

Executive Report

Ward(s) affected: n/a

Report of Director of Resources

Author: John Armstrong, Democratic Services and Elections Manager

Tel: 01483 444102

Email: [john.armstrong@guildford.gov.uk](mailto:john.armstrong@guildford.gov.uk)

Lead Councillor responsible: Joss Bigmore

Tel: 07974 979369

Email: [joss.bigmore@guildford.gov.uk](mailto:joss.bigmore@guildford.gov.uk)

Date: 22 September 2020

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

- **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 Corporate Governance and Standards Committee at its meeting in November 2019 established a cross-party task group, including a co-opted parish representative and an independent member of that 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 meeting on 18 June 2020, are as follows:

To examine, review, and report back initially to the 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; and
- (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
- Murray Litvak (co-opted independent member of the Committee)
- Julia Osborn (co-opted parish representative on the Committee)

The Task Group has met on a number of occasions since it was established and has considered and reviewed the matters listed (a) to (d) above, and submitted its recommendations in respect of (a) to (c) above to the Corporate Governance and Standards Committee at its meeting held on 30 July 2020.

The Committee considered a number of recommendations to full Council (6 October 2020) including the draft revised Councillors' Code of Conduct, and minor amendments to the adopted Arrangements for dealing with Allegations of Misconduct.

Two of the recommendations from the Corporate Governance and Standards Committee were specifically for the Executive to determine, namely:

- the adoption of the revised Social Media Guidance for Councillors (see **Appendix 2**), and
- the fourteenth of the 15 'Best Practice Recommendations' of the Committee on Standards in Public Life, which was that "*Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place*".

Finally, the Executive will recall that the Overview and Scrutiny Committee at its meeting held on 7 July 2020 received a presentation outlining the purpose of North Downs Housing Limited (NDH), its relationship with the Council, the objectives of NDH and progress to date, together with its plans for 2020-21. The full minute of that meeting in respect of this matter is set out in **Appendix 3**. One of the reasons put forward to explain why NDH had not achieved its business plan objective of letting 125 properties by 2020 was a lack of staff support for NDH. The Committee has asked the Executive to explore the provision of increased resources, particularly personnel, to enable NDH to deliver its ambitions more quickly.

This report addresses these matters.

### **Recommendation to Executive**

- (1) That the draft revised Social Media Guidance for Councillors, as set out in **Appendix 2** to this report, be adopted.
- (2) That the Council's formal response to the CSPL Best Practice Recommendation 14 should be as follows:

*"Regular reports are currently submitted to the Executive Shareholder and Trustee*

*Committee which provide updates on finance, operational matters and changes to companies set up and/or owned by the Council. The Council additionally audits the accounts of such companies and reports the outcome of these audits to the Corporate Governance and Standards Committee as part of the approval annually of the Council's audited accounts. It is considered that the agendas and minutes of the company board meetings contain commercially sensitive information and should not be subject to routine publication."*

- (3) That consideration of any resources necessary to support North Downs Housing Limited's operations be given as part of the implementation plan for Phase B of the Future Guildford Transformation Programme.

Reasons for Recommendation:

- To address one of the corporate governance and ethical standards related concerns raised by councillors.
- To address Recommendation 14 of the 15 Best Practice Recommendations of the Committee on Standards in public Life in their report *Local Government Ethical Standards (January 2019)*
- To respond to the Overview and Scrutiny Committee's recommendation in respect of support for North Downs Housing Limited.

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

## **1. Purpose of Report**

1.1 To report to the Executive on:

(a) the outcome of the consideration by the Corporate Governance Task Group and the Corporate Governance and Standards Committee of the review of:

- the Social Media Guidance for Councillors (see paragraph 4 below), and
- recommendation 14 of the 15 Best Practice Recommendations of the Committee on Standards in Public Life (see paragraph 5 below).

(b) The recommendation of the Overview and Scrutiny Committee (7 July 2020) in respect of North Downs Housing Limited, namely '*That the Executive be requested to explore the provision of increased resources, particularly personnel, to enable NDH to deliver its ambitions more quickly.*' (see paragraph 6 below).

## **2. Strategic Priorities**

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

### 3. Background

- 3.1 In early 2019, the Committee on Standards in Public Life (CSPL) published a report on *Local Government Ethical Standards*<sup>1</sup>. Although some of its 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.
- 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 Corporate Governance and Standards 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 full 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 Corporate Governance and Standards Committee has met on seven 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 CSPL's Best Practice Recommendations. The task group's findings and recommendations in respect of these matters were considered and endorsed by the Corporate Governance and Standards Committee at its meeting on 30 July 2020.
- 3.4 The task group has submitted its findings and recommendations in respect of the review of the Protocol on Councillor/Officer Relations to the Corporate Governance and Standards Committee at its meeting on 24 September 2020.

### 4. Review of the Social Media Guidance for Councillors

- 4.1 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.
- 4.2 As the Council first introduced guidance on the use of social media by councillors in 2014 (see **Appendix 1** attached), the opportunity has been taken to review the guidance in light of changing social media trends and increasing usage.
- 4.3 The Task Group has reviewed the guidance and the revised version is set out as **Appendix 2** to this report. The Corporate Governance and Standards Committee has recommended that Executive adopts the revised guidance.

---

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

## 5. Best Practice Recommendations of the Committee on Standards in Public Life

5.1 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.

5.2 The fourteenth 'Best Practice Recommendation' was as follows:

*“Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place”.*

5.3 Chapter 7 of the CSPL's report (Councils' corporate arrangements) commented that a number of recent changes had created a more complex environment for local government, which could impact on ethical standards. This complex environment – made up of partnerships, joint ventures, and other new entities such as local authority trading companies – creates the potential for ethical risks in three ways:

- (a) First, that such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account.
- (b) Second, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also arise the other way around, when the council has to make decisions about a company in which it has a significant interest.
- (c) Third, the growth in such bodies that are arm's length from a local authority can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself; but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

5.4 The CSPL report comments that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance 'illusion', that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

- (a) First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is

important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

(b) Second, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body. The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

(c) Third, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

5.5 The CSPL's fourteenth Best Practice Recommendation suggests that "*Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place*".

5.6 Interestingly, there is no reference in CSPL's report (other than in this Recommendation), to any consideration of the merits of applying the Nolan principle of openness by suggesting that separate bodies created by local authorities should publish their board agendas and minutes and annual reports in an accessible place.

5.7 Councillors will be aware that, in 2016, the Council established North Downs Housing Limited (NDH) to be the housing trading arm of Guildford Borough Council. NDH is wholly owned by Guildford Borough Council Holdings Limited. The holding company is in turn wholly owned by the Council. NDH is a separate legal entity managed by a board of directors comprising:

- Sarah Creedy (Chairman)
- Cllr Angela Goodwin
- Cllr Gordon Jackson

- Mike Parsons
- Sue Reekie

5.8 The objectives of NDH are to:

- Identify housing need in the borough of Guildford
- Increase provision for lower income households
- Generate a return for the General Fund
- Accelerate development of brownfield land in the borough of Guildford
- Deliver homes for rent and sale

5.9 Guildford Borough Council Holdings Limited's board of directors comprises:

- Andrew Hodges (Chairman)
- Cllr Tom Hunt
- Dennis Paul
- James Whiteman

5.10 In 2017, the Executive established the Executive Shareholder and Trustee Committee (ESTC), which fulfils the Council's role as sole shareholder in current and future Local Authority Trading Companies and the role of trustee in several charitable trusts where the Council is the sole trustee. The ESTC receives the annual report and accounts from NDH and the holding company and other ad hoc company matters, which are normally dealt with in public.

5.11 The day-to-day operations of NDH including all decisions regarding business development and any consideration of commercial opportunities which may arise, are matters for the Board of Directors to consider. However, the Council as the sole shareholder is required to approve any decisions that have an effect on the shareholder's rights.

5.12 Guildford Borough Council Holdings Limited has no tradeable activities of its own and its main purpose is being the holding company shareholder for NDH.

5.13 When the Corporate Governance Task Group considered the CSPL's Best Practice Recommendations, their initial response to Recommendation 14 was that they agreed that the ESTC should have involvement in the overview of the existing and future companies set up by the Council. Meetings of the ESTC were open to the public with public agendas but that commercial sensitivities must be respected.

5.14 Although this response was included in the appendix to the report to the Corporate Governance and Standards Committee on 30 July, it was not included as the recommendation in the report. That recommendation (for the Executive to consider at this meeting) read as follows:

*"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).”*

- 5.15 On 5 August 2020, the Chairman of NDH wrote to the Democratic Services and Elections Manager noting that the Corporate and Governance Standards committee had made a number of recommendations to the Executive for consideration on 22 September, including that NDH should publish its board agendas, minutes and annual report in an accessible place.
- 5.16 The chairman indicated that NDH board published its accounts and annual report in accordance with the requirements of Companies House and sought to abide by all duties placed upon the directors by statute and associated regulations. They were also keen to keep the shareholders well informed as to NDH’s activities and decisions, as evidenced by the Business Plan being made available to Councillors and the recent attendance of the chairman and a director at the Overview and Scrutiny Committee meeting on 7 July 2020.
- 5.17 As the directors of an independent company, the NDH board do not believe that they are required to publish any more than this and believe it is not in the interests of either NDH or indeed the Council as shareholder, for information to be made more widely available. Concern was expressed that it is not good practice to inform commercial competitors of how much NDH is spending on individual properties or, more widely, the criteria they use in deciding whether or not to make investments. As directors it is their decision that such discussions take place at each of their board meetings.
- 5.18 The directors acknowledge that both the task group and the Corporate Governance and Standards Committee had a great deal of material to absorb at their recent meetings and wonder if the independence of NDH and its particular governance may not have been sufficiently explored. They have therefore asked if this recommendation to the Executive could be withdrawn, but that if this was not practical, they have asked that it be accompanied by the detailed views of the Directors of NDH (of which the email received on 5 August contained the headlines) and, if necessary, a qualified opinion as to the legality of this requirement.
- 5.19 The Democratic Services and Elections Manager has confirmed to the chairman of NDH that the recommendation of the Corporate Governance Task Group was not accurately reported to the Corporate Governance and Standards Committee on 30 July, as stated in paragraphs 5.13 and 5.14 above, and that the matter would be clarified in the report to the Executive, including an explanation of the current legal requirements for publication and reporting of information by NDH.
- 5.20 The Monitoring Officer has confirmed that the information that NDH is required to publish is the information which it has published with Companies House, which is open to anyone to view. Additionally, the Local Authorities (Companies) Order 1995 requires NDH to make available to the public minutes of any general meeting for a period of four years after the meeting took place. The only exemption to this duty to make available minutes is if publication of minutes would lead to a breach of any law or of an obligation owed to any person including a fiduciary breach of confidentiality. In order to comply with the 1995 Order, the NDH board will have to consider if there is a breach of fiduciary duty first.



- 5.21 The Council is able to adequately scrutinise NDH's operations via the ESTC, the Corporate Governance and Standards Committee, and the Overview and Scrutiny Committee, which would normally take place in public, except where information which is lawfully exempt from publication is likely to be disclosed.
- 5.22 It is therefore recommended that the formal response to the CSPL Best Practice Recommendation 14 should be as follows:

*“Regular reports are currently submitted to the Executive Shareholder and Trustee Committee which provide updates on finance, operational matters and changes to companies set up and/or owned by the Council. The Council additionally audits the accounts of such companies and reports the outcome of these audits to the Corporate Governance and Standards Committee as part of the approval annually of the Council's audited accounts. It is considered that the agendas and minutes of the company board meetings contain commercially sensitive information and should not be subject to routine publication.”*

## **6. North Downs Housing Limited – Recommendation from Overview and Scrutiny Committee**

- 6.1 The Overview and Scrutiny Committee, at its meeting held on 7 July 2020, received a presentation outlining the purpose of NDH, its relationship with the Council, the objectives of NDH and progress to date, together with its plans for 2020-21. The full minute of that meeting in respect of this matter is set out in **Appendix 3**.
- 6.2 One of the reasons put forward to explain why NDH had not achieved its business plan objective of letting 125 properties by 2020 was a lack of staff support for NDH. The Committee has asked the Executive to explore the provision of increased resources, particularly personnel, to enable NDH to deliver its ambitions more quickly.
- 6.3 NDH as a separate legal entity is responsible for providing staffing for its activities. The NDH board has agreed that it will look to the Council in the first instance to provide resources to meet its requirements, for which the Council is entitled to recharge the company for the provision of such resources, which is paid for by rental income from NDH's tenants. If the Council is unable to provide resources for NDH, the board will look to external providers to meet their requirements.
- 6.4 Given that formal consultation with staff in respect of Phase B of the Future Guildford transformation programme, which includes staff involved with the housing support function, is currently underway, it is suggested that consideration of any resources necessary to support NDH's operations be given as part of the implementation plan for Phase B.

## **7. Key Risks**

- 7.1 Failure to review and update social media guidance would be a lost opportunity to ensure that the guidance reflects current circumstances.

## **8. Financial Implications**

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

## **9. Legal Implications**

9.1 The Council has a duty to promote and maintain high standards of conduct by its members as required by section 27 of the Localism Act 2011.

9.2 The draft revised Code of Conduct to be considered by full Council on 6 October 2020, includes a new provision requiring councillors to also comply with the relevant requirements of other documents including the Social Media Guidance for Councillors.

9.3 It is open to the Executive to determine whether or not the revised Social Media guidance for Councillors should be adopted.

9.4 Legal considerations with regard to NDH have been incorporated within the report.

## **10. Human Resource Implications**

10.1 The HR implications arising from this report and referred to in section 6 above.

## **11. Equality and Diversity Implications**

11.1 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.

11.2 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.

11.3 There are no other equality and diversity implications arising directly from the recommendations in this report.

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

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

## **13. Summary of Options**

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

- (1) To adopt the revised Social Media Guidance for Councillors set out in Appendix 2.
- (2) To retain the existing Social Media Guidance for Councillors (Appendix 1)
- (3) To adopt the recommended response to the Best Practice Recommendation 14 of the Committee on Standards in Public Life
- (4) To not adopt, or amend, the recommended response.

## **14. Conclusion**

- 14.1 This is one of a number of reports to full Council, the Executive, and to the Corporate Governance and Standards Committee on the outcome of the Corporate Governance Task Group's consideration of a range of matters under its purview. These reports propose a number of recommendations 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.

## **15. Background Papers**

Committee on Standards in Public Life (CSPL) report: *Local Government Ethical Standards* (January 2019)

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

## **16. Appendices**

Appendix 1: Current Guidance on Councillors' use of Social Media and Mobile Devices

Appendix 2: Draft Revised Social Media Guidance for Councillors

Appendix 3: Overview and Scrutiny Committee: Extract from minutes (7 July 2020)