

# Guildford Borough Council

Report to: Council

Date: 22 January 2025

Ward(s) affected: All

Report of: Head of Paid Service: Pedro Wrobel

Authors: Pedro Wrobel, Chief Executive and Head of Paid Service;  
Susan Sale, Strategic Director, Democracy, Law and People and  
Monitoring Officer;

Richard Bates, Strategic Director, Finance & Resources and  
Chief Financial Officer; and

Mark Greenburgh, external Solicitor.

Email: Pedro.wrobel@guildford.gov.uk

Lead Councillor responsible: Cllr Julia McShane

Email: julia.mcshane@guildford.gov.uk

Report Status: Deemed Open

## Report of the Head of Paid Service

### 1. Issues for decision:

1.1 There are two issues I wish to address in this report. The substantive issue is to present to members the final piece of the picture relating to historic failings in the housing landlord service, and more broadly in relation to governance and financial controls at Guildford. These have already been the subject of reviews by SOLACE and the Council's Improvement Plan, which I will refer to below.

1.2 This report attaches the independent investigation report received from Heminsley Law (see Appendix 1). It sets out the evidence that has been considered by the independent investigators and conclusions they have reached as to who knew what and when, and what those senior officers did, or should have done at the time.

- 1.3 However, before members receive a detailed introduction and debate the substantive business, the council must decide whether, or not, the item of business should be considered without the press and public present. There are important considerations on both sides of that question, and these have been formulated by the legal services team and subject to detailed advice from Leading Counsel, Nigel Giffin KC. A summary is set out in section 2, below.

## **2 Whether to exclude the public and press?**

- 2.1 Democracy does not really work in a vacuum; it depends on information to inform the debate and permit effective scrutiny of decisions. It is a very important principle that those responsible for providing services, taking important decisions about the level of resources to be allocated, and monitoring the performance of the service, take those decisions in public where possible. This Council has repeatedly stated its intention to be open and transparent.
- 2.2 The law is very clear. The default position for any meeting of a local authority (be it the Council or an Executive meeting), is that the meeting is open to members of the public and press to attend, and to receive the agenda papers, reports and minutes of the meeting in advance or have access to them for 6 years after the meeting.
- 2.3 Members will be used to the standard wording inviting them to consider excluding the public and press on one of the grounds mentioned in the paragraphs of Part 1 of Schedule 12A to the Local Government Act 1972. These provide grounds including issues such as where an individual is named or identifiable from the report, where the financial or commercial interests of a third party are affected, advice that is subject to professional legal privilege, or where revealing the information may hamper an investigation or prosecution of a crime.
- 2.4 Similar issues arise in relation to considerations under data protection, freedom of information, common law claims such as privacy or

defences available under the Defamation Act 2013. All require that the decision taker (you, the members of the Council) have regard to and balance the relevant public interests of disclosure against the private interests of those affected by disclosure and come to a view on where you judge the public interest test to lie.

2.5 On one hand, it is clear from the face of the documents that some information qualifying as 'exempt' information is disclosed in the report. This includes:

- paragraph 1 – information relating to an individual
- paragraph 2 - information which is likely to reveal the identity of an individual
- paragraph 5 - information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- paragraph 7 - information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The information disclosed is the name of individuals, not sensitive personal data or private information such as home addresses; what is in the report is a commentary following a fair and thorough investigation on how those officers discharged their duties.

2.6 There appears to be a number of factors the Council should balance, especially in the context of the obvious public interest considerations, which amplify the default provisions of papers and meetings taking place in public. These include:

- The sums of public funds involved are substantial.
- The issues arose over quite a long period of time.

- The seniority of the officers named – no one below Deputy Chief Officer grade; and the closest scrutiny falls on the Chief Executive and members of Corporate Management Board.
- There is evidence of significant non-compliance with established rules and procedures.
- There appears to be significant variation between the job descriptions of the officers and the way in which they perceived their role.
- There appears to be an absence of formal reporting of any issues of concern to relevant members of the council. Investigators conclude that Members of the council were not made aware by way of formal reports presented from officers when that information came to officers' knowledge.
- There has already been considerable interest shown by the public and press, leading to articles published in local print and broadcast media and websites.
- Seeking to exempt papers is likely to lead to the focus being on what was withheld with doubtless baseless accusations and speculation – whereas disclosing the paper proves that the council has confidence in the report and is committed to having, and responding to, an independent investigation.
- Given the review of the evidence and report by a senior barrister specialising in Defamation Law, members can have a high degree of confidence in the quality of the opinions and facts reported.
- There is a duty on a local authority to maintain confidence in the public service. This may include recognising where issues have happened in the past and being open and explicit about the actions being taken to address historic failings.

- What is the likely impact of disclosure on those named or identifiable from the report, with a view taken in the round rather than on a name-by-name basis.
  - In relation to potential prejudice to the criminal investigation, the Monitoring Officer has been in touch with the police investigation team, and they have raised no concerns to the possible publication by the full council.
- 2.7 Members should ensure that they have read both this covering report and the Heminsley Report well before the meeting so that they can hold an informed debate and ensure that they have properly understood its contents.
- 2.8 Once members have resolved this question, the debate will then continue either in private session, or otherwise in public.
- 2.9 Finally, irrespective of the decision on releasing the Investigators' report (the Heminsley Law report) and this covering paper, the background documents are likely to remain exempt and members should note that the Monitoring Officer, being the Proper Officer, will assess any requests as they come forward. This would also apply to members seeking to exercise a 'need to know' in relation to the background papers.

### **3 Summary of the Heminsley Law report**

- 3.1 As members will already be aware, in 2022/23 senior officers became aware of circumstances that suggested there may have been fraud against Guildford Borough Council connected to the housing landlord service and the Council's contractors. Those allegations were reported to Surrey Police and are now the subject of an investigation by the South East Regional Organised Crime Unit (SEROCU). Whether or not criminality is established, and/or prosecuted by the CPS, it has become clear that there were serious deficiencies in the ways in which the housing landlord service was managed, contracts let and managed, works commissioned and budgets spent, and that this led to a

- considerable contractual overspend and a risk that Guildford Borough Council failed to discharge its Best Value duty.
- 3.2 In December 2023, Guildford Borough Council commissioned a review, undertaken by the Society of Local Authority Chief Executive's (SOLACE), into Governance matters at Guildford Borough Council, and a separate review specifically into Housing Governance. The outcomes of those reviews have been separately reported to Council and published in the public domain.
  - 3.3 There is now in place a comprehensive improvement plan which identifies the learning and sets out a series of steps to improve performance and ensure compliance with the council's 'Best Value' duties. A copy of the improvement plan, and the progress update from officers and the Independent Assurance Panel is attached as Appendix 2 to this report.
  - 3.4 The SOLACE reports were focussed on identifying the systemic failures which meant that works were not commissioned properly, spend was not monitored or reported, and circumstances created in which the opportunity for fraud could arise and go undetected.
  - 3.5 In February 2024, the Joint Senior Staff Committee (JSSC), commissioned a separate piece of work to consider the actions of senior officers, in order to establish, of senior staff members in post at the relevant times, who knew what, and when, what they did about it and what they should or could have done about it. Heminsley Law were appointed as an independent, specialist firm of lawyers, experienced in such investigations in both the public and private sector.
  - 3.6 That investigation has now concluded and the report from Heminsley Law has been presented to the JSSC, as it is that committee, with responsibility for the discipline and performance of the most senior staff in the organisation, which commissioned it. A copy of the Report is attached as Appendix 1. I should emphasise that there are appendices to the Report, which I have not reproduced and indeed for

reasons discussed below, I do not believe that those appendices should be published or debated in public.

- 3.7 The Report identifies that there were points in time when 'red flags' were reported to the Corporate Management Board (CMB), and that the CMB, and its chair, Tom Horwood, as the former joint chief executive, missed key opportunities to ask further questions, establish facts and stop the substantial costs overrunning.
- 3.8 Moreover, the Report has not found evidence to suggest that any formal reports to members were considered or made, despite these being apparently serious matters including the whistle blowing report and recommendations and eventually costs overrun information. Simon Stephen a partner in the firm of Heminsley Law will attend the council meeting on 22 January in order to present his findings and respond to questions from elected members.
- 3.9 Tom Horwood, the former Chief Executive of Guildford and Waverley Borough Councils gave notice and left the Council's employment in February 2024 at the conclusion of a slightly extended notice period. Annie Righton was appointed as the Interim Chief Executive but agreed to step away from her duties once the JSSC identified the need for an external investigation. Similarly, Ian Doyle, as Joint Strategic Director Transformation and Governance had agreed to step away from his duties to protect the integrity of the process.
- 3.10 Both Ms Righton and Mr Doyle subsequently agreed terms with the Council to end their employment. As none of the senior staff who were in place at the relevant times remain employed by the councils, there is no further action for the JSSC to take. However, as the Head of Paid Service, having considered the report and consulted with the Monitoring Officer and the Chief Finance Officer of the Council, I have concluded that it is both appropriate and necessary for me to present this report to both councils. This is to ensure that there is full transparency to the councils of the background, the failures, and most importantly of the steps the Council has taken and will continue to

take to ensure that the Council is able to achieve its Best Value obligations going forwards.

- 3.11 I have already referred to the Improvement Plan which has been approved by the Council. In December 2024, I presented to full council the first 6-month report of progress including a presentation by the chair of the Independent Improvement Panel, who confirmed that the improvement plan remained fit for purpose, that the Council had made good progress against the report, and that – in the judgement of the Panel – we were ahead of where they had expected us to be.
- 3.12 Having now reviewed the findings of the Heminsley Law Investigation, I am satisfied that the steps that have already been identified in the Improvement Plan are sufficient to ensure that the Council's systems and processes are compliant and would not permit such a state of affairs to arise in the future. However, as transparency lies at the heart of accountability, I believe it to be essential for this report to be presented to members.
- 3.13 The report will be referred to the South East Regional Organised Crime Unit so that they remain fully sighted on the investigations we have undertaken from a management perspective, and to the Executive, Corporate Governance and Standards Committee and relevant Overview and Scrutiny Committee of the Council to ensure that it informs their work going forwards. In addition, the external auditor of the councils has been provided with a copy of the investigation report.

#### **4. Recommendation to Council**

- 4.1 To determine whether the private interests of exemption outweigh the public interest in publication, and decide whether to move the meeting into private session by excluding the public and press. If members choose to move the exempt session, the reports will stay on pink paper and must not be disclosed. If members conclude to remain in open session, then the debate will continue in public, and the reports will be made public.



- 4.2 To note and comment on the report of the Head of Paid Service and the investigation report by Heminsley Law set out at Appendix 1.
- 4.3 To confirm actions taken by the Council and identified in the Improvement Plan in Appendix 2.
- 4.4 To consider the action that has already been taken and whether any further action would be in the public interest.

## **5. Consultations**

- 5.1 In preparing this report I have formally consulted the Chief Finance Officer, Richard Bates, and the Monitoring Officer, Susan Sale. Their comments are set out below. The Council has also taken specialist legal advice from Greenburgh & Co, a firm of solicitors focussed on employment, equalities, and ethical governance law, and from Kings Counsel. The advice is subject to professional legal privilege and is not therefore appended to this report. However, Mark Greenburgh will be available to respond to any questions from members raised at the meetings of the Council which consider this report.

## **6. Financial Implications**

- 6.1 The costs of the investigation are £109,000, to be shared equally between Guildford and Waverley Borough Councils and this is financed through use of reserves.
- 6.2 The Head of Paid Service has already referred to coterminous reporting obligations that fall upon the Chief Finance Officer and Monitoring Officer of the Council. I am the officer designated as the Chief Finance Officer under S.151 of the Local Government Act 1972. S.114 of the Local Government Finance Act 1988 requires a Chief Finance Officer of a local authority to make a report to the Council where it appears to him that the authority:
  - (a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,
  - (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or

(c) is about to enter an item of account the entry of which is unlawful.

- 6.3 I have considered whether my statutory reporting duty is engaged in relation to the findings made in the Heminsley Law Report. The events identified in the Heminsley Law Report are all historic. I am satisfied that the systems, processes and approvals now in place by the councils are far more robust and that any overspends of the nature experienced historically would now be flagged, reported and controlled effectively.
- 6.4 Whilst it is clear that the Council did not follow its standing orders as to contracts, procurement or financial regulations adequately, and that there was a substantial overspend, which could give rise to a formal report, having been consulted by the Head of Paid Service and the Monitoring Officer, and on balance, I am satisfied that the matter has been adequately reported to the Council and in public, and that effective steps have been taken to prevent any recurrence of this state of affairs. I am therefore content to support this report, and the actions recommended.

## **7. Legal Implications**

- 7.1 The Council is under a legal obligation to secure best value and continuous improvement. The Heminsley Law Report, alongside the Solace reports referred to reveals a serious risk of failure by the Council in achieving this objective. The detail of the reports contains further individual errors and failings by the authority in relation to a number of legal obligations. Section 5 of the Local Government and Housing Act 1989 places the Monitoring Officer of the Council under legal duty to make a report to the council in circumstances where it appears that the authority “has given rise to or is likely to or would give rise to, a contravention by the authority, of any enactment or rule of law or of any code of practice or any maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 to prepare a report to the authority with respect to that proposal, decision or omission”.

- 7.2 I have considered whether my statutory reporting duty is engaged in relation to this matter and have concluded on the balance that the steps taken by the Head of Paid Service to bring this matter to the attention of the council, and the steps already taken and approved by the full council in preparing and approving and Improvement Plan, are sufficient and that my statutory reporting duty is therefore not engaged. I support the making of this report and the proposed actions identified. I further confirm that I agree with the council having the option to 'declassify' the Heminsley Law Report and to debate this matter in public session if it is satisfied that the public interest in publication outweighs the private interests of those identified or named in the report. I confirm that the Police have been made aware of the Heminsley Law Report and have not objected to publication in relation to their on-going investigation.
- 7.3 I have given consideration to various legal risks arising from this report including public information law and defamation. I have taken extensive advice and am comfortable with the content and proposals within this report.

## **8 Human Resource Implications**

- 8.1 None identified as none of the individuals continue to have an employment relationship with either Councils. There is a potential impact on morale, as the report identifies a number of failings by senior officers and a culture of non-compliance. Morale may also be adversely affected by the naming of individual officers and members will want to take account of this in deciding the 'public interest test' referred to above.

## **9 Equality and Diversity Implications**

- 9.1 No equality and diversity implications identified, but the impact on individuals as opposed to the public interest in disclosing information from the investigators in respect of those individuals, has been carefully considered.

## **10 Climate Change/Sustainability Implications**

10.1 There are no direct climate change or sustainability implications arising from this report.

## **11 Summary of Options**

11.1 The Council could legitimately decide to maintain the exemption from publication and to conduct its meetings in private with the press and public excluded.

11.2 The Council could take no action to note or approve the report of the Head of Paid Service.

11.3 The Council could seek to take further actions in response to the report and its findings.

## **12. Background Papers**

- Solace Report on Governance Review at Guildford Borough Council 2024
- Solace Report on Housing Governance Review at Guildford Borough Council 2024

### **Exempt Background Papers:**

Written advice of Lorna Skinner KC and Nigel Giffin KC (exempt under Sch 12A para 5 Local Government Act 1972 as being subject to professional legal privilege.

## **13 Appendices**

Appendix 1: Report of Heminsley Law dated 20 January 2025

Appendix 2: GBC Improvement Plan 2024 and progress report December 2024