

Guildford Borough Council

Report to: Executive Shareholder and Trustee Committee
Date: 28 November 2024
Ward(s) affected: 'All'
Report of Strategic Director of: Legal & Democratic Services
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Status: Open
Key decision: No

A review of the Council's interests in charities

1.0 Executive Summary

- 1.1 The Council is trustee for a number of charities and exercises its trustee function as an Executive function. The Leader has chosen to exercise the function via the Executive Shareholder & Trustee Committee. At the meeting of the Executive Shareholder & Trustee Committee in August 2024 it was resolved that a report should be received in November 2024 from the Council's Statutory Officers starting the process of reviewing the governance arrangements and Council's interests in charities and trusts.
- 1.2 This report sets out the Council's existing trustee responsibilities in charities and the work that needs to be undertaken to review the aims and objectives, management arrangements, financial and performance monitoring of each.

2.0 Recommendation to Executive Shareholder and Trustee Committee

That the Committee resolves to:

- 2.1 Note the Council's interests in The Mayor of Guildford's Local Support Fund, The Racks Close Open Space, Burpham War Memorial Recreation Ground, Public Walks and Pleasure Grounds, Guildford Sports Ground and Arundel House (Hamilton Fellows);
- 2.2 In recognition of Trustees Week at the beginning of November to thank all those trustees who volunteer their time to support charities in our local community and in particular Cllr Sallie Barker MBE and Cllr Howard Smith for their commitment and effort to supporting The Mayor of Guildford's Local Support Fund and Arundel House (Hamilton Fellows);
- 2.3 To approve the draft work programme set out at paragraph 6.4 and delegate authority to the Monitoring Officer to deviate from the work programme where appropriate, in consultation with the Leader of the Council;
- 2.4 To receive a report in January 2025 from Joint Strategic Director, Finance to provide confirmation of the filing of accounting reports for the financial year ending 31 March 2023 for The Racks Open Space, Public Walks and Pleasure Grounds and Burpham War Memorial Recreation Ground and draft accounts of all the charities for the financial year ending 31 March 2024 for approval;
- 2.5 To receive a report in March 2025 from the Joint Strategic Director for Legal & Democratic Services considering whether any of the charities can be linked or have compatible objectives and would benefit in achieving their objectives by a merger with another charity.
- 2.6 To receive a report in March 2025 from the Joint Strategic Director for Legal & Democratic Services proposing conflict of interest policies for adoption by each charity.

3.0 Reasons for Recommendations

- 3.1 As a trustee the Council has a responsibility to ensure it has in place robust mechanisms for making trustee decisions which are in the best interests of the charity. The recommendations in this report will establish compliance with the accounting and reporting responsibilities whilst supporting good governance to enable the Council to fulfil its duties in respect of the trustee function competently, robustly and transparently.
- 3.2 To enable the Council to be able to fulfil its duties in respect of best value and continuous improvement in respect of its interests in charities, and to keep under review the objectives, strategies and plans, and performance of each of its companies.

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 Corporate Strategy 2024-2028 includes a strategic priority of having a well-managed and resilient Council. The management of the trustee function supports that priority.

6.0 Background

6.1 Guildford Borough Council's interests in charities

6.1.1 The Mayor of Guildford's Local Support Fund (258388)

Guildford Borough Council is joint trustee of this charity with Cllr Sallie Barker MBE and Cllr Howard Smith.

The objects of the charity are to relieve the poor, needy and distressed living or having previously lived with the borough of Guildford. The charity provides grants of up to £250 to residents of the borough who have been referred through specific routes and are facing financial problems.

The charity's accounts for the year ending 31 March 2023 were approved at the meeting of Executive Shareholder & Trustee

Committee in August 2024 and have been filed with the Charity Commission. It is noted that these accounts should have been filed on 31 January 2024 and were therefore filed late but the charity is now up to date. The charities accounts for the year ending 31 March 2024 should be considered by a meeting of Executive Shareholder & Trustee Committee prior to submission on 31 January 2025.

6.1.2 The Racks Close Open Space (1058137)

Guildford Borough Council is the sole trustee of this charity.

The objects of the charity are to hold land for the benefit of the inhabitants of the borough of Guildford.

The charity was created by a transfer of land dated July 1911 which is held on trust for the charity by Guildford Borough Council. The property is a field known as Racks Close, Warwicks Bench. The charity does not have any funds and a review should be undertaken to ascertain whether the charity is meeting its objectives.

The charity did not have any financial movement for the year ending 31 March 2023 and therefore accounts were not required but approval was given to submission of the annual return at the meeting of Executive Shareholder & Trustee Committee in August 2024. It does not appear that this has been filed and the charity is therefore overdue with its filing and this should be rectified immediately. The charities accounts for the year ending 31 March 2024 should be considered by a meeting of Executive Shareholder & Trustee Committee prior to submission on 31 January 2025.

6.1.3 Guildford Sports Ground (305056)

Guildford Borough Council is the sole trustee of this charity.

The objects of the charity are the purposes of a sports ground.

The charity was created by a transfer of land, Woodbridge sports ground, dated 9 August 1912 which is held on trust for the charity by Guildford Borough Council. The Council has historically provided subsidy to the charity through funding its management and upkeep,

including the ground and associated buildings to meet the objects of the charity. The previous condition of the pavilion was recognised in 2016 as an impediment to its wider community use, and the need for its refurbishment became a priority. A project was therefore approved with Guildford Cricket Club and Surrey County Cricket Club to redevelop the sportsground and pavilion to support use of the site for cricket.

Following the redevelopment the facility was lease out to Guildford Sportsground Management Company, with a separate management agreement in place. The structure was put in place following a thorough review of options and consultation with the Charity Commission.

The Council is also a member of the Guildford Sportsground Management Company which is a jointly owned company with Guildford Cricket Club and Surrey County Cricket Club. There is an additional potential for conflicts of interests given the Council's role as trustee and shareholder.

On 19 March 2024 the Charity Commission opened an inquiry into the charity as part of a statutory class inquiry into charities that are in default of their legal duty to file their annual reports, accounts and returns. This is because the trustees had failed to submit the required information to the Charity Commission for the financial years ending 31 March 2022 and 31 March 2023. As part of the inquiry a direction was issued under section 84 of the Charities Act 2011. All directions have been complied with and the accounting information has been filed.

It became apparent that correspondence from the Charity Commission was initially being directed to individual members of staff who had left the organisation and the information held by the Charity Commission has now been updated to reflect the correct contact details.

6.1.4 Burpham War Memorial Recreation Ground (304982)

Guildford Borough Council is the sole trustee.

The objects of the charity are for the purposes of public recreation ground and playing field.

The charity was created by a transfer of land dated 21 September 1954 which is held on trust for the charity by Guildford Borough Council. The property is part of Sutherland Memorial Park including the pavilion.

The charity accounts for the year ending 31 March 2023 were approved at the meeting of Executive Shareholder & Trustee Committee in August 2024. It does not appear that this has been filed and the charity is therefore overdue with its filing and this should be rectified immediately. The charities accounts for the year ending 31 March 2024 should be considered by a meeting of Executive Shareholder & Trustee Committee prior to submission on 31 January 2025.

6.1.5 Public Walks and Pleasure Grounds (305054)

Guildford Borough Council is the sole trustee.

The objects of the charity are for the purposes of recreation ground.

The charity was created by a transfer of land dated 1 September 1914, amended by a Scheme dated 1 May 1996 and further amended by a deed dated 16 April 2014. The land, which is known as Allen House Grounds, is held on trust for the charity by Guildford Borough Council.

The charity accounts for the year ending 31 March 2023 were approved at the meeting of Executive Shareholder & Trustee Committee in August 2024. It does not appear that this has been filed and the charity is therefore overdue with its filing and this should be rectified immediately. The charities accounts for the year ending 31 March 2024 should be considered by a meeting of Executive Shareholder & Trustee Committee prior to submission on 31 January 2025.

6.1.6 Arundel House (Hamilton Fellows) (200497)

Guildford Borough Council is joint trustee with Cllr Sallie Barker MBE.

The objects of the charity are for the welfare and the benefit of the children of the borough.

The charity was created by a transfer of land dated 18 June 1919 and the land is held on trust for the charity by Guildford Borough Council. The property is leased out in furtherance of the charities objectives and receives investment income.

The Council agreed to appointment as a trustee in March 2023 and delegated authority to the Joint Strategic Director of Transformation to arrange for an Officer to attend the trustee meetings and take day to day decisions about the operation of the charity and any applications made to the charity.

6.2 Council role as trustee

As a trustee the Council has legal responsibility for the management and administration of the charities. Trustees play a vital role in providing time, skills and knowledge to enable charities to meet their charitable objectives. National trustee week takes place at the beginning of November to recognise the significant contribution that trustees make to our community.

As a trustee the Council has a number of duties, the same as any other trustee, and must always act in the interests of the charity when making a decision as trustee. The Council must act with skill and care and use the charity's resources responsibly to support the charitable objectives.

6.3 Accounts

- 6.3.1 It is noted that accounting reports for all of the charities are due to be filed by no later than 31 January on an annual basis. Reports are to be taken to the Executive Shareholder & Trustee Committee on an annual basis to their September meeting to consider the final annual accounting reports prior to filing and submission. This will allow time for any queries to be addressed prior to filing with the Charity Commission.

6.3.2 The accounting reports for all the charities for the year ending 31 March 2023 were approved by Executive Shareholder & Trustee Committee in August 2024 but it appears that the accounting reports for Racks Open Space, Public Walks and Pleasure Grounds and Burpham War Memorial Recreation Ground and this should be done immediately. A meeting of Executive Shareholder & Trustee Committee will also need to be arranged in early January 2025 to approve the accounting reports for the year ending 31 March 2024.

6.4 Monitoring and performance of charities

The trustee function is exercised by the Executive Shareholder & Trustee Committee which meets on a quarterly basis following a review of the arrangements in August 2024.

It is proposed that each charity reports, via an internal Client Officer, annually on the progress and performance of the charity. It is recognised that there appears to be some overlap between the objectives of the charities and therefore in order to avoid duplication and ensure efficient use of the charity's resources consideration should be given as to whether any of the charities should be merged. The progress and performance reports are recommended to cover charities with similar objectives, taking into account the size of the charity's resources.

A draft annual work programme for routine matters within the remit of the Committee is as follows:

March

Guildford Sports Ground annual review

June

The Mayor of Guildford's Local Support Fund and Arundel House (Hamilton Fellows) annual review

September

Final accounts for each charity to be considered.

December

The Racks Close Open Space, Burpham War Memorial Recreation Ground and Public Walks and Pleasure Grounds annual review

6.5 Officer oversight of monitoring and performance of charities

The Council's leadership team will have oversight of the governance of the Council's charities in order to be able to fulfil their obligations, and to advise and support the trustee role.

The Joint Chief Executive will appoint a Lead Officer for each charity from within the senior Leadership Team and the role of that Officer will be to undertake an annual review of the charity, and to provide updates when appropriate, to enable the Council to fulfil its role of trustee. The review should consider the following matters:

1. Should any particular activities be delegated to Officers and if they have already been delegated does this remain appropriate;
2. How effective is the charities performance against its objectives and are there any steps that can be taken to improve effectiveness in light of the charity's resources;
3. Are there any risks that need to be mitigated;
4. Does the charity have sufficient funds and is there a strategy in place to maintain future funding.

The trustee will be advised by the Lead Officer for each charity and supported by the Monitoring Officer and Chief Financial Officer, and their deputies.

6.6 Governance Arrangements relating to the trustee function

Trustee decisions are generally taken by the Executive Shareholder & Trustee Committee unless specifically delegated, such as for Arundel House (Hamilton Fellows). The report requirements set out above will ensure that the trustee retains oversight of all decisions but delegation can enable day to day decisions about the running of the charity to be taken as required.

When acting as trustee the Council has a duty to act in the best interest of the charity and there are likely to be occasions when this creates a conflict of interests. It is recommended that a policy is

developed for each charity, separate from the Council's own policy, setting out how conflicts of interest will be identified and managed.

7.0 Options

- 7.1 The Executive Shareholder & Trustee Committee could choose not to receive regular reports going forwards, but to do so would provide insufficient oversight by the trustee who would be at risk of not competently fulfilling their executive role and insufficient ability to monitor the performance of each charity and perform their statutory duty.

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 also took place with the Executive as a whole via the Executive briefing meeting prior to the date of the Executive Shareholder & 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.

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 trustee function.
- 9.2 Insufficient oversight leads to a risk that the Council may not be fulfilling its legal responsibilities in respect of its trustee duties and as a result the charities may not be delivering their objectives, nor making sufficient progress. There is a risk of financial implications and additionally that the Council cannot satisfy its legal duty as to best value.

10.0 Legal and Governance Implications

10.1 Under section 139 of the Local Government Act 1972 the Council can receive and hold gifts on charitable trust. It is recognised that Councils are well placed to act as trustees have high standards of governance, make decisions openly and transparently and are accountable. However, in order to comply with the Charities Act 2011 and ensure that the Council meets its duties as a trustee there needs to be an awareness of the risks and good governance.

10.2 In August 2024 further guidance was issued by the Charity Commission in relation to the role of local authorities as trustee. This followed concerns in particular about how charity assets were being managed and some cases where assets were not being held and treated separately.

10.3 The recommendations in this report will help to address any potential risks by ensuring there is robust governance in place, regular reviews and oversight. It is also recommended that separate conflict policies are adopted for each charity to support these arrangements.

11.0 Financial Implications

11.1 There are no direct financial implications 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 Joint Chief Executive will progress with arrangements for senior officer oversight of the Council's charities.

15.2 Officers will bring further reports to the Executive Shareholder & Trustee Committee over the coming months with a more detailed review of each of the charities.

16.0 Background Papers

16.1 Guildford Borough Council Constitution

17.0 Appendices

None

Report clearance progress:

Your report will not be published by democratic services unless the below is completed and there is evidence of the correct clearance process.

This box must not be deleted and will be published with the report

Finance	Richard Bates	20.11.2024
Legal & Governance	Claire Beesly	20.11.2024
Human Resources	Insert name	Insert date cleared
Equalities	Insert name	Insert date cleared
Strategic Director	Pedro Wrobel (in SS absence)	20.11.2024