragraph 6 below),

## **2. Strategic Priorities**

- 2.1 The work undertaken by the Task Group will assist the Council in achieving its value of being open and accountable to our residents.

## **3. Background**

- 3.1 At its meeting on 28 March 2019, this Committee received the Monitoring Officer's Annual Report on allegations of misconduct against borough and parish councillors for 2018. Part of that report included reference to recommendations contained in a report published by the Committee on Standards in Public Life (CSPL) on *Local Government Ethical Standards*<sup>1</sup>. Although some of the recommendations required primary legislation to implement the changes sought, the CSPL also put forward a number of best practice recommendations for local authorities to consider which did not require changes in the law. The Committee noted that the Council already complied, or partially complied, with some of the best practice recommendations and authorised the Monitoring Officer to take the necessary steps to ensure compliance with them and submit reports as appropriate to this Committee in due course.
- 3.2 Following the Borough Council elections in May 2019, the Council at its meeting on 8 October 2019, adopted a motion which, amongst other matters, requested the establishment of a task group to examine the effectiveness of internal communications and promote transparency. The Committee, at its meeting in November 2019, set up its own task group to review the Best Practice Recommendations, review the work undertaken by a previous task group which conducted a separate review of the Protocol on Councillor/Officer Relations, and also to undertake the work agreed by the Council.
- 3.3 The cross party task group comprising a representative from each political group on the Council plus a co-opted independent member and a co-opted parish representative on the Committee has met on six occasions since it was established and has considered and completed its review of the Councillors' Code of Conduct, the Social Media Guidance for Councillors, and the Best Practice Recommendations.

## **4. Review of the Councillors' Code of Conduct**

- 4.1 Local authorities, including parish councils, have a duty, under s.27 Localism Act 2011, to promote and maintain high standards of conduct by their members and co-opted members. In discharging this duty, a council must adopt a code dealing with the conduct that is expected of its members and co-opted members when they are acting in that capacity.

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<sup>1</sup> <https://www.gov.uk/government/publications/local-government-ethical-standards-report>

4.2 Under s28(1) of the 2011 Act, the code is required, when viewed as a whole, to be consistent with the following principles:

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

4.3 Furthermore, the 2011 Act requires a council to secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration and disclosure of:

- (a) pecuniary interests, and
- (b) interests other than pecuniary interests.

4.4 Prior to the 2011 Act, all councils were required to adopt a Model Code of Conduct. This Council adopted its current code of conduct in July 2012, and subsequently made some minor amendments in 2014. It has not been reviewed since then. One of the Best Practice Recommendations contained in the CSPL's report referred to above, was that councils should frequently review their codes of conduct. The review of Guildford's code of conduct is, therefore, long overdue.

#### Parish Councils

4.5 Currently, there is no statutory requirement for parish councils to adopt the same, or substantially the same, code of conduct as the principal authority (the Borough Council). When the Council adopted the current code in 2012, all parish councils within the borough were invited to, and most did, adopt the GBC Code of Conduct, with appropriate amendments. Having a uniform code of conduct across all parish councils ensures a consistent approach with clearly defined expectations of conduct and greatly assists the Monitoring Officer when dealing with allegations of misconduct by parish councillors.

4.6 One of the CSPL's recommendations to Government referred to in their report was to amend Section 27(3) of the Localism Act 2011 to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code<sup>2</sup>.

#### Task Group's consideration of the proposed revised Code of Conduct

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<sup>2</sup> CSPL has also recommended that the LGA updates a national Model Code of Conduct that councils could consider adopting.

- 4.7 In reviewing the Code, the Task Group considered those Best Practice Recommendations suggested by the CSPL (nos.1 to 5), which were directly relevant to codes of conduct, notably Recommendation 1:

*“Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition”.*

- 4.8 In addition, following research by officers, the Task Group reviewed examples of other councils’ codes of conduct particularly in respect of matters covered by other codes which were not currently included in Guildford’s.
- 4.9 In considering the revised Code, the Task Group has tried to avoid being overly prescriptive. The CSPL in its report acknowledges that codes of conduct “cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be ‘legalistic’ in tone, or overly technical in style<sup>3</sup>.” However, the Task Group were also keen to encourage robust challenge from councillors provided always that, in so doing, they conduct themselves in a respectful manner.
- 4.10 Following consideration of proposed revisions to the Code of Conduct which now include:
- a definition of “bullying” and “harassment” and examples of behaviour covered by such definitions,
  - a new requirement for councillors to register and declare non-pecuniary interests, and
  - revisions to the section of the Code dealing with Gifts and Hospitality

the Task Group agreed to consult all borough councillors and all parish councils on the proposed revisions. The consultation took place from 5 March to 31 May 2020. Summaries of the responses received from councillors and parish councils are attached respectively as **Appendices 1 and 2**.

- 4.11 The Task Group met on 24 June 2020 to consider the responses and made further revisions to the Code. A copy of the revised draft Code of Conduct, as now proposed by the task group, is set out in **Appendix 3**.

## **5. Review of the Social Media Guidance for Councillors**

- 5.1 The increasing prevalence of social media in our personal and professional lives, whilst hugely beneficial on the one hand by enabling instant engagement and communication (and re-communication) of information and opinion, can also, if used improperly by councillors, lead to Code of Conduct complaints.

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<sup>3</sup> Chapter 2: Codes of Conduct and Interests (p.42)

5.2 As the Council first introduced guidance on the use of social media by councillors in 2014, the opportunity has been taken to review the guidance in light of changing social media trends and increasing usage.

5.3 The Task Group has reviewed the guidance and the revised version is set out as **Appendix 3** to this report.

## **6. Review of the Best Practice Recommendations of the Committee on Standards in Public Life**

6.1 The Task Group considered each of the 15 Best Practice Recommendations proposed by the CSPL. This included an assessment of the extent to which the Council currently complied with the recommendations and commentary on actions the Council could take to ensure future compliance. As some of the Best Practice Recommendations were directly relevant to parish councils, the Task Group agreed to consult all parish councils in that regard as part of its consultation on the proposed revisions to the Code of Conduct.

6.2 The table in **Appendix 4** to this report shows each of the 15 best practice recommendations of the CSPL, together with the Task Group's initial commentary regarding the Council's current practices and an assessment of the extent to which they were compliant with best practice, the input from a number of parish councils who responded to the consultation, and the task group's comments in response to parish councils' comments. to the Committee.

6.3 The recommendations at the beginning of this report include the Task Group's recommendations in response to each of the 15 Best Practice Recommendations. Some of these require minor amendments to the Council's adopted Arrangements for dealing with allegations of misconduct by councillors.

## **7. Consultations**

7.1 As indicated above, separate consultations have taken place with councillors and with parish councils in respect of the review of the Code of Conduct.

## **8. Key Risks**

8.1 Failure to review and update our code of conduct and social media guidance would not only amount to a lost opportunity to ensure that these documents reflect current circumstances, but may also be interpreted as a failure to comply with our duty under s.27 Localism Act 2011 to promote and maintain high standards of conduct.

## **9. Financial Implications**

9.1 There are no financial implications arising from the recommendations in this report.



## **10. Legal Implications**

- 10.1 These are referred to in Section 4 of this report in the context of the review of the Code of Conduct and the Council's duty to promote and maintain high standards of conduct.
- 10.2 In addition, the Council must also, by virtue of s28(6) Localism Act 2011, have in place arrangements for dealing with allegations of misconduct by councillors, which are referred to in paragraph 6.3 above and in Appendix 5.
- 10.3 There is no statutory requirement for a council to adopt social media guidance for councillors.

## **11. Human Resource Implications**

- 11.1 There are no HR implications arising from the recommendations in this report.

## **12. Equality and Diversity Implications**

- 12.1 Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies. The Council has a statutory duty under section 149 of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, have due regard to the need to

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 12.2 This duty has been considered in the context of the recommendations in this report and it has been concluded that the proposed revisions to the Councillors' Code of Conduct (Appendix 3) will assist the Council in ensuring, and encourage local parish councils to ensure, the highest standards of conduct by councillors, which have due regard to (a), (b), and (c) above.
- 12.3 There are no other equality and diversity implications arising directly from the recommendations in this report.

## **13. Climate Change/Sustainability Implications**

- 13.1 There are no climate change/sustainability implications arising from the recommendations in this report.

## **14. Summary of Options**

- 14.1 The range of options in this report are as follows:

- (1) To adopt the revised Councillors' Code of Conduct set out in Appendix 3.
  - (2) To retain the existing Code of Conduct set out in Part 5 of the Council's Constitution.
  - (3) To adopt the revised Social Media Guidance for Councillors set out in Appendix 4.
  - (4) To retain the existing Social Media Guidance for Councillors
  - (5) To adopt all the Task Group's recommendations in response to the 15 Best Practice Recommendations of the Committee on Standards in Public Life
  - (6) To not adopt or amend the recommendation referred to in (5) above
- 14.2 The Corporate Governance Task Group recommends Options (1), (3), and (5) above.

## **15. Conclusion**

- 15.1 This is the first report to this Committee on the outcome of the Corporate Governance Task Group's consideration of a range of matters under its purview. It proposes a number of recommendations to Council, the Executive and to this Committee that, taken together, will bring up to date the Councillors' Code of Conduct and social media guidance for councillors, and address the 15 Best Practice Recommendations of the Committee on Standards in Public Life.

## **16. Background Papers**

- Guidance on Councillors' use of Social Media and Mobile Devices (December 2014)
- Council Constitution Part 5: Codes and Protocols

## **17. Appendices**

- Appendix 1: Summary of responses from borough councillors to the consultation on the review of the Code of Conduct for Councillors
- Appendix 2: Summary of responses from parish councils to the consultation on the review of the Code of Conduct for Councillors
- Appendix 3: Draft Revised Code of Conduct for Councillors as recommended by the Corporate Governance Task Group
- Appendix 4: Draft Revised Social Media Guidance for Councillors
- Appendix 5: Table showing CSPL Best Practice Recommendations with Task Group comments, Parish Councils' comments, and officer response

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