

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee

DATE: 18 July 2018

CONTACT OFFICER: Sushil Thobhani, Service Lead Governance & Deputy Monitoring Officer

(For all enquiries) (01753) 875036

WARD(S): All

PART I **FOR DECISION**

GOVERNANCE REVIEW

1 Purpose of Report

The purpose of this report is to:

- Report to the Committee on the Governance Review carried out following the approach agreed by this Committee at their meeting on 8 March 2018;
- To ask the Committee to resolve to note this Report and recognise the work carried out by Officers in improving the Governance of the Council ; and
- To ask the Committee to note and approve the Council's proposed Annual Governance Statement.

2 Recommendation(s)/Proposed Action

- a) That the findings of this Report following the review of the Council's governance arrangements be noted by this Committee; and
- b) The proposed Annual Governance Statement by the Council at Appendix 3 be noted and approved.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. This is underpinned by good governance arrangements being in place.

4 Other Implications

(a) Financial

There are no financial implications arising from this report.

(b) Human Rights Act and Other Legal Implications

There are no Human Rights Act or other legal implications arising from this Report.

(c) Equalities Impact Assessment

There is no identified need for an EIA arising from this Report.

5 Supporting Information

- 5.1 On 19 December 2017 the Council agreed a motion relating to governance which, inter alia, resolved to commission this Committee to undertake a full review of the Council's governance arrangements. The full printed minutes of the Council's resolution are appended to this report as Appendix 1.
- 5.2 The Council's resolution established the outcomes they desired to promote from such a review. This report concludes that the Council's governance arrangements are generally sound and assurance can be taken that they promote the features of good governance recognised in the Council resolution.
- 5.3 The background to the Council motion was the need in the preceding months to make a permanent appointment to the position of the Council's Chief Executive and Head of Paid Service together with various actions and behaviours exhibited by some individuals (both Council Officers and Members) generated by the appointment process and the circumstances preceding it.
- 5.4 That episode and actions leading up to it inflicted a strong test on the Council's governance arrangements which led to the Council's desire for the review of those governance arrangements.
- 5.5 An independent review into some of these events, behaviours and allegations made against various individuals had been commissioned by the then Deputy Monitoring Officer in September 2016. The investigation was conducted by Mr Richard Penn and reported upon in November 2016. A copy of the confidential report and findings from that investigation, which contains personal data, is appended to this report in Part 2 as Appendix 4, for noting. The Report has been redacted solely to remove references to current employees of the Council.
- 5.6 At their meeting on 8 March 2018 the Committee agreed an approach to the governance review which identified the following areas as being appropriate for review:
- the Council's Constitution generally
 - the process for the appointment of Head of Paid Service
 - the process for Members' access to information and to Council documents
 - the use by Members and Officers or former officers of the rights to request information under the Freedom of Information Act 2000 or the Data Protection Act 1998
 - The culture of behaviours by members and officers and how to promote desired behaviours and to imbed them.
- 5.7 This Report brings to the Committee the findings in respect of the above areas. In addition, it reports on the following matters which have affected the Council's governance arrangements since the last meeting of the Committee and which relate to the Committee's function as the member forum for corporate governance matters:

- the review of the Council's decision making processes
- the establishment of the Risk and Audit Committee
- the establishment of a committee to discharge the Council's duties as a charitable trustee
- the delegation of the Council's Legal Services Function to the London Borough of Harrow
- operational issues experienced in the area of governance
- engagement with the Local Government Association
- engagement with the Ministry of Housing and Local Government

5.8 The Council's Constitution

- 5.8.1 There is a clear need to revise the Council's constitution in order to update statutory references within it, in order to take account of the restructure of the Council's senior management and directorates, in order to take account of the setting up of the Trustee Committee to discharge the Council's functions as a corporate trustee of charitable assets (which is dealt with more fully below in paragraph 5.13 of this Report), in order to take account of the delegation of the Council's legal services function (which is more fully dealt with below in paragraph 5.14 of this Report) and, most importantly, to be able to make revisions to enhance the constitution as a result of the findings of the review of the Council's governance arrangements set out in this Report.
- 5.8.2 There is a separate report before the Committee today dealing in more detail with the revisions to the Constitution. That report deals largely with the revisions needed to deal formally with most of the above matters. This report deals with the matters designed to enhance good governance in other ways.
- 5.8.2 Ways to enhance good governance have been discussed at the last three meetings of the Member Panel on the Constitution. The revisions proposed as a result of the discussions of the Panel are the following:
- 5.8.2.1 to provide that the Chief Executive and Head of Paid Service should act as the Returning Officer and Acting Returning Officer at local and Parliamentary elections to accord with common practice elsewhere and to signal the importance to the Council of the electoral arrangements which it administers.
- 5.8.2.2 to extend to all Committees, subcommittees and panels of the Council the practice of the Overview and Scrutiny Committee and Panels of writing to Members who have missed two consecutive meetings without good reason and to provide for communication to Group Leaders following three consecutive absences.
- 5.8.2.3 to provide for regard to be had as to which of Cabinet or Council is the holder of the functions which need to be effected in order to implement recommendations in reports of Overview & Scrutiny Committee and Panels when considering where such reports should be referred.
- 5.8.2.4 to provide expressly that no body should seek to influence or control the contents or recommendations of Officers' reports in relation to Planning and Licensing Matters in order to avoid any impression of pressure on officers in relation to applications in which the Council may have an interest

5.8.2.5 to amend the Local Code Governing Relations Between elected Members and Council Employees to express clearly that Members are to be treated in the same manner as any member of the public would be when requesting information which any member of the public would be entitled to.

5.8.2.6 to amend the Code referred to in the preceding subparagraph to provide that in the event that Members feel unable for whatever reason to refer any matter to any of the Statutory Officers where the matter involves all of such officers, then they may refer the matter to any officer who would deputise for such statutory officers in their absence.

5.9 Appointment of Head of Paid Service

5.9.1 At its extraordinary meeting on 19 December 2017 Council requested an independent review by the Chartered Institute of Personnel and Development (CIPD) into the abortive process to appoint a Chief Executive and Head of Paid Service at the end of last year. The findings of this review were reported to this Committee at its last meeting on 8 March 2018. The findings were that the process was standard for this level of appointment.

5.9.2 Since then the Council have appointed the current Interim Chief Executive under whose supervision the process is underway to appoint the new permanent Chief Executive and Head of Paid Service. The Interim Chief Executive is not a candidate. The LGA have actively participated in the process.

5.9.3 The appointment will be recommended by the Council's appointments sub-committee for approval by full Council in accordance with Part 4.7 of the Constitution. The sub-committee comprises eight Members including the Leader and Deputy Leader and the Leader and Deputy Leader of the opposition group.

5.9.4 There have been over 20 applicants and five have been shortlisted. The Council Management Team, a stakeholders panel of partner organisations and an engagement panel of employees have all had the opportunity to meet and question the short-listed candidates.

5.9.5 The appointment is expected to be recommended for approval by the Council meeting on 24 July following a meeting of the appointments sub-committee on 20 July.

5.9.6 The recruitment process was approved by full Council at their meeting on 22 January 2018 and has found general acceptance and approval and there have been no objections to it. It is expected to result in the appointment of a strong candidate to lead the Council's Paid Service.

5.10 Members' Access to Information and Documents

5.10.1 The provisions dealing with Members' access to information and to Council documents is contained in paragraph 16 of the Local Code Governing Relations Between elected Members and Council Employees in Part 5.4 of the Constitution.

5.10.2 These provisions have been considered at the Member Panel on the Constitution. They have generally been found to be satisfactory. The only change that is proposed is that there be explicit recognition that Members are treated in the same manner as members of the public when requesting information to which members

of the public are entitled. This change is proposed to be made in the separate report before the Committee today relating to revisions of the Constitution.

5.10.3 Of more importance, however, is the manner in which information is sought by Members. The interim Chief Executive has now communicated with Members and Staff to set out the expectations of each other and the acceptable manner of seeking and providing information. The procedure that will be adopted henceforth is that requests will be made by Members through a central access point in the Council's Communication Team so that these requests can be monitored and processed effectively without placing an excessive burden on staff. Requests for information will also be addressed by Members to Directors and senior Managers and not to operational staff members. Staff have also been reminded of the expectations of their role in this process.

5.10.4 It is considered that this area of concern has now been fully addressed and should not prove an area of any difficulty, going forward.

5.11 Requests for information by Members and Officers under the Freedom of Information Act 2000 and the Data Protection Act 1998

5.11.1 Whilst Members have the same right as the Public to seek information from the Council it is not considered that Members should need to make formal requests under such statutory rights to receive information from their own Council. It is considered, therefore, that the communication by the Interim Chief Executive to Members and Staff referred to above, supported by the proposed amendment to the Constitution to provide for Members to be treated in the same manner as Members of the Public in relation to requests for information, and the direction of requests to a central contact point and to Directors and Senior Managers will lead to there being little need for such requests going forward.

5.11.2 in relation to any difficult areas, staff will now have access to dedicated expert advice on legal issues relating to the Data Protection Act and the Freedom of Information Act at the shared Legal Service with Harrow. It is considered that this will assist Officers considerably to deal more confidently and more expeditiously with requests for information under these statutes.

5.12 The Culture of Behaviours Amongst Members and Officers

5.12.1 The Committee will note from paragraphs 5.8 and 5.9 of this Report that the Interim Chief Executive has written to Members and Officers alike to reinforce good behaviours in the governance context.

5.12.2 It is indeed very much the case that the rules and procedures which prescribe good practice rely upon good behaviour for their effectiveness.

5.12.3 In this regard the Committee is informed that since the last meeting of this committee it is the case that all of the independent investigations of formal complaints under the Councillors' Code of Conduct against and among Members arising from the abortive 2017 Chief Executive appointment have now been completed and the final reports of the investigators have been issued. In no case was it found that there had been a breach of the Councillors' Code of Conduct. Nevertheless, the Reports did reveal behaviours which highlighted difficult relationships during this period between Officers and Members and amongst Members. It is considered that these are matters of behaviour which should be

addressed in furtherance of the purposes of the Constitution set out in Article 1 of the Constitution.

- 5.12.4 These difficult relationships and behaviours are matters which could be addressed by training and by building upon the programme of training “Actions Speak Louder Than Words” carried out across the Council subject to the findings of an ongoing evaluation of that programme. This could be a matter for further consideration by the new permanent Chief Executive, once in post.
- 5.12.5 It is of great importance, however, that the Committee, because it has been specifically charged to carry out a review of the Council’s governance arrangements as a result of specific difficult circumstances arising last year, receive, in confidence, the redacted copy of the independent investigation report (referred to in paragraph 5.4 above) which gained particular notoriety at the time. The purpose of providing the committee with this report in confidence in this manner is to enable general assurance to be taken that any findings of the Committee’s on the state of the Council’s governance arrangements arising from this report have been arrived at in all transparency.
- 5.12.6 Of course, matters could be enhanced further by informal adoption of good behaviour such as better cross party working, sharing of information between party groups, cross party co-operation on appointments to positions on committees and panels, joint working on further enhancement for better governance etc. all of which are not dependant upon formal provision in the Constitution but upon better behaviours outside the formal arrangements but which enhance them. Work is now continuing to seek to encourage the adoption of such behaviours and to imbed them.
- 5.12.7 During the current calendar year only four new complaints of Member conduct under the Code have been received, in marked contrast to the second half of the last calendar year.

5.13 Review of Decision Making Processes

- 5.13.1 For a considerable period of time now, there had developed within the Council a plethora of boards, project boards, consultative and advisory groups and informal groupings which led to confusion over the appropriate and correct decision making process.
- 5.13.2 the Council have now undertaken a complete overhaul of these procedures and groupings, which has been considered by the Interim Chief Executive, the Council Management Team and Lead Members.
- 5.13.3 As a consequence there is now in place a formal decision making process which provides a principled and properly understood process for decision making within the Council.
- 5.13.4 There is appended at Appendix 2 of this Report a schematic chart showing this new decision making process which takes account of the new directorates and their operation.

5.14 Establishment of Risk and Audit Board

- 5.14.1 The Council have now established a formal Risk and Audit Board to keep under constant review the Council's Corporate Risks Register and the risk registers of individual directorates.
- 5.14.2 the Risk and Audit Board consists of the Director for Finance and Resources, the Council's Service Lead For Finance, the Service Lead for Governance, the Council's Senior Risk and Insurance Officer, a representative from the Project Management Office, a representative from the Council's internal auditors and a representative from each directorate.
- 5.14.3 the Board meets once every month and reviews the Council's Corporate Risk Register and the risk register of a selected directorate at each meeting, on a rolling basis. In this manner, the risks registers are constantly monitored and actions required to mitigate or avoid them are progressed

5.15 Establishment of Charitable Trustee Committee

- 5.15.1 The Council is the corporate trustee of three registered charitable trusts, namely the Salt Hill Playing Fields Trust, the Langley War Memorial Trust and the War Memorial Fields.
- 5.15.2. Up till recently any decisions relating to these Trusts had to be taken at full Council as this was a Council side function and there was no mechanism for decisions to be taken otherwise on trust matters. This was unwieldy and not the best practice for dealing with the Council's functions as a corporate trustee.
- 5.15.3 At its meeting on 24 April 2018, the Council agreed, in accordance with Best practice, to set up a Trustee Committee of 7 members with appropriate terms of reference as advised by external, specialist Solicitors to discharge the Council's functions as a corporate Trustee.
- 5.15.4 Officers are now in the process of arranging appropriate Training for this Committee to enable the Committee to operate and to fulfil its functions, which are designed to provide clarity of purpose, ensure compliance with Charity Commission regulatory requirements, legal requirements of trustee obligations and to avoid conflicts of interest between the Council when acting in its different capacities as a local authority on the one hand and as a corporate trustee of charitable assets on the other.

5.16 Delegation of the Council's Legal Services Function

- 5.16.1 The Council's Legal Services department had become considerably depleted over time. Recruitment and retention of suitable staff was a continuing matter for concern. It was proving increasingly difficult to maintain a good and timely service without the expensive outsourcing of work to private firms. The Legal Services department lacked resilience and could not provide an attractive career path for staff employed within the department.
- 5.16.2 On 19 March 2018 the Cabinet agreed to the delegation of the Council's legal services function to the London Borough of Harrow, to be delivered by the joint legal service hosted by that Borough on behalf of itself, other London Boroughs and other authorities in Buckinghamshire. This decision was approved by full

Council on 24 April 2018 when the necessary constitutional changes were also agreed by Council.

5.16.3 On 31 May 2018 an Inter Authorities Agreement was completed between the Council and the London Borough of Harrow to effect the transfer of the legal services function to that Borough and the transfer became operational on 1 June 2018, when the Council's legal services staff transferred to the new service under TUPE arrangements.

5.16.4 With effect from 1 June 2018, therefore, the Council has access to a large and experienced legal service dedicated to work for public authorities whose profits are reinvested only in improvements of the service. This will enable the Council to have greater control over its legal spend and it provides the resilience previously lacking in the service. The Council's staff who transferred to the new service have greater opportunity for career progression than before.

5.17 Operational Issues Experienced In the Governance Area

5.17.1 Since the last meeting of this Committee, operational issues have arisen in the area of governance, which have provided the opportunity to improve governance practices at the Council, instances of which are described below.

5.17.2 It appeared, based on previous advice issued, that Officers had operated on the basis that during the "Purdah" period, at the time of elections, it was in order for Members to be shown on council publicity if they were not standing as a candidate in the election. This could in certain circumstances breach the Code on Local Authority Publicity and corrected advice was issued to officers to avoid such publicity during the relevant time.

5.17.3 Conversely, as a result of the advice issued as above, Officers also mistakenly stopped including news about Members' activities in the weekly Bulletins to Members. Accordingly, corrective advice was issued to officers that it was only publicity aimed at the public or a section of the public which was subject to the code and not publicity between Members and so it was not necessary to remove references to individual members and their activities from the Bulletin.

5.17.4 It had been the practice of the Council, and in fact the practice of all the authorities in Berkshire, not to apply the principle of political proportionality in relation to appointment of members to the Fire and Rescue Authority, which is required by the relevant legislation. When this non-compliance was brought to the attention of the Council, the practice was altered at the Council and, via the office of the Council's Interim Chief Executive, at all the other Berkshire authorities. Henceforth this error should not be perpetuated.

5.17.5 The Council's Constitution provides for the automatic disqualification of members of the Overview & Scrutiny Committee and its Panels in the event of three consecutive failures to attend meetings without good reason. It was proposed to extend this to all the Council committees, sub-committees and panels. This practice, was however, declared unlawful by virtue of the Localism Act 2011 by a judgement of the High Court of Justice handed down in May 2018 and hence action will now be taken to amend the Constitution in a manner that will not breach the law.

5.18 Engagement with the Local Government Association

- 5.18.1 Since the last meeting of this Committee there has been increased engagement, both by Officers and Members, with the Local Government Association (“LGA”) through meetings and support from LGA Officials.
- 5.18.2 The LGA supports good practice across all local authorities and provides learning and mentoring opportunities for both Officers and Members.
- 5.18.3 LGA representatives have met with the Interim Chief Executive and with the Directorate Management Team for the Finance and Resources Directorate and have provided individual members with access to contacts and opportunities to learn about and import good practice to the Council. This resource is now available to Managers to exploit as required.
- 5.18.4 LGA representatives have held a training session for Members upon effective Overview and Scrutiny functions and Members have had peer support in establishing better governance.
- 5.18.5 There is now increased awareness amongst Officers and Members of the utility of the LGA as a resource for reinforcing good practice and good governance.

5.19 Engagement with the Ministry of Housing Communities and Local Government

- 5.19.1 Civil Servants from the Ministry of Housing, Communities and Local Government (“MHCLG”), the former Department of Communities & Local Government (“DCLG”), have visited the Council’s Statutory Officers responsible for Governance i.e. the Monitoring Officer and S151 Officer and the Service Leads for Finance and Governance, for an in depth discussion upon the Council’s plans and practices in these important areas.
- 5.19.2 The Civil Servants involved in the visit recognised the significant work undertaken to improve the governance arrangements within the Council and did not express any concerns following their visit. The Council also intend to arrange further training sessions via South East Employers and make use of their resources as a further improvement tool going forward.

5.20 Legal Implications Content In Reports to the Council and the Executive

- 5.20.1 The most important control which seek to avoid the Council undertaking any actions or policies which may be ultra vires the Council or which might breach and statutory requirements in the requirement for legal implications to be considered.
- 5.20.2 Following the delegation of the Council’s Legal Services function to the London Borough of Harrow, the Council’s Senior Management Team has been instructed that report must be submitted to the Head of Legal Practice at Harrow to provide legal implications content for Reports before they are passed to the Service Lead for Governance to approve for publication.
- 5.20.3 The greater range of expertise and breadth of coverage of subject areas available from the share legal service should considerably reduce any risk of actions being taken by the Council which are ultra vires

5.21 Community Governance Review

5.21.1 At its meeting on 17 May 2018 the Council approved the carrying out of a Community Governance Review into the Parish Council arrangements in the Borough under the Local Government and Public Involvement in Health Act 2007.

5.21.2 This review is underway and expected to report recommendations by the end of the year which will provide an opportunity for further enhancement, if required, of the Council's Governance arrangements in relation to authorities in the tier below and interactions with them..

5.22 Annual Governance Statement

To reflect the findings of this Report, there is appended to this Report, at Appendix 3, the Council's proposed Annual Governance Statement for approval by the Committee.

6 Conclusion

The conclusion that is drawn from the cumulative consideration of the matters set out in this Report is that there is no crisis in the Council's governance arrangements, which are generally sound and improving, and this Committee can take assurance that the arrangements embody the features of good governance recognised in the Council's resolution of 19 December 2017.

7 Background Papers

None

Appendices

Part 1

Appendix 1 - Printed Minutes of the Council's Resolution of 19 December 2017.

Appendix 2 – Council's Decision Making Structure

Appendix 3 – Council's proposed Annual Governance Statement

Part 2 – Confidential Appendices

Appendix 4 – Redacted Investigation Report (Penn Report).