

Guildford/Waverley Borough Council

Report to: Council (GBC and WBC)

Date: 8 October 2024 (GBC), 22 October 2024 (WBC)

Ward(s) affected: All

Report of Strategic Director: Legal & Democratic Services

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Report status: Open

Proposed Changes to Local Choice Functions

1.1 Executive Summary

- 1.1 It is good practice to keep the Constitution under review to help to ensure good governance. This review of Local Choice functions has been considered by the Joint Constitutions Review Group (JCRG), with the intention that both Councils will have Local Choice functions which align where appropriate.
- 1.2 This matter was considered initially by the Joint Constitutions Review Group (JCRG) on 12 August, and subsequently by both the Corporate Governance & Standards Committee (GBC) and the Standards & General Purposes Committee (WBC) at meetings held simultaneously on 26 September 2024. Both committees recommend the adoption of the recommendation below to their respective full Councils.

2. Recommendation

That the Local Choice functions, as set out in the Appendix 1 to this report, be adopted into the GBC and WBC Constitutions as appropriate.

3. Reasons for Recommendation:

- 3.1 Both Councils currently have chosen different decision makers for their local choice functions. This means that functions exercised by an officer in one council could be executive functions, and the same functions in another council could be Council functions. This can lead to confusion and a lack of clear governance processes.
- 3.2 Waverley Borough Council currently has an Appeals Committee which deals with all staffing matters. It is not considered good practice for members to hear staffing matters, as this is an executive function which should be delegated to the Head of Paid Service or their authorised representative in line with staffing policies.

4. Purpose of Report

- 4.1 This report presents, for members' consideration, the proposed changes to the Local Choice functions as set out in Appendix 1.

5. Strategic Priorities

- 5.1 This report will assist in the delivery of the Councils' corporate priorities and collaborative working agenda, in particular Priority 5: A resilient and well managed Council.

6. Background

- 6.1 'Local Choice functions' are those which may be the responsibility of either the Council or the Executive, under the Local Authorities (Functions & Responsibilities) (England) Regulations 2000 (as amended). They are prescribed in legislation and each local authority has to set out in its Constitution who will have the responsibility for exercising them.
- 6.2 Both Guildford and Waverley Borough Councils have made different choices for their Local Choice functions as currently set out in their respective Constitutions – see Appendices 2 and 3.
- 6.3 Waverley Borough Council has included an additional paragraph (para 3) into their Local Choice functions, to allow their appeals panel

to hear all staffing appeals. Whilst the Regulations are wide in this area, staffing is not a 'Local Choice' function as it is a matter for the Head of Paid Service under their statutory role, other than for matters which relate to Chief Officers/Deputy Chief Officers.

6.4 Guildford Borough Council has included a Local Choice function in respect of highways (para 12). However, the Council does not have any highways functions, as this is a County Council function. Removal of this section does not stop the Council from entering into any necessary highways agreements as landowner, but it is not correct for it to be a local choice function.

6.5 We are proposing that all functions be Leader/Executive functions other than the appointment of members to committee/outside bodies etc. This is because the majority of the Local Choice functions are regulatory in nature which better sits with the Executive, as they are operational matters.

6.6 The JCRG asked that it be made clear that the local choice decisions are not for matters within the Council's policy framework or significant financial decisions, as these of course remain with the Council. An explanatory note has been included to this effect.

7. Key Risks

7.1 There is a risk of poor governance and decision making due to a lack of clarity amongst officers as to who the decision maker is.

8. Financial Implications

8.1 There are no direct financial implications resulting from this report.

9. Legal Implications

9.1 Legislation (by way of statutory instrument) sets out those functions which can only be carried out by the Council, and those which can only be carried out by the Executive. The Local Authorities (Functions & Responsibilities) (England) Regulations 2000 sets out these functions, and Schedule 2 contains those functions which may be (but need not be) the responsibility of a Council's Executive.

9.2 Each Council must decide who is responsible for those Local Choice functions and set this out in their Constitution. Some functions are also discharged by officers, under a delegation from either the Council or the Executive (depending on who is the chosen decision maker).

10. Human Resource Implications

10.1 There are no direct HR implications.

11. Equality and Diversity Implications

11.1 There are no equality and diversity implications arising from this report. This report has given due regard to the requirements of the Public Sector Equality Duty (Equality Act 2010) when making any recommendations concerning constitutional arrangements.

12. Climate Change/Sustainability Implications

12.1 There are no climate change or sustainability implications.

13. Conclusion

13.1 Both full Councils are asked to consider the recommendation in this report.

14. Background Papers

- (a) Local Choice Functions; Part 3 Constitution of Waverley Borough Council
- (b) Local Choice Functions; Part 3 Constitution of Guildford Borough Council

15. Appendices

Appendix 1: Proposed Local Choice functions.

Appendix 2: Current Local Choice functions – WBC

Appendix 3: Current Local Choice functions - GBC