WAVERLEY BOROUGH COUNCIL

MINUTES OF THE STANDARDS AND GENERAL PURPOSES COMMITTEE - 8 JANUARY 2024

(To be read in conjunction with the Agenda for the Meeting)

Present

Cllr Andy MacLeod (Chair)
Cllr John Robini (Vice Chair)
Cllr Michael Goodridge
Cllr Gemma Long
Cllr Peter Nicholson
Cllr John Ward

Co-opted Members

Cllr Joan Heagin, Godalming Town Council (Co-Optee)
Cllr Joan Holroyd, Elstead Parish Council (Co-Optee)

Apologies

Cllr Janet Crowe

Also Present

Cllr Paul Follows, Cllr Jerry Hyman

SGP1/APOLOGIES FOR ABSENCE (Agenda item)

The Democratic Services Officer noted that apologies had been received from Cllr Crowe.

SGP2/MINUTES (Agenda item 2.)

The Committee agreed that the minutes of the meeting held on 29 October and published to the Council's website were an accurate and complete record.

SGP3/DISCLOSURES OF INTERESTS (Agenda item 3.)

There were none received.

SGP4/QUESTIONS BY MEMBERS OF THE PUBLIC (Agenda item 4.)

There were none received.

SGP5/QUESTIONS FROM MEMBERS OF THE COUNCIL (Agenda item 5.)

There were no questions.

The Chair, in consultation with the Executive Head of Legal and Democratic Services reminded Members that the procedure to ask questions for Councillors outside of the Committee is detailed in paragraph 11.3(a) of the Constitution. The

clause makes provision for Members to ask questions at Committee meetings which constitute a formal response and that the question must be provided 4 working days in advance of the meeting as noted on the agenda unless it is an urgent matter not relating to any item on the agenda. He urged that Members follow the correct procedure as set out in the Constitution, although in this instance he was happy to use his discretion.

SGP6/REVISED TERMS OF REFERENCE FOR THE JOINT GOVERNANCE COMMITTEE (Agenda item 6.)

The Executive Head of Legal and Democratic Services introduced the report and explained that the Joint Governance Committee between Waverley and Guildford Borough Councils set up in accordance with 101(5) of the Local Government Act 1972 primarily focuses on issues around the Collaboration between the two authorities. It was noted that amendments to the Terms of Reference as set out in Appendix 2 & 3 were agreed upon by the Joint Governance Committee on the 18 November 2023. The Executive Head of Legal and Democratic Services informed Members that the key changes were around the inclusion of the Temporary Shared Staffing Inter Authority Agreement (IAA), periodic review periods, frequency of meetings, quorum, and procedures for electing a chairperson (in the absence of a Co-Chair) and voting. The amendments also include the requirement for respective Group Leaders to nominate an ongoing main substitute.

The Leader noted that the recommendations were received by the Joint Governance Committee and the Joint Constitutions Review Group (JCRG) and Members were largely in agreement with the proposals. The only concerns raised were around the changes to the quorum of the Committee and the practicalities around Members and Officers travelling to the respective Council buildings for meetings that may not go ahead.

The Committee were in agreement with the recommendations set out in the report and the appendices.

The Chair invited Members to vote on the recommendations set out in part 2 of the report.

There was a unanimous vote in favour.

The Committee resolved to recommend that Full Council;

1. *approves the proposed amended terms of reference for the Guildford Borough Council and Waverley Borough Council Joint Governance Committee for adoption into the Constitution.*

SGP7/OFFICER EMPLOYMENT PROCEDURE RULES (Agenda item 7.)

The Executive Head of Legal and Democratic Services addressed the Committee and introduced the proposed Officer Employment Procedure Rules. She explained that The Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015 amended statutory process for dismissing the Head of Paid Service, Monitoring Officer and Chief Finance Officer (“the relevant officers”). The 2015

Regulations outlined a new process to be followed and to be incorporated into Council constitutions and sets out specific arrangements that need to be applied to appointment and dismissal of Chief Officers and Deputy Chief Officers (effectively the 'Joint Management Team' between Waverley Borough Council & Guildford Borough Council). She explained that currently WBC does not have a set of procedure rules in place which deal with these requirements. She noted the proposed changes to the Terms of Reference of the 'Joint Appointments Committee' in Appendix 4 and highlighted the Committee's expanded responsibilities including their involvement in appointment, discipline and dismissal of a Senior Officer as set out in Appendix 4, including the change of name to the 'Joint Senior Staff Committee'.

The Committee raised a query about the use of the term 'Proper Officer' throughout the proposed Officer Employment Procedure Rules document and whether this can be specified in the Introduction and Definitions section under part 1.1 of Appendix 1. The Executive Head of Legal and Democratic Services explained that the Proper Officer is a term set out within the Scheme of Delegation and if this is incorporated into the Officer Employment Procedure Rules, there is a risk of the document becoming outdated if there is a change in future.

The Committee therefore recommended that an amendment is made to the Introduction and Definitions section under part 1.1 of Appendix 1, to include a reference to the relevant clause within the Scheme of Delegation which defines the 'Proper Officer'.

There was discussion about the proposed re-naming of the Joint Appointments Committee to the 'Joint Senior Staff Committee' and potential confusion amongst Councillors about this being an all-staff Committee. Cllr Hyman suggested that the Committee could consider renaming it the 'Joint Senior Staffing Committee'. The Officers advising the Committee did not feel this would be a point of confusion and noted that any change would be subject to approval from the Guildford Borough Council's Corporate Governance Committee and Full Council because it is a Joint Committee. The Executive Head of Legal and Democratic Services further advised that this Committee could make a recommendation to Full Council 'subject to the approval of the Guildford Borough Council Full Council', however it was advised that this mechanism should only be utilised for serious amendments that have been flagged up by the Committee.

The Executive Head of Legal and Democratic Services further advised, in response to queries from Members, that comments from this Committee can be relayed through herself to the GBC Corporate Governance and Standards Committee on 18 January 2024 for recommendation to the GBC Full Council. Members of the Committee did not feel that an amendment to the name would be necessary.

The Committee discussed the procedure for appointing a Statutory Officer and questions were raised about the distinction between the employing authority (Waverley Borough Council) and the role of the Guildford Borough Council as the Joint Authority. A question was raised about paragraph 3.1 in Appendix 1 and the Committee sought clarity around the process of appointment and designation by both Councils.

The Executive Head of Legal and Democratic Service informed Members that an offer of employment for Statutory Officers would not be made before the formal resolution of designation from the Full Council. The Executive Head of Legal and Democratic Services confirmed that Waverley Borough Council is the employer and will enter into an employment contract with the individual, however, as the role is a joint appointment between both councils, the offer of employment would be subject to approval from both Full Councils. She further noted an example of the distinction between the appointment of the 'Joint Chief Executive' role and the designation to the role of the' Head of Paid Service' as the Law constitutes that the Council must designate this position. Members were satisfied with the explanations provided.

The Chair invited the Committee to vote on the recommendation set out in part 2 of the report, subject the amendments mentioned in the discussion.

There was a unanimous vote in favour.

The Committee therefore resolved to recommend that Full Council;

1. *Approves the new proposed Officer Employment Procedure Rules as set out in Appendix 1 to the report for formal adoption into the Waverley Borough Council Constitution, subject to: a reference to the 'Proper officer' being included in the Introduction and Definitions section (1.1) with reference to the relevant descriptions in the Scheme of Delegation, with Delegated authority to the Executive Head of Legal and Democratic Services to make the amendment, and;*
2. *approves the revised Terms of Reference for the Joint Appointments Committee and name change to reflect its expanded responsibilities to the new Joint Senior Staff Committee, as set out in Appendix 4, to the report, for formal adoption into the Waverley Borough Council Constitution, and;*
3. *agrees to the Officer Scheme of Delegations to be amended to provide authority for the Monitoring Officer to convene an Independent Panel, as provided for in the Officer Procedure Rules, where necessary.*

SGP8/REVIEW OF THE WAVERLEY BOROUGH COUNCIL KEY DECISION FINANCIAL THRESHOLD (Agenda item 8.)

The Executive Head of Legal and Democratic Services addressed the Committee and introduced the report, explaining that the current threshold for key financial decisions at Waverley Borough Council, as set out in, Article 12 of the Constitution, currently stands at £100,000. It was noted that this figure had not been changed for an extended period of time and that the provisions and requirements for a Key Decision are set out in the Executive Procedure Rules and the Article 12 paragraph (a) of the Constitution. It was emphasised that a key decision is one that is deemed particularly significant in terms of its financial implications or broader implications which effect two or more wards in the Borough. The Committee was advised that a review of the Key Decision Threshold had become necessary, considering the disparities with neighbouring Authorities and apparent disconnect with Waverley's population and total budget, it was proposed in Appendix 2 that the Key Decision Financial Threshold should be increased to £200,000, aligning with the level

adopted by Guildford Borough Council and other neighbouring authorities – as referenced in the table at Appendix 3.

Cllr Hyman had registered to make a statement on the agenda item and was allocated 4 minutes to speak. Cllr Hyman raised questions about the length of time the threshold had remained unchanged as part 1.4 of the report states that it had been in place for 'quite some time'. He questioned the relevance of 'Funding received' in part 1.4 of the report and questioned the justification for what he perceived as losing financial control of the Council during uncertain times and cited financial challenges faced by local councils.

In response to the comments made by Cllr Hyman, The Executive Head of Legal and Democratic Services clarified that the exact amount of time could not be determined due to lack of records however it is estimated to be approximately 10 - 12 years. It was clarified that the inclusion of 'funding received' was explained as part of benchmarking against other authorities. Further, the Executive Head of Legal and Democratic Services explained that the proposed change would not compromise financial control of the Council, rather enhance efficiency in decision making. Part 4.6 of the Constitution, Access to information procedure rules, would still ensure that 5 working days notice of a non-key decision would be given and 28 days notice of a key decision would be provided in the public domain. However, it was noted that Waverley Borough Council tends to err on the side of caution and publish all key and non-key decisions in the Executive Forward Plan for transparency.

The Committee commented on the proposals in the report and Appendix 2 and endorsed the proposed changed to the Key Decision Financial Threshold, highlighting the need to adapt to inflation and benefits of harmonising procedures with Guildford Borough Council and other neighbouring authorities.

The Chair invited Members to vote on the recommendations set out in part 2 of the report.

There was a unanimous vote in favour.

The Committee resolved to recommend that Full Council;

1. *approves the report and the proposal to increase the financial threshold of a key decision at Waverley Borough Council from £100,000 to £200,000 and to amend Article 12 of the Constitution to reflect the change.*

SGP9/PRE-ELECTION PUBLICITY & DECISION MAKING POLICY (Agenda item 9.)

The Executive Head of Legal and Democratic Services addressed the Committee and made reference to the existing Pre-Election Publicity Policies adopted by both Guildford and Waverley Borough Councils. She noted that the guidance states that Councils should continue business as usual expect in politically sensitive cases. However, the current Policy prohibits Executive, Full Council and non-Regulatory Committees taking place in the pre-election period in part 8 of the Policy. The Executive Head of Legal and Democratic Services explained that the amendments detailed in appendix 2 would allow more flexibility to continue with business as usual where it is politically appropriate within the limits set out in Section 2 of the

Local Government Act 1986 ('the Act') and the Code of Recommended Practice on Local Authority Publicity published in 2011 ("the Code of Practice").

The Executive Head of Legal and Democratic Services stated that as the pre-election policy currently stands, with all routine Council, Executive and non-regulatory Committees being suspended, there is a risk of raising practical problems around decision making i.e. The Joint Chief Executive's Urgency Powers or an alternative may be utilised. It was also noted that different types of elections could determine how the statutory guidance is interpreted and more flexibility should be allowed in this regard. She explained that wording of the Policy has been amended to allow discretion for the Monitoring Officer to approve the schedule of meetings during the pre-election period and the appropriate business to be transacted.

Cllr Robini posed a question about cross boundary wards and whether correspondence will take place with neighbouring authorities to ensure politically sensitive business is not transacted which could impact the other authority or Waverley Borough Council. The Executive Head of Legal and Democratic Services confirmed that this would be the case and that the Council has good working relations with other neighbouring authorities.

The Committee were in favour of the amendments proposed in Appendix 2 and further raised the possibility of restricting motions during pre-election period which could be regarded as politically sensitive. Although 'motions' are mentioned in section 12, bullet point 3 of Appendix 2, Members suggested that, alongside restrictions on 'business to be transacted' in section 8 of Appendix 2, a restriction on motions should also be included, with the discretion of the Monitoring Officer and Chair to decide if the motion is appropriate or should be re-scheduled after the pre-election period. The Committee further suggested that extra wording should be included in section 8 of Appendix 2 to ensure that general Conduct is upheld within meetings during this period and that Members should not behave politically.

Further to the discussion, the Committee suggested that extra wording should be added to section 8 of the proposed amended Pre-election period publicity and decision-making Policy in Appendix 2, to include 'Motions and General Conduct', subject to the discretion of the Monitoring Officer and the Chair. The Committee agreed to delegate authority to the Executive Head of Legal and Democratic Services to finalise the wording and make the change to the proposed Policy.

The Executive Head of Service reassured Members that she would verbally inform Members of the GBC Corporate Governance and Standards Committee on the [insert date] as to the outcome of this meeting and advise that they make the same change to the GBC Policy. However, both Councils have separate Pre-election Policies and it would be appropriate for them to differ slightly, therefore the change would not ultimately be subject to approval of the GBC Full Council.

The Chair Invited the Committee to vote on the recommendations set out In part 2 of the report, subject to the amendment detailed in the discussion above. There was a unanimous vote in favour.

The Committee resolved to recommend that Full Council;

1. *approves the proposed amendments to the Pre-Election Publicity & Decision Making Policy set out in Appendix 1, subject to the following change: Section 8 bullet 1 should include 'Motions and Conduct', with Delegated authority to the Executive Head of Legal and Democratic Services to make the amendment.*

SGP10 PROPOSED MONITORING OFFICER PROTOCOL (Agenda item 10.)

The Executive Head of Legal and Democratic Services addressed the Committee and introduced the report and proposed Monitoring Officer Protocol set out in Appendix 1. It was noted that Section 5(1) Local Government and Housing Act 1989 and the Localism Act 2011 requires the Council to designate an Officer as the Council's Monitoring Officer and sets out the responsibility of the designated Officer. The Executive Head of Legal and Democratic Services emphasized the importance of approving and introducing the proposed Monitoring Officer Protocol to ensure legal protection for the Monitoring Officer and to allow the Monitoring Officer to effectively discharge the obligations set out in statute. The Protocol sets out the roles and responsibilities and the limitations of the Monitoring Officer for the benefit of other officers and Members of the Council i.e. the monitoring officer is the Council's primary legal advisor to the Council, is politically neutral and available to offer impartial legal advice to all Members in the best interests of the Council.

Cllr Hyman had registered to make a statement on the agenda item and was allocated 4 minutes to speak. Cllr Hyman suggested that Members must be able to ensure the accuracy of legal advice or information being provided and argued that there are no 'checks and balances' in the Constitution by which the Monitoring Officer be held to account in the case of incorrect legal advice. He further raised a point about section 4.0, bullet points 1 & 2 of Appendix 1, and stated that this would not be appropriate if the Monitoring Officer is the subject of the investigation or has an interest. Finally, he sought clarification about the reference to 'special persons' in section 4.0 of Appendix 1.

The Chair invited the Executive Head of Legal and Democratic Services to respond to some of the points raised. The Executive Head of Legal and Democratic Services informed Members that the appointment of two Deputy Monitoring Officers between Guildford and Waverley allows for impartiality to be upheld as the Monitoring Officer can receive independent and professional advice from their deputies.

The Executive Head of Legal and Democratic Services clarified that the Monitoring Officer is personally liable for any legal advice they provide, and the Council can take legal action against the Monitoring Officer in case of a breach or misconduct. Therefore it was clarified that there are 'checks and balances' in place. In the event of a conflict of interest, the Deputy Monitoring Officer would act in place of the Monitoring Officer and this can be specified in the clause. With regards to the appointment of 'independent persons', it was clarified that this role is designated by the Full Council and if there is a question about their integrity it is within the remit of the Full Council to appoint other 'independent persons'. It was also clarified that the

designation of the Monitoring Officer is the Council decision and the designation of the Deputy Monitoring Officer is delegated to the Monitoring Officer themselves and this is considered right and prudent as the Deputy is responsible to assist the Monitoring Officer with their work.

The Committee endorsed the point made by Cllr Hyman pertaining to section 4.0, bullet point 2 and agreed that this should be amended to specify the procedure in the event of the Monitoring Officer being the subject of the investigation. The Committee also agreed that section 4.0, bullet point 1 should be amended to include 'or Conflict of Interest' and agreed to delegate authority to the Executive Head of Legal and Democratic Services to finalise the wording and make both amendments.

Members raised a query regarding part 5.2, bullet point 6 in the proposed Monitoring Officer Protocol at Appendix 1, which may be interpreted to imply that the Monitoring Officer must be legally qualified although the previous Monitoring Officer was not, while the Borough Solicitor was delegated authority to provide legal advice to the Council. Members queried whether the designated Monitoring Officer is required to be legally qualified. The Executive Head of Legal and Democratic Services clarified that the Monitoring Officer is not required in statute to be legally qualified and the function of providing legal advice can be discharged to an appointed Deputy Monitoring Officer (usually the Borough Solicitor). Members therefore suggested that the wording should be amended to cover or to allow provisions for a non-legally qualified Monitoring Officer and agreed that delegation should be given to the Executive head of Legal and Democratic Services to make the change.

The Chair invited the Committee to vote on the recommendations set out in part 2 of the report, subject to the amendment detailed in the discussion above.

There was a unanimous vote in favour.

The Committee resolved to recommend that Full Council;

1. *approves the proposed Monitoring Officer Protocol in Appendix 1, subject to the following changes: Section 4.0, bullet point 1 to include 'or Conflict of Interest', Section 4.0, bullet point 2 to specify the protocol in the event of the Monitoring Officer being the subject of the investigation and Section 5.2, bullet point 6 to include wording that does not require the Monitoring Officer to be legally qualified, with delegated authority to the Executive Head of Legal and Democratic Services to make the amendments.*

SGP11 REVISED COUNCIL PROCEDURE RULE - EXTRAORDINARY MEETINGS OF THE COUNCIL (Agenda item 11.)

The Executive Head of Legal and Democratic Services addressed the Committee and introduced the report and the proposed revision of the Council Procedure Rule No. 3.2: 'Extraordinary Meetings' with the revisions detailed in Appendix 1. It was noted that officers and the JCRG were currently undergoing work to review the

remainder of The Council Procedure Rules in sections and recommendations/outcomes from the JCRG regarding these are due to be brought forward to the Committee in March, however Procedure Rule 3.2 was expedited due to its urgency. The Head of Service explained that changes to the Council Procedure Rule No.3.2: Extraordinary Meetings set out in appendix 1 would provide more flexibility in calling Extraordinary meetings and would remove the current restriction of confining the agenda to a single item. It was explained that the amendment would allow for multiple items on the agenda for Extraordinary meetings of the Council.

The Committee endorsed the amended Council Procedure Rule 3.2: Extraordinary Meetings of Council as detailed in Appendix 1 and no further comments were made.

There was a unanimous vote in favour of the recommendations set out in part 2 of the report.

The Committee therefore resolved to recommend that Full Council*;*

1. *approves the amended Council Procedure Rule No. 3.2 - Extraordinary Meetings of the Council, as set out in Appendix 1, for adoption into the Waverley Borough Constitution with immediate effect.*

SGP12 EXCLUSION OF PRESS AND PUBLIC (Agenda item 12.)

There were no items to consider in exempt session.

The meeting commenced at 6.00 pm and concluded at 7.18 pm

Chairman