

DEMOCRACY AND GENERAL PURPOSES COMMITTEE MEETING

Date: Wednesday 13 November 2019
Time: 6.30 pm
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Mrs Blackmore, Chappell-Tay, Mrs Gooch (Chairman), Hastie, Joy, Lewins, Perry, Purle and Webb (Vice-Chairman)

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

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Issued on Tuesday 5 November 2019

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

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PUBLIC SPEAKING AND ALTERNATIVE FORMATS

If you require this information in an alternative format please contact us, call **01622 602899** or email committee@maidstone.gov.uk.

In order to speak at this meeting, please contact Democratic Services using the contact details above, by 5 p.m. one clear working day before the meeting (i.e. Monday 11 November 2019). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

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MAIDSTONE BOROUGH COUNCIL

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

MINUTES OF THE MEETING HELD ON WEDNESDAY 4 SEPTEMBER 2019

Present: Councillors Mrs Blackmore, Chappell-Tay, Garten, Hastie, Joy, Lewins, Munford, Purle and Webb (Chairman)

23. **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gooch and Perry.

24. **NOTIFICATION OF SUBSTITUTE MEMBERS**

It was noted that the following Substitute Members were present:

- Councillor Munford for Councillor Gooch
- Councillor Garten for Councillor Perry

25. **URGENT ITEMS**

There were no urgent items.

26. **NOTIFICATION OF VISITING MEMBERS**

There were no Visiting Members.

27. **DISCLOSURES BY MEMBERS AND OFFICERS**

There were no disclosures by Members or Officers.

28. **DISCLOSURES OF LOBBYING**

There were no disclosures of lobbying.

29. **TO CONSIDER WHETHER ANY ITEMS SHOULD BE TAKEN IN PRIVATE
BECAUSE OF THE POSSIBLE DISCLOSURE OF EXEMPT INFORMATION.**

RESOLVED: That all items be taken in public as proposed.

30. **MINUTES OF THE MEETING HELD ON 3 JULY 2019**

RESOLVED: That the minutes of the meeting held on 3 July 2019 be approved as a correct record and signed.

31. PRESENTATION OF PETITIONS (IF ANY)

There were no petitions.

32. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

33. COMMITTEE WORK PROGRAMME

The Head of Policy, Communications and Governance highlighted that additional items could be added to the Work Programme following consideration of Item 15. Democratic Representation Review.

RESOLVED: That the Committee Work Programme be noted.

34. WORKFORCE STRATEGY UPDATE

The Head of HR Shared Services explained that the primary reason for long-term sick leave in recent years was mental health. The figure had substantially reduced and was comparable to other factors such as cancer and hospital treatment/surgery. In 2018/19, 30 employees had been trained to support staff through Mental Health First Aid training. Work had also been undertaken to communicate the total employment package received by employees at the council. This included monetary and non-monetary benefits. A Total Rewards Video had been developed to communicate this information as part of the Total Reward Statements roadshows. This video was shown to the Committee.

In response to questions from the Committee, the Head of HR Shared Services replied that:

- Staff turnover percentages were consistent with previous years.
- MBC was on track to achieve the target of having 2.3% of the workforce on apprenticeships by 2021.

The Committee commented that:

- It would be positive for MBC to meet, or exceed, the 2.3% apprentice headcount target.
- It was beneficial for Councillors to receive further information on Mental Health First Aid.
- Staff turnover figures could be broken down into percentages and categories, including benchmarks.

RESOLVED: That the progress of the actions set out in the Workforce Strategy be noted.

35. PROTOCOLS FOR FLYING THE BOROUGH COUNCIL FLAG AT HALF-MAST

The Democratic and Electoral Services Manager recommended that the current protocol for flying the Borough Council flag at half-mast be continued. Through engagement with Civic Teams at other Local Councils, it was apparent that the approach detailed in 'Civic Ceremonial' was commonly used.

The Committee commented that if Maidstone Borough Council deviated from national policy, this had the potential to lead to challenges in the future.

RESOLVED: That the Borough Council continue to use the existing protocol, as set out in 'Civic Ceremonial'.

Voting: Unanimous

36. NOMINATIONS TO OUTSIDE BODIES

The Democratic Services Officer explained that, following the advertisement of vacant Outside Body positions, two nominations had been received.

In response to a question from the Committee, the Democratic and Electoral Services Manager confirmed that it was possible to appoint members of the public as Council Representatives on Outside Bodies. This had been suggested by the Communities, Housing and Environment Committee on 16 July 2019 and was in accordance with the principles agreed by the Democracy and General Purposes Committee on 3 July 2019.

RESOLVED: That:

1. Councillor Dan Daley be appointed as a Council Representative on the Allington Millennium Green Trust.

Voting: Unanimous

2. Ms Daphne Parvin be appointed as a Council Representative on the Relief in Need Charities.

Voting: For – 8 Against – 0 Abstentions – 1

37. DEMOCRATIC REPRESENTATION REVIEW

The Democratic and Electoral Services Manager outlined that the report set out a structured approach to the review. It was explained that an initial decision on Whole Council Elections was required, as the introduction of single-member wards could only be considered if Whole Council Elections were agreed.

In response to questions from the Committee, the Electoral and Democratic Services Manager said that:

- If a decision was made not to move to Whole Council Elections, then it was possible to conduct a review of boundaries through a Community Governance Review.
- If a Community Governance Review was required, it was important to prepare fully for this, as the review had to be completed within 12 months.

RESOLVED: That:

1. The new approach, structure and timetable for the review as set out in Appendix 1 be agreed.
2. The factors listed in Appendix 2 be included in the report on Whole Council Elections in November 2019.

Voting: Unanimous

38. AMENDMENTS TO THE CONSTITUTION - OUTSIDE BODIES

The Democratic Services Officer informed the Committee that, following work to consolidate records relating to Outside Body appointments, the report aimed to align information in the Constitution with accepted administrative practices. Furthermore, improvements to the future administration of Outside Body appointments had been suggested.

The Committee commented that:

- Ward Members were often best placed to be the Council Representative on organisations that were directly linked to specific Wards. Therefore, where appropriate, Ward Members were to be given preference during the nomination process. If no nominations were received from the relevant Ward Members, then all Councillors were to be given the opportunity to apply for the position.
- To prevent the politicisation of Outside Body appointments, the Constitution was to state that the Policy and Resources (P&R) Committee delegated appropriate positions only when invited to do so by the Chairman.

RESOLVED: That:

1. Council be recommended to agree the changes to Schedule 2 of the Constitution, attached as Appendix 1, subject to the amendment of Ward Member restriction wording and Chairman delegation wording as follows:
 - a. "[XXX] Ward Member be appointed, unless no relevant Ward Member nomination is received, in which case this restriction no longer applies."

- b. "P&R Chairman automatically appointed, unless he/she invites the Committee to delegate to another member."
- 2. Council be recommended to agree the changes to committee Terms of Reference, attached as Appendix 2.
- 3. The amended terms of office for Council Representative positions on the Collis Millennium Green Trust and Kent Downs AONB Joint Advisory Committee be noted.

Voting: Unanimous

39. DURATION OF MEETING

6.31 p.m. to 7.41 p.m.

2019/20 WORK PROGRAMME

	Committee	Month	Lead	Report Author
Planning Committee Terms of Reference - 6 Month Update	D&GP	29-Jan-20	Angela Woodhouse	Ryan O'Connell
Whole Council Elections - Approval for Council Decision	D&GP	29-Jan-20	Angela Woodhouse	Ryan O'Connell
Pay Policy Statement 2020	D&GP	29-Jan-20	Bal Sandher	Bal Sandher
Workforce Strategy Update	D&GP	29-Jan-20	Bal Sandher	Bal Sandher
Democratic Representation Review - Single Member Wards/Community Governance Review	D&GP	11-Mar-20	Angela Woodhouse	Ryan O'Connell
Annual Reports of Outside Bodies and Consideration of Outside Bodies for the Next Municipal Year	D&GP	11-Mar-20	Angela Woodhouse	Mike Nash

MAIDSTONE BOROUGH COUNCIL

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

13 NOVEMBER 2019

REFERENCE FROM AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

ACTIONS ARISING FROM THE INVESTIGATION INTO THE RELEASE OF EXEMPT INFORMATION CONTRARY TO PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

The Audit, Governance and Standards Committee, at its meeting held on 16 September 2019, considered a report by the Senior Governance Lawyer setting out the results of an investigation into the release of exempt information contrary to paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972 and actions to be taken to help manage the risk of exempt information being made public.

It was noted that:

- The investigation into the release of exempt information had not been able to establish, based on the balance of probabilities, who was, or who may have been, responsible for the exempt information being leaked to the press.
- The identified actions arising from the investigation would help manage the risks of exempt information being made public.

The Committee agreed that as a result of the investigation into the release of exempt information, the following actions be taken to manage the risks of exempt information being made public:

- i. A training course will be made available to Members on Media training and insight;
- ii. Officers will be provided with training from Democratic Services on how to structure reports to minimise the information required to be taken in Part II of a meeting;
- iii. Regular meetings with Communications will be offered to all Group Leaders to review, plan and schedule public relations, as appropriate, for Council activities; and
- iv. Tighter control of exempt information, via named checking in of information after a meeting, will be implemented by Democratic Services.

The Committee also agreed that these actions be referred to the Democracy and General Purposes Committee to review how they are implemented.

RECOMMENDED: That the Committee review how the actions to be taken to manage the risks of exempt information being made public are implemented.

MAIDSTONE BOROUGH COUNCIL

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

13 NOVEMBER 2019

REFERENCE FROM COUNCIL

MOTION – ACCESS TO INFORMATION

Councillor Perry gave notice of his intention to move the following motion at the meeting of the Council held on 25 September 2019:

Members of this Council are elected by the Residents of this Borough to represent their interests. And in order for Members to carry out their duties effectively the Council agrees that all committee agendas, reports and information relating to items on the agenda (Minutes etc.) should be made available to all Members; including information made exempt from publication under Paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972.

In moving the motion, with the agreement of his seconder (Councillor D Burton), and with the consent of the meeting, Councillor Perry deleted the words *Paragraph 3 of* from the sixth line.

A copy of the briefing note prepared by Officers to assist Members in the debate is attached as Appendix A.

During the discussion, the following suggested amendment was moved by Councillor Clark, seconded by Councillor English:

Members of this Council are elected by the Residents of this Borough to represent their interests. In order for Members to carry out their duties effectively this Council agrees that all committee agendas and reports relating to items on the agenda (including minutes, supporting documentation and urgent updates) will be provided to committee members and made available to any other interested members on request.

It was suggested that this amendment be further amended as follows:

Members of this Council are elected by the Residents of this Borough to represent their interests. In order for Members to carry out their duties effectively this Council agrees that all committee agendas and reports relating to items on the agenda (including minutes, supporting documentation, ~~and~~ urgent updates *and relevant exempt information*) will be provided to committee members and made available to any other interested members on request.

In accordance with Council Procedure Rule 17.5, the motion, having been moved and seconded, and the suggested amendments were referred to the Democracy and General Purposes Committee.

RECOMMENDED: That the Committee consider the motion relating to Access to Information and the amendments suggested by Members at the Council meeting.

Note: Following the Council meeting, Counsel's Opinion was sought regarding access by Councillors to confidential or exempt information in order to inform this Committee's discussions. A copy of the Opinion is attached as Appendix B.

Council – 25 September 2019 – Motion on Access to Information Briefing Note

- The provisions covering exempt information and access to information are set out in the Local Government Act 1972 as amended (by the Local Government (Access to Information) Act 1985 and the Local Government (Access to Information) (Variation) Order 2006 amongst others). The Council's constitution sets out, with regard to Members, how those rules are applied locally.
- It is important to understand that there are two types of 'private' information in this context. They are:
 - Exempt – this is information where the proper officer has determined that the information should not be made public. This is only possible where the information falls under one of the exempt categories in Part I of Schedule 12A to the Local Government Act 1972.
 - Confidential – this is information supplied to us confidentially under another mechanism – it may have come from the police, the MoD or some other source and we would be breaking the law if we released it without express permission to do so.
- The Motion on the papers specifies exempt information and does not specify confidential information.
- The exempt paragraphs under Part I of Schedule 12A of the Local Government Act 1972 are:
 - 1 - Information relating to any individual.
 - 2 - Information which is likely to reveal the identity of an individual.
 - 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - 4 - Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
 - 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 - 6 - Information which reveals that the authority proposes— (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment
 - 7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- The motion relates to making exempt information available to all Councillors by default. The current status is that Members of Committees are provided with exempt information and other Councillors have to demonstrate a 'need to know' (to the Monitoring Officer) before the information is made available to them. By virtue of the nature of the test, this is done on a case by case basis.
- The 'need to know' approach currently adopted by the Council is in line with the common law right (*R v Birmingham City Council ex p O* (1983)) which established the principle that Councillors had a right of access to material within the possession of the Council if they could demonstrate a "need to know". The proposed motion will be departing from the common law principle and the practice adopted by other Councils.
- It is vital that the implications of blanket access for Councillors and removing the 'need to know' requirement are fully considered. A simple example would be as follows:
 - The Council is looking to purchase a piece of land that is valued at £2.5m
 - The Policy and Resources Committee authorise the Director of Finance and Business Improvement to purchase the land with authorisation to spend up to £3m.

The landowner is a Councillor who has a registered DPI and also has access to the exempt information (under paragraph 3 financial/business affairs)

- The Councillor now knows that they could hold out for £3m from the Council – which prejudices the Council's interests.

(The above examples and other scenarios may hinder the Council discharging its statutory obligation eg the obligation to secure the best price reasonably obtainable under section 123(2) the Local Government Act 1972; third party information may be compromised leading to a possible contractual breach resulting in a claim for compensation / court proceedings).

- These implications, and any others, will need to be considered in detail by Democracy and General Purposes when they consider the motion and any subsequent changes to the constitution.

**ACCESS BY COUNCILLORS
TO CONFIDENTIAL OR EXEMPT INFORMATION**

OPINION

1. I am concerned particularly with Maidstone Borough Council but the matters discussed will be equally applicable to all district councils (such as Swale and Tunbridge Wells).
2. Every district in England (such as those mentioned) has a council consisting of a chairman and councillors with each council being a body corporate: section 2 of the Local Government Act 1972. Accordingly, a council has legal personality which is, necessarily, separate from the legal personality an individual councillor enjoys. Putting the matter briefly no councillor can say 'I am the council' (whereas Louis XIV, an absolute monarch, could say *l'etat, c'est moi*).
3. This is an important, although seemingly elementary or trivial point. It means that no councillor can say that by virtue of being a councillor he or

she is entitled to all the material the council has. Further, it is clear that councillors have, see section 6 of the 1972 Act, a term of office. Indeed the office they hold is that of councillor. It is only to be expected that certain material will be referable to the discharge of that office; and certain material will not be so referable.

4. It is fundamental to the operation of district councils that a committee structure is put in place. The legislation expressly recognises that a local authority may arrange for the discharge of their functions by a committee, a sub-committee or an officer: see section 101 of the 1972 Act. Further, committees are appointed by the local authority: section 102.
5. Accordingly, it is clear that some councillors rather than all councillors will be appointed to any given committee and it is for those councillors as the committee to discharge the relevant functions of the committee (as delegated to the committee by the council). This means, as a matter of a statutory approach, that those councillors who are not on the committee do not, in general terms, for the immediate performance of their office, need to have the material used by the committee in making its decisions.
6. The preceding approach is consonant with the approach of the House of Lords in *R v. Birmingham City Council ex p O* [1983] 1 AC 578. The speech of Lord Brightman considered the legal structure of councils and

the role of committees. He drew attention to an extract from the judgment given earlier by Donaldson LJ. He had cited a judgment (in a case called *R v. Barnes ex p Conlan* [1938] 3 All ER 226) which said that a right exists on the part of a councillor to inspect documents in the possession of a council so far as access was reasonably necessary to enable the councillor properly to perform his duties as councillor.

7. In the *Barnes* case the judgment stated there was a limit on the part of a councillor to keep himself informed of all matters necessary to enable him to discharge his duty as a councillor. The judgment went on to say it was wrong to say that a councillor had to make himself familiar with every document in possession of the council. This would be an impossible burden. It was plain, the judgment recorded (as decided in *R v. Southwold Corp ex p Wrighton* (1908) 97 LT 431), that a councillor had no right to a roving commission to go and examine books or documents of a corporation simply because he is a councillor. Mere curiosity or desire to see and inspect documents is not sufficient.
8. Lord Brightman in *ex parte O* expressly considered the case of a committee of which a councillor was not a member. Such a councillor Lord Brightman said, had no automatic right of access to documentary material (of that committee). A need to know had to be demonstrated. In the Divisional Court in *O*, Donaldson LJ whose judgment was approved in the House of

Lords, said that no official – and he appears to have been embracing councillors in that expression – had any right to acquire any part of the authority's stock of information, whether or not confidential, save in so far as needed by him in order to do his job. There had to be a need to know.

9. *Ex parte O* must still (subject to what follows) be counted as a leading decision in this field, authoritatively stating the law. On 25 September 2019 notice, at a meeting of the Council of Maidstone, was given. The motion invites the Council to agree that all committee agendas or reports relating to items on the agenda (including minutes, supporting documentation, and urgent updates and relevant exempt information) will be provided to committee members and made available to any other interested members on request.
10. The reference to 'any other interested members' ought to be noted. The motion, if carried, would, if put into effect, mean that any councillor would be able to secure all the documents, including so called exempt information, that a committee (of which he or she was not a member) was to consider.
11. On the face of it this is inconsistent with *ex parte O*, which makes plain there is no roving commission. Further, there is no automatic right of access to documentary material of a committee (of which the councillor is

not a member). At this point I should mention public access provisions, which, of course, councillors can enjoy as members of the public.

12. Part VA of the 1972 Act is headed 'Access to Meetings and Documents of Certain Authorities Committee and Sub-Committee'. Part VA consists of a suite of sections (100A to 100K) designed to provide a comprehensive regime for admission to meetings (s.100A), access to papers (s.100B), inspection of minutes (s.100C), inspection of background papers (s.100D), application of preceding sections to committees and sub-committees (s.100E), inspection of records relating to functions exercisable by members (S.100EA), additional rights of access to documents for members of principal councils (s.100F), publication of additional information (s.100G), supplemental provisions and offences (s.100H), exempt information (s.100I), application to new authorities (s.100J) and interpretation (s.100K).
13. It is important to observe that these provisions were introduced by the Local Government (Access to Information) Act 1985. There have, however, been some subsequent amendments or additions. Thus, the legislation was introduced in the light of *ex parte O*. Parliament is taken to know the law and thus enacted the 1985 Act bearing in mind *ex p O*.

14. Two points are therefore clear. First, that Parliament specifically enacted that certain material should be exempt. Considerable trouble was taken to identify such material: see schedule 12A. There is no suggestion exemptions were not to be taken seriously. Second, Parliament specifically introduced additional rights of access to documents for members of councils: section 100F.
15. In those circumstances we can be sure that, in conjunction with common law rights explained in *ex p O*, the relevant part (VA) of the Local Government Act 1972 is intended to provide a code of access to material both for the public and for councillors. The latter as well as enjoying the public rights also enjoy such rights as derive from *ex parte O* (need to know) and those rights given in section 100F.
16. Section 100F therefore repays careful attention. The section provides that any document in the possession or under the control of a council which contains material relating to any business to be transacted at a meeting of the council or a committee or a sub-committee shall, subject to certain provisions, be open to inspection by any member of the council. This provision accordingly provides a general right to members not being committee members to inspect material which relates to business to be transacted.

17. It should be noted that this provision is referable to business to be transacted and provides for inspection by members. In other words this is a matter of a councillor choosing to inspect material relating to business to be transacted rather than wholesale provision of such material. (The material is in the possession or control of the council because the council is the body corporate and the committees are undertaking functions in the name of the council).
18. It must immediately be noted that the entitlement that material should be open to inspection by councillors does not require a document to be open to inspection if it appears to the officer appointed for the purpose that the document discloses exempt information. Accordingly, if we have in mind the motion to which reference has been made, it is apparent that it offends against section 100F in at least these respects. First, it seems universal the provision rather than one of documents being open to inspection (to councillors). Second, the motion disregards the inhibition on exempt information.
19. It should be noted that there is an exception to the inhibition given by section 100F(2A) if certain exempt information falls within paragraph 3 of schedule 12A to the Act or paragraph 6 of Schedule 12A to the Act. However, that exception is itself subject to an exception. Accordingly, in

the operation of section 100F care has to be taken in the application of the ability to inspect.

20. In those circumstances I turn to the specific matters on the last page of my instructions. First, the general legal position in respect of access to information by councillors. The position is that a councillor does not have free range over material held by the council. There is an entitlement on a need to know basis as per *ex parte O*. (This covers committee members seeing all committee members together with councilors having need to know). Further, there is an entitlement under section 100F for inspection by members of papers relating to business to be transacted. The position under section 100F excludes (subject to the particular operation of the section) exempt information.
21. It follows I do not consider it feasible or lawful for councillors to be granted full access to information as sought. The reaction of a court would be that *O* stated the position at common law and that section 100F gave, as its heading, records additional rights. It follows, the court would say, that there are no yet further rights.
22. It also follows that I consider the Council not merely should but has to follow the terms of section 100F of the 1972 Act. This means as stated that a councillor should seek to inspect (and possibly be refused if material is

exempt) rather than (as sought in the motion) be provided with all. Consequently, limitations on access are required.

23. The final matter to consider is the current approach of the Maidstone Borough Council to information in the light of the law as explained above and in other cases. I have considered this question in relation to councillors (rather than more generally). The only criticism I make of the current approach is the lack of sufficient reference to section 100F of the 1972 Act.
24. The effect of section 100F does not alter the position of councillors greatly when contrasted to members of the public under Part VA of the 1972 Act. However, it does enable limited categories of exempt information to be open to inspection by a councillor not being a member of the committee having to consider such information. The information potentially available (to such councillors) is (see paragraph 3 of schedule 12A) information relating to the financial or business affairs of any particular person but excluding such information to the extent it relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.
25. The other piece of exempt information capable of being inspected (see section 100F(2A) of the 1972 Act) is (see section 100F(2A)(b)) information revealing that the authority proposes to give under any

enactment or notice under or by virtue of which requirements are imposed on a person or to make an order or direction under any enactment: see paragraph 6 of schedule 12A of the 1972 Act.

26. Save in respect of those particular matters the right to inspection under section 100F of the 1972 Act appears to disclose little if anything more than might otherwise be available to a member of the public.
27. I have already discussed *ex p O*. In *R v. Hackney ex p Gamper* [1985] 3 All ER 275. This case followed the approach of *ex p O* and indicated that the council had to consider whether there was a need to know. *R v. Hinckley and Bosworth ex p Handford* (1972) is unreported but the character of the case is consistent with the approach in this opinion.
28. I do not consider *ex p Crawford* or *ex p Gladbourn*, dealing as they do with committee membership, to be of particular assistance in this matter. *R v. Sheffield ex p Chadwick* (1985) 84 LGR 563 applied *ex parte O*.
29. Generally, I consider the Council needs to ensure that the access to information provisions operate in accordance with *ex parte O* and the legislative provisions. The motion pushes the matter too far. I do not consider that it is open to a council to secure arrangements that go beyond what the law provides. It is quite apparent that to do can have poor

administration and expose the council, putting the matter at its lowest, to concerns that there are breaches of provisions touching on confidentiality or exemptions.

30. CONCLUSION: The notice of motion as presently drafted pushes at the boundaries of the law and, as explained above, goes too far.

23rd October 2019
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IN THE MATTER OF:

ACCESS BY COUNCILLORS

**TO CONFIDENTIAL OR EXEMPT
INFORMATION**

OPINION

Democracy and General Purposes Committee

13 November 2019

Whole Council Elections – Consultation Stage Approval

Final Decision-Maker	Council
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Ryan O’Connell, Democratic and Electoral Services Manager
Classification	Public
Wards affected	All

Executive Summary

The report sets out the considerations for moving to Whole Council Elections and detailed options of the possible consultations to be carried out in the event the Committee agree to proceed to consultation to inform the Council decision.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. To decide whether the Whole Council Elections process moves onto the consultation stage;
2. That if the consultation stage is agreed, agree the form of consultation they wish to undertake from the options set out in Appendix 2; and
3. Request Policy and Resources Committee to approve the funding for the consultation.

Timetable

Meeting	Date
Policy and Resources Committee	20 November 2019
Democracy and General Purposes Committee	29 January 2020
Council	26 February 2020

Whole Council Elections – Consultation Stage Approval

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Ensuring the Council has appropriate forms of Governance, including how Members are elected and the Council is formed, is crucial to the proper functioning of the Council and therefore contributes indirectly to all Council objectives.	Democratic and Electoral Services Manager
Cross Cutting Objectives	Ensuring the Council has appropriate forms of Governance, including how Members are elected and the Council is formed, is crucial to the proper functioning of the Council and therefore contributes indirectly to all Council objectives.	Democratic and Electoral Services Manager
Risk Management	The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.	Democratic and Electoral Services Manager
Financial	<ul style="list-style-type: none"> The options in the report include consideration of the financial impact of switching to Whole Council Elections. It is for the Committee to weight those up against the non-financial considerations. The proposals also consider costed options for consultation. If the Committee proceed with a consultation on whole Council Elections the cost of the necessary consultation will be referred to P&R for full financial consideration. 	Section 151 Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Democratic and Electoral Services Manager
Legal	<ul style="list-style-type: none"> The legislation governing the move to Whole Council Elections is the Local Government and Public Involvement in Health Act 2007 as amended by the Localism Act 2011. The Acts give Councils the power to decide whether to move to 	Team Leader (Corporate Governance), MKLS

	<p>whole council elections, elections by halves or elections by thirds. The legislation to move to whole council elections includes certain actions that must be taken during the process.</p> <ul style="list-style-type: none"> • One requirement is to have carried out a consultation on the proposal. The format of that consultation is a consideration of this report. 	
Privacy and Data Protection	Any consultation agreed by the Committee will be carried out using the Council's corporate policies for consultations and will meet data protection requirements.	Policy and Information Team
Equalities	The chosen consultation will be carried out using the Council's corporate policies for consultations and this will include consideration of equalities.	[Policy & Information Manager]
Public Health	No impacts.	[Public Health Officer]
Crime and Disorder	<u>No impacts.</u>	Democratic and Electoral Services Manager
Procurement	Any consultation will be carried out in house.	Democratic and Electoral Services Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 At its meeting on 27 February 2019 the Council adopted a motion on Whole Council Elections requesting that Officers report to the Democracy Committee.
- 2.2 A short report considering Whole Council Elections and considering a wider Democratic Representation Review was brought to Committee on 3 July 2019. The Committee agreed to proceed with the work on Whole Council Elections and to carry out consultation with Members on boundary issues. This consultation was carried out via a workshop and a survey and questions on Whole Council Elections were included to help inform the overall review.
- 2.3 At its last meeting on 4 September 2019 the Committee agreed the review's structure and timetable, including the decision making points and

factors to be included in this report on Whole Council Elections. These have been included in the analysis in Appendix 1.

3. AVAILABLE OPTIONS

- 3.1 To agree to proceed to the consultation stage of Whole Council Elections and select one of the possible consultation options in Appendix 2. The Committee will need to consider the form of the consultation and any amendments they may wish to make to the wording to ensure that it is balanced and clear about the options the public are being asked to express an opinion on.
 - 3.2 On the basis of the information presented in this report, the Committee could decide not to proceed to the consultation stage and not to request funding for a consultation from Policy and Resources. This would need to be made on a balance of the reasons for and against moving to Whole Council Elections.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 This report does not make a recommendation on which option is preferred as any decision on Whole Council Elections will require the Committee to balance the factors, including political considerations, and conclude on how much weight to give to each of these factors.
 - 4.2 Should the Committee decide to proceed to consultation stage it is recommended that the Committee carefully consider the format, wording and method of consultation.
-

5. RISK

- 5.1 The decision on whether to move to Whole Council Elections needs to weigh up the pros and cons of changing the electoral cycle. Some of the risks are political in nature and are not considered here.
 - 5.2 Any change inherently carries risks. From an administrative viewpoint the primary risk is the capacity of the electoral services team to support the increased size of a Whole Council Election. However, this risk is considered to be low given that the team already currently administer larger elections, for example a General Election.
-

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Whole Council Elections have been considered on several previous occasions:

- Following a motion to Council in 2008 to look at elections, a scrutiny review was commissioned in 2009 which led to public consultation on 4 yearly elections in September 2010. A motion to change the electoral cycle to all out elections was put to full Council in November 2010. This motion was lost.
- On 17 September 2014 – A motion was put to full Council to change to a four yearly cycle for elections. This motion was lost.
- On 22 April 2015 – A motion was put to Council to hold a referendum on four yearly elections. This motion was lost.
- In summer 2016 the Democracy Committee began a review of the electoral cycle and in November 2016 the Committee decided not to continue with the review.

6.2 A Member workshop was held at the end of July 2019 and a Member consultation was carried out in August 2019. The results of these have been factored into this report and will be considered through the decision making process.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the Committee agree to move to consultation stage a reference will be made to Policy and Resources to approve the funding for the consultation.
- 7.2 The consultation will then be carried out and the results reported to Democracy and General Purposes Committee for a final decision on whether to put the issue to an extraordinary meeting of Council in February 2020.

8. REPORT APPENDICES

- Appendix 1: Whole Council Elections - Analysis
- Appendix 2: Whole Council Elections – Consultation Options

9. BACKGROUND PAPERS

None

WHOLE COUNCIL ELECTIONS - ANALYSIS

1. Overview of Factors to be Included

- Consideration of pros and cons (including those summarised from the consultation below)
- Impact on time and resources for officers and Members, including the interruption to the committee flow
- Cost analysis
- Consultation – method and content (see Appendix 2)

2. Pros and Cons of Whole Council Elections – Summary from Member Workshop, Survey and Committees

Pro	Con
Stability - would enable 4 years of strategy, work and building relationships	Increased potential for wholesale change - could lose many experienced Councillors and impact on continuity
Could improve voter engagement - reduced voter fatigue and potentially increase turnout	Parishes would need to align or face additional costs and their by-elections are less likely to coincide with borough elections.
Lower cost – see cost analysis	Hard to find suitable candidates for 55 seats
Increased focus on borough-wide issues for election campaigns	Reduced focus on Independent candidates and Ward/Street issues for election campaigns
Greater scope for wholesale policy change	Local elections can be related to National Politics so could become out of step with feelings.
Clearer delineation between Borough and County as distinction between elections would be clearer	Extra work for whole council election on the Elections team (e.g. nominations)
Training and induction for councillors is easier – done as one cohort	Feeling of reduced political accountability immediately following an election and less gradual change
Reduced time spent campaigning and canvassing, and in 'purdah'	Less canvassing to put Members in touch with their electorate

APPENDIX 1

ELECTIONS BY THIRDS	2020	2021	2022	2023	2024	2025	2026
Election Type	District	County	District	District	District	County	District
	PCC		General		PCC		
Estimated proportion of spend	50%	0%	50%	100%	50%	0%	100%
Estimated Expenditure	£82,000	£0	£82,000	£164,000	£82,000	£0	£164,000

District Election Cost (based on budget incl. by elections)

£164,000

4 year Cost

£410,000

WHOLE COUNCIL ELECTIONS	2020	2021	2022	2023	2024	2025	2026
Election Type	District	County	District	District	PCC	County	
	PCC		General				
Estimated proportion of spend	50%	0%	50%	100%	0%	0%	0%
Estimated Expenditure	£82,000	£0	£82,000	£275,000	£0	£0	£0

District Election Cost (Estimate incl. by elections)

£275,000

4 year Cost

£275,000

Whole Council Election Saving

£135,000

Annualised

£33,750

	Election By Thirds	Whole Council Election
Vacancies	18 or 19	55
Wards	18 or 19	26 or 55 (if single member wards adopted)
Electorate (est.)	90k	120k
Cost (incl. by elections)	£164k	£275k
Parish elections (dependent on contested)	up to 21	up to 40

3. Practical Impact on the Calendar:

- Currently lose early May from the calendar, as per our local choice
- Publicity restrictions in place 'Purdah' – limits types of decisions able to be taken in April (impact is managed so minimal in practice)
- Publicity restrictions currently happen in four out of four years (three Borough, one County)
- Under Whole Council Elections publicity restrictions would happen in two out of four years (one Borough, one County)

4. Impact on Electoral Services and elections resourcing

- 4.1 Electoral Services carry out Electoral Registration functions and Election functions. Whole Council Elections impacts only on Borough Elections not any other function performed by the team as set below:

Electoral Registration	Election functions
<ul style="list-style-type: none"> • Rolling registration • Annual Canvass • Postal refresh (January) • Service voters and other declarations • Polling Place Review • Community Governance Reviews • Boundary maintenance (UPRNs etc.) • Register control and access 	<ul style="list-style-type: none"> • Primary election activity - Parliamentary, County, PCC and referendums • By elections (Parliamentary, PCC, County, Borough, and Parish) • Other elections (i.e. prison) • Neighbourhood plan referendums • Other (misc.) referendums (e.g. linked to CGR or BID)

- 4.2 Running elections involves the work of the Electoral Services team and officers from Democratic Services, Policy and Communications, Business Improvement, Borough Services and others in preparing for the count. On the day of the poll and count staff from across the authority are given a day to work on the election.
- 4.3 It is hard to estimate the full resource opportunity cost of this – but in any event these resource requirements would only be removed one year in four – assuming no other elections take place in that year (i.e. a General Election).
- 4.4 The possibility of electoral services staffing reductions has been raised previously but this is unlikely to be achievable (see 4.1). As shown we would have elections three years in every four as a minimum, and registration work is now all year round. However, the additional time freed up one year in four (assuming no General Election) would be to provide capacity to ensure all other activities are up to date, look at Democratic Engagement, and look at services developments through improvements to the canvass, registration and election processes.
- 4.5 There is an argument that currently, with local elections run three years in four and county elections in the fourth, that electoral services and the wider elections team maintain practice at running local elections and this improves our ability to deliver them. It could also be argued that running

a local election for the whole council would be a significantly bigger undertaking than an election by thirds. However, in reality, with the number of elections we would be running, and our capacity to run larger elections (such as a General Election) it is really only the scale of the nominations process that would represent a new challenge for the team. We would put in place actions required to cover this (for example providing office cover to free electoral services staff to receive nominations). The cost of a Whole Council Election budget has factored in the increased size of an all out election, potential complexities from multi-member wards and an increase in by-elections in coming to the savings calculation.

5. Impacts on Members

- 5.1 Members would be better placed to comment on the resource requirement and impacts of interruptions caused by elections due to campaigning and publicity restrictions. Depending on the natural timings of issues publicity restrictions 'Purdah' could have either a significant or limited impact each year. Campaigning impacts would presumably have a varying degree of impact dependent upon the 'party machinery' available to support local groups and is not something that officers can effectively evaluate.

Appendix 2

Whole Council Elections – Consultation Options

This appendix sets out the costings for three levels of consultation and sets out some proposed wording for the consultation document and the format of the question for the Committee to approve. The three levels are:

- Full – Sending a copy of the consultation document to every household
- Medium – Sending a copy of the consultation document to a sample of 15,000 households and conducting face to face interviews in key locations around the Borough
- Minimal - Producing an online survey, emailing consultation mailing list, advertising via social media etc. and collating the responses

Confidence – depending on sample size and return rate consultations have varying degrees of margin of error. The industry standard is 5%, Maidstone Borough Council aims for at least 3%. Each of the options below has a stated margin of error based on a return rate assumption. Above a certain threshold there is a diminishing return on rate of improvement.

What is a margin of error? If you repeated the exercise 100 times then it would come back 95 times with a result +/- the amount stated (i.e. if 50% of people said 'Yes' with an error rate of +/- 2% then the results would be 48%-52%).

	Full	Medium	Minimal
	Forms sent to every occupied household (70,000)	Residents Survey style – 15,000 sample plus face to face	Online survey (online and email list)
Postage	£28,000	£6,000	£0
Return Postage	£0-£30,800	£0-£6,600	£0
Print	£1,500	£350	£0
Staff time (Opp. Cost)	£1,500	£4,000	£2,000
Total	£31,000-£61,800	£10,350-£16,950	£2,000
Margin of error at 20% response rate	+/-0.78%	+/-1.7%	+/- 8%

Consultation on method of elections for Maidstone Borough Council

Maidstone Borough Council are consulting on how often we should vote for our councillors. We are interested in your views on whether we should change to 'whole' council elections every four years or retain the existing system of election 'by thirds'. This page gives background information and the reasons for both electoral cycles to help give you an informed view on the issue.

The consultation closes on xx xx

Our Council

Maidstone Borough Council (MBC) consists of 55 Councillors who are elected by voters in 26 Wards. The Councillors represent residents and make decisions on the running of MBC.

MBC provides numerous services including waste collection, development planning, housing, parking, benefits, culture and leisure (including the museum, parks and open spaces), licensing, environmental health, building control and others.

Current Electoral Cycle – election 'by thirds'

Currently the Council holds elections 'by thirds' meaning that in 3 years out of 4 one third of seats are up for election.

Whole Council Elections

Under the Local Government and Public Involvement Health Act 2007, the Council has the power to change its electoral arrangements to 'whole council elections' which would mean that all seats on the Council would be elected at the same time, once every four years.

Please note that the elections for the County Council, UK Parliament and the European Parliament will not be affected by any future change in Maidstone Borough Council's electoral cycle.

Reasons to keep elections 'by thirds'

- A regular turnover of Council members.
- Decisions are being made annually rather than every 4 years which means voters are able to react sooner to local circumstances, thereby providing more immediate political accountability.
- Maintaining the current system may encourage people to vote by getting them into the habit of voting regularly.

Reasons to change to whole council elections

- When a Council has a 4 year mandate it can adopt a long term strategic approach to policy and decision making with less focus on yearly election campaigning.
- The results from whole council elections are simpler and more easily understood by the electorate. This may increase turnout at local elections.

- There would be a better opportunity for the voter to change the political makeup of the Council as all seats would be up for election.

As part of making its decision on this the Council will consider the opinion of its residents. We are therefore asking you to let us know which system you would prefer.

Cost Implications

The budget for running local elections by thirds is £164,000 per annum. Running a single election every four years will result in savings. Please see the report to Democracy and General Purposes committee for more information (insert link to report).

"Should the Council have elections by thirds, or whole council elections?"

Elections By Thirds

Whole Council Elections

☐
☐

(MARK YOUR PREFERRED OPTION ONLY)

Equalities and monitoring information

DEMOCRACY AND GENERAL PURPOSES COMMITTEE

**13 NOVEMBER
2019**

COMMITTEE STRUCTURE REVIEW – 6 MONTH UPDATE

Final Decision-Maker	Democracy and General Purposes Committee
Lead Head of Service	Angela Woodhouse, Head of Policy, Communications and Governance
Lead Officer and Report Author	Mike Nash, Democratic Services Officer
Classification	Public
Wards affected	All

Executive Summary

At its meeting on 10 April 2019, Council suggested that a report be considered by the Democracy and General Purposes Committee six months after the implementation of new report styles in order to assess the effectiveness of the new arrangements.

Purpose of Report

Noting

This report makes the following recommendations to this Committee:

That the report be noted.

Timetable

Meeting	Date
Democracy and General Purposes Committee	13 November 2019

COMMITTEE STRUCTURE REVIEW – 6 MONTH UPDATE

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	We do not expect the recommendation will materially affect achievement of corporate priorities. However, it will support the Council's overall achievement of its aims, as effective reporting is key to the strategic decision-making processes operated by the Council.	Democratic Services Officer
Cross Cutting Objectives	No implications.	Democratic Services Officer
Risk Management	No implications.	Democratic Services Officer
Financial	No implications.	Director of Finance and Business Improvement
Staffing	No implications.	Democratic Services Officer
Legal	Under Section 3 of the Local Government Act 1999 the Council has a statutory duty to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. The Committee Structure Review assist in demonstrating compliance with the statutory duty.	Team Leader (Corporate Governance), MKLS
Privacy and Data Protection	There are no specific privacy or data protection issues to address.	Team Leader (Corporate Governance), MKLS
Equalities	No implications.	Democratic Services Officer
Public Health	No implications.	Senior Public Health Officer
Crime and Disorder	No implications.	Democratic Services Officer
Procurement	No implications.	Democratic Services Officer

2. INTRODUCTION AND BACKGROUND

- 2.1 At its meeting on 10 April 2019, Council considered the *Report of the Democracy Committee held on 13 March 2019 – Committee Structure Review*. The minutes of the meeting state that:

Note: During consideration of the next agenda item (Report of the Democracy Committee proposing amendments to the terms of reference of the Planning Committee), a Member expressed concern that although he had indicated that he wished to speak on recommendation 10 of the Committee Structure Review report relating to report styles and, in particular, the proposal that the cross-cutting issues and implications section be included at the front of reports, he had not been given the opportunity to speak. The Mayor apologised for his mistake in failing to call upon the Member to speak.

The Chief Executive confirmed that there was no facility for the Council to amend its earlier decision at this meeting, but Members might wish to reflect in due course on the effectiveness of the new arrangements.

As a consequence, an item will be included in the Democracy and General Purposes Committee Work Programme to review the effectiveness of the new arrangements in six months' time.

- 2.2 Following the agreement of the Committee Structure Review report by Council on 10 April 2019, the new report style was introduced for the 2019/20 municipal year.
- 2.3 All Councillors and Wider Leadership Team were asked to provide feedback on the new report template in August 2019. 12 responses were received, although respondents were not required to answer every question.
- 2.4 The questions that Councillors and Officers were asked to respond to were:
1. The relocation of the "Cross Cutting Issues and Implications" section to the front of reports is:
 - i. A positive change
 - ii. Neither a positive nor negative change
 - iii. A negative change
 2. Please explain the reasons for your response to question one
 3. Any other comments

2.5 The following table shows the responses received for Question One:

Response	Number of Responses
i. A positive change	4
ii. Neither a positive nor negative change	3
iii. A negative change	1

2.6 The responses to Question Two have been summarised below:

Positive Comments	Neutral Comments	Negative Comments
This helps to demonstrate how proposals may further corporate objectives and the Strategic Plan.	Members and Officers are expected to fully read reports, so its position is not important.	This confuses reports and encourages the reader the skim read from the outset.
This helps to highlight important factors, such as cost implications.	The difference was not noticeable and did not make a significant difference.	
This helps to provide a preamble to the content of the report, which provides a better awareness of the issues while you read the report and form a view on the topic.		

2.7 Two themes emerged as a result of Question Three:

Theme	Response from Democratic Services
Biodiversity, climate and pollution needed to be considered as part of the cross-cutting issues and implications section.	<p>"Biodiversity and Environmental sustainability is respected" is included under the second row "Cross Cutting Objectives". This wording is taken directly from the new Strategic Plan.</p> <p>If an Officer identifies a consideration during report writing, then this could be explained within this section. Equally, if the report has no relevant implications, then it would be appropriate for the Officer to delete this wording from the table. This may explain why it does not appear in some reports.</p>

The relocation of the cross-cutting issues and implications may be beneficial for members of the public, who could decide whether to read the full report based on the information contained in this section.	N/A
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2.8 From the feedback received, most respondents considered the change to be positive or neutral. It is therefore suggested that no further changes are made to the template at present.

2.9 Should any changes be required at a later date, this would be an operational matter dealt with by Democratic Services. This would not require prior consideration by a committee, although any feedback provided informally by Councillors and Officers would be taken into account.

3. AVAILABLE OPTIONS

3.1 The Committee could choose to note the report and therefore no further action would be taken.

3.2 The Committee could suggest changes to the report style, which would be considered by Democratic Services when the service committee report template is next reviewed. This is not recommended as the feedback received has shown that the new report template has been received largely positively.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 Option 3.1 is the preferred option.

4.2 Regardless of the approach that the Committee chooses, the future adjustment of report templates is an operational matter, and it is therefore imperative that changes are implemented by Democratic Services without the expectation that a report is submitted to the Democracy and General Purposes Committee beforehand.

5. RISK

5.1 This report is presented for information only and has no risk management implications.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 The Democracy Committee (decommissioned on 22 April 2019 and replaced by the Democracy and General Purposes Committee) led the Committee Structure Review in 2018/19, which resulted in changes being made to the report styles.

- 6.2 An email was sent to all Councillors and Wider Leadership Team to request feedback on the new reporting template.
-

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the report is noted, then no further action will be taken.
- 7.2 If adjustments are suggested by the Committee, then Democratic Services will consider these suggestions when the report template is next reviewed.
-

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

None.