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Standards and Audit Committee 17 September 2020

MINUTES
OF A MEETING OF THE
STANDARDS AND AUDIT COMMITTEE

held on 17 September 2020

Present:

Mrs C Storey (Chair)
Cllr I Johnson (Vice-Chair)

Cllr J E Bond Cllr L S Lyons
Cllr G W Elson Cllr M A Whitehand

1. MINUTES

RESOLVED

That the minutes of the Committee held on 23 July 2020 be approved and signed as a true and correct record.

2. APOLOGIES FOR ABSENCE

None.

3. DECLARATIONS OF INTEREST

In accordance with the Members' Code of Conduct, Councillor I Johnson declared a non-pecuniary interest in agenda item no. 5, Protocols for Confidentiality and Officer Conflict of Interests, arising from his wife's position as the Chairman of Woking Football Club. The interest was such that speaking and voting were permissible.

In accordance with the Officer Procedure Rules, the Director of Legal and Democratic Services, Peter Bryant, declared a disclosable personal interest (non-pecuniary) in any items concerning the companies of which he was a Council-appointed Director. The interest was such that speaking was permissible.

In accordance with the Officer Procedure Rules, the Director Legal and Democratic Services, Peter Bryant, declared a disclosable personal interest (non-pecuniary) in agenda item no. 5, Protocols for Confidentiality and Officer Conflict of Interests, arising from his position as a Council appointed Director of Kingfield Community Sports Centre Ltd, being a member of the Cards Trust; and on occasion providing advice and assistance to Woking Football Club on an unpaid basis. The interest was such that speaking was permissible.

In accordance with the Officer Procedure Rules, the Finance Director, Leigh Clarke, declared a disclosable personal interest (non-pecuniary) in any items concerning the companies of which she was a Council-appointed Director. The interest was such that speaking was permissible.

In accordance with the Officer Procedure Rules, the Finance Director, Leigh Clarke, declared a disclosable personal interest (pecuniary) in agenda item no. 5, Protocols for Confidentiality and Officer Conflict of Interests, arising from her husband holding a small shareholding in Woking Football Club. The interest was such that speaking was permissible.

4. URGENT BUSINESS

There were no items of Urgent Business.

5. PROTOCOLS FOR CONFIDENTIALITY AND OFFICER CONFLICT OF INTERESTS STA20-012

Peter Bryant, Director of Legal and Democratic Services, introduced the report and stated that at its meeting on 30 July 2020, the Council had considered a report on the recommendations from the Overview and Scrutiny Committee in respect of the Woking Football Club and Associated Developments Task Group report. It had been agreed that draft Protocols on Confidentiality and Officer Conflict of Interests would be received by the Standards and Audit Committee, and for the Committee to make recommendations back to full Council. The Committee received a report with the two draft Protocols attached as appendices.

The Committee was advised that the draft Confidentiality Protocol would deal with the rare occasions where the Council was involved in a transaction which would require confidentiality, in order to protect the interests of the Council and / or the party the Council was dealing with. The Protocol referred to Non-Disclosure Agreements (NDAs) entered into with the Council, confidentiality clauses within contracts, and situations where Council and Committees discussed matters under Part II. Provisions were made for the Council to undertake business on a confidential basis whilst making clear that the level of confidentiality should be kept at the minimum required to enable the business to take place, with a significant increase in Member oversight available through a new Register alongside restrictions on the process for drawing up new NDAs.

The Chairman noted that Reviews for each NDA would take place on the twelve month anniversary of each agreement. In addition, whilst the previous report to Council stated that contractual confidentiality clauses would be drawn up alongside standard timescales for each clause, it was stated that this would be carried out either at the time of the next contract being entered into, with the resulting contract being received by the Council or Executive, or a separate report being received by the Executive if no contract was being entered into in the near future.

The Protocol contained an Annual Review and it was agreed that it should also constitute a review of the Protocol itself as well as the confidentiality provisions agreed by Officers under NDAs or by Council or Executive. A new paragraph 5.0 of the Protocol would be added accordingly, headed 'Review of Protocol'.

The Committee received the Officer Conflicts of Interest Protocol which drew together the existing controls on Officers' conflicts of interest. These were stated to be contained in the Local Government Act 1972, Officer Employment Rules and the Code of Conduct for Employees Policy.

Regarding the issue of public perception, Peter Bryant stated that an Officer conflict of interest would arise if so deemed by a reasonable person in full knowledge of the facts,

and that an Officer should only carry out tasks which were fully justifiable to the public. It was noted that the report made provision for the Monitoring Officer to carry out a general review of the actions undertaken by officers, and agreed that further provision be made for the Deputy Monitoring Officer to undertake a general review of any actions undertaken by the Monitoring Officer. Paragraph 4.6 of the Protocol would be amended accordingly.

RECOMMENDED TO COUNCIL

That the draft Confidentiality Protocol and Officer Conflicts of Interest Protocol, as attached to the minutes of the meeting of the Standards and Audit Committee, be adopted by the Council.

6. INTERNAL AUDIT PROGRESS REPORT STA20-013

Juan Fosco, Assistant Manager of Internal Audit, introduced the report on the internal audit performance and activity from 23 July to 04 September 2020.

The Internal Audit plan agreed by the Committee in March had been revisited in consultation with the Council's Corporate Management Group due to the Covid-19 pandemic. An additional review was added related to the Council's performance during the pandemic with regard to lessons learnt during the period. Due to the increased pressures and workloads it had been felt that a number of Audits could be deferred to begin in July 2020. Accordingly around 20% of the Plan had been started by 1 September, with all Quarter 2 reports expected to be completed by the end of October. The support received by the teams within the Council was noted to have been very positive and had enabled the delivery of the plan to be progressed.

A total of three final and two draft Internal Audit reports had been issued during the period, two of which received a limited assurance opinion, with seven high priority recommendations raised. The summary reports were available through the Members' I pads. The new action management system had been populated with 2018/19 and 2019/20 recommendations and was being updated as new reports were published. An extract would be included in future Internal Audit progress reports. There remained two outstanding high priority recommendations which related to counter fraud, with a Risk Assessment and Counter Fraud Strategy to be developed which would assist going forward.

Leigh Clarke, Finance Director, stated that CMG had revisited the management responses to the Off-Payroll Engagement report and agreed that some of the responsibilities given to Managers would be reviewed.

In relation to the Audit of Managing Agents (Health and Safety), the Chairman suggested that an update should be given in Quarter 4 of 2020 due to the responses to the audit recommendations requiring recruitment to a staff post. Given the importance of Health and Safety, CMG would receive a further report towards the end of this year which would also be received by the Committee at its meeting in March 2021. In addition, Managing Agents compliance should form part of the Annual Health and Safety Report received by the Committee each July.

Regarding the level of Health and Safety staff mandatory training courses being completed by staff, the Committee was advised that the number of courses had reduced and each member of CMG would deal with any remaining issues in their areas, with the aim of most being completed by the end of this calendar year. CMG would review the situation at one of its weekly meetings in November.

At the last meeting it had also been noted that a number of Risk Assessments had not been filed in the correct area on Sharepoint. The matter had been referred to CMG and each member was ensuring that Assessments within their area had been filed correctly. The latest update was that Building Services and Parking Services had moved their Assessments into the correct library on Sharepoint.

RESOLVED

That the report be received and progress against the 2020-21 Internal Audit Plan and implementation of Internal Audit recommendations be noted.

7. MEMBERS' CODE OF CONDUCT STA20-010

The Committee received the report which stated that five complaints had been submitted under the Members' Code of Conduct over the past year. Four of the complaints had not merited formal investigation with one complaint to be determined.

A discussion was held on the obligations of Members to respond to correspondence from members of the public in a timely manner and noted that there were some instances, for example when a large number were received regarding a planning application that it would not be possible to reply to all. If a complaint was received from a member of the public regarding a Councillor, it was assessed against the Members' Code of Conduct. Political Groups would be able to introduce additional controls if the Members of that Group felt it appropriate.

RESOLVED

That the report detailing the complaints, submitted under the Members' Code of Conduct, received by the Monitoring Officer between 1 August 2019 and 31 July 2020 be noted.

8. OMBUDSMEN COMPLAINTS STA20-011

The Committee received a report which set out details of recent complaints to the Local Government & Social Care Ombudsman and the Housing Ombudsman. During the year ended 31 March 2020, the Council had been the subject of three detailed investigations, none of which were upheld by the Ombudsman. In addition, during the year ended 31 August 2020, two complaints had been received by the Housing Ombudsman and the outcome from both was to be determined.

RESOLVED

That the position regarding complaints to the Local Government & Social Care Ombudsman and the Housing Ombudsman be noted.

9. APPOINTMENT OF SUBSTITUTES TO STANDARDS HEARINGS SUB-COMMITTEE STA20-014

The Committee received a report which sought the appointment of Substitutes to the Standards Hearings Sub-Committee. Following consultation with Group Leaders, it had been stated that Councillor Boote would act as the Substitute for Councillor Bond; Councillor Lyons would act for Councillor Johnson; and Councillor Hussain would be the Substitute for both Councillors Elson and Whitehand.

It was formally proposed and seconded that the Members be appointed as Substitutes to the Sub-Committee and it was accordingly,

RESOLVED

That Councillors Boote, Lyons and Hussain be appointed as Substitutes to the Standards Hearings Sub-Committee for the remainder of the 2021/22 Municipal Year.

The meeting commenced at 7.00 pm
and ended at 8.15 pm

Chairman: _____

Date: _____

Minute Item 5

Draft Approved by Standards and Audit Committee (17/9/20)

Woking Borough Council

Confidentiality Protocol

Adopted [15 October 2020]

DRAFT

1. Introduction

- 1.1 The Council is an open and transparent organisation. This enables residents to see what the Council is doing and, more importantly, why actions are taken by it. In this way, residents are able to hold the Council to account for its actions.
- 1.2 There will be rare occasions where the Council is involved in a transaction that needs to be kept confidential, in order to protect the interests of the Council and/or the party the Council is dealing with. The Council will only enter into confidentiality obligations when there are sound and clear-cut reasons to do so.
- 1.3 Confidentiality obligations fall into three main categories, (i) non-disclosure agreements (NDAs), (ii) confidentiality clauses in contracts and (iii) Part II items of business considered by Council, Executive and Committees. This Protocol deals with each category in turn, and sets out the issues and procedures that apply to these confidentiality obligations.
- 1.4 For the avoidance of doubt, this Protocol does not apply to situations where the Council is required to maintain the confidentiality of personal information e.g. information relating to (i) recipients of Council services and (ii) Council employees. This information will be processed in accordance with the relevant statutory provisions, including the Data Protection Act 2018 and the General Data Protection Regulation.

2. Non-Disclosure Agreements (NDAs)

- 2.1 It is normal practice for the Council to enter into a NDA when it is exploring a commercial proposal with a third-party. NDAs allow third-parties to make proposals to the Council, and for Officers to establish whether those proposals warrant formal consideration by the Council (normally by report to the Executive and/or Council). NDAs are an important, but standard, part of local authority business practice.
- 2.2 A NDA will only be entered into if one of the three Statutory Officers of the Council has, following (where practical) consultation with the Leader of the Council (or in his/her absence, the Deputy Leader of the Council), authorised completion of the same. In the event that all three Statutory Officers are absent (or are otherwise unable to act), authority to enter into a NDA may be given by a Deputy Statutory Officer.
- 2.3 The extent of confidentiality provided for in a NDA (including the period during which the information will be confidential) shall be the minimum amount reasonably required to enable the underlying proposal to be considered by the Council.
- 2.4 Full details of completed NDAs (together with a copy of the NDA) shall be included in:-
 - (a) a Register of NDAs maintained by the Monitoring Officer, and
 - (b) the Project Workbook, prepared under the Council's Project Management Framework, for the underlying proposal.

The Register of NDAs and Project Workbook shall be available for inspection by Members of the Council.

- 2.5 The need for a NDA to remain in effect shall be reviewed, on an annual basis, by the Monitoring Officer. The outcome of the review shall be recorded in the Register of NDAs.
- 2.6 An annual report shall be submitted to the Executive setting out details of NDAs still in effect.

3. Confidentiality Clauses in Contracts

- 3.1 On occasions, the Council will enter into business contracts/development agreements that contain confidentiality clauses. This is to ensure that commercially sensitive information remains private until it ceases to be sensitive. Such clauses routinely provide for publication of the information to be agreed between the parties.
- 3.2 The extent of confidentiality provided for in a business contract/development agreement (including the period during which the information will be confidential) shall be the minimum amount reasonably required to enable the underlying transaction to proceed.
- 3.3 Business contracts/development agreements are normally completed following a report to the Executive and/or Council. The Officer report will detail the extent of confidentiality provided for in the proposed business contract/development agreement (including the period during which the information will be confidential) so that it can be considered and, if appropriate, approved by Members. Any extension to the period during which the information will be confidential will require the approval of the Executive.
- 3.4 Full details of confidentiality clauses in completed business contracts/development agreements (together with a copy of the confidentiality clause) shall be included in:-
 - (a) a Register of Contractual Confidentiality Clauses maintained by the Monitoring Officer, and
 - (b) the Project Workbook, prepared under the Council's Project Management Framework, for the underlying transaction.

The Register of Contractual Confidentiality Clauses shall be available for inspection by Members of the Council.
- 3.5 The need for a contractual confidentiality clause to remain in effect shall be reviewed, on an annual basis, by the Monitoring Officer. The outcome of the review shall be recorded in the Register of Contractual Confidentiality Clauses.
- 3.6 An annual report shall be submitted to the Executive setting out details of contractual confidentiality clauses still in effect.

4. Part II Items of Business Considered by Council, Executive and Committees.

- 4.1 The ability of the Council, Executive or a Committee to consider an item of business on a Part II basis (i.e. without the press and public present) is strictly limited by statute.
- 4.2 The Council has adopted, as part of its Constitution, "Access to Information Rules". These set out the circumstances in which the Council must, and may, deal with business on a Part II basis. These Rules are consistent with the statutory provisions and should be complied with on all occasions.
- 4.3 Full details of Part II items of business shall be included in a Register of Part II Items maintained by the Monitoring Officer. The Register of Part II Items shall be available for inspection by Members of the Council.
- 4.4 The need for an item of business to remain subject to a Part II designation shall be reviewed, on an annual basis, by the Monitoring Officer. The outcome of the review shall be recorded in the Register of Part II Items.
- 4.5 An annual report shall be submitted to the Executive setting out details of items of business subject to a Part II designation.

5. Review of Protocol

- 5.1 This Protocol shall be subject to an annual review (as part of the Executive's consideration of the annual report referred to in paragraphs 2.6, 3.6 and 4.5 above).

This Protocol was adopted by the Council on [15 October 2020]

Draft Approved by Standards and Audit Committee (17/9/20)

Woking Borough Council

Officer Conflicts of Interest Protocol

Adopted [15 October 2020]

DRAFT

1. Introduction

- 1.1 The Council is a major public authority, active in its local community. As such, it is important that the Council ensures that its Officers do not act, on its behalf, when there is a conflict between an Officer's personal interests and those of the Council.
- 1.2 Provisions relevant to conflicts of interest are contained in the Local Government Act 1972, the Council's Officer Employment Procedure Rules and the Council's Code of Conduct for Employees Policy. This Protocol provides further guidance to Officers on how conflicts of interest are dealt with at the Council.
- 1.3 For the avoidance of doubt, this Protocol does not apply to the roles performed by Officers as Council appointed directors of companies in which the Council has an interest. In these circumstances, an Officer's role is no different to what it would be if the activity was directly managed by a department of the Council.

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2. Existing Requirements

2.1 The Local Government Act 1972

2.2 Section 117 of the Local Government Act 1972 requires Officers to give notice to the Council of any Council contract in which he/she has a pecuniary interest.

2.3 Failure to comply with this obligation is punishable, on conviction, with a fine not exceeding £2,500.

2.4 Officer Employment Rules

2.5 Section 4 of the Officer Employment Rules requires Officers to give notice of interests (pecuniary and non-pecuniary) to the Director of Legal and Democratic Services. The record of these interests is open for inspection by Members of the Council.

2.6 Section 4 of the Officer Employment Rules also requires reports to Council, Executive and Committees to include reference to Officers' interests.

2.7 Code of Conduct for Employees Policy

2.8 Section 8 of the Code of Conduct for Employees Policy requires Officers to consider carefully which outside interests might give rise to a conflict in the performance of their normal duties and which ought to be disclosed to their manager and formally recorded.

2.9 Section 9 of the Code of Conduct for Employees Policy also reinforces the requirement for Officers to comply with the provisions of the Local Government Act 1972 and the Officer Employment Rules.

3. What is a Conflict of Interest?

3.1 For the purposes of this Protocol, a conflict of interest arises when:-

- an Officer's personal interests compromise his/her integrity and/or ability to act in the best interests of the Council in respect of a particular matter, **or**
- a reasonable person, with knowledge of all relevant facts, would consider this to be the case.

3.2 The effect of this definition is that Officers should never do anything that is incapable of being justified to the public.

3.3 A consistent and corporate approach should be adopted in determining whether an Officer has a conflict of interest. If there is a conflict of interest, the Officer should not be involved in the transaction being undertaken by the Council. The following section of this Protocol outlines the procedure that should be followed.

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4. Procedure

- 4.1 Officer interests shall be declared and recorded in accordance with the requirements of the Local Government Act 1972, Officer Employment Rules and Code of Conduct for Employees Policy.
- 4.2 An Officer who has declared an interest may only be involved in a transaction to which the declaration relates if one of the three Statutory Officers of the Council has, following (where practical) consultation with the Leader of the Council (or in his/her absence, the Deputy Leader of the Council), determined that the Officer does not have a conflict of interest. In the event that all three Statutory Officers are absent (or are otherwise unable to act), a Deputy Statutory Officer shall determine whether the Officer has a conflict of interest.
- 4.3 In the event that the Officer declaring an interest is a Statutory Officer, the determination may only be made by a Statutory Officer who does not have the same, or similar, interest.
- 4.4 Full details of Statutory Officers' Determinations shall be included in:-
 - (a) a Register of Statutory Officers' Determinations (Officers' Conflict of Interests Protocol) maintained by the Monitoring Officer, and
 - (b) the Project Workbook, prepared under the Council's Project Management Framework, for the underlying proposal.

The Register of Statutory Officers' Determinations (Officers' Conflict of Interests Protocol) and Project Workbook shall be available for inspection by Members of the Council.
- 4.5 The extent to which an Officer has a conflict of interest in respect of a Council transaction shall be reviewed on a three-monthly basis. This review shall, where practical, be undertaken by the Statutory Officer who made the initial determination. The provisions of paragraphs 4.2 and 4.3 of this Protocol shall apply to the review. The outcome of the review shall be recorded in the Register of Statutory Officers' Determinations (Officers' Conflict of Interests Protocol).
- 4.6 The Monitoring Officer shall undertake a general review of the operation of this Protocol on a three-monthly basis. The Deputy Monitoring Officer will review any actions taken by the Monitoring Officer under this Protocol. The outcome of the review shall be recorded in the Register of Statutory Officers' Determinations (Officers' Conflict of Interests Protocol).
- 4.7 An annual report shall be submitted to the Executive setting out details of the Statutory Officers' Determinations.

This Protocol was adopted by the Council on [15 October 2020]

