

Guildford and Waverley Borough Councils

Report to: Executive

Date: Guildford Borough Council (GBC) Executive 16th May 2024

Waverley Borough Council (WBC) Executive 7th May 2024

Ward(s) affected: All

Report of Director: Legal & Democratic Services

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Report Status: Open

Key Decision: No (Waverley); Yes (Guildford)

Legal and Democratic Services: Resourcing and Structure Proposals

1. Executive Summary

The Council's Joint Corporate Management Board has recently undertaken a review of resources in the area of Legal & Democratic Services. It is acknowledged that as a consequence of a long term failure to invest in these functions and a corporate failure to consistently understand the critical role these teams play in supporting effective decision making and culture, there is a gap in our ability to assure both Councils leadership that legal, democratic and governance functions of the authorities are resilient and robust and the Councils are both meeting their statutory obligations. Such a position presents significant risks for both Councils and it is essential that such functions are appropriately resourced to mitigate risk and enable continuous improvement to reach an adequate position of good assurance in decision making over the long term.

2. Recommendation to Executive

NB Each Executive is asked to approve the recommendations applicable to its Authority.

That the Executive resolves to approve:

- 2.1. The Joint Head of Paid Service's proposal to create a role of Joint Executive Head / Assistant Director - Legal as set out in para 15.1 of this report;
- 2.2. The Joint Head of Paid Service's proposal to create a role of Joint Executive Head / Assistant Director - Democracy & Governance as set out in para 15.1 of this report;
- 2.3. The Joint Head of Paid Service's proposal to create a Joint Executive Advisory and Support team as set out in para 6.4 of this report to include two new posts of Joint Executive Advisory and Support Manager and Joint Executive Advisor. The Joint Executive Advisory and Support Manager will provide advisory support as well as management of the existing Joint Executive support team;
- 2.4. The Head of Paid Service's proposal to create a new post of Joint Head of Governance as set out in para 15.2 of this report;
- 2.5. The Head of Paid Service's proposal to amend the existing three Waverley Borough Council posts of Senior Governance Officer, Senior Corporate Governance Lawyer and Monitoring Officer assistant to be joint roles operating across Waverley and Guildford Councils;
- 2.6. The increase to the Guildford Legal & Democratic Services salary budget for 24/25 of £357,318 as set out in para 10.6 of this report and the future growth for subsequent years;
- 2.7. The increase to the Waverley Legal & Democratic Services salary budget for 24/25 of £179,329 as set out in para 10.6 of this report and the future growth for subsequent years;
- 2.8. An additional one-off cost of £90,605 to Guildford Council which is a 50% contribution towards the costs of two Interim Governance Officers for 6 months;

- 2.9. An additional one-off cost of £40,662 to Waverley Council which is a 50% contribution towards the cost of two interim Governance Officers for 6 months and offset against existing salary budget;
- 2.10. A supplementary estimate of £220k for Waverley Council to cover the ongoing growth and the short term cost of the interim resource will need to be funded by the repurposing of reserves;
- 2.11. To delegate authority to the Monitoring Officer to amend the current inter-authority agreement between Guildford Borough Council and Waverley Borough Council to include the new joint roles as set out in this report.

The Executive is asked to note:

- 2.12. That the implications of these proposals have been considered in the context of restructures already concluded in GBC and WBC Legal Services and work about to commence in Waverley Democratic Services.

Waverley Borough Council Executive:

- 2.13 To recommend to Waverley Borough Council they approve the making of all necessary arrangements for the discharge of functions through joint arrangements between Waverley Borough Council and Guildford Borough Council, by officers of Waverley Borough Council, as set out in this report, and for such arrangements to be included in the inter-authority agreement in accordance with s113 Local Government Act 1972.

Guildford Borough Council Executive:

- 2.14 To recommend to Guildford Borough Council they approve the increase to the Legal & Democratic Services salary budget for 24/25 of £357,318 as set out in para 10.6 of this report;
- 2.15 To recommend to Guildford Borough Council they approve the making of all necessary arrangements for the discharge of functions through joint arrangements between Waverley Borough Council and Guildford Borough Council, by officers of Waverley Borough Council,

as set out in this report, and for such arrangements to be included in the inter-authority agreement in accordance with s113 Local Government Act 1972.

3. Reason(s) for Recommendation:

- 3.1. To respond to the Head of Paid Services' recent changes to his staff structure at Chief Officer level, effective 1st March 2024, which made the previous Joint Executive Head of Legal & Democratic Services the Joint Strategic Director of Legal & Democratic Services and the previous Joint Executive Head of Finance, the Joint Strategic Director of Finance. Whilst this has strengthened the Corporate Management Board and ensured that the governance functions are represented at the most senior level by the three statutory officers, it has also created a gap at the Executive Head of Service / Assistant Director level for each of these disciplines. This gap cannot be sustained.
- 3.2. To respond to the concerns raised in recent months by Statutory Officers in relation to the robustness of governance arrangements for both Waverley Borough Council and Guildford Borough Council which has resulted in the need for an improvement plan, and continuous improvement thereafter to ensure good governance, and compliance with the Council's statutory duties relating to best value.
- 3.3. To fund the growth needed to address items 3.1. and 3.2 in the Legal and Democratic Services function.
- 3.4. To deliver the capacity and capability to enable timely, effective, transparent and consistent decision making at all levels of both organisations, including at the most senior leadership levels.
- 3.5. To deliver the capacity and capability needed to embed successes in ongoing collaboration efforts and enhance the pace of future collaboration, transition to shared services and continuous improvement in service delivery and realisation of cashable and non-cashable savings.

- 3.6. To create the framework for the Legal and Democratic Services function which will reduce dependency on expensive external resources and further implement succession planning and career development which have already seen an increase in internal promotion appointments to vacancies in Waverley Legal Services.

4. Exemption from publication

Not exempt from publication.

5. Purpose of Report

- 5.1. Outline the findings and recommendations of a review of the whole of Legal and Democratic Services undertaken to identify the extent to which sustained underinvestment has impacted our ability to ensure that both Councils have the capacity and capability to support the full range of services needed; thereby ensuring that we are able to deliver a resilient, agile, fit for purpose suite of services; reduce external spending on resources and develop a model which will encourage talented professionals to join our teams and be encouraged to develop their careers here over the longer term.
- 5.2. The review considered a range of options and identified the need to increase capacity and capability by creating new roles and teams, repurposing some existing roles and budgets and to increase staffing budgets for which a growth bid decision is required.

6. Strategic Priorities

- 6.1. Local, open, participative government – the Council is committed to an open, inclusive approach to communications and decision making.

7. Background

- 7.1. Ensuring that a Council's Monitoring Officer has the resources required to fulfil the duty of designated Monitoring Officer is a legal requirement. Additionally, the provision of Governance Services more broadly is fundamental to Local Authority's (LAs) capacity and ability to undertake effective decision making, ensure public

participation in matters of interest to residents and other stakeholders and underpin effective working between Elected Members and Chief and Senior Officers.

- 7.2. There have been a series of high-profile failures in public service organisations across Local Government, NHS and other bodies. They range in scale and scope, but include financial failure (S114 reports), to bullying and harassment but at their heart inadequate and ineffective governance has played a considerable role.
- 7.3. Long term underinvestment in our services presents significant risk to both Councils. Other risks pertain to whether we have the capacity to provide advice and support across the full spectrum of traditional governance related activities across both Councils. In support of our ongoing collaboration work, we have an extensive programme of work underway on the development of a joint constitution and approach to joint committee working. Current lack of capacity and capability is undermining our efforts to address current known risks, be clear sighted on anticipating and mitigating future risks and further progress our efforts on collaboration, improvement and transformation.
- 7.4. The most senior leadership levels across Guildford and Waverley are joint points already. However, it is the case that this approach has not necessarily cascaded throughout the councils as a whole. The completion of the constitutional work and a thorough understanding of decision making in a joint/shared service model is critical if we are to deliver streamlined, appropriately resourced and capable services across the full spectrum of services that are delivered both by Guildford and Waverley employees. These are live concerns for the new Head of Business Improvement post at Guildford and the current Business Transformation Manager post at Waverley, where both posts are responsible for assuring effective cross council working.
- 7.5. Whilst these matters are typically understood in the context of 'governance' matters, the link between organisational culture, good governance and decision making cannot be underestimated. Our values and behaviours are in many respects based on a sound

understanding of how we make decisions in our organisations and what happens when problems occur in leadership and decision making.

- 7.6. Ensuring that we have an effective function providing governance expertise in relation to Local Government decision making, that aligns with work our colleagues in Organisational Design and HR deliver is critical for a range of reasons. Most importantly, providing the foundations for a high performing organisation dedicated to harnessing the knowledge, skills and abilities of its employees (and partners), in the context of robust decision making offers maximum opportunity to deliver inclusive, needs led, value added services to the citizens we serve.
- 7.7. To respond to these risks, work has been undertaken to develop a revised structure for Legal and Democratic Services as a whole which will address these matters in the short term but deliver a sustainable longer-term solution. This has included the creation of new posts, the repurposing of existing posts and salary budgets.

8. Consultations

- 8.1. Human Resources, Finance, and Corporate Management Board were consulted by the Joint Strategic Director.
- 8.2. New role descriptions have been prepared and will be reviewed and agreed by the Job Evaluation Panels in early May 2024.
- 8.3. Staff and consultation with Trade Unions is discussed below.

9. Key Risks

- 9.1. Not properly ensuring that the Joint Strategic Director of Legal and Democratic Services has the resources required to fulfil the duty of the Councils designated Monitoring Officer puts both Councils at risk of breaching their duties in Section 5 (b) of the Local Government & Housing Act 1989.
- 9.2. Not properly resourcing the Legal and Democratic Services function as a whole reduces the assurance that can be provided to both councils, that its statutory obligations are being met.

- 9.3. Not properly ensuring that we have a sufficient level of resources continues financial dependency on expensive external resources and impacts our ability to undertake career development and succession planning. The recommendations made mitigate these key risks.

10. Financial Implications

- 10.1. In the creation of this structure, we have where possible used existing staff budgets in order to alleviate the impact of this additional funding request on our current budgets.
- 10.2. These proposals require growth funding. The impacts are greater for Guildford Borough Council compared to Waverley Borough Council as we have been able to utilise existing budget to partially offset the Waverley contribution.
- 10.3. The proposals also require one off funding to cover urgent steps taken with the approval of CMB, to secure two interim Governance Officers for a period of 6 months. This is necessary to cover critical ongoing work to provide additional capacity on critical joint constitutional review work.
- 10.4. The costs of the interim support for 6 months of these governance officers represents an additional pressure of **£40k** to Waverley Borough Council and a pressure of **£90k** to Guildford Borough Council. The costs are split equally across both Councils, but we have been able to offset existing staffing budget against the Waverley contribution.
- 10.5. The proposals cover the staffing budget for the creation of 8 new posts. The approach taken is exception based but necessary due to the urgent and sensitive need to increase capability and capacity and mitigate current risk to each authority. HR colleagues will undertake a salary benchmarking exercise to confirm proposals.
- 10.6. The ongoing costs of these proposals to Waverley is **£179,329**. The ongoing costs of these proposals to Guildford is **£357,318**. There is no contributory budget within Guildford to offset these costs.

- 10.7. For Waverley, ongoing growth and the short-term cost of the interim resource will need to be funded by the repurposing of reserves. This is a total of £220k. A supplementary estimate will need to be taken to Executive to request this growth in budget.
- 10.8. It should be noted that this additional cost was not considered as part of the Medium-Term Financial Plan when this was taken to Council in February. This growth will be an additional impact to the budget gap going forward.

11. Legal Implications

- 11.1. Section 5 (b) Local Government & Housing Act 1989 places an obligation on Waverley and Guildford Borough Councils to provide the Monitoring Officer with staff, accommodation and other resources required to fulfil the duty of designated Monitoring Officer. The proposed structure will provide the Monitoring Officer with such staff, mitigating governance risks to the Council.
- 11.2. The Head of Paid Service has delegated authority to make all decisions in relation to Human Resources functions subject to exclusions not applicable to matters raised in this report.
- 11.3. Section 112 Local Government Act 1972 provides a power to appoint staff on such terms and conditions as appropriate.
- 11.4. The inter authority agreement which governs the joint officer arrangements will be varied to reflect inclusion of the new posts referenced, which will share the existing principles that apply to the current Joint Management Team.
- 11.5. The Waverley Borough Council Financial Procedure Rules, as approved in October 2023, provide that the Executive may approve any supplementary budget estimates of up to £250,000.
- 11.6. Due process in relation to the restructure will be followed including formal consultation with staff and Trade Unions prior to any definitive decision making.

- 11.7. Both Council's constitutions provide that the appointment of any individual to any office other than an office in which he is employed by the authority is a local choice function to be decided by Council.

12. Human Resource Implications

- 12.1. Human Resources have been consulted throughout the development of these proposals and advised on the process. Existing staff will be consulted on the revised structure once funding has been approved, and as guided by HR policies as applicable.
- 12.2. Of the 8 posts created, some are brand new posts and others are changes to existing posts, which has allowed us to reuse existing salary budget to contribute to costs. Additional work will be undertaken, specifically to include a salary benchmarking exercise to determine the salaries to be applied for joint posts beyond the JMT structure agreed.
- 12.3. We anticipate that there will be opportunities for internal promotion in the creation of new posts. However, to ensure that we are attracting the best talent we will also look to advertise vacancies externally. We intend to encourage the recent successes in Waverley Legal Services, where we have been able to promote existing staff which has communicated a very positive message about career development and retention to the organisation as a whole.

13. Equality and Diversity Implications

- 13.1. An EIA will be completed to underpin these proposals.
- 13.2. In relation to recruitment related activities as a matter of course we set out that we welcome applications from all underrepresented communities.

14. Climate Change/Sustainability Implications

There are no direct climate change or sustainability implications.

15. Summary of Options

- 15.1. In relation to the need to meet our obligations under Section 5 (b) Local Government & Housing Act 1989 there were no other options considered other than the creation of an Executive Head of Service – Legal post and an Executive Head of Service – Democracy and Governance post.
- 15.2. In relation to creating a Joint Governance Team, three options were considered:
- Option 1 - Do nothing
 - Option 2 - Create separate governance teams in Guildford and Waverley Borough Councils
 - Option 3 - Create a joint team covering both Councils
- 15.3. Option 1 means that Waverley and Borough Councils would continue with unsatisfactory arrangements and sub-optimal provision of Governance support. The reality is that senior officers (particularly those in JMT) are being drawn into the types of activity that is normally undertaken by a Governance team and this is impacting their ability to focus on other critical work. This is a specific risk to strategic work and our having sufficient capacity focused on enabling us to proactively identify upcoming opportunities and risks.
- 15.4. Option 2 is an approach aligned to work underway in Legal Services and Democratic Services in both Waverley and Guildford Councils. Notwithstanding a longer-term desire to deliver a shared service approach to both services, an evidence-based decision was made to focus on ensuring that the provision of services within each Council is based on solid foundations. These efforts will support the delivery of excellent and resilient services for now, but they will also provide a pathway to future sustainable shared services.
- 15.5. Option 3 offers the opportunity to build a joint team serving both Councils. Given there are no legacy teams creating a joint service from scratch is a welcome opportunity and considered to be the most appropriate and cost-effective option to pursue.

- 15.6. In the light of concerns set out in 3.2 and in relation to creating a Joint Governance Team, for completeness we also reviewed the current level of advisory support provided to Executive. We have specifically considered whether Executives have the capacity needed so that they are fully appraised and supported in the development of strategic priorities and related policy and that joint working with Joint Management Team on such matters is as fully informed, responsive and effective as it can be.
- 15.7. Two options were considered:
- Option 1 - Do nothing
 - Option 2 - Create two additional posts and restructure the Executive Support Team. We propose creating a Joint Executive Advisory and Support Manager and a Joint Executive Advisor post.
- 15.8. Option 1 would represent no change to decision making and governance capability at the most senior levels across both Councils, thereby not adequately addressing concerns reported by statutory officers.
- 15.9. Option 2 would provide independent, advisory support to Executives so that they have the capacity needed to be fully appraised and supported in the development of strategic priorities and related policy and that joint working with Joint Management Team on such matters is as fully informed, responsive, frictionless and effective as it can be.

16. Conclusion

- 16.1. A new Legal and Democratic Services management structure and overall structure is required to deliver coherent, fully resourced services overall and one which addresses the key risks set out in section 9 of this report. The creation of two new Heads of Service posts, a Joint Governance Team and an Executive Advisory and Support team will complete the current coordinated programme of work being undertaken in the Joint Legal and Democratic Services function. In addition to the contents of this paper, work has been

done on restructuring Legal Services in Guildford and Waverley (new structures being implemented from 1st and 8th April 2024 respectively) and a paper on a proposed restructure of Waverley Democratic Services has been presented for approval.

16.2. This work in totality provides the capacity and capability required to meet organisational requirements; and provides a manageable, risk assessed pathway to the development and implementation of a future Shared Service model structure.

16.3. These proposals require growth funding. A supplementary estimate is requested to fund the restructuring of these proposals to new roles and reconfigure responsibilities to enhance capacity, support, resilience and to reduce the financial cost currently incurred in the use of expensive external resource.

17. Background Papers

17.1. Report to Corporate Management Board 8th April 2024

17.2. Report to Executive Briefings 23rd and 25th April 2024 - Exempt

18. Appendices

18.1. Organisation chart for Legal and Democratic Services