

Council Report

Ward(s) affected: n/a

Report of Director of Resources

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Review of the Councillors' Code of Conduct and consideration of the 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 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 meeting in June, 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; and
- (g) review of anomalies in the Constitution.”

The Task Group currently comprises:

- Councillor Deborah Seabrook (chairman)
- Councillor David Bilbe (w.e.f. 24 September)
- Councillor Liz Hogger
- Councillor Ramsey Nagaty
- Councillor Nigel Manning
- Councillor James Walsh
- Murray Litvak (co-opted independent member of the Corporate Governance and Standards Committee)
- Julia Osborn (co-opted parish representative on the Corporate Governance and Standards 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. The Task Group submitted its recommendations in respect of (a) to (c) to the Corporate Governance and Standards Committee at its meeting held on 30 July 2020.

On 30 July, the Committee considered and supported the Task Group's recommendations, some were for full Council to make the final decision, which are the subject of this report, and others were either for the Executive to consider at its meeting on 22 September (in respect of the review of the guidance on the use of social media by councillors), or were approved by the Committee (a full list of the recommendations adopted by the Committee is set out, for information, in **Appendix 4**).

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

- the Councillors' Code of Conduct, and
- a number of the 'Best Practice Recommendations' of the Committee on Standards in Public Life (CSPL). A table showing all 15 of the CSPL's Best Practice Recommendations, with the Task Group's comments, parish councils' comments, and officer response is set out in **Appendix 5**.

Recommendation to Council:

- (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).

Reasons for Recommendation:

- To address various corporate governance and ethical standards related concerns raised by councillors.
- To address the 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 Council the recommendations of the Corporate Governance and Standards 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), and
- a number of the 'Best Practice Recommendations' of the CSPL (see paragraph 5 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, the Corporate Governance and Standards 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*¹. 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. At that time, 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 Corporate Governance and Standards Committee, at its meeting in November 2019, set up its own task group to review the Council's Code of Conduct, the Best Practice Recommendations, review the work undertaken by a previous task group which had 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 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

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

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 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, which is a separate item of business on this agenda.

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.
- 4.2 Under s28(1) of the 2011 Act, the code is required, when viewed as a whole, to be consistent with the following (Nolan) 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 was, 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), although they are still required to have one. 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 code².

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

- 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 style³.” 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 as a result. A copy of the revised draft Code of

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

³ Chapter 2: Codes of Conduct and Interests (p.42)

Conduct, as proposed by the task group and endorsed by the Corporate Governance and Standards Committee, is set out in **Appendix 3**.

5. Review of the 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. 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.
- 5.2 The table in **Appendix 5** 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.
- 5.3 The recommendations in response to Best Practice Recommendations 2, 8, and 9 require the Council's approval of 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 would not only amount to a lost opportunity to ensure that the code reflected current circumstances and best practice, 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 5.3 above and in Appendix 5.

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 recommended response to the Best Practice Recommendations of the Committee on Standards in Public Life referred to in this report.
- (4) To not adopt the recommended response to the Recommendations referred to in (3) above.

14.2 The Corporate Governance and Standards Committee recommends Options (1) and (3) above.

15. Conclusion

15.1 This is the first report to Council 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 that, taken together, will bring up to date the Councillors' Code of Conduct, and address many of the Best Practice Recommendations of the Committee on Standards in Public Life.

16. Background Papers

[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: List of recommendations adopted by the Corporate Governance and Standards Committee on 30 July 2020

Appendix 5: Table showing CSPL Best Practice Recommendations with Task Group comments, Parish Councils' comments, and officer response