

Council Report

Ward(s) affected: All

Report of Director of Transformation & Governance

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Lead Councillor responsible: GBC: Cllr McShane & WBC: Cllr Follows

Date: 22 March 2023

## **Matters arising from the formal review of the Inter-Authority Agreement and the Collaboration Risk Register (December 2022)**

### **Executive Summary**

At its first meeting on 9 December 2022 the Joint Governance Committee considered reports on:

- (a) the formal review of the Inter-Authority Agreement (IAA), to ensure that it continues to be fit for purpose, with any changes required being recommended to both Full Councils; and
- (b) the six-monthly review of the collaboration risk register.

In relation to the review of the IAA, the Committee noted that the Terms of Reference of the Joint Appointments Committee, which were included within the IAA, currently provided that its membership shall comprise the leaders of both councils plus two members appointed by Guildford Borough Council and two members appointed by Waverley Borough Council, with no substitutes permitted.

The Committee, noting that substitutes were permitted in respect of the Joint Governance Committee, felt that substitutes should be allowed on the Joint Appointments Committee and agreed to recommend to both councils that the terms of reference of the Joint Appointments Committee should be amended to reflect the membership as specified by each council.

In their discussion on the review of the risk register, the Committee raised a number of queries in respect of specific risks. With regard to Risk No. 6 (*that either or both councils will decide to terminate the partnership*), councillors queried the relation of this risk to clauses 21 and 22 of the IAA, and whether:

- (i) there was still a need for those clauses, and
- (ii) the notice periods were correct.

It was noted that legal advice had been to include dispute resolution arrangements in the IAA, and that further legal advice would be needed before changing these clauses. The Committee therefore asked officers to obtain legal advice on this issue so that the risks could be reflected correctly in the risk register. The risk register needed to reflect that the closer the collaboration became, the more impactful an ending of the partnership would be to the councils.

This report sets out details of the further legal advice sought and suggests an amendment to the wording of the IAA, which will also require the formal approval by the full Councils of both authorities.

The Committee will consider the proposed amendment to the wording of the IAA at its meeting on 17 March 2023, and its recommendation in that regard will be reported to both councils at their respective extraordinary meetings on 21 and 22 March 2023.

#### **Recommendation to Guildford and Waverley Borough Councils:**

- (1) That the terms of reference of the Joint Appointments Committee be amended as follows:

- (a) Delete the following:

*“SUBSTITUTES: Substitutes shall not be appointed”*

- (b) Insert the following:

*“SUBSTITUTES: Substitutes may be appointed. Guildford Borough Council may appoint two substitute members. Waverley Borough Council may appoint two substitute members, with one being nominated by the Leader of the council, and one nominated by the Leader of Waverley’s Principal Opposition Group.”*

- (2) That, subject to the recommendation of the Joint Governance Committee at its meeting on 17 March 2023, clause 21.1 of the Inter-Authority Agreement be amended to read:

#### **“21 TERMINATION FOR CAUSE**

- 21.1 Without affecting any other right or remedy available to it, any Party may terminate this Agreement ~~with immediate effect~~ by giving ~~written notice to~~ **a minimum of three months’ notice in writing** to the other Party”

#### Reasons for Recommendation:

To ensure that any recommended change to the inter-authority agreement following a review is reported to the full Council meetings of both authorities

Is the report (or part of it) exempt from publication? No

## 1. Background

- 1.1 The Joint Government Committee's terms of reference include a requirement to undertake periodically a formal review (at least once every 12 months) of the inter-authority agreement (IAA), ensuring it continues to be fit for purpose and recommending to both Full Councils any changes required. The Committee is also required to undertake a six-monthly review of the Collaboration Risk Register.

## 2. Review of the IAA and Collaboration Risk Register

- 2.1 The Joint Governance Committee undertook the first formal review of the IAA and the Collaboration Risk Register at its meeting held on 9 December 2022.
- 2.2 In relation to the review of the IAA, the Committee noted that the Terms of Reference of the Joint Appointments Committee, which were included within the IAA, currently provided that its membership shall comprise the leaders of both councils plus two members appointed by Guildford Borough Council and two members appointed by Waverley Borough Council, with no substitutes permitted.
- 2.3 The Committee, noting that substitutes were permitted in respect of the Joint Governance Committee, felt that substitutes should also be allowed on the Joint Appointments Committee and agreed to recommend to both councils that the terms of reference of the Joint Appointments Committee should be amended to reflect the membership as specified by each council.
- 2.4 This would mean that the following would need to be included in the terms of reference:
- “Substitutes: Substitutes may be appointed. Guildford may appoint two substitute members. Waverley may appoint two substitute members, with one being nominated by the Leader of the council, and one nominated by the Leader of Waverley’s Principal Opposition Group.”*
- 2.5 In their discussion on the review of the risk register, the Committee raised a number of queries in respect of specific risks. With regard to Risk No. 6 (*that either or both councils will decide to terminate the partnership*), councillors queried the relation of this risk to clauses 21 and 22 of the IAA, which currently read as follows:

## **“21. TERMINATION FOR CAUSE**

*21.1. Without affecting any other right or remedy available to it, any Party may terminate this Agreement with immediate effect by giving written notice to the other Party:*

*21.1.1. if the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;*

*21.1.2. if the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;*

*21.2 For the purposes of clause 21.1.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from a substantial portion of this Agreement.*

## **22. TERMINATION WITHOUT CAUSE**

*22.1. A Party may terminate this Agreement by giving the other Party a minimum of twelve months' notice in writing.*

*22.2 A notice to terminate may only be served once in each calendar year and in any event no later than 30 September in each calendar year. In the event a notice is served after 30 September in a calendar it shall be deemed to be served on the 1 April in the following calendar year.”*

2.6 The Committee expressed concern as to whether:

- (i) there was still a need for clauses 21 and 22 above, and
- (ii) the notice periods were correct.

2.7 It was noted that specialist legal advice sought in the drafting of the IAA had recommended the inclusion of dispute resolution arrangements in the IAA, and that further legal advice would be needed before changing these clauses. The Committee therefore asked officers to obtain legal advice on this issue so that the risks could be reflected correctly in the risk register.

The risk register needed to reflect that the closer the collaboration became, the more impactful an ending of the partnership would be to the councils.

- 2.8 Details of the further legal advice sought, together with a consequential amendment suggested to the wording of Clause 21.1 are set out below. The Joint Governance Committee will be meeting on 17 March 2023 to consider the further legal advice and the proposed amendment to the wording of the IAA. The Committee's recommendation will be reported to both councils for consideration and formal approval.

### **3. Proposed Amendment to the IAA**

- 3.1 In response to the Committee's concerns, the Interim Executive Head of Legal and Democratic Services considers that both clauses 21 and 22 of the IAA are required as the Agreement should have termination provisions like any other contract. However, the notice period in the termination for cause provision (clause 21), requires amendment because the current contractual provision permits one authority to terminate the IAA with "*immediate effect*" where the other authority commits a material breach of any term of the IAA which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so.

- 3.2 It is suggested that clause 21.1 should be amended to read:

*"21.1 Without affecting any other right or remedy available to it, any Party may terminate this Agreement ~~with immediate effect~~ by giving ~~written notice to a minimum of three months' notice in writing~~ to the other Party:*

- 3.3 The proposed amendment replaces "*immediate effect*" with "*three months' notice*" thereby affording each authority a three-month period, in the very unlikely event this clause was ever triggered, to prepare for the ending of the IAA. The Joint Governance Committee will be invited to consider whether such notice period needs to be longer.

### **4. Consultations**

- 4.1 There is no requirement for consultation.

### **5. Key Risks**

- 5.1 The Joint Governance Committee's terms of reference include undertaking periodically 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. The Joint Governance Committee, at its meeting on 17 March, will also be considering a further report on the review of the collaboration risk assessment.

## **6. Financial Implications**

6.1 There are no direct financial implications arising from this report.

## **7. Legal Implications**

7.1 There are no direct legal implications arising from this report.

## **8. Human Resource Implications**

8.1 There are no direct human resource implications arising from this report.

## **9. Equality and Diversity Implications**

9.1 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

## **10. Climate Change/Sustainability Implications**

10.1 There are no relevant climate change/sustainability implications.

## **11. Summary of Options**

11.1 If the Committee, and both full council meetings, accept there is still a need for clauses 21 and 22 of the IAA as detailed above, and that a reasonable notice period is required for clause 21.1, they have the option of determining what is a reasonable notice period. Officers are recommending that such notice period should be three months.

## **12. Background Papers**

- Terms of Reference of the Joint Appointments Committee
- Inter Authority Agreement

## **13. Appendices**

None