

GUILDFORD BOROUGH COUNCIL

MINUTES OF THE GUILDFORD AND WAVERLEY JOINT CONSTITUTIONS REVIEW GROUP  
20 JUNE 2024

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

**Present**

Cllr Andy MacLeod (Joint Chair)  
Cllr Michael Goodridge  
Cllr Catherine Houston

Cllr Gemma Long  
Cllr Richard Mills

**Apologies**

Cllr Joss Bigmore, Cllr Paul Follows and Cllr James Jones

32. APOLOGIES FOR ABSENCE (Agenda item 1)

Apologies were received from Cllr Joss Bigmore, Cllr Paul Follows and Cllr James Jones.

33. DISCLOSURE OF INTERESTS (Agenda item 2)

There were no disclosures of interest.

34. MINUTES (Agenda item 3)

The minutes of the previous meeting of the Group, held on 29 May 2024, were agreed as a correct record.

35. PROPOSED CHANGES TO THE OFFICER SCHEMES OF DELEGATION (Agenda item 4)

The Group considered a report which presented further revisions to the proposed draft Officer Schemes of Delegation, set out at Appendix 1 to the paper. As councillors had already considered a number of previous revisions, the new proposed changes to the Schemes were shown in gold and brown text in the draft to denote changes requested by officers since the last meeting of this Group and changes requested by officers since Executive meetings, respectively.

The following significant changes were highlighted:

Delegation 1.6.2 – Management of Exercise of Delegated Powers

The Group accepted these proposed changes which reflected the need for the Councils to publish decisions falling within the Openness of Local Government Bodies Regulations 2014 on their websites, in addition to Executive decisions in accordance with Regulation 14 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

#### Delegation 2.1.8 – Joint Chief Executive

Further to a query regarding the current position in relation to determining staff salaries locally, the Group was advised that this delegation remained as the Group previously requested and therefore only applied to Guildford. It would be a matter for the Joint Chief Executive to discuss with the Leader of Waverley to establish whether the delegation would also be applied to Waverley.

#### Delegation 2.3.4 – Joint Strategic Director (JSD) of Community Wellbeing

Councillors expressed their support for this change to mirror the legal obligation to sell Council homes under the Right to Buy scheme. Therefore, there was no requirement for officers to consult the Executive when disposing of land valued at £200,000 or more as the Council had no choice in the matter.

#### Delegation 2.4.8 – JSD of Legal & Democratic Services and Monitoring Officer

The delegation proposed the addition of the words '*in or before any Court, Tribunal or Inquiry*' in section (c) and the addition of the words '*the withdrawal of reasons for planning appeals*' in section (g). The Group supported this widening of legal proceedings to include planning inquiries and appeals.

#### Delegation 2.6.2 – JSD of Place

This proposed change, which limited the delegation to exclude Section 106 Agreements, was noted.

#### Delegation 2.8.20 – Joint Chief Executive, all JSDs & Assistant Directors (ADs) - Legal

This delegation had been transferred into the section relating to all JSDs and ADs as many officers in different areas of the Councils were involved in exercising the delegation. The safeguard was that the delegation could only be exercised in consultation with the JSD of Legal & Democratic Services and the AD of Regulatory Services. The Group confirmed its acceptance of the change. Re-numbering of the paragraphs below this delegation in the document was required as a consequence of this addition.

#### Delegation 3.1.9 – AD of Housing Services

It was noted that the words '*including the disposal of properties*' would be added to allow for disposal under the Right to Buy scheme.

#### Delegation 3.3.3 – AD of Environmental Services

This delegation had been amended to reflect that some of the regulatory functions it previously contained had been moved elsewhere. The changes were accepted and attention was drawn to the need to correct some typographical errors in the section as a result of the deletion of words.

#### Delegations 3.3.19 - 3.3.22 – AD of Environmental Services

These four new delegations had been added at the request of the Parks Team who sought authority from councillors to undertake these tasks which they already performed. Whilst these functions constituted everyday work, it was felt appropriate to add them to the Schemes as they involved entering into agreements.

Delegation 3.3.20, concerning delivering, managing and operating habitat banks on Council owned land, had already been agreed by Guildford's Executive with the exception of the associated pricing schedule which was now being included. The whole delegation needed to be added to Waverley's Scheme. The settling of rights of way disputes and the issue of works permits and access licences referred in delegations 3.3.21 and 3.3.22, respectively, were explained. It was noted that the paragraph numbering in this section required correction.

#### Delegations 3.4.21 - 3.4.22 – AD of Planning Development

The wording amendments to the above delegations, which made them more appropriate without changing the meaning, were agreed by the Group.

#### Delegation 3.4.23 – AD of Planning Development

This was a new delegation that related to agreeing statutory compensation payable under the Planning Acts. It was suggested that the amount of £200,000, which was the key decision threshold, be inserted.

#### Delegation 3.7.1

The Group was advised that the delegation regarding dog fouling and other dog controls had been transferred to the Regulatory Services section under 3.7.1 (k).

Delegations 3.8.3 and 3.8.6 – AD of Assets and Property

The proposed amendment to delegation 3.8.3 sought to clarify that it related to General Fund properties to distinguish it from delegations to the AD of Housing concerning Housing Revenue Account (HRA) stock. The same applied to delegation 3.8.6. (c) which did not relate to HRA properties other than those of a commercial nature. Delegation 3.8.6. (j) was a new section to arrange for the issue of relevant notices under the Landlord and Tenant Act where required in consultation with the relevant portfolio holder and JSD / AD. Councillors indicated their acceptance of these changes.

In this connection, a member who was new to the Group advised that he had found this document difficult to follow and enquired as to whether an alternative format showing a logical sequence of changes could be prepared prior to it being submitted to Committees for consideration to improve its legibility. However, other members of the Group who had contributed to the development of the Scheme were of the view that it was clear and its earlier versions had been well received by Committees. As the Scheme was due to be published the following day as part of the agendas for Guildford's Corporate Governance and Standards Committee and for Waverley's Standards and General Purposes Committee, which were meeting simultaneously on 1 July 2024, there was limited opportunity to amend its layout and presentation at this stage. In order to assist, it suggested that a cleaner version of the document, showing all proposed text changes in one colour as opposed to the current edition which indicated every stage of amendment in a different colour in the interests of transparency, could be produced for Committee agenda publication.

The Group RESOLVED to recommend the revised Joint Officer Scheme of Delegation and Proper Officer Scheme to the Standards and General Purposes Committee (Waverley) and the Corporate Governance and Standards Committee (Guildford).

36. PROPOSED CHANGES TO THE FINANCIAL PROCEDURE RULES (Agenda item 5)

A report presenting the proposed revised draft Financial Procedure Rules, set out at Appendix 1, was before the Group for consideration. The purpose of the revised Procedure Rules was to align financial limits and procedures across the two Councils where possible. Councillors had received a draft set of the Procedure Rules at their meeting in May, and this revised version contained some proposed amendments. Whilst the Procedure Rules did not grant any additional powers, they refined the procedures.

The following changes to the Procedure Rules were suggested:

Paragraph 1.3 – Introduction

This paragraph related to the use of critical action stating that every use of this Rule must be reported by the Chief Executive, in writing, to the next available meeting of the Executive and/or Full Council. Although this perceived double reporting was questioned, the Senior Governance Officer advised that the appropriate reporting route would depend upon the nature of the critical action taken. For example, if the action related to an Executive function then it should be reported to the Executive whereas if a Council function was being exercised it should be reported to full Council. In the event that the action encompassed both Executive and Council functions, it should be reported to both. It was agreed that the expression '*as appropriate*' be added for the purposes of clarification.

The paragraph also referred to the Chief Executive as '*s/he*' and members supported the suggestion that the reference should be replaced with '*they*'.

#### Paragraph 1.4 – Introduction

Attention was drawn to an error in this paragraph where it referred to the JSD of Finance having responsibility for reporting, where appropriate, breaches of the Financial Procedure Rules and Contract Procedure Rules to the Audit and Risk Committee/Standards and General Purposes Committee. It was noted that the name of the latter Committee was incorrect and should refer to Guildford's Corporate Governance and Standards Committee. It was suggested that the words '*where appropriate*' be deleted and Waverley's version of the Procedure Rules refer to its Audit and Risk Committee and Guildford's version refer to its Corporate Governance and Standards Committee. It was explained that whilst Waverley had two Committees, namely, the Audit and Risk Committee and the Standards and General Purposes Committee, Guildford currently had one Committee, its Corporate Governance and Standards Committee, which fulfilled the roles undertaken by both of Waverley's Committees. However, proposals to introduce a separate audit committee at Guildford would be progressed later in the year as it was considered to be best practice to have separate standards and audit committees. This move would increase alignment between the two Councils' structures. There was a delegation to enable the Monitoring Officer to make consequential amendments to the Constitution to reflect changes to committee structures.

#### Paragraph 1.5 – Introduction

Proposed changes to this paragraph consisted of deleting the word '*Senior*' from the reference to the Joint Management Team and replacing the word '*Employees*' with the term '*Staff*' in relation to the Code of Conduct.

#### Paragraph 2.2 – Financial Management - Responsibilities

This minor amendment consisted of substituting the word '*is*' for '*are*' to refer to the Executive in the singular.

#### Paragraph 2.5 – Financial Management - Responsibilities

It was proposed to delete the word '*Strategic*' to refer to the Joint Management Team, which was the correct name.

#### Paragraphs 4.1 and 4.2 – Revenue Budget Monitoring and Control

The above change would be applied to paragraph 4.1 followed by '*JMT*' in brackets with the initials utilised in paragraph 4.2.

#### Paragraph 5.2 – Scheme of Virement

It was explained that a virement was the movement of an uncommitted budget from its intended purpose to another purpose to fund expenditure. The Scheme of Virement was intended to enable budgets to be managed with a degree of flexibility within the overall framework determined by the Council, and therefore optimise the use of resources. However, there were areas where virement would not normally be permitted such as transferring funds between revenue and capital budgets.

It was proposed to expand the second bullet point in this paragraph to include the words '*with the exception of external funding movements agreed by the Section 151 Officer*' as there were instances of external funding movements into revenue when there was a need to spend those funds on capital.

It was further proposed to delete the third bullet point in this paragraph which did not permit virements into staffing budgets (other than from within existing staffing budgets). The reason for this was that there were occasions, particularly associated with large projects, when external funding was received and utilised to fund staff to assist with delivering the projects.

#### Paragraph 5.5 – Scheme of Virement

The third bullet point in this paragraph stipulated that all virements must be made prior to the end February in the relevant financial year. This stipulation significantly affected Waverley as it possessed a system whereby purchase orders could not be raised without funding in the relevant budget line creating a negative effect on its ability to budget and spend appropriately, possibly affecting the year end position. It was therefore intended to delete this bullet point.

#### Paragraph 9.2 – Budget and Policy Framework

It was suggested that the words '*a minimum of*' be added to the first bullet point which required the JSD of Finance to develop a three-year Medium Term Financial

Plan (including the current budget year). The addition reflected the fact that Waverley's Medium Term Financial Strategy was for a four-year period.

In the interests of consistency, it was agreed that both Councils would name their respective documents '*Medium Term Financial Plan*'.

The Group RESOLVED to recommend the revised Financial Procedure Rules to the Standards and General Purposes Committee (Waverley) and the Corporate Governance and Standards Committee (Guildford).

37. PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES (Agenda item 6)

The Legal Services Manager introduced a report which presented the proposed draft revised Contract Procedure Rules, set out at Appendix 1, for members' consideration. The purpose of the revised Contract Procedure Rules was to align contract limits and procedures across the two Councils where possible and implement the Procurement Act 2023.

To conduct its business effectively, a Council needed to ensure that it had procurement policies in place which were strictly adhered to. It was a legal requirement under s135(2) of the Local Government Act 1972 that the Council maintained a set of standing orders in relation to contracts for the supply of goods, services and works. An element of good financial management was having an established set of Contract Procedure Rules which set out the policies of the Council. They provided the rules for the Council to follow to protect public money, give clarity to members and officers regarding responsibility for procurement, and addressed competition to create a fair marketplace.

Both Councils currently each had a different set of Contract Procedure Rules and Contract limits. However, their approaches to procurement differed considerably. Waverley had a devolved de-centralised system where officers individually procured goods, services and works with the benefit of an advisory service. Guildford operated a centralised system where all procurement activity to a value of £1,500 was carried out via the Procurement service. The draft Rules sought to bring together the best aspects of both systems with Waverley moving towards a more centralised approach which was in keeping with good practice and the provisions of the Procurement Act 2023, which would come into effect from 28 October 2024.

The Group's attention was drawn to Appendix 2 to the report which outlined the following areas of key change to the Rules.

**Part 1 - Introduction**

1. Introduction

This section had been updated to reflect both authorities' previous positions. However, there was no material change.

## 2. Key Principles

This constituted an update to the previous Key Principles to reflect the changes in the Procurement Act 2023 and Government policy. In response to a query, the Group was advised that the main purpose of the Act was to provide transparency, simplicity and accessibility for small to medium enterprises. However, in reality it was more onerous for local authorities to operate as it placed greater demands upon them including the need to publish more notices and introduce a more stringent regime in respect of conflict assessments.

## 3. Statutory Requirements

Although this section had been updated to reflect the current thresholds and the implementation of the Procurement Act 2023, there was no material change. The documents for both Councils had been updated to confirm what constituted a statutory requirement and clarify the Councils' powers and control.

## 4. Compliance

This section had been updated to reflect the implementation of the Procurement Act. There was a material change in creating a provision allowing the JSD of Legal and Democratic Services and the JSD of Finance to terminate a procurement procedure if it was considered that the contracts had been disaggregated to avoid the procurement thresholds. This provided additional protection for the Councils and assisted the Statutory Officers to undertake their duties. There was a need for a toolkit and templates to reflect these higher-level new rules associated with procurement activity.

Guildford had some additional requirements above Waverley as it had adopted a Modern Slavery Statement which Waverley had not. A further difference between the Councils was that Guildford had made a commitment to social value and had a requirement to include it in the contract re-evaluation process whereas Waverley had not embedded this into its Rules. However, Waverley officers had indicated that they would like more protection in the area of social value and that it should be a stand alone process outside the contract quality and price.

## 5. Scope



The reason for the bold and underlined lettering in paragraph 5.1, concerning where an approval was required under these Rules, was to emphasise its importance and show where the wording had been updated for clarification. Attention was drawn to a typographical error in the new sentence.

## 6. Roles and Responsibilities

Although there was minimal change for Guildford in this area, for Waverley there would be a shift towards a centralised procurement model with more responsibilities lying with Procurement as a function and not an advisory service.

In response to a query, the Group was advised that Guildford's centralised Procurement service consisted of a Head of Procurement who reported directly to the Section 151 Officer and managed a team of five Procurement specialists. Although Waverley's model currently consisted of one Procurement adviser who also reported directly to the Section 151 Officer, that Council was contracting some Procurement support from Guildford and was in need of further resources in this area. The Head of Procurement had been asked to focus on how to achieve a shared centralised Procurement offer across both Councils and such a review was necessary to align the services and meet the requirements of the new Act.

The request for an amendment to section 6.5, which specified the responsibilities of JSDs / ADs, to add '*with support from Finance and Procurement*' was not supported as it was felt it would dilute the lines of responsibility and also senior officers were free to seek support from other officers as they felt necessary.

## **Part 2 - Process**

### 7. Calculating Contract Value

There were a number of statutory requirements in respect of calculating contract value. The Rules took account of old and new processes as older methods had been tested.

### 8. Thresholds and Route to Market

This section set out actions to be taken under each of the different thresholds which posed significant changes for both Councils. There were four thresholds:

- Threshold 1 - procurement under £5,000.
- Threshold 2 - procurement from £5,000 to £24,999.
- Threshold 3 - procurement from £25,000 to £150,000.
- Threshold 4 - procurement over £150,000.

The requirement at Guildford for any contract of a value above £1,500 to be actioned through the procurement process would be increased to £5,000 in line with the first threshold. The second threshold was newly introduced and offered a lighter touch procedure featuring a service officer taking the lead with the benefit of advice and input from Procurement. As the system at Waverley was currently officer led, this represented a shift as its officers would not have previously needed to obtain procurement advice in respect of contracts valued at up to £25,000. A good reason for seeking Procurement advice was that it offered a holistic and economical approach avoiding the issue where multiple contracts were awarded to the same companies by different services across the Councils. The figure of £25,000 had been selected as, although not all procurement legislation was triggered at that amount, the application of the COP30 (United Nations Climate Change Conference of the Parties) requirements commenced at that contract value and the switch to Procurement leading on associated activity would ensure compliance with those necessities.

Waverley officers had raised a concern in respect of the £5,000 to £25,000 threshold as they felt that it was too onerous to involve Procurement at that level and expressed a preference to continue procuring through the e-platform they currently utilised. This was not an issue for Guildford officers as they were accustomed to following the Procurement route. It was hoped that related training would demonstrate the benefits of Procurement taking the lead, particularly when the toolkit and correct process was in place.

Any works and services etc of a value falling into the third threshold from £25,000 to £150,000 would be procured via the team. Legislation was triggered at this level and in order to maintain competition and meet the best value duty, there was a requirement to seek tenders. This was standard good practice and posed no significant changes for either Council. All legislation would be applied to contracts falling within the fourth threshold of over £150,000 which would follow the formal path via tender. Although the Councils' threshold figures were exclusive of VAT, the figures for initiating procurement legislation were inclusive of VAT, or exclusive if VAT was not applicable. It was hoped that contracts would not be under valued to avoid compliance with legislation.

As highlighted in paragraph 8.6, any procurement above the Key Decision threshold of £200,000 would require approval from the Executive before tender and prior to award.

#### 9. Permission to Tender

There was a new stipulation that authority to commence a procurement was subject to written approval from the relevant AD (by e-mail), or where the procurement

would result in a Key Decision, Executive approval would be required. This matter was included in the Officer Schemes of Delegation where the contract value was below the Key Decision threshold. Where the value was above the threshold, the Executive may be content to delegate the award of the contract at the approval stage, or be involved at each stage of the process, depending upon the significance of the contract.

#### 10. Pre-Market Engagement

Pre-market engagement was encouraged under the new legislation and, in the event that a local authority had not pursued it, there was a requirement to justify the reason why. There had been a request to limit the requirement to threshold four only which seemed acceptable. However, there was no reason to prevent it being carried out in relation to the lower thresholds. It was therefore proposed to add wording along the lines of: *'for any procurement largely in threshold four Procurement will undertake a market consultation'*.

#### 11. eSourcing

In response to a query, it was explained that the reference to eSourcing in this paragraph related to all local authorities being part of an eSourcing platform / portal which linked to a central 'Find a Tender' service operated by the Government whereby tenders were invited, with links to central platforms in the case of higher value tenders.

#### 12. Records

This section clarified responsibility for maintaining and retaining a full audit trail of documentation in respect of procurement for three years following the award of contract. Record keeping was more regulated under the new legislation in the interests of transparency. This represented an addition to both Guildford's and Waverley's Rules. It was proposed to add the words *'and then in accordance with the Council's retention policy'* to paragraph 12.3 as the policy may require retention of certain documents beyond three years, or there may be a reason to retain documents for longer.

#### 13. Waivers

The Group was advised that waivers could occur in circumstances where officers requested not to comply with or by-pass part of the procurement process, for example, not wishing to obtain three tenders for various reasons including a timing issue or there being only one supplier in the market. Paragraph 13.2 set out the exceptional circumstances under which the Rules could be waived. These were similar to the provisions in both Councils' existing Rules. Waivers up to the Key Decision limit

could be approved by the JSD of Finance and those above would require Executive approval. The JSD of Finance would maintain a log of all waivers and these would be reported to the relevant Committee.

#### 14. Exemptions (direct award for Covered Procurement)

Councillors noted that approval may be given for a direct award of a contract in the event that a procurement was a Covered Procurement in accordance with the relevant legislation. The exemption would only be granted if approved by the JSD of Finance, the JSD of Legal and Democratic Services, and Procurement, or in the case of a Key Decision, by the Executive. This was similar to the current procedure at Guildford where any exemptions were reported to the Corporate Procurement Board and recorded.

#### 15. Variations

This section was a new addition to the Rules which had emerged from a review at Guildford and in the interests of good practice as neither Council currently had any requirements set out for varying existing contracts. However, Guildford was moving towards introducing deeds of variation in respect of contracts. Construction was the area where contract variations were most likely to be sought. The aim of this Rule was to capture variations, ensure that they were being scrutinised and demonstrate that they were allowed under the contract.

With regard to variations potentially disadvantaging a party to the contract, the new legislation contained provisions relating to circumstances where a contract variation tipped its value from below to above a threshold and necessitated compliance with variation requirements. This Rule specified that advice from Procurement and approval from the JSD of Finance was required to ensure that the variation was legitimate and did not disadvantage any party. A variation which would not result in the total value of the contract exceeding £200,000 could be approved by the JSD of Finance whilst a variation which would result in the total value of the contract exceeding £200,000 required the approval of the Executive.

A key part of the new legislation was the requirement to consider whether components of a large project could be commissioned as separate contracts to minimise the need for variations.

In the event that a Council was a partner in a project, this would be covered in the related contract.

It was agreed that paragraph 15.5, which stipulated that all requests for variations should be submitted to Procurement who would make a recommendation before

seeking the required approval, be expanded by the addition of the words *'and seek advice from Legal services where appropriate'*.

### **Part 3 - General**

#### 21. Temporary Staff, Consultants and Professional Services

The Group was advised that another area of significant change for Waverley was that its previous Rules excluded all agency workers whereas the revised Rules specified that Procurement worked closely with HR to manage the Council's temporary agency workforce needs. As the Council's contract would be with the agency and not the individual worker these Rules applied in full.

#### 25. Social Value

It was proposed that the word *'technical'* be deleted from paragraph 25.4 leaving it to read *'Social Value for each tender must contain a minimum weighting of 5% of the evaluation scoring'*. This transferred social value outside the quality and financial evaluations to stand alone as a separate contract entity to enable the Councils to maximise the benefits offered by contracts. Councillors indicated their acceptance of a social value minimum weighting of 5%.

Paragraph 25.5 specified that it was the Contract Manager's responsibility to ensure that social value was being delivered during the life of the contract. The Contract Manager was the person appointed to manage the contract initially and, once procured, responsibility for the management of the contract would transfer to a nominated officer in the relevant service department.

### **Part 4 - Contracts**

#### 41. Sealing and Signing of Contracts

As paragraph 41.1 referred to a formal contract and paragraph 41.2 specified a formal written contract, it was agreed that the word *'written'* be added to paragraph 41.1.

Paragraphs 41.1 and 41.2, which contained some flexibility around the use of purchase orders in place of formal written contracts under certain circumstances, subject to Legal advice, were agreed.

#### 44. Insurance

A new paragraph, 44.4, was being added: *'Procurement will request copies of any relevant insurance documents on contract award. The Contract Manager should*

*ensure that updated copies are requested as required*'. This addition clarified where responsibility for obtaining insurance documents lay.

The Group RESOLVED to recommend the revised Financial Procedure Rules to the Standards and General Purposes Committee (Waverley) and the Corporate Governance and Standards Committee (Guildford).

38. DRAFT WORK PROGRAMME (Agenda item 7)

It was reported that no amendments to the Work Programme had been made since the last meeting of the Group. Members did not express any wishes for changes to the Programme.

39. DATE OF NEXT MEETING (Agenda item 8)

It was noted that the next scheduled meeting of the Group was at 5:00 pm on Monday 29 July, to be held in The Burys, Godalming, subject to committee room availability. Cllr Catherine Houston tendered her apologies for the next meeting.