

# Inter-Authority Agreement – Heads of Terms

## 1 Background

1.1 In 2020 the eleven district councils in Surrey commissioned a report from KPMG on local government collaboration. The KPMG report presented a strong case for councils to work together more closely in the context of continued funding reductions from central government and the financial consequences of the Covid pandemic. KPMG identified Guildford and Waverley Boroughs as being natural partners, given the geography, infrastructure links and similar sizes. Despite both councils having made efficiencies and cut costs in recent years, both face extremely difficult financial challenges. Local Partnerships produced a financial feasibility study which identified savings which could be achieved through a partnership between the two authorities.

## 2 Authorisation and Vires/Legal Basis

2.1 The Authorities' respective Full Councils made decisions on 6 July 2021 to create a single management team across the two authorities, comprised of statutory officers (Head of Paid Service; Chief Finance Officer; Monitoring Officer), directors and heads of service as the most appropriate means for bringing forward business cases for future collaboration

2.2 On 28 July 2021 (Guildford Borough Council) and 3 August 2021 (Waverley Borough Council), the Authorities' respective Full Councils agreed that a further report would be submitted to Full Councils to agree final Heads of Terms for the Inter Authority Agreement between the two authorities.

2.3 The legal basis for the sharing of officer teams is Section 113 of the Local Government Act 1972 which provides that any local authority may enter into an agreement with another local authority for the placing their officers at the disposal of another authority for the purposes of carrying out their functions.

2.4 A Joint Appointments Committee has been established pursuant to Section 102(1) of the Local Government Act 1972.

2.5 The legal basis for the Inter Authority Agreement is Section 2 of the Local Government Act 2000

### **3 Parties**

3.1 Guildford Borough Council (GBC) and Waverley Borough Council (WBC) – the ‘Parties’

### **4 Commencement and Duration**

4.1 The Agreement will commence on the date set out within the Agreement and will continue until or unless determined by either or both parties in accordance with the terms of the Agreement.

### **5 Scope**

5.1 Nothing in this Agreement shall restrict either Party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this Agreement.

### **6 Principles and Aims**

6.1 These are contained in the Vision Statement for Waverley-Guildford Collaboration contained at Appendix 1 of 6 July 2021 Guildford Borough Council Full Council papers and in Annexe 1 of 6 July 2021 Waverley Borough Council Full Council papers.

6.2 The following key principles will underpin the operation of this Agreement:

6.2.1 The sovereignty and identity of both Parties will be preserved

6.2.2 Councillor independence and leadership in both Parties will be retained

6.2.3 Both Parties will retain clear accountability to the councillors and residents of each Party

6.2.4 No one Party will take an overall lead – both Parties are of equal status and have equality of influence in the Joint Arrangements (although the Parties recognise that there may be a requirement for one Party to take a role as “Employing Authority” or “Contracting Authority” to facilitate the delivery of the Joint Arrangements)

6.2.5 Accountability for services delivered through the Joint Arrangements remains with the Party with whom the statutory responsibility lies.

6.3 The following general values for each Party will guide the partnership:

6.3.1 The Parties shall act reasonably and in good faith at all times

6.3.2 The Parties shall provide information to each other as and when required to achieve the aims of the Joint Arrangements (provided each Authority is complying with the law)

6.3.3 The Parties shall identify issues and problems early and work constructively to achieve solutions

6.3.4 The Parties shall actively co-operate to ensure the smooth running of the Joint Arrangements, for example, in payment of Inter-Authority invoices and recharges

6.3.5 The Parties shall keep all councillors, residents, staff and other stakeholders informed about the arrangements

## **7 Model and Governance**

7.1 A Joint Appointments Committee (JAC) has been established under s.102(1) of the Local Government Act 1972, and the Terms of Reference for the JAC will be attached to the IAA. Further, it is proposed that a Joint Governance Committee will be established under s.102(1) of the Local Government Act 1972.

## **8 Termination and Exit Strategy**

8.1 The notice of termination period will be 12 months, to allow each Party to make necessary provisions within their budgets.

8.2 Any staff employed within a shared officer team under clause 2.3 above shall remain at the disposal of the non-employing authority for the duration of the exit period to enable the non-employing authority time to recruit.

8.3 The termination period should commence before 1 October in any year to enable each authority to update its budget cycle, with a minimum period of 12 months and a maximum period of 24 months

## **9 Review**

9.1 The Parties shall:

- (i) periodically undertake a formal review (at least once every 12 months) of the inter-authority agreement, ensuring it continues to be fit for purpose and recommending to both Full Councils any changes required; and
- (ii) periodically undertake a formal review (at least once every 6 months) of the collaboration risk assessment, reviewing current and target impact and likelihood scores and making any changes to the list of risks and mitigating actions

and nothing in clause 9.1 shall fetter the discretion of the Joint Governance Committee to agree to undertake a review at any point during the term of the Agreement.

## **10 Staffing Arrangements**

10.1 The Joint Management Team shall be employed by one host authority, that being Waverley Borough Council, on new shared terms and conditions

10.2 Following completion of the IAA, authorities will commence a project to harmonise policies generally across the two councils

10.3 Any proposal for moving existing staff onto the new terms and conditions will be assessed on a case-by-case basis, consulting with staff and unions.

10.4 A restructure will be undertaken to move all shared staff onto new 'collaboration' terms and conditions as soon as possible.

10.5 If any member of staff is in a shared role then the costs shall be split on a 50/50 basis. If not, the employing authority shall retain the liability.

10.6 For the avoidance of doubt, while the Joint Management Team shall be employed by Waverley Borough Council as the host authority, that principle shall not necessarily apply to any future shared services.

The Parties commit to the following principles:

- 10.7 The ring-fencing of vacant or newly created posts to those within a suitable pool that are at risk of redundancy *[Drafting note - In this context, 'ring-fencing' a vacant or newly-created post means restricting the application and selection process initially to people who have been notified that they are at risk of redundancy. If the role cannot be filled from those people (referred to as a 'pool' i.e. those who have been notified that are at risk of redundancy) then the application and selection process will be broadened out to welcome applications internally from other Council staff and/or externally from applicants who do not currently work for either Council. This definition derives from employment legislation.]*
- 10.8 The use of objective selection criteria and independent specialist support in the selection process where necessary
- 10.9 Staff appointed are committed to representing the best interests of both Councils and are able to provide objective professional advice across both Councils
- 10.10 The employment of staff on merit and 'best fit for the role' and not considering factors such as comparison of the cost of redundancy dismissals for 'at risk' staff
- 10.11 The adoption of an approach to the 'slotting' of staff or offering suitable alternative employment where service structure has changed but roles have not significantly altered *[Drafting note - 'Slotting' staff is a process that is followed if a role in a new structure is substantially the same as that which was in the original structure. In this instance, the case for a redundancy dismissal is difficult to argue and therefore staff in the original structure role may be offered the role in the new structure as a reasonable suitable alternative and will not be required to go through a selection process for the role. This avoids a potential unfair dismissal claim. If the member of staff rejects the role, it is possible to argue that there has been no redundancy situation or dismissal and therefore the member of staff may not be paid redundancy. This is always a situation considered on a case-by-case basis as a number of variables will need to be considered when making a final decision. Again, his definition derives from employment legislation.]*
- 10.12 The agreement of an approach to selection for redundancy such as a voluntary redundancy scheme or agreed redundancy selection criteria

- 10.13 Working positively in consultation with unions and employees to achieve the best outcome for the staff and the organisation and to maintain good employee relations
- 10.14 Adopting a communications plan from the start of the process to share the vision, reasons, plans and progress to ensures that staff members are informed and involved.
- 10.15 The adequate resourcing of the HR teams across both Councils to ensure that they are able to provide the proper level of support to the restructuring and transformation processes.

## **11 Establishment of Joint Appointments Committee (JAC)**

- 11.1 The JAC consists of 6 members (quorum is 3 provided at least one member of each authority is present). The Chairman of the JAC alternates between the Leaders of each authority. The JAC remit is the appointment of the councils' Joint Chief Executive/Head of Paid Service and any Joint Statutory Officer and Director posts as are covered by the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) or any successor regulations.

## **12 Cost of Shared Services**

- 12.1 50/50 sharing of costs shall be the default, unless there is sufficient justification in any business case for departing from that position (both authorities acknowledging that consideration may need to be given to pension costs for each authority)
- 12.2 A review of the cost sharing arrangements should take place initially after one year, and every two years thereafter to ensure value for money. This would not be a review to rectify contributions to date but to look forward as to whether the contribution ratio (50/50) should be altered for the subsequent two years.
- 12.3 The principle of the employing authority covering pension strain costs shall apply within this agreement.
- 12.4 The following multiples shall apply and consideration shall be given to how multiples can be standardised in the future:
  - 12.4.1 For both councils, the basic sharing principle is 50:50
  - 12.4.2 However, for redundancy costs, Waverley has a x1.5 multiple and Guildford has a x2 multiple

- 12.5 For any employee employed by Waverley, the councils split the cost 50/50
- 12.6 For any employee employed by Guildford, Waverley will pay the amount as if the employee were employed by Waverley, with Guildford covering the remainder
- 12.7 Employment costs for shared senior managers (salary, NI, pension contributions, expenses), recruitment costs, advisor/consultancy costs, will follow the basic split agreed above.

**In relation to future business cases for shared service models:**

- 12.8 The default position shall be an equal split, with justification in each case for any departure.
- 12.9 There shall be formal Executive agreement from both authorities for any shared service models
- 12.10 Part of any future design work which would be brought forward for consideration will include clarity on the scope of the senior management team.
- 12.11 A standard business case template and consistent methodology should be agreed.

**13 Insurance**

- 13.1 During the term of this Agreement each Party shall maintain in force, with a reputable insurance company, such policy or policies of insurance necessary to insure each Party against all risks required in relation to the JCEO Arrangements and the Agreement and any insurances as may be required by law.
- 13.2 Nothing in this Agreement shall limit or exclude a Party's liability:
- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) for breach of any obligation as to title or quiet possession implied by statute;
- or
- (d) for any other act, omission, or liability which may not be limited or excluded by law.

- 13.3 Subject to clause 13.2 above, no Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Agreement.
- 13.4 Each Party shall keep its own insurance and liabilities until the point where joint agreements are being considered, at which point there shall be further discussion in relation to specific business cases for shared arrangements and related insurance arrangements shall be considered on a case-by-case basis.

## **14 Property and Assets**

- 14.1 The ownership of each Party's property and assets shall continue to be retained by that Party. Exceptions to this shall require a business case and approval shall be in accordance with the appropriate approval process and each Party's Scheme of Delegation as set out in their Constitution at that time.
- 14.2 If any property or asset is sold, the proceeds will remain with the legal owner. All collaboration business cases will include an appropriate financing proposal and it will be each council's prerogative on how it funds a business case, and approval shall be in accordance with the appropriate approval process and each Party's Scheme of Delegation as set out in their Constitution at that time.
- 14.3 Each Party will make its premises available (by way of licence) to the other for ad hoc meetings and working space by officers, councillors and contractors, subject to sufficient space being available to the host council, at no charge.
- 14.4 If either Party moves staff into the other's premises on more than an ad hoc basis, there will be agreement in place for the host council to recover costs, agreed in advance of the arrangement coming into effect. An appropriate lease or licensing arrangement will be put into place if necessary. This will include mutual aid and business continuity purposes if one council's premises becomes unavailable in part or in total.
- 14.5 Any shared facility will be subject to a business case and financing agreement. The mechanism for financing within each Party will be a matter for that Party. Costs will be agreed in advance.

- 14.6 Each Party will retain its own ICT facilities and make them available to officers in shared roles or directly supporting shared roles. Those officers will abide by the security policies of the council that is hosting the ICT facility being used.
- 14.7 If required to travel to the other council's premises, employees will adhere to their employing Party's mileage and expense protocols. Parking may not be guaranteed.
- 14.8 The Parties will establish a protocol with each other and their insurance providers to support the principles in this Inter-Authority Agreement. This will include consideration of use of assets and property by employees, councillors and contractors.
- 14.9 If any assets are proposed to be purchased, leased or invested in jointly, they will be subject to an approved business case, clear protocols for use of such assets, both during the collaboration in the event of the partnership's termination, and approval in accordance with the appropriate approval process and each Party's Scheme of Delegation.

## **15 Indemnity**

- 15.1 Each Party ("**Indemnifying party**") shall indemnify the other Party ("**Indemnified Party**") against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with the Indemnifying Party's performance of this Agreement.
- 15.2 This indemnity shall not cover the indemnified party to the extent that a claim under it results from the indemnified party's negligence or wilful misconduct.
- 15.3 Nothing in this clause shall restrict or limit the indemnified party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity

## **16 Conflicts of Interest**

- 16.1 Each Party shall notify the other Party immediately of any actual or potential conflict of interest between the notifying Party and any contractor or customer (or

prospective contractor or customer) which may arise in connection with the Project. The notifying Party will as soon as possible either withdraw from any decision making in relation to such contractor or customer giving rise to the potential conflict or agree with the other Party either that no conflict exists or an acceptable method of averting it

16.2 The Parties shall agree a conflicts protocol that is to be appended to this agreement

16.3 The Parties shall use the same process used currently for resolving conflicts of interest within each authority as the basis of conflicts resolution, expanded upon as necessary.

## **17 Dispute Resolution**

17.1 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows: *[Drafting note – ‘Dispute’ is defined within the existing s113 Agreement as ‘any dispute arising under this Agreement’.]*

- (a) the Dispute shall be referred by a Party, first to the authorised representatives of the Party for resolution *[Drafting note – the authorised representatives will be those officers nominated by each authority to represent each party in the case of a dispute];*
- (b) if the Dispute cannot be resolved by the authorised representatives of the Party within 14 days after the Dispute has been referred to them, then the Party may give notice to the other Party in writing (Dispute Notice) that a Dispute has arisen; and
- (c) within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Leader of the Council of each Party for resolution.

17.2 If the Leaders of the Parties are unable, or fail, to resolve the Dispute within 21 days of the date of the Dispute Notice, the Parties may attempt to resolve the Dispute by mediation in accordance with clauses 17.3 and 17.4 below.

17.3 The Parties will attempt in good faith to resolve the Dispute through mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in

writing (ADR notice) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR.

17.4 The mediation will start not later than 14 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

## **18 Confidentiality**

18.1 Each Party will use reasonable endeavours to keep confidential all Confidential Information concerning the collaboration or the business and affairs of the other Authority and shall not disclose it except with the consent of the other Party or a valid order from a Court or Tribunal of competent jurisdiction.

## **19 Data Protection/Freedom of Information**

19.1 A Data Sharing Agreement has been drafted and will be appended to this Agreement.

19.2 Each Party acknowledges that the other Authority is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and each Party shall, where reasonable, assist and co-operate with the other Party (at its own expense) to enable the other Party to comply with these information disclosure obligations.

## **20 Copyright and Intellectual Property**

20.1 Copyright and intellectual property in any documents, reports, policies and procedures produced by Employees of one Council for the sole benefit of the other Council shall vest solely in the other Council. Where any such documents, reports, policies and procedures are produced for the benefit of both Councils, copyright and intellectual property in them shall vest in both Councils equally.

20.2 Each Council hereby grants to the extent permissible by law a licence to the other to use its Intellectual Property Rights solely and exclusively for the purposes of and in connection with this Agreement.

20.3 Any Intellectual Property Rights created through the establishment and running of shared services by the Councils shall vest in the Councils and be held jointly by them at the time they were created.

## **21 Variation**

21.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## **22 Waiver** *[Drafting Note - This clause governs the way in which either Party can (or cannot) waive a contractual right under the Agreement and the consequences of any waiver]*

22.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

22.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **23 Third Parties**

23.1 It is agreed for the purposes of the Contract (Rights of Third Parties) Act 1999 that this Agreement is not intended to and does not give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

## **24 Governing Law and Jurisdiction**

24.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.

## **25 Force Majeure**

25.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two months, the Parties shall refer the matter via the dispute resolution process set out at clause 17 and if resolution cannot be agreed the Party not

affected may terminate this Agreement by giving one month's written notice to the affected Party.

## **26 Severability**

26.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

26.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **27 Transfer and Sub-Contracting** *[Drafting note – This clause governs whether or not each Council can sub-contract, transfer, assign, etc, its obligations and rights under the Inter-Authority Agreement. This clause does not apply to individual 'outsourcing' arrangements in relation to services, but instead relates purely to the rights and obligations under the IAA.]*

27.1 Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party.

## **28 Entire Agreement**

28.1 This Agreement and its Schedules constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

28.2 Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.