

**You are hereby summoned to attend a meeting of the**

**MAIDSTONE BOROUGH COUNCIL**



Date: Wednesday 20 June 2012

Time: 6.30 p.m.

Venue: Town Hall, High Street,  
Maidstone

Membership:

Councillors Nelson-Gracie (The Mayor), Ash,  
Barned, Beerling, Black,  
Mrs Blackmore, Brindle, Burton,  
Butler, Chittenden, Collins, Cox,  
Cuming, Daley, English, Garland,  
Mrs Gibson, Mrs Gooch, Greer,  
Ms Griffin, Mrs Grigg, Harwood,  
Mrs Hinder, Hogg, Hotson, Mrs Joy,  
Lusty, McKay, McLoughlin, Moriarty,  
B Mortimer, D Mortimer, Moss,  
Munford, Naghi, Newton, Paine,  
Parvin, Mrs Parvin, Paterson, Pickett,  
Mrs Ring, Robertson, Mrs Robertson,  
Ross, Sams, Springett, Mrs Stockell,  
Thick, Vizzard, Warner,  
de Wiggondene, J A Wilson,  
Mrs Wilson and Yates

**Continued Over/:**

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**Issued on 12 June 2012**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEBBIE SNOOK on 01622 602030**. To find out more about the work of the Council, please visit [www.maidstone.gov.uk](http://www.maidstone.gov.uk)

*Alison Broom*

**Alison Broom, Chief Executive, Maidstone Borough Council,  
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

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## **AGENDA**

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1. Prayers
2. Apologies for Absence
3. Disclosures by Members and Officers
4. Disclosures of Lobbying
5. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
6. Minutes of the Annual Meeting of the Borough Council held on 16 May 2012 1 - 6
7. Mayor's Announcements
8. Petitions
9. Question and Answer Session for Members of the Public
10. Questions from Members of the Council to the
  - (a) Leader of the Council
  - (b) Cabinet Members
  - (c) Chairmen of Overview and Scrutiny Committees
  - (d) Chairmen of other Committees
11. Current Issues - Report of the Leader of the Council and Response of the Group Leaders
12. Record of Recommendation of the Leader of the Council - Leader's Report on Current Issues 7 - 8
13. Oral Report of the Cabinet to be held on 13 June 2012
14. Report of the Standards Committee held on 8 June 2012 - Standards Regime 9
15. Report of the Scrutiny Co-ordinating Committee held on 11 June 2012 - Changes to the Constitution as Required by the Localism Act Concerning Councillor Call for Action and Overview and Scrutiny 10 - 24
16. Report of the Head of Democratic Services - Appointment of New Non-Statutory Standards Committee 25 - 26

**NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 17 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989 THAT ALTERNATIVE ARRANGEMENTS FOR APPOINTMENTS TO COMMITTEES OUTSIDE THE USUAL POLITICAL BALANCE REQUIREMENTS MAY BE CONSIDERED IN RELATION TO AGENDA ITEM 16.**

## **MAIDSTONE BOROUGH COUNCIL**

### **MINUTES OF THE ANNUAL MEETING OF MAIDSTONE BOROUGH COUNCIL HELD AT THE TOWN HALL, HIGH STREET, MAIDSTONE ON 16 MAY 2012**

**Present:** Councillor B Mortimer (The Mayor) and  
Councillors Ash, Beerling, Black, Mrs Blackmore,  
Brindle, Burton, Butler, Chittenden, Collins, Cox,  
Cuming, Daley, English, Garland, Mrs Gibson,  
Mrs Gooch, Greer, Ms Griffin, Mrs Grigg, Harwood,  
Mrs Hinder, Hogg, Hotson, Mrs Joy, Lusty, McKay,  
McLoughlin, Moriarty, D Mortimer, Moss, Munford,  
Naghi, Nelson-Gracie, Newton, Paine, Parvin,  
Mrs Parvin, Paterson, Pickett, Mrs Ring, Ross, Sams,  
Springett, Mrs Stockell, Thick, Vizzard, Warner,  
de Wiggondene, J A Wilson, Mrs Wilson and Yates

1. **PRAYERS**

Prayers were said by the Reverend Canon Chris Morgan-Jones.

2. **APOLOGIES FOR ABSENCE**

It was noted that apologies for absence had been received from Councillors Barned, Robertson and Mrs Robertson.

3. **DISCLOSURES BY MEMBERS AND OFFICERS**

There were no disclosures by Members or Officers.

4. **DISCLOSURES OF LOBBYING**

There were no disclosures of lobbying.

5. **ELECTION OF MAYOR**

It was moved by Councillor Lusty, seconded by Councillor Warner, supported by Councillor Mrs Gooch and

**RESOLVED:** That Rodd Nelson-Gracie, a Councillor of the Borough, be duly elected Mayor of the Borough of Maidstone until the Annual Meeting of the Council in 2013.

Councillor Nelson-Gracie then made the Statutory Declaration of Acceptance of Office which was duly witnessed in accordance with Section 83(3)(a) of the Local Government Act 1972.

**\*\*THE MAYOR (COUNCILLOR NELSON-GRACIE) IN THE CHAIR\*\***

6. CONGRATULATIONS TO THE MAYOR

The Mayor received congratulations on his election from scholars representing schools as follows:-

Jenna Aldrich                      Yalding St Peter and St Paul CE Primary School

Harry Petch                        Marden Primary School

Sally McConchie                Maidstone Grammar School for Girls

Alexander Rolfe                Maidstone Grammar School

7. THE RETIRING MAYOR

It was moved by Councillor Mrs Joy, seconded by Councillor Newton, supported by Councillor Parvin and

RESOLVED: That the hearty thanks of this Council be given to Councillor Mortimer and Mrs Mortimer for the admirable discharge of their duties as Mayor and Mayoress during the past year, and for their courteous approach to all sections of the community.

8. EXEMPT ITEMS

RESOLVED: That the items on the agenda be taken in public as proposed.

9. MINUTES

RESOLVED: That the Minutes of the meeting of the Borough Council held on 25 April 2012 be approved as a correct record and signed.

10. APPOINTMENT OF DEPUTY MAYOR

It was moved by Councillor Daley, seconded by Councillor Paine, supported by Councillor Mrs Gooch and

RESOLVED: That Councillor Clive Andrew English be duly appointed Deputy Mayor of the Borough of Maidstone until the Annual Meeting of the Council in 2013.

Councillor English then made the Statutory Declaration of Acceptance of Office which was duly witnessed in accordance with Section 83(3)(a) of the Local Government Act 1972.

11. MAYOR'S ANNOUNCEMENTS

The Mayor announced that the official opening of the new Town Square would take place at 12.15 p.m. on Friday 1 June 2012. He hoped that as many Members as possible would be able to attend.

12. ELECTION OF THE LEADER OF THE COUNCIL

It was moved by Councillor Greer, seconded by Councillor J A Wilson, that Councillor Garland be elected as Leader of the Council until the expiry of his term of office as a Councillor in 2016.

RESOLVED: That Councillor Garland be elected as Leader of the Council until the expiry of his term of office as a Councillor in 2016.

13. APPOINTMENTS TO THE CABINET

The Leader of the Council reported that his appointments to the Cabinet were as follows:-

Community and Leisure Services	Councillor J A Wilson
Corporate Services	Councillor Hotson
Economic and Commercial Development	Councillor Greer
Environment	Councillor Mrs Ring
Planning, Transport and Development	Councillor Paine

14. DELEGATION OF EXECUTIVE FUNCTIONS

The Leader of the Council reported that an amended version of the Scheme of Delegation of Executive Functions had been circulated for the Council's information.

15. ALLOCATION OF SEATS ON COMMITTEES

In accordance with Sections 15 and 16 of the Local Government and Housing Act 1989, the Council considered the allocation of seats to each Political Group in relation to its various Committees.

It was moved by Councillor Garland, seconded by Councillor Hotson:-

1. That the allocation of seats on Committees be as set out in Appendix C to the report of the Head of Democratic Services with the following adjustments:-

General Purposes Group	1 seat from Independent to Labour
Member and Employment and Development Panel	1 seat from Liberal Democrat to Labour

2. That the allocation of seats on the Standards Committee be:-

Conservative	3 seats
Liberal Democrat	2 seats
Independent	1 seat

RESOLVED:

1. That the allocation of seats on Committees be as set out in Appendix C to the report of the Head of Democratic Services with the following adjustments:-

General Purposes Group	1 seat from Independent to Labour
Member and Employment and Development Panel	1 seat from Liberal Democrat to Labour

2. That the allocation of seats on the Standards Committee be:-

Conservative	3 seats
Liberal Democrat	2 seats
Independent	1 seat

(A copy of the amended allocation of seats on Committees is attached as Appendix A to these Minutes).

16. APPOINTMENT OF COMMITTEES

In accordance with Section 16 of the Local Government and Housing Act 1989, the Council considered the appointments to its Committees and Substitutes.

It was moved by Councillor Garland, seconded by Councillor Paine, that the wishes of the Group Leaders with regard to the appointments to Committees and Substitutes be accepted.

RESOLVED: That the wishes of the Group Leaders with regard to the appointments to Committees and Substitutes be accepted.

17. APPOINTMENT OF THE VICE-CHAIRMAN OF THE JOINT TRANSPORTATION BOARD

It was moved by Councillor Garland, seconded by Councillor Paine, that Councillor J A Wilson be appointed as the Vice-Chairman of the Joint Transportation Board for the Municipal Year 2012/13.

RESOLVED: That Councillor J A Wilson be appointed as the Vice-Chairman of the Joint Transportation Board for the Municipal Year 2012/13.

18. SCHEME OF DELEGATION FOR NON-EXECUTIVE FUNCTIONS

It was moved by Councillor Garland, seconded by Councillor Greer, that the Scheme of Delegation for Non-Executive Functions be agreed.

RESOLVED: That the Scheme of Delegation for Non-Executive Functions be agreed.

19. DURATION OF MEETING

11.15 a.m. to 12.30 p.m.

## APPENDIX A

### ALLOCATION OF SEATS ON COMMITTEES

	Overview & Scrutiny Committees											
	Corporate Services	Regeneration and Economic Development	Communities	Planning Committee	Licensing Committee	Licensing Act 2003 Committee	Member and Employment and Development Panel	Joint Transportation Board	General Purposes Group	Planning Referrals Committee	Audit Committee	Overall entitlement
Con	5	5	5	7	6	6	7	5	3	1	3	53
Lib Dem	3	3	3	5	4	4	3	3	2	1	2	33
Ind	1	1	1	1	1	1	1	1	0	1	0	9
Lab	0	0	0	0	0	0	1	0	1	0	0	2
	9	9	9	13	11	11	12	9	6	3	5	97



## **MAIDSTONE BOROUGH COUNCIL**

### **RECORD OF RECOMMENDATION OF THE LEADER OF THE COUNCIL TO COUNCIL**

Recommendation Made: 07 June 2012

#### **LEADER'S REPORT ON CURRENT ISSUES**

##### **Issue for Decision**

Reporting on a request from the Group Leaders to open up this item to include questioning from the other members of the public.

##### **Recommendation Made**

That Procedural Rule 17 in the Council Procedure Rules in the Constitution be deleted and the following inserted:-

##### **"Leaders Report on Current Issues"**

- 17.1 At every Ordinary Meeting of the Council (except the Annual Meeting) after the Question and Answer session dealing with questions by Members, the Leader shall report to the Council on current issues.
- 17.2 The Leaders of every other Group shall then have the right to respond to the issues raised.
- 17.3 Each Group Leader may speak for up to five minutes.
- 17.4 After the Leader and the other Group Leaders have spoken the Mayor will open the item to questions from Council Members for a period of fifteen minutes.
- 17.5 Questions to be asked by Council Members as set out in 17.4 above will be limited to those issues raised by the Leader and the other Group Leaders in their speeches. Questions will be answered as directed by the questioner and will not require a response from all Group Leaders. The Mayor will be the sole determinant of whether the question relates to the issues raised in these speeches.

##### **Reasons for Recommendation**

Currently the constitution states the following:-

##### **"LEADERS REPORT ON CURRENT ISSUES**

- 17.1 At every Ordinary Meeting of the Council (except the annual meeting) after the Question and Answer session dealing with questions by Members, the Leader shall report to the Council on current issues
- 17.2 The Leaders of every other Group shall then have the right to respond to the issues raised.
- 17.3 Each Group Leader may speak for up to ten minutes.
- 17.4 After the other Group Leaders have spoken the Leader shall have the right to speak for a further three minutes in response to points raised by them."

This means that the item on the Council Agenda entitled "Leader's Report on Current Issues" allows for the Leader to speak for ten minutes and for the other Group Leaders to respond speaking for ten minutes with the Leader summing up for a further three minutes. The Group Leaders have requested a review of the "Leaders Report on Current Issues" with a view to opening it up to all Members to give them an opportunity to participate in this item. The view is that each of the Leaders should still have five minutes to speak but after that there should be a period of fifteen minutes for Council members to ask questions of the Leader and other Group Leaders about matters they have raised in their speeches. It is proposed that there will be no summing up by the Leader. It is felt that this gives a greater opportunity for all Members to be involved in the proceedings of the Council meeting.

The recommendation sets out the changes necessary to the Constitution to implement the proposal made by the Group Leaders.

### **Alternatives considered and why not recommended**

The Leader could agree to take no action and retain the existing system but that would fail to provide an opportunity for greater involvement in the Council meeting for all Members on the Council.

### **Background Papers**

None

### **Evaluation from Standards Committee**

In accordance with Article 15.02 (a) of the Constitution, the Standards Committee has evaluated the proposed amendments to the Council Procedure Rule relating to the Leaders' Report on Current Issues and, although having some concerns about the details (for example, calling the Rule "Leader's Report on Current Issues"), in principle, believes that their implementation will help to ensure that the aims and principles of the Constitution are given full effect by providing an opportunity for all Members of the Council to have greater involvement in Council meetings.

## **MAIDSTONE BOROUGH COUNCIL**

### **COUNCIL**

**20 JUNE 2012**

### **REPORT OF THE STANDARDS COMMITTEE HELD ON 8 JUNE 2012**

#### **1. STANDARDS REGIME**

- 1.1.** The Standards Committee, at its meeting held on 8 June 2012, considered a report by the Head of Legal Services and Monitoring Officer updating the position regarding the implementation of the provisions of the Localism Act 2011 relating to the ethical standards regime. Specific reference was made to the requirement for all local authorities to adopt a Code of Conduct (although there would no longer be a national mandatory Code).
- 1.2.** It was noted that the LGA had now published a model Code of Conduct for Councils to consider adopting as had the Department for Communities and Local Government. The Kent Secretaries Group had considered both of these models and drafted a Code of Conduct based on the best elements of those Codes and of the current Code. The draft Code had been amended following the recent issue by the Government of draft regulations relating to disclosable pecuniary interests. The Kent Secretaries Group was now looking at other disclosable interests. It was hoped that all Councils in Kent would be recommended to adopt the same Code.
- 1.3.** The Committee considered the draft Code. It was noted that the commencement date for the new regime was likely to be 1 July 2012, but there was little chance of being in a position to make a recommendation to the next meeting of the Council regarding the adoption of a new Code.
- 1.4.** During the ensuing discussion, it was pointed out that unless the Government responded to the consultation on the draft regulations with transitional arrangements, there would be a period of time without a Code of Conduct. The Committee felt that, in the circumstances, it would be sensible to continue with the existing Code of Conduct until a new Code is adopted, although the Monitoring Officer advised that the existing Code of Conduct did not comply with the requirements of the Localism Act.
- 1.5. RECOMMENDED: That the Council continue with the existing Code of Conduct as an advisory Code until a new Code is adopted.**

# Agenda Item 15

## **MAIDSTONE BOROUGH COUNCIL**

### **COUNCIL**

**20 JUNE 2012**

#### **REPORT OF THE SCRUTINY COORDINATING COMMITTEE**

Report prepared by Angela Woodhouse

1. **Changes to the Constitution as Required by the Localism Act concerning: Councillor Call for Action and Overview and Scrutiny**

1.1. Issue for Decision

1.1.1. Council is asked to consider and agree the changes to the constitution required as a result of the Localism Act 2011. The changes are outlined in Appendix A

1.2. Recommendation from the Scrutiny Coordinating Committee:

The Council is recommended to approve the amendments to the constitution as set out in Appendix A

1.3. Reasons for Recommendation

1.3.1. The Localism Act 2011, has introduced changes for Overview and Scrutiny that will need to be reflected in the Council's constitution. As a consequence of the Localism Act, the following parts of the constitution relating to scrutiny need to be amended:

- The Overview and Scrutiny Procedure Rules, section 9, Agenda Items and section 20 procedure at Overview and Scrutiny Committee Meetings; and
- Councillor Call for Action Protocol.

1.3.2. Overview and Scrutiny Procedure Rules

Section 9 will need to be amended to allow any Member to put a matter relevant to the functions of the committee or sub committee to be included on the agenda for the next available meeting. The Scrutiny Coordinating Committee also agreed that any Member putting a matter

on a scrutiny agenda should also be present at the meeting to talk on the item. At present the rules are that any scrutiny member may put an agenda item forward, the Act broadens this to include all members see explanatory note on the statutory instrument below:

“ Section 9FC(1)(c) of the Local Government Act 2000 (inserted by section 21 of, and Schedule 2 to, the Localism Act 2011) requires the executive arrangements of a local authority in England to include provision enabling those of its members who are not members of the overview and scrutiny committee to refer to that committee any matter relevant to the committee’s functions, which is not an excluded matter.

Section 9FC(5) defines “excluded matter” as a matter which is a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 or a matter of any description specified in an order made by the Secretary of State for the purposes of section 9FC. ”<sup>1</sup>

As a consequence section 20 will also be amended to reflect this with the addition at (a) (v) of consideration of any matter referred to the Committee by a Member.

#### 1.3.3. Councillor Call for Action

The Localism act has removed the reference to local government matters. As a consequence the Councillor Call for Action Protocol will need to be updated to remove references to a local government matter and replace these with a broader definition. Section 2.1 of the protocol already suggests a broad interpretation to include issues relating to our partners.

#### 1.4. Evaluation by Standards Committee

In accordance with Article 15.02 (a) of the Constitution, the Standards Committee has evaluated the proposed amendments to the Overview and Scrutiny Procedure Rules and the Councillor Call for Action Protocol arising from the changes introduced by the Localism Act 2011, and has no comments to make.

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<sup>1</sup> As taken from, <http://www.legislation.gov.uk/ukxi/2012/1022/note/made>

## **OVERVIEW AND SCRUTINY PROCEDURE RULES**

### **1. What will be the number and arrangements for Overview and Scrutiny Committees?**

The Council will have the Overview and Scrutiny Committees set out at Article 6 and will appoint to them as it considers appropriate from time to time. Such Committees may also appoint Sub-Committees. Overview and Scrutiny Committees and Sub-Committees may be appointed for a fixed period, on the expiry of which they shall cease to exist.

The Council will have three Overview and Scrutiny Committees, which will perform all Overview and Scrutiny functions on behalf of the Council. The number of Members of each Overview and Scrutiny Committee will be set out in Article 6 of the Constitution. Overview and Scrutiny Committees and Sub-Committees may appoint co-optees.

### **2. Who may sit on Overview and Scrutiny Committees?**

All Councillors, except Members of the Executive, may be Members of an Overview and Scrutiny Committee. However no Member may be involved in scrutinising a decision in which he has been directly involved.

### **3. Visiting Members**

Visiting Members should be allowed to speak as of right at any Overview and Scrutiny Committee meeting on a given agenda item (for example where they have an interest or expertise in a particular manner) subject to the following conditions:-

- that Visiting Members can appear before the Committee but that Visiting Members limit their comments to the specified item or items; and
- that Visiting Members are not allowed to vote or to be involved in the general discussion of the Committee.

### **4. Co-optees**

Each Overview and Scrutiny Committee or Sub-Committee shall be entitled to appoint non-voting co-optees as it deems appropriate.

### **5. Meetings of the Overview and Scrutiny Committees**

There shall be at least four ordinary meetings of each Overview and Scrutiny Committee in each year. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the chairman of the relevant Overview and Scrutiny Committee, by any two Members of the Committee or by the proper officer if he considers it necessary or appropriate.

6. **Quorum**

The quorum for an Overview and Scrutiny Committee shall be as set out for Committees in the Council Procedure Rules in Part 4 of this Constitution.

7. **Who chairs Overview and Scrutiny Committee meetings?**

Chairmen of Overview and Scrutiny Committees/Sub-Committees will be drawn from among the Councillors sitting on the Committees/Sub-Committees. The Committee/Sub-Committee may appoint such person as it considers appropriate as Chairman.

The chairman and vice-chairman of each overview and scrutiny committee shall come from different political groups; in the case of a cabinet comprising members of more than one political group, the chairman and vice-chairman shall not both come from parties represented in the cabinet.

The chairman of the Corporate Services Overview and Scrutiny Committee shall come from a political group not represented on the executive, except where all political groups are represented on the executive .

8. **Work programme**

The Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own work programme and in doing so they shall take into account wishes of all Members on that Committee.

9. **Agenda items**

Any Member ~~of an Overview and Scrutiny Committee or Sub-Committee~~ shall be entitled to give notice to the proper officer that he wishes an item relevant to the functions of the Committee or Sub-Committee to be included on the agenda for the next available meeting of the Committee or Sub-Committee. On receipt of such a request the proper officer will ensure that it is included on the next available agenda, the Member must attend the meeting and speak on the item put forward.

Furthermore any Member shall be entitled to give notice to the proper officer that he wishes an item relating to his ward, which is relevant to the functions of the Committee or Sub-Committee to be included on the agenda for the next available meeting of the Committee or Sub-Committee (A Councillor Call for Action). On receipt of such a request the Chairman of the relevant Overview and Scrutiny Committee will in consultation with the proper officer then determine whether the item can be taken forward in accordance with the Councillor Call for Action Protocol. ~~In particular they should have regard to whether it is a local government matter and what matters cannot be referred to an Overview and Scrutiny Committee.~~ In putting forward such a request the Councillor must have regard to the Councillor Call for Action Protocol attached to these rules at Appendix 1 and the government guidance. The Councillor concerned will be able to make representation to the Committee or Sub-Committee, when the Committee or Sub-Committee takes an item forward for scrutiny. The Committee should consider the extent to which the Councillor has

exercised any power given to him under section 236. If the matter is a crime and disorder matter responsible authorities (CDRP Members) must be notified by the proper officer. The proper officer in consultation with the Overview and Scrutiny Chairman will also give regard to the guidance from the Secretary of State regarding matters that cannot be referred to an Overview and Scrutiny Committee as outlined in the paragraph below.

The following matters may not be referred to an Overview and Scrutiny Committee or its Sub-Committees:

- a) any matter relating to a planning decision;
- b) any matter relating to a licensing decision;
- c) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
- d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

However a matter which consists of an allegation of systematic failure of an authority to discharge a function for which the authority is responsible may be referred to an overview and scrutiny committee, notwithstanding the fact that the allegation specifies matters which would otherwise be excluded by virtue of article 2.

#### **10. Policy review and development**

- (a) The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules in Part 4 of this Constitution.
- (b) In relation to the development of the Council's approach to other matters not forming part of its budget and policy framework, the Overview and Scrutiny Committees may make proposals to the Executive for development in so far as they relate to matters within their terms of reference.
- (c) Overview and Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

#### **11. Reports from the Overview and Scrutiny Committee**

- (a) Once it has formed recommendations on proposals for development, the Overview and Scrutiny Committee will prepare a formal report and submit it



to the proper officer for consideration by the Executive (if the proposals are not inconsistent with the existing budget and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).

- (b) If an Overview and Scrutiny Committee cannot agree on one single final report to Council or Executive as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council/Executive with the majority report.
- (c) The Council/Executive shall consider the report of the Overview and Scrutiny Committee within one month of it being submitted to the proper officer.

## **12. Protocol for Dealing with Overview and Scrutiny Policy Review Reports Submitted to the Executive**

- (a) Reports from Overview and Scrutiny Committees will be submitted to the appropriate Cabinet Member or the Cabinet as a whole if the issue is cross-cutting or requires a departure from the existing policy framework or budget strategy.
- (b) Where a report's recommendations cover the portfolio of more than one Cabinet portfolio, the Cabinet Member principally responsible (to whom the report has been sent formally for response) will assume responsibility for soliciting a response to those recommendations from any other relevant Cabinet Members and including it in the response. When a report is submitted to the Cabinet, the Leader of the Council will assume responsibility for co-ordinating the response.
- (c) If the Cabinet or the appropriate Cabinet Member substantively accepts the recommendations of the Overview and Scrutiny Committee they will respond in writing within four weeks of receiving the report. If the response period falls within or shortly after a significant holiday period or an election then the period may (with the consent of the Overview and Scrutiny Committee) be extended in order to give the Cabinet or the appropriate Cabinet Member sufficient time to consider the report.
- (d) If a Cabinet Member in considering the report does not substantively accept the recommendations the matter will be referred to the next meeting of the Cabinet for debate. The Cabinet will then debate the issue and the relevant Cabinet Member will subsequently respond immediately in writing to the Overview and Scrutiny Committee.
- (e) The Overview and Scrutiny Committee will then consider the response at its next meeting and may request the Cabinet Member to attend the meeting. It will then forward any comments it may have on the response to the Cabinet or Cabinet Member for consideration. Having considered the comments of the Committee, the Cabinet or Cabinet Member will then formally adopt their response at their next meeting.

- (f) If the recommendations of the report have a significant impact on the policy framework or budget, it will be necessary for the report of the Overview and Scrutiny Committee to be submitted to full Council together with the response of the Cabinet or Cabinet Member. The Council will then determine the issue.

**13. Rights of Overview and Scrutiny Committee Members to documents**

- (a) In addition to their rights as Councillors, Members of Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this section prevents more detailed liaison between Executive and Overview and Scrutiny Committees as appropriate depending on the particular matter under consideration.

**14. Members and officers giving account**

- (a) Any Overview and Scrutiny Committee or Sub-Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing the documentation, in fulfilling the Overview and Scrutiny role, it may require any Member of the Executive, the Head of Paid Service, and/or any senior officer to attend before it to explain in relation to matters within their remit:
  - (i) Any particular decision or series of decisions;
  - (ii) The extent to which the actions taken implement Council policy; or
  - (iii) Their performance.

And it is the duty of those persons to attend if so required.

- (b) Where any Member or officer is required to attend an Overview and Scrutiny Committee under this provision, the chairman of that committee will inform the proper officer. The proper officer shall inform the Member or officer in writing giving at least 5 working days notice of the meeting at which he is required to attend. The notice will state the nature of the item on which he is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that document.
- (c) Where in exceptional circumstances the Member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the Member or officer arrange an alternative date for attendance, to take place within a maximum of 21 days from the date of the original request.

- (d) It should be noted that if a Member is requested or chooses to submit written evidence to an Overview and Scrutiny Committee containing information which he has received from an Officer, or he has obtained from elsewhere by virtue of being a Member of an Overview and Scrutiny Committee, he will submit the information to the Overview and Scrutiny and Policy Manager in order that he may then circulate it to all Members of the Overview and Scrutiny Committee at least three days before the date of the meeting which will consider the evidence.

## 15. **Attendance by others**

An Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 14 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers of other parts of the public sector and shall invite such people to attend. Attendance is entirely optional.

## 16. **Call in**

When a decision is made by the Executive, an individual Member of the Executive, or a Councillor with delegated Executive authority or a key decision is made by an Officer with delegated authority from the Executive or an Area Committee or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council, normally within 2 working days of it being made. All Members of each Overview and Scrutiny Committee will be sent copies of the records of all decisions within the same time scale, by the person responsible for publishing the decision.

That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless an Overview and Scrutiny Committee objects to it and calls it in.

During that period, the proper officer shall call in a decision for scrutiny by the Committee if so requested by any two Members of the Council not serving on the Executive and shall then notify the decision taker of the call in. He shall call a meeting of the Committee on such date as he may determine, where possible after consultation with the chairman of the Committee, and in any case within ten days of the expiry of the call-in period. At that meeting, the councillors calling in the decision should make themselves available for questioning and will be able to take part in the debate as non-voting members of the Committee. If there is significant background or technical information to be considered, the councillors calling in the decision should submit a short written statement to the proper officer outlining their reasons for call-in at least 24 hours prior to the meeting.

If having considered it, the Overview and Scrutiny Committee is still concerned about the executive decision, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. If referred to the decision maker they shall then reconsider within a further five working days, amending the decisions or not, before adopting a final decision (which shall not be subject to call in).

If following an objection to the executive decision, the Overview and Scrutiny Committee does not meet in the period set out above or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the Overview and Scrutiny meeting or at the expiry of the five days period from the decision to call in the matter.

If the matter was referred to full Council the Council meeting should be convened within five days of that referral. If the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has not locus to make decisions in respect of Executive decisions unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Executive as a whole or Committee of it, a meeting will be convened to reconsider within five working days on the Council request. Where the decision was made by an individual, the individual will reconsider within five days of the Council request.

If the Council does not meet, or if it does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

#### **17. Exceptions**

In order to ensure that call in is not abused, nor cause unreasonable delay, a limitation is to be placed on its use. That is that a notice to call in a decision must be signed by at least two Members of the Council not serving on the Executive.

#### **18. Call in and urgency**

The call in procedure set out in the paragraphs above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call in. The Mayor in consultation with the Head of Paid Service, and the chairman of the relevant Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the Head of Paid Service or his nominee's consent shall be required. In the absence of the Overview and Scrutiny chairman his nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

The operation of the provisions relating to call in and urgency shall be monitored annually, and a report submitted to Council with proposals for review where necessary.

## 19. **The Party Whip**

The party whip is defined as follows:

“Any instruction given by or on behalf of a political group to any Councillor who is a Member of that group as to how that Councillor shall speak or vote on any matter before the Council or any Committee or Sub-Committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he speak or vote in any particular manner.”

When considering any matter in respect of which a Member of an Overview and Scrutiny Committee is subject to a party whip, the Member must declare the existence of the whip, and the nature of it before the commencement of the Committee’s deliberations on the matter. The declaration and the details of the whipping arrangements shall be recorded in the minutes of the meeting.

## 20. **Procedure at Overview and Scrutiny Committee meetings**

(a) Overview and Scrutiny Committees and Sub-Committees shall consider the following business:

- (i) Minutes of the last meeting;
- (ii) Declarations of interest (including whipping declarations);
- (iii) Consideration of any matter referred to the Committee for a decision in relation to call in of a decision made by the Executive

(iv) Responses of the Executive to reports of the Overview and Scrutiny Committee;

~~(iv)~~(v) Any items referred to the Committee by a Member; and

~~(v)~~(vi) The business otherwise set out on the agenda for the meeting.

(b) Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development) the Committee may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:

- (i) That the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;

- (ii) That those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - (iii) That the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Committee/Sub-Committee shall prepare a report, for submission to the Executive and/or Council as appropriate and shall make its report and findings public.

**21. Matters in remit of more than one Overview and Scrutiny Committee**

From time to time, matters may arise which fall within the remit of more than one Overview and Scrutiny Committee. In such instances, one of the relevant Committees may decide to establish a working group which can be made up of representative from the appropriate committees. The Report will be considered by the appropriate committee following the opportunity of all other appropriate committees to comment, before it is forwarded to the Executive for a response.

Before submitting its findings to the Executive and/or Council for consideration, the report of the reviewing Overview and Scrutiny Committee shall be considered by the other Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration.

If a single committee decides to examine an issue that falls within the remit of another committee, its report shall be passed to the other relevant committee(s) for comment before its findings are submitted to the Executive and/or Council for consideration. Those comments shall be incorporated into the report which is then sent to that body for consideration.

**22. National Health Service Overview and Scrutiny**

The Protocol for National Health Service Scrutiny is attached as Appendix 2 to these procedure rules.

**23. Crime and Disorder Reduction Partnership Overview and Scrutiny**

The Protocol for Crime and Disorder Reduction Partnership Overview and Scrutiny is attached as Appendix 3 to these procedure rules.

## Maidstone Borough Council, Councillor Call for Action Protocol

### 1. Introduction

- 1.1 Councillor Call for Action (CCfA) seeks to strengthen the role of the Ward Councillor, encouraging them to resolve local problems on behalf of residents. The Act allows ward councillors to place Councillor Calls for Action onto scrutiny agendas for resolution and action. The legislation introduced under the Local Government and Public Involvement Act 2007 and subsequently amended under the Localism Act 2011 extends the power of overview and scrutiny in two ways:
  - so that any Member of the Council can refer any local government matter providing it falls within the Committee's terms of reference to O&S committees; and
  - that matters which can be referred include matters which the council and its partners are delivering through the Local Area Agreement and "local crime and disorder" matters.
- 1.2 The CCfA Best Practice guidance released by CfPS and the IDeA refers to the importance of concentrating on outcomes rather than process when dealing with CCfAs this protocol is therefore a light touch approach.
- 1.3 The protocol outlines what constitutes a CCfA, what should be excluded and the process for dealing with a CCfA. The protocol applies to CCfAs related to crime and disorder matters as well as local government matters.

### 2. What is Councillor Call for Action

- 2.1 Councillor Call for Action has been introduced by the government under the Local Government and Public Involvement in Health Act 2007, to strengthen the role of the ward councillor. The CCfA is a process for a Councillor to act on behalf of residents to resolve a local issue of concern, acting as a last resort for people who cannot get issues resolved through any other means; this can include crime and disorder matters. Such matters could include issues relating to the Council's partners.

**Local Government Matter**—under section 21A, a CCfA needs to relate to a "local government matter". ~~This could be interpreted narrowly, to mean only those issues under the direct control of the authority. However, to give full effect to CCfA the interpretation of "local government matter" needs to be broader. This includes issues relating to the Council's partners, in line with the area focus of Comprehensive Area Assessment (CAA), and the fact that an authority's duties increasingly impact on other organisations, and involve partners within and outside the Local Strategic Partnership (LSP).~~



### **3. Matters that can not be raised as a Councillor Call for Action**

3.1 The following matters have been excluded under section 21A of the Local Government Act 2000, introduced under section 119 of the Local Government and Public Involvement in Health Act, 2007.

- (a) any matter relating to a planning decision;
- (b) Any matter relating to a licensing decision;
- (c) Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review of right of appeal conferred by or under any enactment;
- (d) Any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

### **4. CCfA Process**

4.1 In accordance with the national best practice guidance Overview and Scrutiny should be the last stop for a CCfA. The expectation will be on the Ward Councillor to have tried to resolve an issue using all available mechanisms (including partnership working when appropriate) prior to referring the matter to the Overview and Scrutiny Committee. When a matter is referred to the Overview and Scrutiny Committee it will be up to the relevant Overview and Scrutiny Chairman and the Proper Officer whether the matter is progressed and taken forward by Scrutiny. The process of determination by the Overview and Scrutiny Chairman with the Proper Officer represents a sifting process to determine if the matter is a local government matter and to determine whether the matter is excluded under paragraph 3 above. The possible reasons for rejecting a CCfA are outlined at paragraph 4.2 below. If the CCfA relates to a crime and disorder matter than this must be referred to the Crime and Disorder Scrutiny Committee which in Maidstone Borough Council is the External Overview and Scrutiny Committee.

#### **4.2 Referral to Scrutiny**

The Chairman of the relevant O & S Committee will then determine with the Proper Officer whether to take the CCfA forward. The proper officer will inform the Ward Councillor whether they will accept the CCfA within 5 working days. If the CCfA is a crime and disorder related matter then responsible partners must be notified (CDRP Members).

Reasons a Chairman may not take the CCfA forward to Committee could include:

- Not enough information has been provided;
- More could be done to resolve the issue at a local level, e.g. key people have not been contacted;
- The CCfA is, or has stemmed from, a vexatious discriminatory or unreasonable complaint;



- The matter has recently been examined by O&S (though the Ward Councillors may argue that certain aspects were not sufficiently covered hence a need for a CCfA);
- The matter is the subject of an ombudsman complaint or other official complaints procedure;
- The matter falls under any other excluded matters (see paragraph 3 above).

If a CCfA is rejected for consideration by scrutiny the ward councillor will be notified in writing within 5 working days of lodging the CCfA. Where it is a Crime and Disorder CCfA all responsible partners (CDRP Members) must be notified. Ward Councillors will have the opportunity to reply to the Chairman perhaps with further information to substantiate the CCfA.

If the CCfA is accepted, the relevant Cabinet Members, Officers and/or partners will be notified by the Chairman.

#### **4.3 Ward Councillor Process for resolution of a CCfA:**

- (a) Public request for action or issue identified by local ward councillor.
- (b) Discuss with other ward councillors is a multi-member ward and agree action.
- (c) Take steps to resolve the issue through existing mechanisms such as liaising with partners, county and parish councillors or raising with officers.
- (d) If unresolved and the matter can be taken no further by the ward councillor then refer to the relevant Overview and Scrutiny Committee by completing “the councillor call for action form” and submit this to the Proper Officer (the Overview and Scrutiny Manager) for action.
- (e) Overview and Scrutiny Committee either:
  - Rejects the CCfA and notifies the Councillor who in turn should inform the public;
  - Accepts the CCfA and arranges to consider the CCfA, notifying partners as appropriate. Following which they will determine their response and relay this to the Councillor and partners as appropriate.

#### **5. Process for Dealing with a CCfA by a Scrutiny Committee**

- 5.1 The Chairman and Proper Officer will determine if a special meeting outside the calendar of meetings is required and call a meeting, if not then the CCfA will be dealt with at the next available meeting of the Committee.
- 5.2 The Chairman in consultation with the Ward Councillor and Scrutiny Team when considering the meeting should give consideration to:
  - Witnesses
  - Notifying and Inviting Partners
  - Evidence required
  - Key questions
  - Timescales, and
  - Aims and objectives for the meeting.

5.3 In a similar fashion to the call-in process at the meeting the committee will be expected to reach a decision on whether to:

1. Take no action; or
2. Refer the matter to the Executive/Council/Partner Organisations with recommendations; and/or
3. Carry out a full scrutiny investigation.

Any report and recommendations arising from the Committee meeting will be made available and sent to all agencies involved with the CCfA within 5 working days of the meeting, in the case of a crime and disorder matter, reports and recommendations will be sent to the responsible authorities as listed in the Police and Justice Act 2006:

## **MAIDSTONE BOROUGH COUNCIL**

### **COUNCIL**

**20 JUNE 2012**

### **REPORT OF THE HEAD OF DEMOCRATIC SERVICES**

Report Prepared by Debbie Snook

#### **1. APPOINTMENT OF NEW NON-STATUTORY STANDARDS COMMITTEE**

- 1.1 It is anticipated that the Government will introduce the new ethical standards regime on 1 July 2012. It is necessary therefore for the Council to have in place a new non-statutory Standards Committee, the main purpose of which will be to provide a pool from which Members will be drawn for the Sub-Committees which will deal with complaints of misconduct.
- 1.2 The Council has decided already that the new Committee should comprise a maximum of three Members from each political group of the Council (a political group being two or more Members who have asked to be treated as a political group) nominated, as usual, by the Group Leaders and appointed by the full Council. This means that the Council will have to agree, with no Member voting against, to appoint a Committee which is not politically balanced.
- 1.3 Given that there is no guidance as to the political impartiality of the new Standards Committee, it is proposed to retain the current arrangement whereby the Council appoints three Substitute Members (one from each political group) to the Committee, but that they substitute for Members of their group only.
- 1.4 It is considered that there is advantage to be gained from having a Parish Councillor representative on the Sub-Committees when they hold hearings into allegations of misconduct by Parish Councillors and, in this connection, the Council has decided already that two Parish Councillor representatives be appointed as non-voting Members of the new Committee on the nomination of the Kent Association of Local Councils. The Maidstone Area Committee of the Kent Association of Local Councils has nominated Councillors Paul Butcher and Eileen Riden to serve on the new Committee for an initial period until November 2012.
- 1.5 **RECOMMENDED:**
  - 1.5.1 **That as from the commencement date, the allocation of seats on the new (not politically balanced) Standards Committee be as follows:-**

<b>Conservative</b>	<b>3 seats</b>
<b>Liberal Democrat</b>	<b>3 seats</b>
<b>Independent</b>	<b>3 seats</b>

- 1.2.2 That three Substitute Members (one from each political group) be appointed to the new Standards Committee, but that they substitute for Members of their group only.**
- 1.2.3 That the wishes of the Group Leaders with regard to the appointment of Members to serve on the new Standards Committee (and Substitutes) be accepted.**
- 1.2.4 That Councillors Paul Butcher and Eileen Riden be appointed to serve as non-voting Parish Councillor representatives on the new Standards Committee for an initial period until November 2012.**
- 1.2.5 That the existing arrangements be maintained until the commencement date.**

Background Documents

Minutes of the meeting of the Borough Council held on 25 April 2012