

Ward: N/A

## **Motion on Notice - Worthing Borough Council**

### **Joint report by the Director for Communities and Solicitor to the Councils**

#### **1.0 Summary**

- 1.1 Councillor Tom Wye submitted a Motion on Notice to the Worthing Borough Council at its meeting on 20th October 2015. The Motion is attached to this report as Annex A.
- 1.2 The Motion has been proposed and seconded. As it proposes a change to the Councils' Scheme of Delegations to Officers, and Constitutions, it is before the Joint Governance Committee for determination.

#### **2.0 Background**

- 2.1 The Director for Communities, as Proper Officer, accepted the Notice of Motion and under Council Procedure Rule 14.5, Council accepted his determination that the matter should be considered by this Joint Governance Committee. Therefore the Notice has been proposed and seconded and automatically referred for consideration and determination.
- 2.2 Council Procedure Rule 14.6 allows the mover of the Motion, Councillor Wye, to attend the Committee and explain the Motion.
- 2.3 Under Rule 14.6.2 the Member (Councillor Wye) may, prior to any debate on the matter, answer questions from the Committee for the purposes of clarification, and may sit with the Committee for the item in question.
- 2.4 Under Rule 14.6.3 the Member (Councillor Wye) may not partake in the debate nor vote upon the item.
- 2.5 The proposal contained in the Motion seeks to prevent Members and Officers accepting confidentiality clauses when settling or negotiating legal agreements.
- 2.6 The authority to settle legal proceedings has been delegated by Council, through the Scheme of Officer Delegations, to the Solicitor to the Councils. Paragraph 3.9 of the Scheme of Delegations provides the power to the Solicitor to the Councils to prosecute, terminate, defend or settle proceedings on behalf of the Councils. Such delegation has been further sub delegated to specific other Legal Officers. A similar delegation is provided to the Councils' Head of Finance at paragraph 3.8 to settle

claims where the Councils' insurers have been involved. Both the Solicitor to the Councils and the Head of Finance are constrained by other rules incurring expenditure exceeding budget, and may in some circumstances revert to the Councils' Executives to seek authority to incur expenditure when settling proceedings on behalf of the Councils.

- 2.7 In addition, the Councils' Chief Executive has the authority to take urgent action on behalf of the Councils which could include settling legal proceedings. At paragraph 2.1 of the Scheme of Officer Delegations it provides that the Chief Executive may take urgent action on behalf of the Councils. Urgent is defined as "a matter of pressing importance requiring swift action given the gravity of the situation, to prevent damage, or further damage, to life, limb, infrastructure or the financial integrity of the Councils". Such delegation is only exercisable following consultation with the Leader. A report following the use of such power must be taken to the first available Council meeting following the action.
- 2.8 The Councils routinely include confidentiality clauses in settlement agreements, to protect the interests of the Councils. For example, when allowing an employee to voluntarily give up their employment in return for financial compensation, it would be standard practice to include a confidentiality clause in any settlement agreement both to prevent the employee releasing details of Council business following their departure and to prevent loss of negotiating power in respect of other employees. Likewise in settling any claims or proceedings, the Councils may wish to prevent a former employee from airing their grievances in public by including a confidentiality clause into such agreements. In respect of commercial disputes, confidentiality clauses are often useful in negotiating settlements to prevent commercially sensitive information, relating either to the Councils or a third party, from coming into the public domain.
- 2.9 To restrict Council Officers from entering into confidentiality clauses in settlement agreements would fetter their discretion and reduce the Councils' negotiating power. This could prevent settlement in some cases, which could result in continued litigation, increasing risk, cost and reputational damage to the Councils. Such a restriction on the ability to settle proceedings in appropriate circumstances could lead to increased costs for the Council Tax payer of the District and Borough.

### **3.0 Proposals**

- 3.1 One option would be to amend the Scheme of Officer Delegations to limit the Solicitor to the Councils' authority to settle proceedings on behalf of the Councils, and to prevent the inclusion of confidentiality clauses. Such an amendment would also need to be made to the urgency power of the Chief Executive to limit his ability to settle proceedings where urgency circumstances apply, by not being able to include a confidentiality clause. The benefit of this would be an increased level of accountability and transparency. The disadvantage would be a reduction in negotiating power and ability to settle proceedings successfully in appropriate cases. There would also be operational difficulty surrounding the Councils' ability to act quickly to take advantage of settlement opportunities, be agile and responsive, if

Officers were obliged to consult with Members on such matters or to bring matters to Committee meetings. This option is not recommended by Officers.

- 3.2 The second option is not to amend the current Scheme of Officer Delegations. Legal Officers have always used confidentiality clauses only in appropriate circumstances where it is in the best interests of the Councils to do so. Legal Officers are mindful of the benefits of being transparent and accountable to the public.

#### **4.0 Legal**

- 4.1 The Scheme of Officer Delegations provides authority for specified Council Officers to settle legal proceedings on behalf of the Councils. The Scheme of Officer Delegations forms part of the Councils' Constitutions and is approved by both Councils on an annual basis.

#### **5.0 Financial implications**

- 5.1 There are no direct financial implications to the Councils of this Notice of Motion. However if the proposal is agreed, it could have significant negative financial consequences for the Councils.

#### **6.0 Recommendation**

- 6.1 The Joint Governance Committee is recommended to determine the Notice of Motion as attached to this report at Annex A.

### **Local Government Act 1972**

#### **Background Papers:**

Motion on Notice received by email 22 September 2015

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## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 This report does not link to any Corporate Priority

### **2.0 Specific Action Plans**

2.1 None

### **3.0 Sustainability Issues**

3.1 Matter considered.

### **4.0 Equality Issues**

4.1 Matter considered and included within the report

### **5.0 Community Safety Issues (Section 17)**

5.1 Matter considered, no issues identified

### **6.0 Human Rights Issues**

6.1 Matter considered

### **7.0 Reputation**

7.1 Matter considered, no specific issues identified.

### **8.0 Consultations**

8.1 No specific consultations were undertaken

### **9.0 Risk Assessment**

9.1 Risks are covered in paragraph 2.9 of the report.

### **10.0 Health & Safety Issues**

10.1 Matter considered, no issues identified.

### **11.0 Procurement Strategy**

11.1 Matter considered, no issues identified

### **12.0 Partnership Working**

12.1 The Scheme of Officer Delegations refers to all work undertaken by Adur and Worthing staff on behalf of the individual Councils, as well as when working jointly.

### **Motion to Worthing Borough Council**

One of the truest statements made by any Prime Minister is ‘there is no such thing as public money, only taxpayer’s money’. The members of Worthing Borough Council believe in the fullest possible transparency in all uses of taxpayer’s money. It is morally unethical, poor practice and indefensible to allow “gagging orders” or confidentiality clauses to be used to conceal facts or restrict transparency when any public body is settling legal disputes with third party contractors that involve public or taxpayer monies. In such circumstances, we believe that the people who are paying the bills have every right to know how much they have to pay and the reason they have to pay it.

The Council moves that in any future legal dispute with a third party contractor, involving taxpayers’ money, the acceptance of any “gagging orders” or confidentiality clauses will not be tolerated and all members and officers involved with the dispute are instructed that this council will not accept a “gagging order” as part of any such settlement.

Proposed by Councillor Tom Wye MBE

Seconded by Councillor Daniel Humphreys