

Report to: **Governance Committee**

Date: **3 March 2020**

By: **Assistant Chief Executive**

Title of report: **Annual Governance Statement – Reporting on Separate Bodies**

Purpose of report: **To provide an update on the requirement to report, within the Annual Governance Statement, on ‘separate bodies’ that the Council owns or has set-up**

RECOMMENDATIONS – The Governance Committee is recommended to agree:

- 1. that the Best Practice recommendation from the Committee on Standards in Public Life be interpreted as set out in paragraph 3.1 of the report; and**
 - 2. that a review be undertaken to collate the information set out in paragraph 3.2 of the report and that this be incorporated into the Annual Governance Statement completed at the end of the forthcoming year (2020/21)**
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1. Background

1.1 The Committee on Standards in Public Life (CSPL) has concluded that several recent changes to councils’ corporate arrangements have created a more complex environment for local government which can impact on ethical standards. This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Standards apply to how decisions are made, as much as to an individual’s day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest. The CSPL considered:

(a) Such complexity makes it difficult to identify who is accountable for decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account.

(b) Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council.

(c) The growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

1.5 The CSPL was aware of local authorities setting up a separate body without enough clarity over the governance arrangements, potentially creating a governance ‘illusion’, that

because of its relative day-to-day independence, the local authority is not responsible or accountable for its activities and propriety. To avoid this, the CSPL concluded that attention needs to be paid to ethical governance at three key stages:

1. local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority;
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance;
- how and when the body will report to full council;
- what the relationship will be between the body and individual councillors;
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

2. additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. The local authority needs to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

3. both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

2. Committee on Standards in Public Life Recommendation

2.1 The CSPL have recommended that best practice would be that:

“Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place”.

3. Conclusion

3.1 It is recommended that the Committee agree that for the purposes of the Annual Governance Statement the Council interprets this as those bodies which are a separate legal entity (e.g. a company) and of which the Council is a member or has appointed a Member or officer as a Director.

3.2 To ensure that all relevant separate bodies are included a review will be undertaken to identify these bodies and establish:

- What the relationship is between the body and the local authority;
- The structure and form of the body (e.g. private limited company)
- Council's percentage share in the body
- What role the statutory officers will have in overseeing its activities and providing assurance on its governance, including financial governance;
- How and when the body will report to the council;
- What the relationship will be between the body and individual councillors and whether councillors' involvement is likely to constitute a conflict of interest;

- How the activities of the body will be scrutinised

3.2 It is recommended that this information be incorporated into the Annual Governance Statement completed at the end of the forthcoming year.

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Background Documents: Local Government Ethical Standards – A Review by the Committee on Standards in Public Life