

Guildford Borough Council

Report to: Executive Shareholder and Trustee
Committee
Date: 8 August 2024
Ward(s) affected: 'All'
Report of Strategic Director of: Legal & Democratic Services
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Status: Open
Key decision: No

The Council's interests in Companies: Review of Governance Arrangements

1.0 Executive Summary

- 1.1 The Council has various existing interests in Companies, whether by way of sole or joint ownership. The Council, as shareholder, must have robust and resilient governance arrangements in place. Such arrangements must enable the Council, acting as shareholder, to have continuous oversight of financial interests, business cases and performance measures of its Companies, to ensure continuous improvement and satisfaction of the Council's best value duty.
- 1.2 This report reviews the existing governance arrangements and makes recommendation for change to ensure that the shareholder has greater oversight of the Council's interests in Companies, there is more frequent and transparent reporting, better officer support to the shareholder, and clearer lines of responsibility and accountability.

2.0 Recommendation to Executive Shareholder and Trustee Committee

That the Committee resolves to:

- 2.1 Note the changes the Chief Executive is making to ensure the Corporate Leadership Team have greater oversight of the Council's companies, their objectives, business cases, and performance as summarised in paragraph 6.3 of this report;
- 2.2 Note the proposed revised governance arrangements relating to the Council's company interests, set out at Part 3(1) of the Constitution, (Responsibility for Functions), as set out in para 6.1 to this report and appendix 1 and 2, and provide feedback on the proposals to the Monitoring Officer, by way of consultation;
- 2.2 Note the proposed revised governance arrangements relating to the Council's company interests, set out at Part 3(2) of the Constitution, (Terms of Reference of Council, Leader/Executive and Committees), as set out in para 6.2 of this report and appendix 3 and 4, and provide feedback on the proposals to the Monitoring Officer, by way of consultation;
- 2.3 Note the Monitoring Officer's intention to recommend to the GBC Corporate Governance & Standards Committee that they recommend to full Council the adoption into the Constitution of revised Parts 3(1) and 3(2) to reflect appendix 2 and 4, subject to the feedback of the Executive Shareholder and Trustee Committee.

3.0 Reasons for Recommendations

- 3.1 It is considered that improvements can be made to the governance framework to ensure the shareholder has greater oversight of the Council's interests in companies.
- 3.2 Good practice would be for the Council's senior officers to monitor the performance of the Council's interests in companies, and to bring forwards reports to the shareholder in a regular, timely and transparent way with appropriate recommendations.

- 3.3 Whilst the shareholder function is exercised by the Leader as an Executive function, there is currently no mechanism in place for scrutiny of such executive decisions and good practice would be for the Council's overview and scrutiny committees to provide effective scrutiny of the shareholder role.

4.0 Status of Report

- 4.1 This report is open as no parts fall within schedule 12A to the Local Government Act 1972 regarding exempt information.

5.0 Strategic Priorities

- 5.1 The Council's draft Corporate Strategy 2024 includes a strategic priority of having a well run Council and the more robust and resilient governance framework being proposed supports such a strategic objective.

6.0 Background

6.1 Responsibility for Functions relating to the Council Interests in Companies

- 6.1.1 It is considered that improvements could be made to the robustness of the Council's governance arrangements surrounding oversight of its interests in Companies.

The Constitution, at Part 3(1), sets out the responsibility for functions at Guildford Borough Council providing a framework for which functions are the responsibility of full Council, which are Executive functions and which are a matter of choice for the Council. The Constitution does not currently provide clarity in respect of the Council's responsibility for Companies.

- 6.1.2 It is therefore proposed that amendments are made to this Part of the constitution to provide for the following principles regarding the responsibility for Council owned Companies:

- The responsibility of representing the Council as a shareholder of each Council owned Company is an Executive function;
- The Leader of the Council has determined to operate the shareholder role for each Council owned Company through the Executive Shareholder and Trustee Committee;
- Each Council owned company will have its objects set out in Articles of Association;
- Each Council owned Company will enter into a Shareholder Agreement with the Council clarifying which matters are the responsibility of the Company Directors and which are reserved to the shareholder;
- The Committee will meet with each Company's Directors, or representatives from the Board of Directors, at least bi-annually to monitor finance, performance and progress and determine any reserved matters;
- The activities of the Committee will be subject to consideration by the Overview & Scrutiny Resources Committee;
- The responsibility of the appointment of Directors to the Board of a Council owned Company is set out in the Articles of the Company, and included in the shareholder agreement, but will usually be the responsibility of the Committee;
- The Directors owe a fiduciary duty and have to act in the best interests of the Company but are also accountable to the shareholder;
- The Council and its Companies may contract with each other, subject to procurement matters, best value duty and a written legal agreement; and
- Arrangements must be in place to avoid conflicts of interest.

6.1.3 These principles have been drafted into a revised Part 3(1) of the Constitution which can be found at Appendix 1 to this report as a tracked change version and at Appendix 2 as a clean version.

6.1.4 Subject to the views of the Executive Shareholder and Trustee Committee, the Monitoring Officer proposes consulting on these proposed changes with the Joint Constitution Review Group, before taking a report to the Corporate Governance and Standards

Committee seeking their recommendation to full Council for adoption of the revised Part 3(1) of the Constitution.

6.2 Terms of Reference of the Council, the Executive Shareholder & Trustee Committee and the Overview and Scrutiny Committee (Resources) and Corporate Governance & Standards Committee

6.2.1 The Guildford Borough Council Constitution Part 3(2) sets out the terms of reference for each of the Council's bodies including the full Council, the Leader and their Executive, the Regulatory Committees, the Council's Committees, the Scrutiny Committees and the Executive Shareholder and Trustee Committee and Corporate Governance & Standards Committee*.

Professional officers consider that further resilience can be provided to the governance framework relating to the Council's interests in Companies by strengthening and clarifying these constitutional provisions.

6.2.2 Currently the constitution, whilst clear that the shareholder function is an executive matter, is silent on which body has the power to determine to create a company, where the Council is either a sole or joint owner. It is proposed that where there is any budgetary implication arising from creation of such a new body, or impact on current strategies, plans or policies, such a matter should be reserved for determination by full Council.

6.2.3 It is proposed that the terms of reference of the Leader and Executive are amended to provide clarity that the Executive will exercise their shareholder function through the Executive Shareholder and Trustee Committee, who shall collectively act as the shareholder to the Council's wholly or jointly owned Companies.

6.2.4 The Executive Shareholder & Trustee Committee is currently required to meet at least once a year but it is proposed that this be amended to meeting quarterly, with each Council owned Company reporting to the Committee at least bi-annually. This will ensure that meetings are sufficiently regular to review all Companies and to receive performance reports and financial information in a timely way.

- 6.2.5 The current membership of the Executive Shareholder & Trustee Committee is 5 members of the Executive. This is considered insufficient to accommodate absences which may arise from conflicts of interest where members of the Executive are also Directors of Companies. It is proposed therefore that all members of the Executive are appointed, by the Leader, to the Executive Shareholder & Trustee Committee. This would leave no substitutes permitted as there would be no remaining Executive members who were non-Committee members and a quorum of three elected members is proposed. It is also advised that the Committee have the option to appoint two additional members to the Executive Shareholder and Trustee Committee who would be external members ie non-elected Councillors. They would be co-opted members, who were not entitled to vote, but could provide a critical friend role to the Committee where that was considered appropriate and helpful by the Leader.
- 6.2.6 To reflect the fact that the Executive Shareholder & Trustee Committee exercises the shareholder function on behalf of the Council, the Committee should be required to report to the Council, once a year on the oversight of the exercise of the function. It is proposed that the Executive Shareholder & Trustee Committee be required to take an annual report to the Corporate Governance & Standards Committee*, who will consider it and make recommendations to the Council.
- 6.2.7 There is currently no governance mechanism in place for scrutinising this executive function of acting as shareholder for the Council owned Companies. It is therefore proposed that the Overview and Scrutiny Resources Committee has within its terms of reference the ability to scrutinise the work of the Executive Shareholder and Trustee Committee and make recommendations to them. To facilitate effective scrutiny, it is advised that all members of the O&S Resources Committee are invited to attend and speak at the Executive Shareholder and Trustee Committee, and that the Committee is able to make recommendations.
- 6.2.8 There is currently no responsibility on the Council to carry out an audit function in respect of its Companies. It is recommended that the Corporate Governance & Standards Committee agree the internal audit plan on an annual basis with each Company, and

provision is made in the shareholder agreement, and that internal audit report to the Council's Corporate Governance & Standards Committee* on audits relating to the Council's Companies.

6.2.9 Revised terms of reference of Council, Leader/Executive and Committees have been drafted to reflect the above proposed governance arrangements and can be found at Appendix 3 to this report as a tracked changes version and at Appendix 4 as a clean version for ease of reference.

Subject to the views of the Executive Shareholder and Trustee Committee, the Monitoring Officer proposes consulting on these proposed changes with the Joint Constitution Review Group, before taking a report to the Corporate Governance and Standards Committee seeking their recommendation to full Council for adoption of the revised Part 3(2) of the Constitution.

6.2.10 It should be noted that where the Corporate Governance & Standards Committee is referenced with an asterisk *, it indicates that this is the relevant Committee for the time being as it currently exercises the Council's audit function. However, if in due course the Council establishes an Audit Committee in accordance with the Local Government Act 1972, such responsibilities will transfer to the Audit Committee.

6.3 Officer arrangements to ensure good governance of the Council's interests in Companies

6.3.1 The Chief Executive, Monitoring Officer and Chief Financial Officer have reviewed how best senior officers may support the Executive in exercising their shareholder function and other members in exercising their scrutiny function, relating to the Council's interests in Companies.

6.3.2 The Chief Executive has appointed a senior officer within the Joint Leadership Team (JLT), for each Company, to act as an internal officer responsible for managing the Council's relationship with that Company. The Officer will receive periodic information, including business cases, financial, performance and progress information from the relevant Company, and will bring forwards reports to the Corporate Leadership Board (CLB), appending that information.

Such reports will come to CLB at least bi-annually for each Company.

6.3.3 Such reports, from the Council's senior 'client' officer will then be taken to the Executive Shareholder & Trustee Committee for consideration. The reports are likely to append the information from the Company's Directors, who will be expected to attend the Executive Shareholder and Trustee Committee to answer questions from councillors. The Executive Shareholder and Trustee Committee will receive their advice, as a Committee, from the senior client officer for the Company, supported by the Monitoring Officer or their deputy, and the Chief Financial Officer, or their deputy.

6.3.4 Should the Company require professional advice, by way of legal, financial or any other such advice, they will determine where they secure such advice from. Should they choose to contract with the Council for provision of services, the Council must ensure that any procurement and best value considerations are complied with. Any contractual arrangements must be encompassed in a legally binding document between the Council and the Company and best practice would also include the use of a service level agreement to govern the arrangement. Any provision of service by the Council would need to ensure that any costs were recovered to avoid any subsidy control issues arising. And the Council would need to ensure that an ethical wall is in place between those officers providing a service to the Company and those acting for the Council and providing advice to the shareholder.

7.0 Options

7.1 The Executive Shareholder & Trustee Committee could choose not to make changes to the governance framework of the Council, but that option is not recommended, as it leaves the shareholder exposed to the risk that they have insufficient oversight of the Council's interests in Companies to properly fulfil the role of the shareholder. Further, it would leave the Council will no scrutiny of the shareholder role which is contrary to best practice and guidance surrounding effective scrutiny arrangements for local authorities.

8.0 Consultation

- 8.1 Consultation has taken place with the Leader of the Council, Cllr McShane and the relevant Portfolio Holder, Cllr Rehorst-Smith. Consultation is due to take place with the Executive as a whole via the Executive briefing meeting prior to the date of the Executive Shareholder and Trustee Committee meeting where this report will be formally considered.
- 8.2 Consultation has taken place with all members of the Corporate Leadership Board, and with the Council's Statutory Officers and their deputies.
- 8.3 Consultation has taken place with the Chair of the Overview and Scrutiny Resources Committee, Cllr Brooker.

9.0 Key Risks

- 9.1 Without more robust governance arrangements in place, both at officer and member level, there is a risk that there is insufficient oversight of the Council's interests in Companies.
- 9.2 Insufficient oversight leads to a risk that the Companies may not be delivering for the Council against their objectives, nor making sufficient progress. There is a risk of financial implications and that the Council cannot satisfy its legal duty as to best value. There is a risk that the Council may not be satisfying their legal responsibilities in respect of the shareholder function.
- 9.3 Without any mechanism for scrutiny of the shareholder function, there are risks arising from the lack of independent 'check and balance' in terms of the executive's role in this area, as currently there is an inability to be able to hold the executive to account.

10.0 Legal and Governance Implications

- 10.1 Section 3 Local Government Act 1999 provides that the Council must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This statutory duty applies to the Council's function and role when acting as a shareholder.

10.2 Whilst this report goes some significant way to addressing existing poor governance arrangements relating to the Council's Companies, it should be noted that this is the start of reviewing Company governance. It is the intention of the Council's statutory officers to carry out a further review against the Chartered Institute of Public Finance and Accountancy (CIPFA) guidance for local authority trading companies (LATCo's) and bring forwards further recommendations in due course.

11.0 Financial Implications

11.1 There are no direct financial implication arising from this report.

12.0 Human Resources Implications

12.1 There are no direct human resources implications arising from this report.

13.0 Equality and Diversity Implications

13.1 There are no direct equality and diversity implications arising from this report.

14.0 Climate Change and Sustainability Implications

14.1 There are no direct climate change and sustainability implications arising from this report.

15.0 Next Steps

15.1 The Chief Executive will progress with arrangements for senior officer oversight of the Council's companies.

15.2 The Monitoring Officer will receive feedback from members of the Executive Shareholder & Trustee Committee to incorporate into the revised Parts 3(1) and 3(2) of the Council's Constitution, before consulting with the Joint Constitution Review Group, and bringing forwards proposals to the GBC Corporate Governance & Standards Committee for a recommendation to Council to adopt the new parts into the Council's constitution.

16.0 Background Papers

16.1 Guildford Borough Council Constitution

17.0 Appendices

17.1 Appendix 1: Proposed revised Part 3(1) Constitution, Responsibility for Functions – tracked changes version

17.2 Appendix 2: Proposed revised Part 3(1) Constitution, Responsibility for Functions – clean version

17.3 Appendix 3: Proposed revised Part 3(2) Constitution, Terms of Reference of Council, Leader/Executive and Committees – tracked changes version

17.4 Appendix 4: Proposed revised Part 3(2) Constitution, Terms of Reference of Council, Leader/Executive and Committees – clean version