

# **Guildford & Waverley Borough Councils**

**Report to:** Guildford and Waverley Joint Constitutions Review Group

**Date:** 30 November 2023

**Ward(s) affected:** All

**Report of Director:** Transformation and Governance

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**Report Status:** Open

## **Guildford Borough Council & Waverley Borough Council: Officer Employment Procedure Rules**

### **1. Executive Summary**

- 1.1 There is a statutory obligation upon every Local Authority to have a constitution and to both maintain and publish it. It is considered good practice to keep the constitution under constant review and for councillors to consider a more formal review on an annual basis.
- 1.2 As part of the current work programme to update the constitutions of both Guildford Borough Council (GBC) and Waverley Borough Council (WBC), the Joint Executive Head of Legal and Democratic Services has deemed the Officer Employment Procedure Rules as a high priority, requiring urgent attention, particularly at WBC where none currently exist.

- 1.3 The GBC Officer Employment Procedure Rules can be found in Part 4 (Procedure Rules) of its constitution. WBC currently does not have any Officer Employment Procedure Rules published in its constitution. Officers are recommending the introduction of new Officer Employment Procedure Rules, using examples of good practice, based on the statutory framework.
- 1.4 This report asks the G&W Joint Constitutions Review Group (JCRG) to consider the proposals in this report and provide feedback on the suggested new Officer Employment Procedure Rules. The report also asks the JCRG to submit the proposed new Procedure Rules to WBC Standards & General Purposes Committee and GBC Corporate Governance & Standards Committee, with a recommendation that each committee recommends their adoption by their respective full Council.
- 1.5 All members of the Joint Management Team (JMT) are employed by WBC and the Officer Employment Procedure Rules based on the Council's current staff structures, apply only to members of the JMT. It is proposed that the new Officer Employment Procedure Rules will be included in the constitution of both councils. The existing Officer Employment Procedure Rules in GBC's Constitution would be superseded by the new rules.
- 1.6 GBC currently has an Employment Committee, whose terms of reference include matters relating to the employment (including appointment, disciplinary action and dismissal) of the Council's most senior officers. The procedures for dealing with those matters are set out in the existing Officer Employment Procedure Rules.
- 1.7 The Employment Committee's terms of reference do not take into account the collaboration between the two councils, the establishment of the JMT and of the Joint Appointments Committee. They are therefore out of date, of no practical use and are superfluous and in contradiction to the terms of reference of the Joint Appointments Committee. The terms of reference of the Guildford & Waverley Joint Appointments Committee includes the

process for the appointment of the Joint Chief Executive, Joint Section 151 Officer, Joint Monitoring Officer, and Joint Strategic Director posts.

- 1.8 Approval of the new Officer Employment Procedure Rules will therefore, as a consequence, require the formal abolition by GBC of its Employment Committee which no longer has a role, other than as set out in paragraph 1.9 below.
- 1.9 The GBC Employment Committee's terms of reference also include "*approval of the Council's human resources policies*", which are not within the remit of the Joint Appointments Committee. It is therefore proposed that this function be delegated to the Head of Paid Service, and that the GBC Officer Scheme of Delegations be amended to reflect this.
- 1.10 The Joint Appointments Committee was formed in August 2021 to deal with the appointments of joint senior members of staff. The TOR for this committee lies in the constitution for both councils, Part 3 page 19 of the GBC constitution and Part 3 appendix 2 of the WBC constitution. To support the improvements to the Officer Employment Procedure Rules, and incorporate statutory requirements, it has become evident that the Joint Appointment Committee's remit needs to be expanded to also deal with disciplinary action against, and the dismissal of, joint senior members of staff.
- 1.11 It is proposed that the Joint Appointments Committee's TOR be amended to deal with appointments, disciplinaries and dismissals of relevant officers, to reflect legislation. As such, the Committee will require a change of name to better reflect its new purpose, and it is proposed that it be known as the 'Joint Senior Staff Committee' (JSSC), rather than the 'Joint Appointments Committee' (JAC).

## **2. Recommendations**

That the Joint Constitution Review Group resolve to:

- 2.1 Note the report and the proposed new Officer Employment Procedure Rules as set out in **Appendix 1** of this report.
- 2.2 Recommend the new Officer Employment Procedure Rules as set out in **Appendix 1** to this report to the Waverley Borough Council Standards & General Purposes Committee and the Guildford Borough Council Corporate Governance & Standards Committee, for their consideration and recommendation to their respective full Councils for adoption into their constitutions.
- 2.3 Recommend to the Guildford Borough Council's Corporate Governance & Standards Committee that they recommend to Guildford's full Council;
  - (i) the formal disbandment and abolition of the GBC Employment Committee; and
  - (ii) an amendment to the GBC Officer Scheme of Delegations to delegate authority to the Head of Paid Service to approve where necessary any human resource policies that apply to Guildford Borough Council.
- 2.5 Recommend to the Waverley Borough Council Standards & General Purposes Committee and the GBC Corporate Governance & Standards Committee, the revised terms of reference for the Joint Appointment Committee and name change to reflect its expanded responsibilities to the new Joint Senior Staff Committee, as set out in **Appendix 4**, to this report and that they recommend them to their respective Councils for formal adoption.
- 2.6 Recommend to the Waverley Borough Council Standards & General Purposes Committee and the Guildford Borough Council Corporate Governance & Standards Committee, that the Officer Scheme of Delegations be amended to provide authority for the Monitoring Officer to convene an Independent Panel, as provided for in the Officer Procedure Rules, where necessary, and recommend such an amendment to their respective full Councils.

### **3. Reason(s) for Recommendation:**

- 3.1 To ensure that both GBC and WBC have adequate arrangements in place to deal with the employment of all officers including senior management and statutory officers. Approval of the new Officer Employment Procedure Rules will be the first step in the process to align the constitutions of GBC and WBC where appropriate to do so.

### **4. Exemption from publication**

- 4.1 No part of this report is exempt from publication.

### **5. Purpose of Report**

- 5.1 This report asks the JCRG;
- (a) To discuss and consider the proposed new Officer Employment Procedure Rules, and
  - (b) To make recommendations to the WBC Standards & General Purposes Committee and GBC Corporate Governance & Standards Committee, in respect of the formal adoption of the new Officer Employment Procedure Rules by both Councils.

### **6. Strategic Priorities**

- 6.1 The work of Councillor task or working groups assist in the delivery of both Councils' Corporate Plan priorities and both GBC and WBC Collaborative working agenda.

### **7. Background**

#### The Officer Employment Procedure Rules

- 7.1 The statutory officers of both councils, the Head of Paid Service (Chief Executive), the Section 151 Officer (Executive Head of Finance) and the Monitoring Officer (Executive Head of Legal and Democratic Services), have duties to advise and protect the councils as corporate bodies. In

carrying out their duties at times they may be required to provide advice to members that is not welcome or popular, or to take such action in connection with that advice in order to fulfil their statutory responsibilities.

- 7.2 Accordingly, these three statutory posts are protected by law under specific regulations from unwarranted political interference in carrying out their proper duties. In the event that disciplinary action is contemplated against a statutory officer, members will need to ensure that they understand the procedure to be used complies with the regulatory requirements and the relevant terms and conditions of employment.
- 7.3 The Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015 amended the previous legislation to change the statutory process for dismissing the Head of Paid Service, Monitoring Officer and Chief Finance Officer (“the relevant officers”). Previously no disciplinary action could be taken against a relevant officer other than in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The 2015 Regulations abolished the role of the DIP and outlined a new process to be followed and to be incorporated into Council constitutions.
- 7.4 The Model Disciplinary Procedure and Guidance which incorporate the relevant statutory requirements was nationally negotiated and agreed by the Joint Negotiating Committee (JNC) for Local Authority Chief Executives issued in October 2016. It was then incorporated into the contractual terms and conditions of employment for Local Authority Chief Executives.
- 7.5 Additionally, the August 2017 Chief Officers’ JNC contains a modified procedure for Monitoring Officers and Section 151 Officer, indicating that the relevant provisions of the Chief Executives’ Handbook can be used as a reference guide in such circumstances. This Model Procedure for Chief Executives has been adopted across England and it is now recommended that it should govern any future disciplinary procedures for the relevant Statutory Officers employed here.

## Guildford and Waverley Borough Council Collaboration

- 7.6 Following the commitment by both Guildford and Waverley to collaborate and the establishment of a JMT, with the prospect of further collaborative proposals coming forward, the benefits of approving new Officer Employment Procedure Rules and related governance processes within the respective Constitutions, where appropriate to do so, are becoming increasingly apparent.
- 7.7 The current published version of WBC constitution lists the Officer Employment Procedure Rules in Part 4 (4.8), however there is a note advising that the section is under review. The previous version was removed in October 2022. This was initially due to the timing of the recruitment process of the JMT and was left under review with an update imminent.
- 7.8 The GBC Officer Employment Procedure rules can be found in Part 4, pages 77 -94 of its constitution, it is a total of 17 pages. As part of the constitutions review process, we have compared both sections to guidance, best practice, and those of several other collaborating borough/district councils. In comparison the average length of the Officer Employment Procedure Rules is 6 pages, they also tend to be less descriptive and more succinct.
- 7.9 It was decided by both councils in April 2022 that all Statutory officers (The Head of Paid Service, Monitoring Officer and Chief Finance Officer) and the entire JMT would be employed directly by WBC. It is proposed that the new Officer Employment Procedure Rules will be included in the constitution of both councils. The existing Officer Employment Procedure Rules in GBC's Constitution would be superseded by the new rules.
- 7.10 The group is invited to consider the draft Officer Employment Procedure Rules set out in **Appendix 1** to this report. If approved by both Councils, the new Rules will be included in Waverley's

Constitution and will supersede the existing Officer Employment Procedure Rules in Guildford's Constitution.

7.11 It will also be necessary for Guildford to formally disband its existing Employment Committee.

7.12 The terms of reference for the current Joint Appointments Committee are set out in appendix 2 to this report, the proposed changes are found as a tracked change version at appendix 3 and a clean copy of proposed changes can be found at appendix 4 to this report.

## **8. Equality and Diversity Implications**

8.1 The JCRG will be responsible for having due regard to the requirements of the Public Sector Equality Duty (Equality Act 2010) when making any recommendations concerning constitutional arrangements.

## **9. Financial Implications**

9.1 There are no financial implications arising from this report. Any proposals, projects, or suggestions from the groups with financial implications will either be contained within approved budgets or considered as part of the Service and Financial Planning cycle.

## **10. Legal Implications**

10.1 The Local Authorities (Standing Orders) (England) Regulations 2001, as amended, govern the appointment and disciplinary arrangements within a Local Authority relevant to senior officers.

10.2 Section 112 Local Government Act 1972 provides a Local authority with the power to appoint such officers as they think necessary for the proper discharge by the authority of their functions.

## **11. Human Resource Implications**



11.1 The Human Resources implications for certain senior Officers of the Council are set out in the body of the report.

## **12. Summary of Options**

12.1 The JCRG is invited to consider the proposed new Officer Employment Procedure Rules attached as **Appendix 1**.

12.2 In terms of options available, the JCRG may:

- (a) accept the proposed new Officer Employment Procedure Rules and agree to submit them to each council's relevant committee and commend them for adoption by each authority's full Council;
- (b) amend any of the proposed new Rules; or
- (c) ask officers to reconsider any part(s) of the new Rules that raise concerns.

## **13. Background Papers**

Waverley Borough Council Constitution

Guildford Borough Council Constitution

Minutes from the GBC Full Council meetings held on 5 April 2022

Minutes from the GBC Full Council meetings held on 26 April 2022

## **14. Appendices**

Appendix 1: Draft Officer Employment Procedure Rules

Appendix 2: TOR for the Joint Appointments Committee

Appendix 3: Draft TOR for the Joint Senior Staff Committee (tracked change version)

Appendix 4: Draft TOR for the Joint Senior Staff Committee (clean version)