

**MAIDSTONE  
BOROUGH  
COUNCIL  
CONSTITUTION**

# CONSTITUTION OF THE COUNCIL

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# Maidstone Borough Council Constitution

## Part 1

# Summary and Explanation

## **SUMMARY AND EXPLANATION**

### **1.1. Purpose**

Maidstone Borough Council has agreed a Constitution which sets out how the Council operates, how decisions are made and the rules and procedures which need to be followed. The Council is required to have a Constitution by law. Some of the rules and procedures are required by the law, whilst others have been chosen by the Council.

This document is for the benefit of people who use council services, those who do business with the Council, Councillors and officers (i.e. the staff employed by the Council) and explains how the Council works.

### **1.2. What is in the Constitution?**

- The first part of the Constitution sets out a summary and explanation of how the Council operates.
- The second part sets out how decisions are made including the remit of each of the Council's Committees and a scheme of delegation to officers.
- The third part sets out the rules and procedures under which the Council operates.
- The fourth part sets out codes and protocols adopted by the Council.
- The fifth part sets out the Councillors' allowances scheme.
- The sixth part sets out the Council's management structure.

### **1.3. How the Council Works**

The Council comprises 55 Councillors, with one-third elected three years out of every four. Councillors are elected for an area known as a 'ward' and help to sort out problems in the area and speak up for the public. Councillors are democratically accountable to people in their ward, but they also have an overriding duty to the whole community, including people who did not vote for them.

Councillors are elected for a period of four years and hold office from the fourth day after being elected until four days after the next regular election four years later (unless they resign or become disqualified). Where a Councillor ceases to hold office within the four year period, a vacancy arises. A by-election will be held unless the vacancy arises within 6 months of the next regular Council elections. Only registered voters of the Borough or those living or working in the Borough are eligible to hold the office of Councillor.

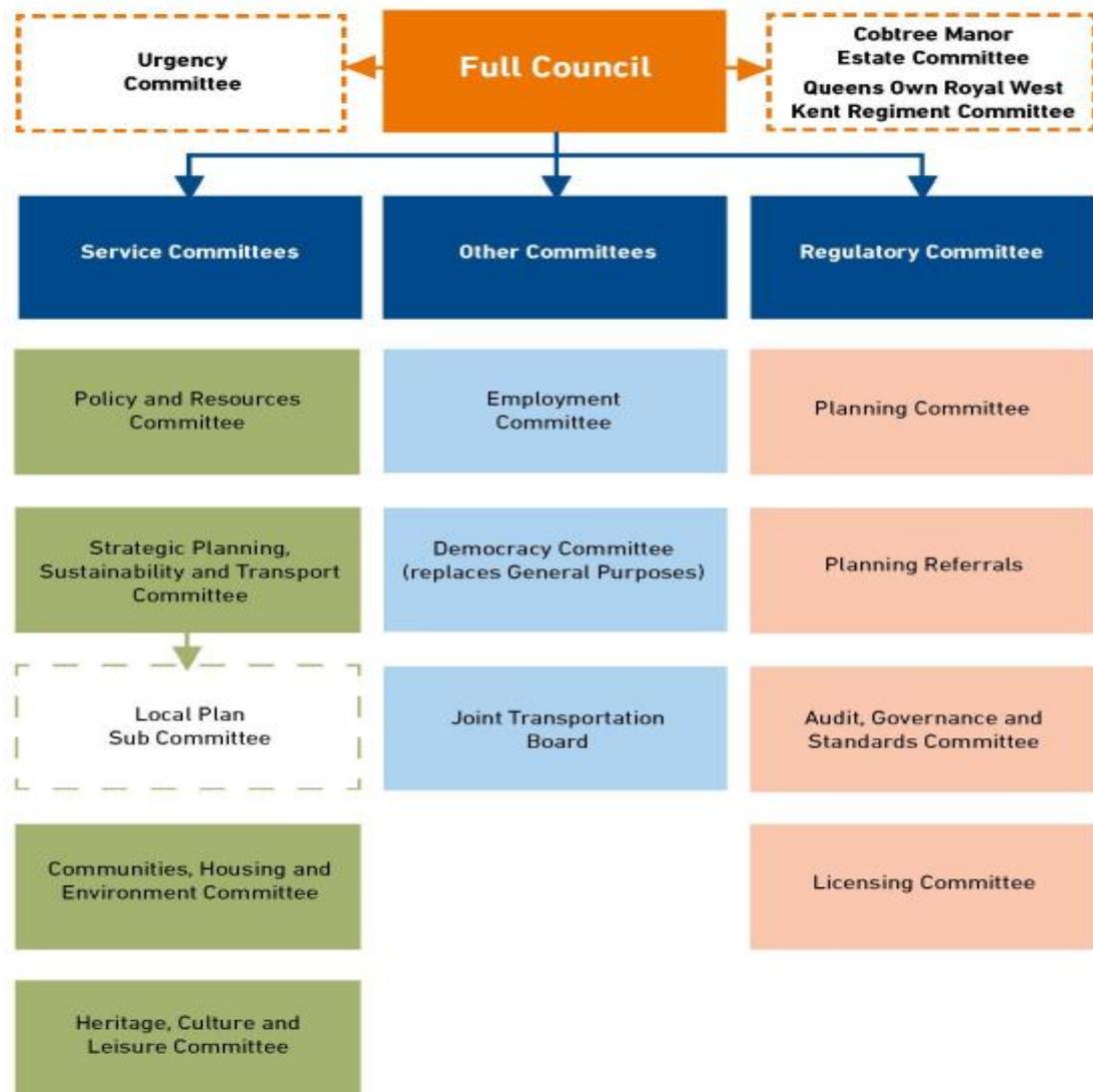
All Councillors meet together as the full Council (this is why Councillors are sometimes known as 'Members' of the Council). Meetings of the Council are normally open to the public. Here Councillors decide the Council's

overall policies and set the budget each year. The Council also elects the Leader of the Council.

Councillors must follow the Councillors' Code of Conduct and the Protocol on Councillor/Officer Relations both of which are set out in Part 4 of this Constitution, to ensure high standards of conduct in the way they undertake their duties. The Audit, Governance and Standards Committee trains and advises them on the Code of Conduct. The Code and procedures for dealing with complaints that there has been a breach of the Code also apply to Parish Councillors.

#### 1.4. How Decisions are Made

Decisions relating to certain functions must be taken by the full Council and cannot be delegated; these are listed in Part 2. The Council delegates most of the decision-making to a range of Committees and Sub-Committees as follows:-



Committees and Sub-Committees of the Council are required to be constituted to reflect the political representation on the Council, in accordance with principles contained in the Local Government and Housing Act 1989. Seats on Committees are therefore allocated between political groups in the same proportion as the groups are represented on the Council and this is known as 'political balance'. Political Group Leaders are responsible for nominating Councillors from their Groups to the seats allocated.

The Council's calendar of meetings can be accessed here:

<http://services.maidstone.gov.uk/meetings/mgCalendarMonthView.aspx?GL=1&bcr=1> Meetings will generally be open to the public to attend except where 'exempt' or confidential matters are being discussed (see the Access to Information Procedure Rules in Part Three for what amounts to 'exempt' and confidential information).

Public notice is given of the time and place of all meetings, usually five clear working days in advance, with details of the items on the agenda. These are posted on the Council's website unless the details of the reports are not for publication (because they contain "exempt" or confidential information) and may be accessed here:

<http://www.maidstone.gov.uk/council/meetings,-minutes-and-agendas>

Officers of the Council may also take decisions (see the staff structure below at 1.11). Some services are delivered jointly with other Councils in shared services arrangements (see 1.12 below and Part Two for details of how different functions are exercised).

## **1.5. Rights of Members of the Public**

People have a number of rights in their dealings with the Council. These are set out in more detail below. Some of these are legal rights, whilst others depend on the Council's own processes. Where members of the public use specific Council services, they have additional rights which are not covered in this Constitution. People have the right to:

- Vote at elections if they are registered;
- Stand for election as a Councillor, subject to eligibility;
- Contact their local Councillor about any matters of concern to them;
- Obtain a copy of the Constitution which is also available on Council's website  
[http://www.maidstone.gov.uk/\\_data/assets/pdf\\_file/0007/9538/Constitution-24-November-2014.pdf](http://www.maidstone.gov.uk/_data/assets/pdf_file/0007/9538/Constitution-24-November-2014.pdf) ;
- Petition the Council about an issue of concern or arrange a deputation to make views known at a Council meeting - for more information on petitions (including the need for a minimum of 100 signatures) and

deputations contact the Democratic Services Team on [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk) or on tel: 01622 602000;

- Petition to request a referendum on a mayoral form of executive governance contact the Democratic Services Team on [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk) or on tel: 01622 602000;
- Find out, in advance what decisions are to be taken by the Council, Committees or Sub-Committees, and when;
- Attend meetings of the Council and its Committees except where, for example, confidential or 'exempt' matters are being discussed (see the Access to Information Rules in Part Three) in which case the meeting will go into private session (also known as "Part II");
- Participate in Council meetings through asking questions and speaking if permitted at the invitation and discretion of the Chairman;
- Film or otherwise record and transmit proceedings of public meetings, with due regard to the rights of others and provided it does not create a nuisance or annoyance to anyone present;
- See reports and background papers, and any records of decisions made by the Council, Committees and Sub-Committees unless confidential or 'exempt' information would be disclosed;
- Access information under the Council's publication scheme, a link to which can be found here <http://www.maidstone.gov.uk/council/freedom-of-information/requesting-information> and by making requests pursuant to the Freedom of Information Act, the Environmental Information Regulations, or by making a data subject request under the Data Protection Act;
- Complain to the Council about the provision of any of its services – equally to compliment the Council. A copy of the Council's 'Comment Compliment or Complaint' form can be found here <https://maidstone.firmstep.com/default.aspx/RenderForm/?F.Name=qcMTePWXMvg&HideToolbar=1> or from the Council's offices;
- Complain to the Local Government Ombudsman if it is felt that the Council has not followed its procedures properly. However, this should only be done after using the Council's own complaints process;
- Complain to the Council's Monitoring Officer if it is felt that a Councillor has not followed the Councillor's Code of Conduct; and complain to a Head of Service or Director if an Officer has not followed the Officers' Code of Conduct (both Codes may be found in Part Four of this Constitution); and

- Inspect the Council's accounts and question any expenditure as well as making your views known to the external auditor, currently Grant Thornton LLP, about whether what has been spent is lawful.

The local Citizens' Advice Bureau can advise on individuals' legal rights. Contact [www.maidstonecab.org.uk](http://www.maidstonecab.org.uk) or visit 2 Bower Terrace, Tonbridge Road, Maidstone, ME16 8RY.

The Council welcomes public participation in its work. For further information on your rights, or if you would like to inspect agendas and reports or attend any Council or Committee meetings please contact the Democratic Services Team at [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk)

### **Responsibilities of Members of the Public**

Members of the public must not be violent, abusive or threatening to Councillors or Officers and must not wilfully or recklessly harm things owned by the Council, Councillors or Officers. The Council has adopted a policy for dealing with persistent and unreasonable complainants, a link to which can be found here:

[http://www.maidstone.gov.uk/\\_data/assets/pdf\\_file/0020/26192/1301\\_UnreasonableandUnreasonablyPersistentComplainantsPolicyV1.pdf](http://www.maidstone.gov.uk/_data/assets/pdf_file/0020/26192/1301_UnreasonableandUnreasonablyPersistentComplainantsPolicyV1.pdf)

## **1.6. The Leader of the Council**

The Council's Procedure Rules provide for the election of a Leader which will normally happen at the Council's Annual Meeting.

As the Council operates a committee style of governance, the Leader is a figurehead for the Council. The Council's Leader is the Council's political and elected head, the focus for political direction and the chief spokesperson for the Borough as well as an ambassador for the Council (although this is different from the civic and ceremonial duties of the Mayor – see below). The Leader will be the Chairman of the Policy & Resources Committee and his/her role should be read and understood in relation to the role of this Chairman

The Leader is normally elected each year at Annual Council for a term of one year until next Annual Council, unless the Council removes the Leader or s/he resigns from that office, or as a Councillor.

The Council's Procedure Rules provide for the appointment of a Deputy Leader which will normally happen at the Council's Annual Meeting. The Deputy Leader will exercise the duties of the Leader in his/her absence (but not as Chairman of Policy and Resources Committee unless s/he serves on that Committee and is appointed as Vice-Chairman).

## **1.7. The Role of the Mayor**

The Mayor is the first citizen of the Borough and the official representative of the Crown, taking precedence over others except for Royalty or the Queens representative, the Lord Lieutenant (and Deputy Lieutenant).

The Council Meeting is chaired by the Mayor, or in his/her absence, the Deputy Mayor. The Mayor is elected and the Deputy Mayor is appointed annually by the Council.

The Mayor, and in his/her absence, the Deputy Mayor, has the following responsibilities:-

- to promote and uphold the purposes of the constitution and to interpret it where necessary;
- to preside over meetings of the Council;
- to promote the Borough and act as an ambassador for Maidstone; and
- to attend civic and ceremonial functions on behalf of the Council with preference being given to local organisations and to events within the Borough.

If the Mayor stands up in a debate in the Council meeting then everyone else is required to sit down and listen to the Mayor.

## **1.8. All Councillors**

Some Councillors have additional responsibilities arising from being the Leader or Deputy Leader of the Council, the Leader of a Political Group, the Mayor or Deputy Mayor or the Chairman or Vice Chairman of a Committee.

Councillors are entitled to allowances and expenses, as set out in Part Five, that have been determined by the Council after considering a report by an Independent Remuneration Panel (involving people who are not Councillors).

All Councillors will:

- collectively be the ultimate policy makers;
- represent their communities and bring their views into the Council's decision making process;
- deal with individual casework and act as an advocate for constituents in resolving particular concern;
- balance different interests and represent the Council as a whole;
- be involved in decision making;
- be available to represent the Council on other bodies; and

- maintain high standards of probity, conduct and ethics in line with the Seven Principles of Public Life adopted by the Parliamentary Committee on Standards in Public Life, set out at the end of the Councillors' Code of Conduct of Part 4.1 of this Constitution.

Details of Maidstone Councillors can be accessed <http://services.maidstone.gov.uk/meetings/mgMemberIndex.aspx?bcr=1> and may be searched alphabetically, on a ward or political party basis.

## **1.9. Meetings of the Council**

There are three types of Council meeting:-

- (a) The Annual Meeting.
- (b) Ordinary meetings.
- (c) Extraordinary meetings.

Meetings are conducted in accordance with the Council Procedure Rules in Part Three of the Constitution. Certain business needs to be considered but the Council may also operate flexibly to allow greater interaction with the public, either on a planned basis (through the agenda for the meeting) or an ad-hoc basis as the Mayor, being Chairman of the meeting, determines.

## **1.10. Committees**

The Committee system consists of a number of service based committees taking decisions under their terms of reference agreed by the full Council and set out in Part Two. Individual Councillors do not have the power to make decisions.

The main Service Committees are:

- **Policy and Resources Committee**

Considers the Council's budget and strategic plan, economic development and corporate matters such as risk management.

- **Strategic Planning, Sustainability and Transport Committee**

Considers the Local Plan, development management policies and transport matters including parking and park and ride.

- **Communities, Housing and Environment Committee**

Develops the housing strategy, waste and recycling strategy responsible for community development. Acts as the Council's Crime and Disorder Committee, where any Councillor may place crime and

disorder matters on the agenda for the meeting (through what is known as the "Councillor Call for Action").

- **Heritage, Culture and Leisure Committee**

Considers matters regarding the Council's parks and open spaces, events, the leisure offer and culture and heritage services.

In addition to formulating and reviewing relevant policies and strategies the Committees will undertake high level performance monitoring and review to evaluate whether the expected outcomes are being achieved in accordance with the Council's Strategic Plan.

In addition there are Committees that deal with **Licensing; Planning; Audit, Governance and Standards; Democracy; Urgent Matters; Employment** and other regulatory matters.

The Chairman of a Committee has the following powers and duties:-

- Responsibility for the proper conduct of meetings;
- A power to exercise a second (casting) vote in the event of an equality of votes on any matter;
- A duty to sign the minutes of the previous meeting;
- A power to agree to the addition of a late item of business to the agenda if s/he believes that it needs to be considered as a matter of urgency;
- To respond to questions or comments raised by Councillors at the Council meeting relating to decisions of the Committee; and
- To respond to questions raised by members of the public at Council and Committee meetings.

### 1.11. The Council's Staff

The Council employs officers to give advice, implement decisions and manage the day to day planning and delivery of the wide range of functions undertaken for the Council on a non-party political basis. Some officers have a specific duty to ensure that the Council acts within the law and to use its resources wisely. A protocol in Part Four governs the relationships between Officers and Councillors.

The Council's most senior officers are set out below with details of their responsibilities:

<b>Post</b>	<b>Functions and areas of responsibility</b>
<b>Chief Executive</b> (Head of Paid Service)	The Chief Executive's role includes: <ul style="list-style-type: none"> <li>• Being chief policy advisor to the Council;</li> <li>• Having overall corporate management and operational</li> </ul>

	<ul style="list-style-type: none"> <li>responsibility;</li> <li>• Managing the Council's electoral and democratic processes, including record keeping;</li> <li>• Providing professional advice to all parties in the decision making process;</li> <li>• Representing the Council on partnerships and external bodies;</li> <li>• Communications;</li> <li>• Planning and Development.</li> </ul>
<b>Director of Environment and Shared Services</b>	Client for Shared Services; Environment and Public Realm.
<b>Director of Regeneration and Communities</b>	Finance and Resources; Housing and Community Services; Commercial and Economic Development.

In addition the Council is required to appoint three statutory officers whose roles are set out below:

<b>Post and Designation</b>	<b>Role and Responsibilities</b>
<p><b>Head of Paid Service</b></p> <p><b>Chief Executive</b></p> <p>(May not be the Monitoring Officer but may hold the post of the Chief Finance Officer if a qualified accountant.)</p>	<p>Responsible for effective corporate management.</p> <p>May report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grades of officers required and the organisation of officers.</p>
<p><b>Monitoring Officer</b></p> <p><b>Head of Legal Partnership</b></p>	<p><b>Maintaining the Constitution.</b></p> <p>The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Councillors, staff and the public.</p> <p><b>Ensuring Lawful and Fair Decision Making.</b> After consulting with the Head of Paid Service, the Monitoring Officer will report to the full Council if s/he considers that any proposal, decision or omission would give rise to unlawfulness or maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report</p>

	<p>has been considered.</p> <p><b>Promoting High Ethical Standards</b> The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of guidance and support to the Audit, Governance and Standards Committee.</p> <p><b>Complaints of Misconduct.</b> The Monitoring Officer shall receive complaints relating to alleged breaches of the Councillors' Code of Conduct and shall process complaints in accordance with the adopted procedure for dealing with complaints, set out in Part Four of this Constitution.</p> <p><b>Dispensations.</b> The Monitoring Officer is the Proper Officer for the purposes of receiving declarations of Councillors' interests, maintaining the register of interests and determining applications for Dispensations to allow Councillors to vote where they may have a conflict of interest pursuant to Section 33(1) of the Localism Act 2011.</p>
<p><b>Chief Finance Officer</b></p> <p><b>Director of Regeneration and Communities</b></p>	<p><b>Administration of Financial Affairs.</b> The Chief Finance Officer has responsibility for the proper administration of the Council's financial affairs.</p> <p><b>Ensuring Lawfulness and Financial Prudence of Decision Making.</b> After consulting with the Head of Paid Service and Monitoring Officer, the Chief Finance Officer will report to the full Council and the Council's external auditor if s/he considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency, or if the Council is about to enter an item of account unlawfully.</p> <p><b>Providing Advice.</b> The Chief Finance Officer will provide advice on financial impropriety, financial probity and the budget to all Councillors and will support and advise Councillors and officers in their respective roles, as well as</p>

	provide financial information to the public.
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**structure.** The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This is set out at Part Six of this Constitution.

The Council is required to provide the Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

The Council approves an annual Pay Policy Statement before the start of the financial year and this includes details of the remuneration of senior officers. It can be accessed at:

<http://services.maidstone.gov.uk/meetings/documents/s40233/Enc.%201%20for%20Pay%20Policy%20Statement.pdf>

Officers will comply with the Officers' Code of Conduct and the Protocol on Councillor/ Officer Relations set out in Part Four of this Constitution.

### 1.12. Shared Services Arrangements

The Council may establish joint services arrangements with other local authorities. Such arrangements may involve the appointment of a Joint Committee with those other local authorities and delegation of functions to the Joint Committee. Alternatively the Council or Committees may delegate functions to another local authority or to an officer of another local authority. The shared services arrangements in which the Council is involved include:

- Mid Kent Improvement Partnership (MKIP) which has a Joint Board
- Audit (Ashford, **Maidstone**, Swale and Tunbridge Wells)
- Environmental Health (Maidstone, **Swale** and Tunbridge Wells)
- Human Resources (**Maidstone** and Swale)
- ICT (**Maidstone**, Swale and Tunbridge Wells)
- Legal (Maidstone, **Swale** and Tunbridge Wells)
- Planning Support (**Maidstone**, Swale and Tunbridge Wells)
- Revenues and Benefits (Maidstone and Tunbridge Wells)
- Licensing (**Sevenoaks**, Tunbridge Wells and Maidstone)
- Waste (**Maidstone**, Ashford, Swale and Kent County Council)

Marked in bold are the host (employing) authorities. Revenues and Benefits does not have a host authority, it is simply run on a collaborative basis.

Maidstone Borough Council is a member of the Kent Joint Waste Management Committee (a Joint Committee of Councillors from authorities across Kent), for which the Terms of reference are set out in Part Two; and the Joint Transportation Board with Kent County Council – details of which are also set out in Part Two.

Maidstone Borough Council also has a joint Independent Remuneration Panel with Swale Borough Council to advise on the level of Councillor remuneration and make a report and recommendations to the Council pursuant to the Local Authorities (Members' Allowances) (England) Regulations 2003.

### **1.13. Working with Partners**

As well as working with other local authorities the Council works with other public, voluntary and community sector and private partners, to deliver its functions and seek to achieve the Council's priorities.

The Council participates in a number of other partnerships, for example West Kent Health and Wellbeing Board (which involves Kent County Council, other Councils and the Clinical Commissioning Groups); the police, probation and health on the Crime and Disorder Partnership; with Zurich Municipal on insurance matters; and with the public and private sectors on The South East Local Enterprise Partnership (LEP). The LEP is the business-led, public/private body established to drive economic growth across East Sussex, Essex, Kent, Medway, Southend and Thurrock.

The Council publishes details of the contracts it proposes to let on the Government's Contracts Finder portal at: <https://www.gov.uk/contracts-finder>

### **1.14. Review and Revision of the Constitution**

The Monitoring Officer will monitor and review the operation of the Constitution periodically and report to the Democracy Committee as appropriate. The Monitoring Officer has delegated authority to make changes to the Constitution which are necessitated by decisions taken by the Council; which remove inconsistency or ambiguity; which are minor; or to effect changes in the law.

Substantial or significant changes to the Constitution will only be approved by the full Council and this may be on the recommendation of the Democracy Committee or other appropriate Committee.

**For further information on how the Council operates please go to [www.maidstone.gov.uk](http://www.maidstone.gov.uk) or contact the Democratic Services Team at [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk) or on tel: 01622 602000**

# Maidstone Borough Council Constitution

## Part 2

### Responsibility for Functions

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## **12 RESPONSIBILITY FOR FUNCTIONS**

### **1. FUNCTIONS OF FULL COUNCIL**

This part of the Constitution explains who takes decisions and sets out the responsibilities of the Council, Committees, Sub-Committees and Panels as well as the Scheme of Delegation to Officers.

Some functions can only be carried out by the Council. Other functions may be carried out by the Council or may be discharged through Committees or Sub-Committees (except where a function is expressly reserved to the Council for decision). In addition the Council may delegate decision making to Officers; to Joint Committees/Boards; to other authorities; or officers of other authorities.

Appointments to Committees are made at the Annual Council Meeting or, when a vacancy occurs, at the next available meeting of the Council. Appointments to outside bodies may be made by the Democracy Committee.

#### **COUNCIL**

(1) All those functions as defined by the Local Authorities (Committee System) (England) Regulations 2012 and other legislation that the Council is unable to delegate including:-

- Adopting a Councillors' Allowance Scheme and amending the same, including the Mayor's and Chairman's allowances having considered the report of an Independent Remuneration Panel.
- Making a request for single Councillor electoral wards to the Local Government Boundary Commission.
- A resolution to change the Council's scheme for elections.
- Making an order giving effect to the recommendations made in a Community Governance Review and other Parish Council functions that are not otherwise delegated.
- Making or revoking or amending the following policies, plans and strategies:-
  - Crime and Disorder Reduction Strategy.
  - Licensing Authority Policy Statement including any Cumulative Impact Policies.
  - Local Development Framework - Plans and alterations which together comprise the Development Plan and Development Plan Documents.
  - Sustainable Community Strategy.

- Policies made under the Gambling Act (including any resolution relating to casinos).
  - Additionally the Council has chosen to make the Strategic Plan part of the policy framework to be agreed by the Council:
  - The approval or adoption of a plan or strategy for the control of the local authority's borrowing, investments or capital expenditure or for determining the authority's minimum revenue provision including:-
    - the Capital Programme.
    - Capital Investment Strategy.
    - Medium Term Financial Plan.
    - Treasury Management Strategy.
- (2) Setting the Council's Budget and Council Tax.
  - (3) Adopting the Council's Constitution and making significant changes to it, including the rules and procedures.
  - (4) Electing the Mayor and appointing the Deputy Mayor of the Council.
  - (5) Appointing (and removing) the Leader of the Council and Deputy Leader.
  - (6) Agreeing or amending the Committee structure, making significant changes to the terms of reference of Committees and sub-Committees and their size, as well as making appointments to Committees.
  - (7) Confirming the appointment of Independent Person(s) in connection with Councillor conduct and Statutory Officer discipline.
  - (8) Confirming the appointment of the Head of Paid Service or dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.
  - (9) Appointing the Returning Officer and Electoral Registration Officer.
  - (10) Making, amending, revoking, re-enacting or adopting bylaws.
  - (11) Making, varying or revoking, Early Morning Alcohol Restriction Orders ("EMROs") and introducing/amending Late Night Alcohol Levy charges on establishments between midnight and six in the morning.

- (12) Promoting or opposing the making of local legislation (including bylaws) or personal bills.
- (13) Considering:-
  - Ombudsman reports where there has been a finding of maladministration with injustice and the report has been rejected;
  - Statutory officer reports of the Monitoring Officer, Chief Financial Officer and Head of Paid Service; and
  - External Auditor's public interest reports.
- (14) Conferring the title of Honorary Freeman and Honorary Alderman of the Borough.
- (15) Approving the Annual Senior Officer Pay Policy Statement.
- (16) Changing the name of the Borough.
- (17) Agreeing to submit plans and strategies to the Secretary of State or Minister for approval.
- (18) Making recommendations to the Secretary of State on district boundaries, ward boundaries, electoral divisions, ward or polling districts.
- (19) Considering reports from Committees, Sub-Committees, or any other body constituted by the Council, where there are items recommended to Council for decision.
- (20) Making compulsory purchase orders (other than under planning grounds).
- (21) Appointment of representatives to outside bodies, including joint bodies, except where delegated to the Democracy Committee.
- (22) Any other function which must, by law, be reserved to the full Council.

For the avoidance of doubt, the full Council retains ultimate responsibility for the actions and decisions of all its Committees and also retains the ability to exercise all its powers whether or not they have also been delegated to a Committee Sub-Committee or officer.

However the Council shall not exercise a power that has been delegated without first ensuring that such a step is in the best interests of the Council. The Council's ability to exercise its powers will not generally be used to override or supersede any decision or action already taken by a Committee or Officer acting under delegated authority and therefore before taking any such action the Council needs to be appraised of the

current situation regarding implementation of decisions made by others (and the potential consequences of taking an alternative decision).

## 2. COMMITTEES OF THE COUNCIL

### Committee Structure and Terms of Reference

All Committees may hold inquiries and investigate the available options for future direction in policy development and may appoint advisors 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.

Each of the four main service Committees have responsibility for **strategic performance management** across the range of their functions and shall review whether policies and approaches should be changed and whether desired outcomes are achieved, including on capital projects, within the remit of the Committee.

All committees may consider any subject that, in the opinion of the committee is relevant to the formulation and delivery of its objectives. This is subject to approval of the business of the meeting by the Chairman, under the process set out in part 3.1, 3 "Meetings", section 3.2 "Business" below.

### 2.1 POLICY AND RESOURCES COMMITTEE

#### Membership: 15 Councillors

#### Purpose:

- To make recommendations to the Council on budget and policy matters;
- To provide strategic direction to the operation of the Council, determining policies in the areas set out below and any cross-cutting policies that impact on other Committee areas;
- make decisions regarding land and property including acquisition, disposal and appropriation;
- retain a strategic overview of risk management;
- be responsible for all policy matters not otherwise allocated to any other Committee and to determine any disputes or differences between Committees.

FUNCTIONS	DELEGATION OF FUNCTIONS
To be responsible for the annual budget submission to full Council (including staffing budgets).	N/A
To be responsible for significant decisions involving more than one service Committee.	N/A

To approve the Council Tax Base and recommend financial decisions to Council	N/A
To be responsible for co-ordinating financial management and performance across the Council and take decisions on virement between services; business rates; council tax; and revenue and benefits functions.	N/A
To make decisions regarding land and property including acquisition (by agreement or compulsorily), disposal, appropriation and development unless delegated to officers or within the remit of another Committee).	Head of Finance and Resources up to £100k
To be responsible for all policy matters not otherwise allocated to any other Committee and to determine any disputes or differences between Committees.	N/A
To be responsible for all strategic budget related staffing issues within the Committee's remit.	N/A
<b>Strategic Planning and Performance Management</b> – to oversee the development, review and implementation of the Council's:	
People strategy and workforce plan;	Head of Human Resources Shared Service
Medium Term Financial Strategy to include, though not exclusively, Capital Investment Strategy, Council tax support scheme, business rates and income generation;	Head of Finance & Resources
Communication and Engagement Strategy;	Head of Policy and Communications
Corporate Improvement Plan;	Head of Policy and Communications
Information Management Strategy;	Head of Policy and Communications
Risk Management Strategy including Counter Fraud;	Chief Executive/Head of Audit Partnership
Commissioning Strategy;	Head of Finance and Resources

Asset Management Strategy including assets of community value;	Head of Finance and Resources
Council Accommodation Strategy;	Head of Finance and Resources
Emergency and Resilience Planning;	Director of Environment and Shared Services
Economic Development Strategy;	Head of Commercial and Economic Development
Commercialisation Strategy;	Head of Commercial and Economic Development
Information and communications technology (ICT);	Head of IT Shared Services
Council tax, business services and housing benefits;	Head of Finance & Resources and Head of Revenues and Benefits Shared Services
Making compulsory purchase orders on planning grounds and/or recommending to Council the making of compulsory purchase orders.	Head of Finance and Resources

### **ROLE OF THE CHAIRMAN OF POLICY AND RESOURCES**

- Be a figurehead for the Council
- Provide strong, clear leadership in the co-ordination of policies and in building a political consensus around council policies
- Take the lead within this Committee and with the other chairmen, of working with others in building a vision for the Council and community and for overall co-ordination of all Committees work in this respect
- Represent the Council and its interests on regional and national bodies as appropriate including the Kent Council Leaders and the Kent Health and Wellbeing Board
- To be responsible for the Council's role in partnerships including leading the Council's contribution to the Mid Kent Improvement Partnership and supporting partnerships and organisations in the private, public and voluntary sectors

- To act as Ambassador for the Council and its activities amongst external advisory and interest groups not falling within the responsibility of the other Committees
- To act as an advocate for the Council in pressing for changes in national policy
- Act as Councillor Health & Safety at Work Champion and attend Health and Safety meetings
- To foster close links with the business community and develop partnerships to achieve outcomes identified in the Economic Development and Regeneration Strategy
- To foster close links and develop partnerships with skills and education providers to achieve outcomes identified in the Economic Development Strategy
- To take responsibility for relationships with funders including KCC and the Heritage Lottery fund, service delivery partners including the Chamber of Commerce, Federation of small businesses, Locate in Kent, education and skills providers, voluntary and community groups.

## 2.2 URGENCY COMMITTEE

**Membership:** Leaders of the five largest Groups represented on the Council. Quorum 3.

**Purpose:** To take any urgent Policy and Resources Committee or Council decisions (that may be delegated by the Council, where above the level of delegation to Officers) in between scheduled meetings and where the decision needs to be taken before the next meeting in order to protect the Council's interests.

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
All decision-making where in the opinion of the Chief Executive (having consulted the Chief Finance Officer and the Monitoring Officer) the Council's interests require that Councillors take a decision urgently; including virement decisions and decisions to expend money from contingencies and balances that are not otherwise delegated.	Any decision that may be made by Council or the Policy and Resources Committee in between scheduled ordinary meetings may be further sub-delegated as considered appropriate.

## 2.3 STRATEGIC PLANNING, SUSTAINABILITY AND TRANSPORTATION COMMITTEE

**Membership: 9 Councillors**

**Purpose:** To be responsible for planning, sustainability, district highways and car parking functions and transportation.

FUNCTIONS	DELEGATION OF FUNCTIONS
To take the lead in ensuring that the Council delivers its strategic objectives for planning, sustainability and transportation	N/A
To pass a resolution that Schedule 2 to the Noise and Nuisance Act 1993 should apply in the authority's area	N/A
To submit to Policy and Resources (P&R) Committee all revenue estimates and capital programmes within the remit of the Committee with a view to P&R determining the budget for submission to Council	
To be responsible for all strategic budget related staffing matters within the Committee's remit	
<b>Strategic Planning and Performance Management</b> – to oversee the development, review and implementation of the Council's:	
Development Plan, including the Maidstone Borough Local Plan and Neighbourhood Plans (subject to approval by Council); Spatial planning documents such as supplementary planning documents and planning policy advice notes; Master Plans and development briefs; The Infrastructure Delivery Plan and The Community Infrastructure Levy (subject to approval by Council).	Head of Planning and Development
Development Management, Enforcement, Building Control.	Head of Planning and Development
Car Parking Plans and Strategy	TBA
Air Quality Management Strategy, smoke free premises and control of pollution.	TBA
Integrated Transport Strategy,	Head of Planning and Development
Park and ride and district highways functioning	TBA

## **ROLE OF THE CHAIRMAN OF STRATEGIC PLANNING, SUSTAINABILITY AND TRANSPORT**

- Working with others in building a vision for the Council and Community
- To represent the Council on all partnerships relevant to the Committee
- To take the lead role in this Committee of fostering close links with key stakeholders including Parish Councils, the Developers Forum, English Heritage and transport interest groups such as Quality Bus Partnership, Transport Users Group, Rail Stakeholders Group
- To take the lead role within this Committee for responsibility for relationships with funders including Kent County Council and Highways England.
- To chair the Joint Transportation Board with Kent County Council in alternate years and be Vice Chairman in others.

### **2.4 LOCAL PLAN SUB COMMITTEE**

#### **Membership: 5 Councillors**

Responsible for Spatial Planning Strategy including the local plan and other Spatial Planning documents including Development Plan documents, Development Management policies and Development briefs (subject to approval by Council and the Strategic Planning, Sustainability and Transportation Committee).

### **2.5 COMMUNITIES, HOUSING AND ENVIRONMENT**

#### **Membership: 9 Councillors**

**Purpose:** To take the lead within the Council for ensuring that the Council delivers its strategic objectives with regard to Communities, Housing and the Environment; to ensure inclusive and productive community engagement, Public Health, licensing, housing, other community services and to be the Council's Crime and Disorder Committee.

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
To take the lead within the Council for ensuring that the Council delivers its strategic objectives with regard to Communities, Housing Public Health and the Environment	N/A
To take the lead within the Council in ensuring that the Council achieves inclusiveness and productive community engagement	N/A

To act as the Council's Crime and Disorder Committee under section 19 Police and Justice Act 2006 and to meet at least once per annum in this capacity.	N/A
To submit to Policy and Resources (P&R) Committee all revenue estimates and capital programmes within the remit of the Committee with a view to P&R determining the budget for submission to Council	N/A
To be responsible for all strategic budget related staffing matters within this Committee's remit	N/A
<b>Strategic Planning and Performance Management</b> – to oversee the development, review and implementation of the Council's:	
Housing Strategy	Head of Housing and Community Services
Community Development Strategy	Head of Housing and Community Services
Climate Change Framework	Head of Housing and Community Services
Parish Charter, Parishes and Community Governance	Head of Housing and Community Services
Crime and Disorder Reduction Strategy (and recommend changes to full Council); and Community Safety Strategy to include CCTV	Head of Housing and Community Services
Compact with Voluntary and Community Sector	Head of Housing and Community Services
Public Health, Healthy Living and Health Inequalities Strategy	Head of Housing and Community Services
Waste Management, Waste minimisation and Recycling Strategy	Head of Environment and Public Realm
Private Water Management	Head of Housing and Community Services
District flood risk management functions	Director of Environment and Shared Services

Licensing Strategy and Policies (including making recommendations to Council)	Head of Housing & Community Services
Public Conveniences	Head of Environment and Public Realm
Street Scene and Environmental Strategy (to include Clean Neighbourhood Enforcement, monitoring.	Director of Environment and Shared Services/Head of Environment & Public Realm
Enforcement of Air Quality Policies)	Head of Housing and Community Services
Renewable Energy Strategy	Director Environment & Shared Services
Contaminated Land Strategy	Environmental Health
Community Safety in consultation with the Safer Maidstone Partnership; reviewing the exercise of crime and disorder functions by responsible authorities (Police and Crime Commissioner, Chief Constable, probation, health etc) and to make reports and recommendations with regard to the discharge of those functions – NB any Councillor may refer such a matter to this Committee.	Head of Housing and Community Services

## **ROLE OF THE CHAIRMAN OF COMMUNITIES, HOUSING AND ENVIRONMENT COMMITTEE**

- Taking the lead within this Committee of working with others in building a vision for the Council and community
- To take the lead within this Committee for external relationships with properly constituted Tenants and Resident's Groups and Parish Councils including the Parish Services Scheme
- To take the lead within this Committee for all aspects of community engagement
- To work with groups such as the Older Person's Forum and the Voluntary Sector including organisations such as the Citizens Advice Bureau, Voluntary Action Maidstone, Maidstone Mediation and other important community organisations
- To represent the Council on all relevant partnerships including the Kent Waste Partnership, the Kent Community Safety Partnership and the Kent Health Overview & Scrutiny Committee. (Health scrutiny shall be

undertaken in accordance with the agreed Kent Protocols for NHS Overview and Scrutiny from time to time.)

- To take the lead on this Committee for ensuring good relationships with funders including Kent County Council and Waste & Resources Action Programme (WRAP), service delivery partners including contractors, voluntary sector and community groups.

## 2.6 HERITAGE CULTURE AND LEISURE COMMITTEE

### Membership: 9 Councillors

**Purpose:** To promote Maidstone as a decent place to live by providing opportunities for engagement in cultural and leisure pursuits, developing a sense of place and ensuring that everyone, no matter who they are, or where they live, has access to quality open space, sports and leisure facilities

FUNCTIONS	DELEGATION OF FUNCTIONS
To take the lead within the Council for ensuring that the Council delivers its strategic objectives with respect to Maidstone as a decent place to live by providing opportunities for engagement in cultural and leisure pursuits, developing a sense of place and ensuring that everyone, no matter who they are, or where they live, has access to quality open space, sports and leisure facilities	N/A
To take the lead in ensuring that Maidstone’s Heritage and Culture together with its leisure facilities play a key role in regeneration and in improving and sustaining the Borough’s economic development and health and wellbeing	N/A
To submit to Policy and Resources Committee all revenue estimates and capital programmes within the remit of the Committee with a view to P&R Committee determining the budget for submission to Council	N/A
To be responsible for all strategic budget related staffing matters within the Committee’s remit	N/A
<b>Strategic Planning and Performance Management</b> – to oversee the development, review and implementation of the Council’s:	

Sports and Leisure Strategy	Head of Commercial and Economic Development
Parks and Open Spaces strategy including play areas and allotments	Head of Commercial and Economic Development
Festivals and Events Strategy including the Hazlitt Theatre and Arts Centre contract. Destination Management Plan Maidstone Culture and Leisure Business Plan Maidstone Market.	Head of Commercial and Economic Development  Head of Commercial and Economic Development

## **ROLE OF THE CHAIRMAN OF HERITAGE, CULTURE AND LEISURE COMMITTEE**

- To take the lead on this Committee on working with others in building a vision for the Council and community
- To represent the Council on all relevant partnerships to include One Maidstone (TCM) in its role producing events and Maidstone Area Arts Partnership (MAAP)
- To take the lead within this Committee for relationships with funders, service delivery partners including voluntary and community groups and Trusts including Maidstone Leisure Trust, Cobtree Manor Estate Trust and the Museum Trusts.

## **2.7 PLANNING COMMITTEE**

### **Membership: 13 Councillors**

**Purpose:** To determine town and country planning and development control matters and associated issues

(NB - Councillors and substitute members of Licensing Committee cannot be members of Planning Committee.)

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
Planning and Conservation - Functions relating to town and country planning and development control as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations [2001/2015] (the Functions Regulations) as amended from time	The Chief Executive/Head of Planning and Development has delegated power to undertake all the

<p>to time including:</p> <ul style="list-style-type: none"> <li>• Development Management and Enforcement</li> <li>• Rights of way</li> <li>• The protection of important hedgerows</li> <li>• The preservation of trees</li> <li>• Functions relating to public rights of way</li> <li>• Functions relating to High Hedges contained in Part 8 of the Anti-Social Behaviour Act 2003</li> <li>• Town and village green matters</li> <li>• Commons registration and enforcement</li> </ul>	<p>functions relating to planning and conservation, except where the intended delegated decision on a planning or related application:</p> <p>(a) would be contrary to the written views of the Ward Councillor or a political group spokesperson of the Planning Committee and the Councillor has requested Committee consideration. The request by a Ward Councillor or a political group spokesperson for the application to be heard by Planning Committee must be made within a period of 21 days of receipt of a weekly list advising them of the application. Additionally, if a Councillor requests that an application is determined by Committee, that Councillor should attend the Committee to address the planning issues they have raised.</p> <p>(b) would be contrary to the written view of any Parish Council and the Parish Council has requested that the application is determined by the</p>
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	<p>Planning Committee.</p> <p>(c) would be contrary to the written view of any statutory consultee in the planning process; or</p> <p>(d) would be contrary to the provisions of the Development Plan or any emerging development plan policies that have been adopted by the Council for Development Control purposes.</p> <p>(e) is made by:  a Councillor; an Officer; or the Council itself.</p> <p>The Head of Planning and Development has delegated power to:-</p> <ul style="list-style-type: none"> <li>• undertake all functions relating to planning and enforcement;</li> <li>• determine high hedges complaints and to take appropriate enforcement action, except in the following specific circumstances;-</li> </ul> <p>- Where the case relates to a hedge on Council land or complaints relate to Council</p>
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	<p>Officers or Councillors;</p> <ul style="list-style-type: none"> <li>- Where trees within a hedge are protected by a Tree Preservation Order or are located within a Conservation Area and the Officer decision would be contrary to the views of Ward Members or the Parish Council; and</li> <li>- Exceptional cases where there are wider issues of a public nature or where there is a potential impact on the Council and/or its policies.</li> </ul>
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## 2.8 PLANNING REFERRALS COMMITTEE

### **Membership: 3 Councillors**

(one from each of the largest 3 political groups) (excluding Councillors and Substitute Members of the Planning Committee)

**Purpose:** To determine planning applications referred to it by the Head of Planning and Development if s/he is of the opinion that the decision of the Planning Committee is likely to have significant cost implications.

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
To determine planning applications referred to it by the Head of Planning and Development if s/he is of the opinion that the decision of the Planning Committee is likely to have significant cost implications.	N/A

## 2.9 LICENSING COMMITTEE

### Membership: 12 Councillors

**Purpose:** To exercise licensing and gambling functions on behalf of the Council

(NB Councillors and substitute members of Planning Committee cannot be members of Licensing Committee.)

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
<p>Licensing – Functions relating to licensing as set out in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations [2001/2015]</p> <p>To deal with Licensing functions in accordance with the Licensing Act 2003 and the Licensing Policies agreed by the Council.</p> <p>Consideration of appeals against any decision on a licence or consent shall be determined by a Sub-Committee of 3 Councillors.</p> <p>Counter notice to temporary use notices will be dealt with by a Sub-Committee of 3 Councillors.</p> <p>A Sub-Committee of 3 Councillors shall deal with matters set out in the table below.</p> <p>To deal with Gambling functions in accordance with the Gambling Act 2005 and the Statement of Principles agreed by the Council.</p> <p>Consider and recommend Communities Housing and Environment Committee or to Council adopting a new Licensing Policy Statement, any Cumulative Impact Policies for the Borough decisions, Late Night Alcohol Levy and to make, vary or revoke Early Morning Alcohol Restriction Orders.</p>	<p>All non-Licensing Act 2003 and Gambling Act 2005 functions delegated to the Director of Regeneration and Communities/Head of Housing and Community Services except the determination of policy, setting the level of fees and charges which are the responsibility of the Licensing Committee.</p> <p>All matters where a “Relevant Representation”, (including an objection, objection notice or application for summary review) (Licensing) or a “Relevant Representation”, (including an objection) (Gambling) has been made; cancellation of club gaming/ club machine permits.</p> <p>All other licensing and gambling matters will be dealt with by the Head of Housing and Community Services, except for Responsible Authority functions</p>

	which will be dealt with by the Director of Regeneration and Communities. (save where prohibited by legislation or otherwise delegated).
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**2.10 LICENSING SUB COMMITTEE**

**Membership: 3 Councillors from Licensing Committee**

**Purpose:** To make decisions about individual licensing matters and appeals where not otherwise delegated to the Head of Housing and Community Services.

Note: The scheme of delegation will normally be adhered to but may be varied in exceptional circumstances and having regard to any relevant statutory requirements.

**2.11 EMPLOYMENT COMMITTEE**

**Membership: 12 Councillors** (to include the Group Leaders of the five largest groups)

**Purpose:** To deal with employment and staffing matters unless otherwise delegated

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
a) To consider the applications received for the posts of Chief Executive and Directors and to compile a short list for interview and subsequently to interview and make appointments (in the case of the Chief Executive any appointment is subject to confirmation by the full Council).	Panel, as required from time to time
b) To review annually the performance of the Chief Executive and Directors, to agree targets for the coming financial year, and agree any corrective action which may be required relating to the previous financial year.	Panel comprising 5 Councillors (to include the Group Leaders of the 5 largest parties)
c) Power to determine terms and conditions on which staff hold office (including procedures for re-organisations and for their severance and dismissal) and all	Head of Human Resources Shared Service

<p>other matters concerning terms and conditions of service.</p> <p>d) To act as an investigatory Committee in disciplinary matters for protected officers</p> <p>e) To act as a hearings panel as appropriate except any decision to dismiss the Head of Paid Service, Chief Finance Officer or Monitoring Officer which must be approved by Council.</p> <p>f) To hear and determine appeals against decisions taken by the Chief Executive under the disciplinary or capability procedures or to hear grievances raised against the Chief Executive under the grievance procedure.</p> <p>g) Pensions and superannuation matters related to terms and conditions</p>	<p>Panel comprising 3 Councillors.</p> <p>For the three statutory protected officers Panel of 3 plus up to two Independent Persons</p> <p>Sub Committee comprising 3 Councillors</p> <p>Head of Human Resources Shared Service</p>
<p><b>Joint Consultative Committee</b>  A consultative forum for views to be expressed between both parties on the Committee regarding the following issues relating to the employment of staff by the Council but excluding individual cases:</p> <ul style="list-style-type: none"> <li>- Health and Safety Issues at Works</li> <li>- Changes in Staff Structures</li> <li>- Terms of Conditions of Employment</li> </ul> <p>Such views are referred to the appropriate Council Decision Making Body.</p>	<p>An advisory sub-Committee comprising 4 Members of the Authority and 4 Trade Union Representatives (3 representatives from UNISON, 1 representative from UNITE)</p>

## 2.12 AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

### **Membership: 9 Councillors**

(plus 2 non-voting Parish Councillors for the Standards Hearings Sub-Committee, for Parish Council matters; and the Council's Independent Person(s) also to be invited).

**Purpose:** The promotion and maintenance of high standards of Councillor and Officer conduct within the Council; adoption and reviewing the Council's Annual Governance Statement; independent assurance of the adequacy of the financial and risk management framework and the associated control environment, independent review of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process, including:

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
To consider the Head of Internal Audit Partnership's annual report and opinion, and a summary of Internal Audit activity (actual and proposed) and the level of assurance it can give over the Council's corporate governance arrangements.	Report may go to Policy and Resources with a reference from this Committee to ensure that the Council satisfactorily addresses all of the issues.
To consider reports dealing with the management and performance of Internal Audit Services, including consideration and endorsement of the Strategic Internal Audit Plan and any report on agreed recommendations not implemented within a reasonable timescale; and the Internal Audit Charter?	As above.
To consider the External Auditor's Annual Audit Letter, relevant reports, and any other report or recommendation to those charged with governance; and ensure that the Council has satisfactorily addressed all issues raised. To comment on the scope and depth of external audit work and to ensure it gives value for money.	As above.
To review and approve the annual statement of accounts. Specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Policy and Resources Committee or Council.	The summary balance sheet will be reported to Policy and Resources Committee as part of its Budgetary Control/Budget Strategy arrangements.
Consider and review the effectiveness of the Treasury Management Strategy, Investment Strategy, Medium Term Financial Strategy, Annual Report and Mid-Year review and make recommendations to the Policy and Resources Committee and Council.	
Recommend and monitor the effectiveness of the Council's Counter-Fraud and Corruption Strategy.	Policy and Resources Committee to approve  Head of Audit Partnership to monitor effectiveness

### **Governance**

To maintain a financial overview of the operation of Council's Constitution in respect of contract procedure rules, financial regulations and codes of conduct and behaviour.	The Monitoring Officer will deal with the detail of any proposed minor changes, but significant
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	recommendations for change will be made to the Democracy Committee (then Council)
In conjunction with Policy and Resources Committee to monitor the effective development and operation of risk management and corporate governance in the Council to ensure that strategically the risk management and corporate governance arrangements protect the Council.	Head of Audit Partnership/ Head of Finance and Resources
To monitor Council policies on 'Raising Concerns at Work' (Whistleblowing') and the 'Anti-fraud and corruption' strategy.	Head of Audit Partnership
To oversee the production of the authority's Annual Governance Statement and to agree its adoption.	Head of Finance & Resources Monitoring Officer/Head of Audit Partnership
The Council's arrangements for corporate governance and agreeing necessary actions to ensure compliance with best practice and high standards of ethics and probity. This Committee will receive the annual review of the Local Code of Corporate Governance and may make recommendations to Policy and Resources Committee for proposed amendments, as necessary.	Director of Regeneration and Communities/Monitoring Officer
To consider whether safeguards are in place to secure the Council's compliance with its own and other published standards and controls.	Directors and Heads of Service

### Standards

<b>FUNCTIONS</b>	<b>DELEGATION OF FUNCTIONS</b>
(a) The promotion and maintenance of high standards of conduct within the Council.	N/A
(b) To advise the Council on the adoption or revision of its Codes of Conduct.	N/A
(c) To monitor and advise the Council about the operation of its Codes of Conduct in the light of best practice, and changes in the law, including in relation to gifts and hospitality and the declaration of interests.	N/A

(d) Assistance to Councillors, Parish Councillors and co-opted members of the authority to observe the Code of Conduct.	N/A
(e) To ensure that all Councillors have access to training in Governance, Audit and the Councillor Code of Conduct; that this training is actively promoted; and that Councillors are aware of the standards expected under the Councils Codes and Protocols.	Democracy Committee to oversee Councillor training
(f) To deal with complaints that Councillors of the Borough Council and Parish Councils may have broken the Councillor Code of Conduct.	Monitoring Officer in consultation with an Independent Person, through informal resolution where possible.
(g) Following a formal investigation and where the Monitoring Officer's investigation concludes that there has been a breach of the Code of Conduct a hearing into the matter will be undertaken.  See the procedure at 4.2 of this Constitution for dealing with complaints that a Councillor has breached the Code of Conduct.	Hearings Sub-Committee comprising 3 Councillors (plus 1 non-voting parish representative when a parish councillor is the subject of the complaint).
(h) Advice on the effectiveness of the above procedures and any proposed changes.	Democracy Committee and Monitoring Officer
(i) Grant of dispensations to Councillors with disclosable pecuniary interests and other significant interests, in accordance with the provisions of the Localism Act 2011.	Monitoring Officer

## 2.13 DEMOCRACY COMMITTEE

### Membership: 9 Councillors

**Purpose:** To be responsible for Councillor training and development; to determine matters relating to elections, electoral registration; and other democratic services responsibilities and functions, including reviewing this constitution on a regular basis.

FUNCTIONS	DELEGATION OF FUNCTIONS
1. To recommend to the Council the	

appointment of an Electoral Registration Officer and Returning Officer.	N/A
2. To consider any matters relating to electoral registration, elections or electoral boundaries which have not been delegated to the Electoral Registration Officer or Returning Officer.	Electoral Registration Officer or Returning Officer.
3. To consider matters relating to the Mayoralty or Councillors generally, where appropriate.	N/A
4. To appoint Council nominees to outside bodies and seminars as appropriate.	N/A
5. To be responsible for the appointment of independent persons to the Independent Remuneration Panel for Councillors' Allowances.	N/A
6. Consider applications from persons wishing to act as Independent Persons in connection with Councillor and Statutory Officer conduct; and for the Independent Remuneration Panel and make recommendations to Council to appoint such persons.	N/A
7. To advise Councillors and the Head of Human Resources Shared Service on Councillor development priorities where appropriate.	Head of Finance and Resources
8. To regularly review the Constitution in conjunction with the Monitoring Officer and recommend proposed changes, where significant, to the Council.	The Monitoring Officer may make changes to the Constitution which are necessitated by decisions which remove inconsistency or ambiguity; which are minor; or to effect changes in the law.
9. The determination of an appeal against any decision made by or on behalf of the authority where there is a statutory appeals procedure and no other panel or Sub-Committee is appropriate elsewhere under this Part of the Constitution.	Panel of 3 Councillors

## 2.14 JOINT INDEPENDENT REMUNERATION PANEL

**Membership:** Three independent people, one representative each of the following:

- Kent Invicta Chamber of Commerce;
- South East Employers;
- Community, selected by the Democracy Committee following a written application process and interview.

**Purpose:** To recommend to Council the level of Councillors' allowances and expenses that should be paid to Councillors on Maidstone Borough Council.

In accordance with the requirements of the Local Authorities (Members' Allowances) (England) Regulations 2003, the terms of reference of the Independent Remuneration Panel are to:

- Make recommendations to the Borough Council as to the amount of basic allowance which should be payable to its elected Councillors, co-optees and Independent Persons;
- Make recommendations to the Borough Council about the role and responsibilities for which a special responsibility allowance should be payable and the amount of each such allowance.
- Make recommendations as to whether the authority's allowances scheme should include an allowance in respect of the expenses of arranging for the care of children and dependents and if it does make such a recommendation, the amount of this allowance and the means by which it is determined.
- Make recommendations as to whether the authority's allowance scheme should include a travelling subsistence allowance and whether Councillors' Allowances should be pensionable.
- Undertake a general review of the Councillors' Allowance Scheme of the Maidstone Borough Council, and make recommendations to the Council.

## **2.15 KENT JOINT WASTE MANAGEMENT COMMITTEE**

Membership: comprises the portfolio holders or designated members with responsibility for waste within the 12 Districts and the County. Each Councillor will be entitled to one vote and will act as the Partner Authority's appointed member.

Partner Authorities may each appoint another named person to act as a Deputy for their appointed Kent Joint Waste Management Committee Member. Where the appointed Committee Member is unable to attend a meeting, their Deputy may attend and speak in their absence and may vote.

**The purpose of the Joint Waste Management Committee (Objectives) is to:**

- ensure the delivery of the Joint Municipal Waste Management Strategy and Vision for Kent.
- provide a platform for cooperative and joint working to improve or deliver services
- act as a single voice for strategic waste issues for Kent local authorities and to influence Central Government and other bodies as necessary on key strategic waste issues
- increase awareness of waste as a resource and to interact with other stakeholders to promote waste minimisation and achieve an economically, environmentally and socially sustainable waste strategy
- work with and support as required statutory agencies, non governmental organisations (NGO's), small and medium sized enterprises (SME's), business, scientific and commercial organisations and other bodies who are in pursuit of developing, supporting and influencing the future direction of sustainable waste/resource management.

**The key functions of the Joint Waste Management Committee are to:**

- ensure the implementation, monitoring and review of the approved Joint Municipal Waste Strategy for Kent
- advise on the future development of the Joint Municipal Waste Strategy for Kent
- produce the Draft Annual Action Plan, including a budget, for approval by the Partner Authorities
- take decisions relevant to the implementation and future development of the Joint Waste Management Strategy and the Approved Annual Action Plan
- authorise any relevant expenditure as outlined in the budget of the Approved Annual Action Plan
- undertake joint funding applications relevant to the implementation and future development of the Joint Waste Management Strategy and the Approved Annual Action Plan
- act as a forum for consideration of strategic/operational municipal and other waste management issues in Kent
- encourage the adoption and sharing of waste management best practices and initiatives
- co-ordinate baseline evaluation and monitoring of services

- facilitate constructive partnership working
- inform and raise awareness of Councillors, officers, and the community with regards to key waste management and resource issues
- consult and engage key interested bodies and stakeholders
- influence, advise and lobby government and other agencies, both nationally and internationally, where to do so is consistent with Kent's Joint Municipal Waste Strategy and the Purpose of the Joint Waste Management Committee
- carry out such other activities calculated to facilitate, or which are conducive or incidental to the discharge of the Joint Waste Management Committee's function in implementing the Approved Annual Operating Plan.

## **2.16 JOINT TRANSPORTATION BOARD**

**Membership:** 9 Councillors from Maidstone Borough Council; and 9 Councillors from Kent County Council representing divisions in Maidstone Borough area; and a representative of the Parish Councils in the District.

**Purpose:** Collaboration on the delivery of highways functions where Kent County Council is the Highway authority, in the interests of Maidstone residents.

### **Term of Reference**

The Joint Transportation Board (JTB) will consider:

- (j) capital and revenue funded works programmes
- (ii) traffic regulation orders
- (iii) street management proposals

and will provide advice on these matters to the relevant Committee as appropriate.

Be a forum for consultation between KCC, Parish Councils and the Council on policies, plans and strategies related to highways, road traffic and public transport.

Review the progress and out-turn of works and business performance indicators.

Recommend and advise on the prioritisation of bids for future programmes of work.

Receive reports on highways and transportation need within the district.

The JTB will generally meet four times a year on dates and at times and venues to be specified by the Council in accordance with the normal arrangements in consultation with KCC.

The quorum for a meeting shall be four comprising at least two voting members present from each of KCC and the Council.

In alternate years a Member of KCC (who is a member of the JTB) will chair the JTB and a Council Member (who is a member of the JTB) will be Vice-Chairman of the JTB and then a Member of the Council will chair the JTB and a KCC Member will be Vice-Chairman of the JTB and so on following on the arrangements which existed in the year before this agreement came into force.

The Strategic Planning Sustainability and Transport Committee will be the lead body on behalf of the Council.

## **2.17 COUNCIL COMMITTEES AS CORPORATE TRUSTEE FOR CHARITIES**

### **3 Cobtree Manor Estate Charity Committee**

**Membership:** 5 Councillors appointed by the Council as Corporate Trustee. Quorum of this Committee is 3

#### **Terms of Reference**

To be responsible for all matters relating to the Registered Charity Number 283617 known as the Cobtree Manor, and the land known as Cobtree Manor Estate, Sandling, Maidstone, Kent, held by the Council as Trustee under a 999 year lease (with the exception of daily management of the Charity which will be undertaken by the Director of Regeneration and Communities).

### **The Queen's Own Royal West Kent Regiment Museum Trust Committee**

**Membership:** 5 Councillors appointed by the Council as Corporate Trustee. Quorum of this Committee is 3

#### **Terms of Reference**

To be responsible for all matters relating to the Registered Charity Number 1083570 known as The Queen's Own Royal West Kent Regiment Museum Trust (with the exception of daily management of the Charity and reporting to the Prince of Wales' Royal Regiment representative, which will be undertaken by the Director of Regeneration and Communities and the Museums and Heritage Manager).

## **3 RESPONSIBILITY FOR FUNCTIONS RELATING TO OFFICERS**

The Chief Executive, Directors and Heads of Service will be responsible for the execution of functions and the provision of all the services under their respective headings as set out below, having authority to act on all such matters (including the authorisation of legal proceedings and the issue and service of notices) and deal with staffing matters in their service, subject to:

- (a) actions being taken being in accord with the Council's Budget and Policy Framework; and
- (b) the referral of any required decision or action which is controversial in nature to the appropriate Councillor decision making body.

The Head of Planning and Development, Head of Legal Partnership, Head of Finance and Resources, Head of Housing and Community Development, Head of Audit Partnership, Head of Human Resources Shared Services, Head of Policy and Communications, Head of ICT Shared Services, Head of Revenues and Benefits Shared Service, Head of Environment and Public Realm and Head of Commercial and Economic Development are all Heads of Service for the purpose of the Constitution.

The Chief Executive, Directors and Heads of Service may exercise the following functions:-

- appointment and dismissal of staff below Chief Executive level;
- all exercises of discretion under Council policies relating to staff;
- secondment of staff, including under section 113 Local Government Act 1972;
- to implement approved schemes and projects and incur expenditure on items approved within the Council's approved Budget. Each Director is responsible for the supervision of the expenditure of their Directorate and for reporting to the appropriate Committee any proposed expenditure not included, or in excess of, the amount included in their estimate.
- deal with everything related to or associated with their designated areas of responsibility, except insofar as such functions are reserved to the Council, Committees or Sub-Committees from time to time.

The Chief Executive, Directors and Heads of Service may authorise any other officer of the Council to exercise their delegated functions on their behalf. This must be evidenced in writing in an officer's job description; a list of delegations to officers shall be maintained by the Monitoring Officer specifically for a particular function; or generally.

All Officers who take delegated decisions shall keep an appropriate record of the date that the decision was taken, the principal considerations involved in reaching the decision and the reasons for the decision. In exercising delegated authority, regard must be had to:

- a) All relevant considerations, disregarding irrelevant considerations, ensuring that the decision is reasonable and proportionate in the circumstances of the case and particularly having regard to the

Council's fiduciary duties; duty of best value; equalities duties; human rights impact if any; and other relevant statutory duties (i.e. biodiversity, public health, climate change and crime and disorder reduction).

- b) The lawfulness of the decision in terms of statutory powers and compliance with relevant procedural rules and other legal or procedural requirements.
- c) Acting for a Proper purpose, consistent with the Council's purposes and vision.
- d) Following financial and contract procedure rules, information and advice.
- e) Ensuring high standards of integrity and probity.

Where an Officer considers it appropriate, the Officer shall be entitled to refer matters for decision to a more Senior Officer or to the appropriate Councillor body.

All Directors and Heads of Service shall be responsible for health and safety at work within their area of responsibility.

#### **Action in Response to a Major Emergency:**

The most senior officer of the authority present will have the authority to approve any expenditure in expediting the Council's response to a major emergency affecting the Borough where it is not possible to refer the matter for decision to a more senior officer of the Council, in consultation with the Leader of the Council, or the Policy and Resources Committee or the Urgency Committee.

### **3.1 CHIEF EXECUTIVE**

The Chief Executive has direct responsibility for the provision of the following services together with those separately listed which are undertaken in the Sections of his/her Department or other Directorates. The Chief Executive may undertake any decision in respect of these services as required.

1. The provision of policy advice to the Council, Committees and Sub-Committees, ensuring that they receive such guidance and advice as will enable them to use the Council's resources to the best advantage in the development of its strategies and policies. Specifically to ensure that the Council has advice on the establishment and structure needed to carry out efficiently the work of the Council.
2. The exercise of authority over all other officers of the Council so far as this is necessary for the efficient management of the Council's functions.

3. Supervising, co-ordinating and ensuring the implementation of the Council's decisions. Specifically to lead the Council's Corporate Leadership Team in securing a co-ordinated approach to the affairs of the Council generally.
4. Ensuring the propriety of the Council's actions (together with the Monitoring Officer).
5. The research and development of corporate policy options for consideration by Councillors.
6. The development of beneficial relations between Councillors and officers of the Council.
7. The promotion and safeguard of the best interests of the Council locally and nationally. Specifically to liaise with national and local associations, authorities, groups, companies, organisations and individuals to further the policies and objectives of the Council.
8. Provision of advice and support on the implementation and delivery of Best Value.
9. The preparation and submission of the draft Strategic Plan, Sustainable Community Strategy and any other corporate plans and policies and upon approval by Council, the implementation of the Plans.
10. Responsibility for undertaking negotiations and consultation with staff through their trade unions on all matters relating to employment.
11. To hear and determine appeals under the Grievance, Capability or Disciplinary (Level 4) Procedures for all categories of employees.
12. To take any action necessary in connection with any civil emergency or disaster including response, recovery and business continuity as may be required from time to time.
13. To exercise a power delegated to any other Chief Officer of the Council when that Officer is unable or unwilling to act, or to authorise another person to exercise such functions in the absence of that Officer (for example if neither the Monitoring Officer nor the Deputy Monitoring Officer is available and willing to act).
14. To submit responses to government and other bodies, consulting on changes to legislation and policy, as considered appropriate, following consultation with the appropriate Committee Chairman.
15. To authorise any action necessary to give effect to any decision to the Council, or any board, Committee, sub-Committee for involvement in partnerships or outside bodies.

16. To be responsible for corporate communications including official publicity, public relations and liaison with the press.
17. To be the Returning Officer for the election of Councillors for the Borough, for Parishes within the Borough and for Members of Parliament and the European Parliament, as required.
18. To exercise all Electoral Registration and Returning Officer functions, including as to polling stations, or delegate such functions, as required.
19. To exercise all functions in relation to parishes, parish councils and community governance.
20. To make payments or provide other benefits in case of maladministration etc. up to £10,000.
21. To appoint officers for particular statutory purposes (appointment of "Proper Officers").

### **3.2 Head of Policy and Communications**

- (1) To deal with stage 2 complaints.
- (2) Implementation of the Council's Performance Management System.
- (4) The provision of Public Relations, Marketing, and Public Consultation Services.
- (5) Responsibility for a Communication and Engagement Strategy.
- (6) The provision of customer services channels including face to face, telephone and website.
- (7) The development and implementation of the Council's Customer Care Strategy
- (8) To be responsible for Corporate Governance.
- (9) To be responsible for Equalities.
- (10) To be responsible for Freedom of Information, complaints handling, customer feedback.
- (11) To be responsible for business transformation.
- (12) To be the Council's Senior Information Risk Owner.

### **3.3 Head of Planning and Development**

- (1) Handling and determination of all applications submitted under the Town and Country Planning Acts in accordance with criteria as set out in the Constitution, including the adoption of screening and scoping opinions in relation to Environmental Statements.
- (2) The enforcement of all aspects of planning control.
- (3) Exercising all other functions relating to planning, conservation areas, listed buildings and trees.
- (4) Taking action to remove gypsies and travellers from non-Council owned land.
- (5) Responsibility for the Council's local land charges service.
- (6) Providing heritage asset conservation and landscape advice in the determination of planning applications and policy.
- (7) Responsibility for all aspects of heritage asset conservation and Tree Preservation and advice, including: proposing buildings for listing, amendments and Orders within Conservation Areas, making Tree Preservation Orders and determining applications for works to Preserved Trees and section 211 notices on trees in conservation Areas.
- (8) Responsibility for functions relating to High Hedges legislation.
- (9) All aspects of the preparation of statutory and non-statutory spatial planning documents on any relevant matter including planning tariff and infrastructure planning and advice to Council, developers and others on these matters.
- (10) Procuring and securing of relevant technical and consultancy advice on the matters to the above.
- (11) Authority to liaise with the highways authorities, strategic planning bodies and neighbouring authorities and other bodies on matters relevant to coordinated strategic transport and spatial planning.
- (12) Handling and determination of all applications submitted under the building regulations and enforcement of building regulations.
- (13) The exercise of control over demolitions and dangerous structures under the Public Health Acts and Building Act.
- (14) Obtaining information under Section 330 of the Town and Country Planning Act 1990.
- (15) Policy and strategic advice to Councillors and Council officers on all the above.

- (16) Making representations to Government and other authorities on these matters and any new legislation or policies and guidance impacting on all the above matters for which the officer has responsibility.

### **3.4 DIRECTOR OF REGENERATION AND COMMUNITIES**

The Director has responsibility for the provision of the following services. The Director of Regeneration and Communities may exercise any function in respect of these services as required.

The Director of Regeneration and Communities is the authorised officer for Responsible Authority Functions under the Gambling Act 2005 and the Licensing Act 2003.

The Director of Regeneration and Communities is also the Council's Chief Finance Officer, responsible for the proper management of the Council's financial affairs.

### **3.5 Head of Commercial and Economic Development**

- (1) Implementation of the Economic Development and Regeneration Strategy for Maidstone Borough.
- (2) Responsibility for the delivery of initiatives across the Borough to further the Council's corporate priority for Maidstone to have a growing economy.
- (3) Implementation of the Visitor Economy strategy for Maidstone Borough.
- (4) Identification, development and mobilisation of projects to increase the quantum and resilience of the Council's income from commercial activities and its commercial property portfolio.
- (5) Responsibility for international activities and relationships established by the Council.
- (6) Responsibility for the contract with the external operator for the Hazlitt Theatre.
- (7) Responsibility for the Museums in Maidstone Borough and the provision of the various facilities and activities at these sites.
- (8) Responsibility for the development and provision of leisure facilities and activities including the contract with the external operator for Maidstone Leisure Centre.
- (9) Responsibility for the provision and development of the Borough's parks and open spaces and the monitoring of all contracts in respect of grounds maintenance.

- (10) Responsibility for the management of the Cobtree Trust and Estate.
- (11) Responsibility for the management of The Queen's Own Royal West Kent Regiment Museum Trust.
- (12) Management of the Lockmeadow Market.

### **3.6 Head of Finance and Resources**

- (1) The provision of financial advice throughout the authority to Officers and Councillors.
- (2) The maintenance of corporate financial systems and ensuring the financial integrity of all other systems.
- (3) The compilation of financial accounts in accordance with statutory requirements.
- (4) Compilation and submission of grant claims.
- (5) The provision of corporate financial services.
- (6) The provision of general financial advice on the allocation of resources for concurrent functions.
- (7) Operation of the receipt of payments service.
- (6) Organisation of the Mayoral function, Civic matters and Town Hall.
- (7) The provision of Facilities for Councillors.
- (8) The servicing of the Council's Committees and Sub-Committees.
- (9) Provision of a printing service.
- (10) The production of an annual register of electors and responsibility for the running of elections, electoral boundaries and all parish council matters.
- (11) To provide through the Property and Procurement Section:-
  - (a) Policy and strategic advice to Councillors and Council officers on all technical and consultancy matters.
  - (b) The procurement and supervision of a full range of architectural, building and engineering related professional services to ensure the completion of the various Council construction programmes through all work stages from inception/feasibility to completion and final account.
  - (c) Collation and holding of professional and trade references.

- (d) Conservation and preservation of the Council's stock of civic buildings.
  - (e) Preparation and holding of archival, historic and statistical information on Council buildings.
  - (f) Community Projects relating to construction activities.
  - (g) Responsibility for land drainage matters.
  - (h) Flood plan advice, flood risk management co-operation and liaison with the Environmental Agency on flooding and related matters.
  - (i) Advice on procurement services
- (12) Acquisition and disposal of land and buildings, including all appropriations between purposes.
  - (13) The management and maintenance of all general fund properties and all non-operational properties.
  - (14) The provision of a valuation service for the Council.
  - (15) The provision of a property advisory service.
  - (16) Authorise all special categories of sale pursuant to paragraph 6 of the Contract Procedure Rules for Land including right to buy sales; where the Council is mortgagee; non-operational land not exceeding 0.25 hectares etc.
  - (17) To be responsible for taking action to remove gypsies and travellers from Council land.

### **3.7 Head of Housing and Community Services**

- (1) All aspects of community safety and crime and disorder reduction.
- (2) The provision of a sport play and youth development service.
- (3) Ensure the Council's duties and obligations in relation to homelessness and the operation of the Council's allocation scheme are fulfilled.
- (4) Manage all forms of temporary accommodation in connection with the Council's homelessness duties including entering into lease agreements and service of any related notices.
- (5) The development of policies on social inclusion, community development and community planning.

- (6) Undertaking any special housing initiatives that might arise.
- (7) Ensuring that private sector housing standards are achieved, in particular as they relate to houses in multiple occupation and unfit dwellings.
- (8) Operation of the grants system for renovating private sector properties.
- (9) Perform the Council's duties and obligations in connection with private sector housing including enforcement measures.
- (10) Enter into arrangements with third parties to enable the delivery of new affordable housing including authorising payments either directly or via government appointed bodies.
- (11) The management of Gypsy and traveller caravan sites.
- (12) The drafting and implementing of the Council's Housing Strategy, including the preparation of the Housing Investment Programme and its submission to the Secretary of State.
- (13) The development of the Council's housing enabling role, including liaison with the Homes & Communities Agency and Housing Providers as appropriate.
- (14) Compact, relationships and funding with the voluntary and community sector.
- (15) The development of an art strategy for the Borough and the provision of a varied events programme during the year.
- (16) The various halls used for recreational purposes throughout the Borough.
- (17) Advice to the Council and other organisations on all matters relating to grants and lottery applications.
- (18) The Sustainable Community Strategy and renewable energy strategy.
- (19) All licensing functions (not otherwise delegated or prohibited).
- (20) All gambling functions (not otherwise delegated or prohibited).
- (21) To ensure that sustainable development policies and good environmental working practices are widely promoted and integrated into the day to day working practices of the Council and publicised to all sectors of the wider community.
- (22) The hygiene and control of food including the provision of safe food, control of standards, meat inspection and education.

- (23) The control of infectious diseases and the general health and wellbeing of the local population.
- (24) The provision of a health promotion service, including home and water safety.
- (25) The enforcement of the Sunday Trading Act 1994.
- (26) Road closure orders.
- (27) The provision of advice and taking actions to further the aim of sustainability and tackle climate change both internally within the Council and externally throughout the Borough.
- (28) Enforcement of Health and Safety at work legislation, including the appointment of Inspectors.
- (29) Deal with issues arising from contaminated land.
- (30) The discharge of any function relating to pollution control (including noise, air, land, water and private drainage) and the management of air quality.
- (31) Pollution control including noise, air, land, water and private drainage and the service of any abatement notice in respect of a statutory nuisance.
- (32) To make Public Space Protection Orders and Orders under the Antisocial Behaviour Act 2003.

### **3.8 DIRECTOR OF THE ENVIRONMENT AND SHARED SERVICES**

- (1) The Director of Environment and Shared Services has responsibility for the provision of the following services. The Director may undertake any function in respect of these services as required.
- (2) Emergency Planning Function and to lead the Council's response.
- (3) The operation of the Park and Ride car parks in the Borough.
- (4) Decriminalised Parking service and the provision of off-street parking facilities.
- (5) Undertaking consultation concerning and making traffic regulation orders.
- (6) Health and Safety and Corporate Manslaughter.
- (7) Taking action to foster an efficient and attractive public transport network in the Borough, including the development of the Park and Ride service and implementation of the concessionary fares scheme.

### **3.9 Head of Environment and Public Realm**

- (1) Responsibility for the development and provision of a cleansing service including street cleansing, refuse collection, public conveniences, and building cleaning, and also including the enforcement of litter and waste control.
- (2) The inspection of the authority's area to detect any statutory nuisance and the investigation of any complaints as to the existence of any statutory nuisance.
- (3) The monitoring of Council contracts in respect of all cleansing services.
- (4) Co-ordination and implementation of environmental improvement schemes in accordance with the Council's strategy.
- (5) Responsibility for the development and provision of a grounds maintenance service including parks and open spaces, horticulture, arboriculture and sports pitches.
- (6) The responsibility for the Vinters Park Crematorium and Maidstone Cemetery.
- (7) The responsibility for the central purchasing of vehicle and transport supplies.
- (8) The responsibility for running a Direct Services Organisation (DSO).
- (9) Ensuring that the optimum level of the works and services provided by the Council in the areas of Highways and Sewers, Grounds Maintenance, Emergencies and any other areas as determined by the Council are undertaken.
- (10) To be responsible for the Enforcement of Street Trading Legislation (including the Maidstone Borough Council Act 2006 and any other functions arising under the Act).
- (11) To be responsible for the Enforcement of Smoke Free Legislation.
- (12) To be responsible for the Council's Emergency Response Service.
- (13) Responsibility for a pest control service, enforcement against pest concerns and the cleansing filthy or verminous premises.
- (14) To be responsible for the licensing of caravan sites.
- (15) Inspection of the authority's area to detect any statutory nuisance (including relating to litter, noise in the street and waste) and the service of any abatement notice in respect of a statutory nuisance.

- (16) To be responsible for the development and provision of animal welfare and dog control, including enforcement.

### **3.10 MID KENT SERVICES**

#### **Head of Audit Partnership**

- (1) The provision of an adequate and effective system of internal audit of the Council's accounting records and its system of internal control in accordance with the proper practices in relation to internal control as prescribed by the Accounts and Audit Regulations 2015.
- (2) The maintenance the Council's Strategic Risk Register and the provision of advice and guidance on the principles and practices of Risk Management and counter-fraud.
- (3) To be the principal point of contact on Public Interest Disclosure Act referrals (Whistleblowing); to arrange for investigation and action as appropriate.

### **3.11 Head of Human Resources Shared Service**

- (1) The provision of advice to Councillors and Officers of the Council on all aspects of personnel policy and issues including employment issues, conditions of service, pay and grading, pensions and superannuation discretion..
- (2) The administration of the Council's scheme of job evaluation for the grading of posts.
- (3) Ensuring that the Council's personnel policies and procedures comply with employment legislation and EC Directives.
- (4) The approval of all staff qualification training; planning and design of in-house training services and co-ordination of the Youth Training Scheme.
- (5) Ensuring the payment of salaries, wages and associated employer expenses to employees and Councillors, and advising on pension matters.
- (6) Ensuring the appropriate development of Councillors and Officers.
- (7) Ensuring that the Council's Health and Safety at Work policies and procedures comply with legislation and EC Directives including Fire Regulations and training.

### **3.12 Head of IT Shared Services**

- (1) The provision of advice on the formulation of the Council's IT Strategy and the facilitation of Corporate IT activities so that they may remain within the corporate IT Strategy.

- (2) The provision of a central purchasing service for all IT related functions including hardware, software and consumables.
- (3) The provision of a strategic input to decisions on matters concerning new technology.
- (4) Maintaining all appropriate Data Protection and other registrations with the Information Commissioner's Office.

### **3.13 Head of Legal Partnership**

- (1) The provision of advice to Councillors and Officers of the Council on all legal issues.
- (2) The provision of a legal service relating to the Council's functions.
- (3) Provision of advice to Councillors, the Council and Committees on the operation of the Constitution.
- (4) Dealing with the Local Government Ombudsman.
- (5) All Monitoring Officer duties, including maintaining the registers of Councillors and Officers interests and gifts and hospitality; granting dispensations to speak and vote at meetings as appropriate; authority to investigate (or arrange for the investigation of) Councillor misconduct; and to resolve matters informally where s/he considers appropriate after consulting the Independent Person.
- (6) The authorisation of Council Officers to appear on behalf of the Council in legal proceedings.
- (7) Obtaining information under Section 330 of the Town and Country Planning Act 1990.
- (8) The Head of Legal Partnership is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Head of Legal Partnership considers that such action is necessary or appropriate to protect the Council's interests.
- (9) Where any document is necessary to any legal procedure or proceedings on behalf of the Council it will be signed by the Head of Legal Partnership or other person authorised by him/her unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.
- (10) Contracts exceeding the value specified with the Financial Procedure Rules must be made under the common seal of the Council attested by the Head of Legal Partnership or other authorised signatory, unless the Head of Legal Partnerships considers that certain contracts may be signed rather than sealed.

- (11) The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal Partnership. A decision of the Council or a Committee or Sub-Committee or Officer will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Partnership, should be sealed. The affixing of the Common Seal will be attested by the Head of Legal Partnership or any other solicitor authorised by him/her.
- (12) The Monitoring Officer has delegated authority to make changes to the Constitution which are necessitated by decisions taken by the Council; which remove inconsistency or ambiguity; which are minor; or to effect changes in the law.

### **3.14 Head of Revenues and Benefits Shared Services**

- (1) The administration, collection and recovery of non-domestic rates and Council Tax, including determining any discretionary items in connection with local taxation or national non-domestic rates.
- (2) The determination, administration and making payments including arranging abatements and rebates for Council Tax Benefit and Housing Benefit including determining any discretionary items in connection with Council Tax Benefit and Housing Benefit.

#### 4. THE "PROPER OFFICER" PROVISIONS

<u>Function</u>	<u>Proper Officer</u>	<u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u>
(1) Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to <b>the Clerk</b> of a Council or the Town Clerk of a Borough.	Chief Executive	Monitoring Officer
(2) Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to <b>the Treasurer</b> of a local authority.	Chief Finance Officer	Head of Finance and Resources
(3) The following provisions of the <b>Local Government Act 1972</b> :-  (a) Section 115(2) – the Officer who shall receive all money due from any other Officer of the Council.  (b) Section 146(1) – the Officer who (upon a transfer of securities the alteration of the name of the District) shall make a statutory declaration specifying the securities and verifying the change of name and identify of the Council or shall give such a certificate as is prescribed.  (c) Section 151 – the Officer having responsibility for the	Chief Finance Officer  Chief Finance Officer  Chief Finance Officer	Head of Finance and Resources  Head of Finance and Resources  Head of Finance and

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
proper administration of the financial affairs of the Council.		Resources
<p>(4) The following provisions of the <b>Representation of the People Act 1983</b>:</p> <p>(a) Section 8 and Section 52 – the Registration Officer for any constituency of part of a constituency coterminous with or situated in the Borough.</p> <p>(b) Section 35(1) – the Returning Officer for elections of Councillors of the District and for elections of Councillors of Parishes within the District and 52 Deputy Electoral Registration Officer.</p> <p>(c) Section 82 – To receive declarations of Election expenses</p>	<p>Chief Executive</p> <p>Chief Executive</p> <p>Chief Executive</p>	<p>Head of Finance and Resources</p> <p>Electoral Registration Officer Head of Finance and Resources</p> <p>Head of Finance and Resources</p>
<p>(5) The follow following provisions of the <b>Local Government Act 1972</b>:</p> <p>(a) Section 83(1) – the Officer to whom a person elected shall deliver a declaration of acceptance of office in a form prescribed by rules made under Section 42 of the Act.</p> <p>(b) Section 84 – the Officer to whom a Councillor may give written notice of resignation.</p> <p>(c) Section 86 – declare any vacancy in office.</p>	<p>Chief Executive</p> <p>Chief Executive</p> <p>Chief Executive</p>	<p>Head of Finance and Resources</p> <p>Head of Finance and Resources</p> <p>Head of Finance and Resources</p>

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
(d) Section 88(2) – the Officer who may convene a meeting for the election of Chairman of the Council following a casual vacancy in that office.	Chief Executive	Head of Finance and Resources
(e) Section 89(1) – the Officer to whom notice shall be given of any casual vacancy occurring in the office of Councillor.	Chief Executive	Head of Finance and Resources
(f) Section 191(2) – the Officer who shall receive an application under section 1 of the Ordnance Survey Act 1841.	Director of Regeneration and Communities	Head of Finance and Resources
(g) Section 210(6) – the Officer who shall exercise the powers relating to charities conferred by these subsections.	Director of Regeneration and Communities	Head of Finance and Resources
(h) Section 223 – authorise Officers to appear in legal proceedings (and Section 60 County Courts Act 1984).	Monitoring Officer	Deputy Monitoring Officer
(i) Section 225(1) – the Officer who shall receive and retain documents deposited with the Council pursuant to the Standing Orders of either Houses of Parliament or to any enactment or instrument, and shall take such action relating to these documents as may be directed.	Director of Regeneration and Communities	Head of Finance and Resources
(j) Section 229(5) – the Officer who shall certify a photographic copy of a document in the custody of the Council, or of a document which has been	Head of Finance and Resources	Monitoring Officer

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
<p>destroyed while in the custody of the Council, or of any part of any such document.</p> <p>(k) Schedule 12, Part I, para 4(3) – the Officer to whom a member of the Council shall give notice in writing desiring summonses to attend meetings of the Council to be sent to an address specified in the notice other than his/her place of residence.</p> <p>(l) Schedule 14, Part II, para 25(7) – the Officer who shall certify a resolution of the Council applying or disapplying provisions under the Public Health Acts 1875-1925.</p> <p>(m) Section 234(1) – the Officer whose signature shall authenticate any notice, order of other document which the Council is required or authorised to issue by or under any enactment.</p> <p>(n) Section 236(9) – the Officer who shall send a copy of every byelaw made by the Council and confirmed to the Proper Officer of every parish to which they apply.</p> <p>(o) Section 236(10) – the Officer who shall send a copy of every byelaw made by the Council and confirmed to the Council of the County.</p>	<p>Head of Finance and Resources</p>	<p>Democratic Services Officer</p> <p>Chief Executive</p> <p>Monitoring Officer</p> <p>Monitoring Officer</p> <p>Monitoring Officer</p>

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
<p>(p) Section 238 – the Officer who shall certify a printed copy of a byelaw of the Council.</p> <p>(q) Section 248 – to keep the roll of Freeman.</p> <p>(r) In relation to Section 13(3) of the Local Government Act 1972 – the Officer who together with the Chairman of the Parish Member shall be a body corporate by the name “The Parish Trustess”.</p> <p>(s) The Officer responsible for the convening of newly created Parish Councils.</p>	<p>Monitoring Officer/Head of Service</p> <p>Chief Executive</p> <p>Chief Executive</p> <p>Chief Executive</p>	<p>Monitoring Officer</p> <p>Head of Finance and Resources</p> <p>Head of Finance and Resources</p> <p>Head of Finance and Resources</p>
<p><b>(6) Local Government and Housing Act 1989</b></p> <p>3A - To determine applications for exemption from the list of politically restricted posts</p> <p>2 - Maintain a list of politically restricted posts</p> <p>4 – Head of Paid Service</p> <p>5 – Monitoring Officer</p> <p><b>Local Government and Housing Act 1989 Sections 15-17 and Local Government (Committees and Political Groups) Regulations 1990</b></p> <p>Regulation 9 – Receipt of Notice re</p>	<p>Chief Executive</p> <p>Chief Executive</p> <p>Chief Executive</p> <p>Head of Legal Partnership</p> <p>Chief Executive</p>	<p>Monitoring Officer</p> <p>Monitoring Officer</p> <p>Any Director</p> <p>Team Leader Corporate Governance</p> <p>Head of</p>

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
<p>Political Groups</p> <p>10 – Receipt of Notice of Cessation of Membership of Political Groups</p> <p>13 – To accept wishes of Political Groups in respect of proportionality</p> <p>14 – To notify Political Groups of allocations</p>	<p>Chief Executive</p> <p>Chief Executive</p> <p>Chief Executive</p>	<p>Finance and Resources</p> <p>Head of Finance and Resources</p> <p>Head of Finance and Resources</p> <p>Head of Finance and Resources</p>
(7) All other cases in respect of which the Strategic Director has from time to time been appointed as the Proper Officer of the Council.	Director of Regeneration and Communities	Chief Executive
<p><b>(8) Local Government (Miscellaneous Provisions) Act 1976</b></p> <p>(a) Section 16 – Service of notices requiring details of any interests in land</p> <p>(b) Section 41 of the – the Officer for certifying documents as provided for under this section.</p>	<p>Directors and Heads of Service</p> <p>Head of Finance and Resources</p>	<p>Chief Executive</p> <p>Chief Executive</p>
Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972 or in any instrument made before 26 October 1972 to the Public Health Inspector.	Director of Regeneration and Communities	Head of Housing and Community Services
<p><b><u>PART I PUBLIC HEALTH ENACTMENTS</u></b></p> <p><b>Public Health Act 1936</b></p> <p><b>Public Health (Control of Disease) Act 1984</b></p>		

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
<p>Section 11 - Duty of local authority to supply forms to doctors for purposes of Section 48.</p> <p>Section 48 - Removal of dead body to mortuary for burial.</p> <p>Section 58 - Authentication of documents.</p> <p>Section 60 - Service of notices and other documents.</p>	<p>Head of Housing and Community Services</p> <p>Head of Housing and Community</p> <p>Head of Housing and Community</p> <p>Head of Housing and Community</p>	<p>Director of Regeneration and Communities</p>
<p><b><u>PART II STATUTORY INSTRUMENT</u></b></p> <p>Health Protection (Notification) Regulations 2010/659 Including cases of infectious disease to be notified to proper officer and disclosure of information/notices</p> <p>Public Health (Fees for Notification of Infectious Disease) Order 1968 (SI 1968 No. 1365).</p> <p>Public Health (Prevention of Tuberculosis) Regulations 1925 (SI 1925 No. 757).</p> <p>Food Hygiene (Docks, Carriers etc) Regulations 1960 (SI 1960 No. 1602) Article 11.</p>	<p>Head of Housing and Community Services</p> <p>Head of Housing and Community</p> <p>Head of Housing and Community</p> <p>Head of Housing and Community</p>	<p>Director of Regeneration and Communities</p>

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
Public Health (Aircraft) Regulations 1979 No. 1434).	Head of Housing and Community	Director of Regeneration and Communities
Public Health (Ships) Regulations 1979 (SI 1979 No. 1435).	Head of Housing and Community Services	Director of Regeneration and Communities
<b>Local Government Act 1974</b>		
Part 3 – Local Government Ombudsman functions, including giving public notice of reports	Chief Executive	Monitoring Officer
<b>Local Government Miscellaneous Provisions Act 1982</b>	Head of Housing and Community Services	Director of Regeneration and Communities
<b>Building Act 1984</b>		
78 – Authorise action in relation to dangerous structures	Head of Planning and Development	Building Control Officers
The local registrar within the meaning of the Land Registration Act 2002 and <b>Local Land Charges Act 1975</b> who shall register any matters specified by these Acts affecting land and situate within the district.	Head of Planning and Development	Chief Executive
<b>Food Safety Act 1990 – Food Safety and authentication of documents</b>	Head of Housing and Community Services	Director of Regeneration and Communities
<b>Freedom of Information Act 2000</b>		
36 – Non-disclosure where potential to prejudice the effective conduct of public affairs	Chief Executive	Monitoring Officer
<b>Local Authorities (Referendum) (Petitions and Directions) Regulations 2000 as amended</b>		

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
Whole – Proper Officer function	Monitoring Officer	Head of Finance and Resources
<b>Licensing Act 2003</b> Whole – Proper Officer function	Director of Regeneration and Communities	Head of Housing and Community Services
<b>Localism Act 2011</b>  29 – Establish and maintain a register of members' and co-opted members' interests  30 – 31 – Receipt of Members and co-opted members' declarations of interests and changes to those interests within 28 days  32 – Sensitive Interests  33 – Dispensations from restrictions under Section 31(4)	Monitoring Officer  Monitoring Officer  Monitoring Officer  Monitoring Officer	Deputy Monitoring Officer  Deputy Monitoring Officer  Deputy Monitoring Officer  Deputy Monitoring Officer
<b>Local Authorities (Conduct of Referendums) (England) Regulations 2012</b>  Whole – Proper Officer function	Monitoring Officer	Head of Finance and Resources
<b>Anti-Social Behaviour Act 2003 and Anti-Social Behaviour, Crime and Policing Act 2014</b> Whole-Proper Officer function	Head of Housing and Community Services	Director of Regeneration and Communities
Any other provisions for which arrangements are not specifically made under the Scheme of Delegation.	Chief Executive to authorise	Monitoring Officer
Any other legislation whether made before or after this list was approved and requiring	Chief Executive to authorise	Monitoring Officer

<b><u>Function</u></b>	<b><u>Proper Officer</u></b>	<b><u>Person to act in the event of the Proper officer being absent or otherwise unable to act</u></b>
a proper officer or authorised officer where not otherwise stated in this list or the Council's approved scheme of delegation from time to time.		

<b><u>COUNCIL PROCEDURE RULES</u></b>		
Rule 3 – Calling and Cancellation of Meetings.	Chief Executive	Director of Regeneration and Communities
Rule 6 – Time and place of meetings.	Chief Executive	Director of Regeneration and Communities
Rule 7 – Give notice to the public of the time and place of meeting and at least five clear days before a meeting send a summons signed by him or her to every Member of the Council.	Chief Executive	Director of Regeneration and Communities
Rule 9 - Set a date in consultation with the Mayor and Group Leaders for the remaining business of an inquorate meeting to be conducted, where there is no agreement between a majority of the Members present.	Head of Finance and Resources	Chief Executive
Rule 10 (b) - Set a date in consultation with the Mayor and Group Leaders for the remaining business of an adjourned meeting to be conducted, where there is no agreement between a majority of those Members present.	Head of Finance and Resources	Chief Executive
Rule 12 (b) (i) - Receipt of petition wording in writing at least two weeks before the meeting.	Head of Finance and Resources	Chief Executive
Rule 12(b) (iii) - Receipt of petition at least one clear date before the meeting.	Head of Finance and Resources	Chief Executive
Rule (b) (viii) - Receipt of petitions.	Head of Finance and Resources	Chief Executive
Rule 13.3 – Receipt of questions in writing or by e-mail no later than close of the office one clear working day before the meeting.	Head of Finance and Resources	Chief Executive
Rule 13.5 – Rejection of questions.	Head of Finance	Chief Executive

Rule 13.6 – Entering questions in a book open to public inspection and sending a copy of questions to the Member to whom it is to be put.	and Resources	Chief Executive
Rule 14 - (a) (ii) Questions by Members.	Head of Finance and Resources	Chief Executive
Rule 15.1 – Receipt of a request to speak no later than 5pm one clear day before the meeting	Head of Finance and Resources	Chief Executive
Rule 17.1 - Receipt of notices of motion.	Head of Finance and Resources	Chief Executive
Rule 17.7 - Ruling of notices of motion out of order or illegal.	Head of Finance and Resources	Chief Executive
Rule 29.1 (a) - Request to speak.	Head of Finance and Resources	Chief Executive
Rule 29.1 (b) - Keeping a reserve list of speakers for Planning Committee.	Head of Finance and Resources	Chief Executive
100B(2),(7) and 100H - Excluding from the Public reports which are not likely to be considered in open session; and provision to the press/public of other documents provided to Councillors where the Proper Officer thinks fit.	Head of Finance and Resources	Chief Executive
100C(2) - Where part or the whole of the report has been exempt the Proper Officer shall make a written summary of the proceedings or part to provide a record without disclosing the exempt information.	Directors and Heads of Service	Directors and Heads of Service
100D - Compilation of list of background documents, relied upon to a material extent in producing the report or disclosing important facts.	Directors and Heads of Service	Democratic Services Officer
100F - Deciding whether documents for inspection in connection with Committees contain exempt information under a paragraph of Schedule 12A.	Directors and Heads of Service	Democratic Services Officer

100G (optional) - Maintain a list of Councillors and list of delegations to officers and the like.	Head of Finance and Resources	Democratic Services Officer
<b>Local Government and Housing Act 1989</b>		
3A - To determine applications for exemption from the list of politically restricted posts	Chief Executive	Monitoring Officer
2 - Maintain a list of politically restricted posts	Chief Executive	Monitoring Officer
4 - Head of Paid Service	Chief Executive	Any Director
5 - Monitoring Officer	Head of Legal Partnership	Team Leader Corporate Governance
<b>Representation of the People Act 1983</b>		
8 - Electoral Registration Officer	Chief Executive	Electoral Registration Officer
35 - Returning Officer	Chief Executive	Electoral Registration Officer
52 - Deputy Electoral Registration Officer	Electoral Registration Officer	Democratic Services Officer
82 - To receive declaration of Election expenses	Chief Executive	Electoral Registration Officer
<b>Local Government and Housing Act 1989 Sections 15-17 and Local Government (Committees and Political Groups) Regulations 1990</b>		
Regulation 9 - Receipt of Notice re Political Groups	Chief Executive	Head of Finance and Resources
10 - Receipt of Notice of Cessation of Membership of Political Groups	Chief Executive	Head of Finance and Resources
13 - To accept wishes of Political Groups in respect of proportionality	Chief Executive	Head of Finance and Resources
14 - To notify Political Groups of	Chief Executive	Head of Finance

allocations		and Resources
<b>Local Government Act 1974</b>		
Part 3 – Local Government Ombudsman functions, including giving public notice of reports	Chief Executive	Monitoring Officer
<b>Freedom of Information Act 2000</b>		
36 – Non-disclosure where potential to prejudice the effective conduct of public affairs	Chief Executive	Monitoring Officer
<b>Local Authorities (Referendum) (Petitions and Directions) Regulations 2000 as amended</b>		
Whole – Proper Officer function	Monitoring Officer	Head of Finance and Resources
<b>Local Authorities (Conduct of Referendums) (England) Regulations 2012</b>		
Whole – Proper Officer function	Monitoring Officer	Head of Finance and Resources
<b>Building Act 1984</b>		
78 – Authorise action in relation to dangerous structures	Head of Planning and Development	Building Control Officers
<b>Local Government Miscellaneous Provisions Act 1982</b>		
Part XI – Public Health	Head of Housing and Community Services	Director of Regeneration and Communities
Food Safety Act 1990 – Food Safety and authentication of documents	Head of Housing and Community Services	Director of Regeneration and Communities
Anti-Social Behaviour Act 2003 – Closure order in respect of noisy premises where public nuisance	Head of Housing and Community Services	Director of Regeneration and Communities
<b>Localism Act 2000</b>		
29 – Establish and maintain a register of members' and co-opted	Monitoring Officer	Deputy Monitoring Officer

members' interests		
30 – 31 – Receipt of Members and co-opted members' declarations of interests and changes to those interests within 28 days	Monitoring Officer	Deputy Monitoring Officer
32 – Sensitive Interests	Monitoring Officer	Deputy Monitoring Officer
33 – Dispensations from restrictions under Section 31(4)	Monitoring Officer	Deputy Monitoring Officer
Any other provisions for which arrangements are not specifically made under the Scheme of Delegation.	Chief Executive to authorise	Monitoring Officer
Any other legislation whether made before or after this list was approved and requiring a proper officer or authorised officer where not otherwise stated in this list or the Council's approved scheme of delegation from time to time.	Chief Executive to authorise	Monitoring Officer

# Maidstone Borough Council Constitution

## Part 3

### Rules of Procedure

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### **3.1 COUNCIL PROCEDURE RULES**

These rules regulate the business at Council meetings and meetings of Committees, Sub-Committees and Panels.

In these rules reference to the Proper Officer is reference to the Head of Finance and Resources, the Director of Regeneration and Communities or the Chief Executive unless stated otherwise.

#### **1. ANNUAL MEETING OF THE COUNCIL**

##### **1.1 Timing and Business**

In a year when there is an ordinary election of Councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, the Annual Meeting will take place in March, April or May.

The Annual Meeting will:

- (a) elect a person to preside if the Mayor or Deputy Mayor is not present;
- (b) elect the Mayor;
- (c) consider whether any items should be taken in private because of the likely disclosure of confidential or exempt information;
- (d) approve and sign the minutes of the last meeting;
- (e) appoint the Deputy Mayor;
- (f) receive any announcements from the Mayor;
- (g) receive congratulations from local scholars;
- (h) elect the Leader and appoint the Deputy Leader;
- (i) appoint such Committees as the Council considers appropriate to deal with matters which are not reserved to the Council nor delegated to officers;
- (j) adopt the Constitution including the scheme of delegation (or relevant updates);
- (k) consider any business set out in the notice convening the meeting; and
- (l) consider matters where confidential or exempt information may be revealed.

##### **1.2 Selection of Councillors on Committees**

At the Annual Meeting, the Council meeting will:

- (a) decide which Committees to establish for the municipal year;
- (b) decide the size and terms of reference for those Committees;
- (c) decide the allocation of seats to political groups in accordance with the political balance rules;
- (d) receive nominations from the Group Leaders of Councillors to serve on each Committee along with substitutes; and
- (e) appoint to those Committees and substitutes.

## 2. **ORDINARY MEETINGS**

Ordinary meetings of the Council will take place in accordance with an agreed calendar of meetings. Ordinary meetings will:

- (a) elect a person to preside if the Mayor or Deputy Mayor is not present;
- (b) receive any declarations of interest from Councillors and officers and deal with any applications for dispensations;
- (c) receive any disclosures of lobbying by Councillors;
- (d) consider whether any items should be taken in private because of the likely disclosure of confidential or exempt information;
- (e) approve and sign the minutes of the last meeting;
- (f) receive any announcements from the Mayor;
- (g) receive any petitions or deputations;
- (h) receive questions from, and provide answers to, the public in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the Council;
- (i) allow any member of the public to speak in accordance with the rule on Public Speaking;
- (j) the following will receive and respond to questions from Councillors in chronological order of receipt:
  - Chairmen of Committees; and
  - Other spokespersons nominated by the relevant Chairman.
- (k) receive the Leader's Report on Current Issues and the Group Leaders' responses;
- (l) deal with any business from the last Council meeting;

- (m) receive reports from the Council's Committees where there are recommendations for the Council to take a decision;
- (n) receive reports about the business of joint arrangements and external organisations which include matters for decision;
- (o) consider motions in the order in which notice has been received;
- (p) consider any other business specified in the summons to the meeting, including consideration of proposals from officers for debate; and
- (q) consider matters where confidential or exempt information may be revealed.

### 3. **MEETINGS**

#### 3.1 **Calling and Cancelling Meetings**

- (a) **Council Meetings** - Those listed below may request the proper officer to call Council meetings in addition to ordinary meetings:
  - (i) the Council by resolution;
  - (ii) the Mayor;
  - (iii) the Monitoring Officer; and
  - (iv) any five Councillors. If they have signed a requisition presented to the proper officer an extraordinary meeting will be held within 21 days of receipt of the requisition.
- (b) **Committee/Sub-Committee Meetings** - The Chairman of a Committee or Sub-Committee may call a special meeting of the Committee or Sub-Committee. A special meeting may also be called on the requisition of at least three Members of a Committee or at least two Members of a Sub-Committee, delivered in writing to the proper officer.
- (c) **Cancellation of Meetings** - In exceptional circumstances the proper officer may cancel or alter the time or location of any meeting.

#### 3.2 **Business**

No business other than that specified in the summons to the meeting may be considered at a meeting of the full Council. However such issues may be considered by Committees and Sub-Committees if urgent in accordance with the Access to Information Rules.

It is not a requirement that the minutes of the previous meeting are approved at an extraordinary meeting.

At an Extraordinary meeting of the Council there may be a presentation of petitions and/or a question and answer session but all petitions, deputations or questions must relate to a matter to be discussed at that meeting.

Each committee sets its own agenda, through its Chairman and Vice-Chairman. Any Councillor may put an item on a committee agenda for consideration, via the Committee Chairman and Democratic Services Team, subject to that matter being relevant to the Committee's terms of reference. The Chairman of a committee, after consulting the Vice Chairman, shall place the requested item on the next available committee agenda unless in the view of the Chairman, having consulted the Head of Legal Partnership and Head of Finance and Resources as necessary, the matter is defamatory, offensive or frivolous. The Councillor must attend the meeting, speak on the item put forward and make clear what outcome s/he is seeking. The Councillor's report and background papers will be published with the agenda under the Access to Information Rules. Following receipt of the Councillor's report, the Committee will decide whether to take the matter further and request an officer's report on the item.

#### **4. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES**

##### **4.1 Allocation**

As well as allocating seats on Committees, the Council will allocate seats for substitute Members in accordance with 4.2 below. As well as allocating seats on Sub-Committees, Committees will allocate seats in the same manner for Substitute Members.

##### **4.2 Number**

For each Committee, the Council will appoint up to six substitutes for each political group. For each Sub-Committee, Committees will appoint five substitutes for each political group.

No Councillor will be able to serve on the Planning and Licensing Committees without having agreed to undertake a minimum period of training on the policies, procedures, legislation and guidance relevant to the Committee as specified by the Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the Committee and must be refreshed annually. If the specified training has not been completed by the due date, the Councillor will cease to be a Member/Substitute Member of the Committee until the training has been completed.

Other than the induction training delivered to all new Members and Substitute Members of the Audit, Governance and Standards Committee, the Committee will identify its training requirements through an annual assessment of skills and knowledge and Members will undertake training as required.

##### **4.3 Powers and duties**

Substitute Members will have all the powers and duties of any ordinary Member of the Committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting.

#### **4.4 Substitution**

Substitute Members may attend meetings in that capacity only:

- (a) if the substitution is notified when the first item is called on the agenda;
- (b) if the full Member arrives after the substitution has been made, s/he will forthwith resume his/her membership of the Committee or Sub-Committee and the substitute Member will forthwith cease to be a Member of the Committee and have the rights of a visiting Member for the remainder of the meeting;
- (c) if the full Member leaves before the conclusion of the meeting a substitution can be made if it has been notified at the first item called on the Committee agenda.

#### **5. VISITING MEMBERS**

Any Councillor may attend any meeting of a Committee or Sub-Committee of which s/he is not a Member to speak on particular items provided s/he states his/her intention when the first item is called on each agenda, except for: the Employment Committee (and any of its panels or sub-committees); Licensing Committee/Sub-Committee hearings; the Hearings Sub-Committee of the Audit, Governance and Standards Committee (when it is considering allegations of misconduct); or any other panel hearing or appeal. Visiting Members speak after the officer introduction on an item, but before the general debate. Having spoken, the Councillor will not participate further unless the Chairman agrees, or it is on a motion that the Councillor moved at Council.

#### **6. TIME AND PLACE OF MEETINGS**

The time and place of meetings will be determined by the proper officer and notified in the summons.

#### **7. NOTICE OF AND SUMMONS TO MEETINGS**

The proper officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear working days before a meeting (or if a meeting of a Committee or Sub-Committee is called at shorter notice, as soon as the meeting is called), the proper officer will publish on the Council's website and send a summons signed by him/her electronically to every Member of the Council (or on request by post or by leaving it at their usual place of residence/other address). The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available. Where not all of the reports are available with the summons they will be posted on the Council's website as soon as they become available and e-mailed or posted to Councillors.

## 8. CHAIRING THE MEETING

- (a) The Mayor or in his/her absence the Deputy Mayor will preside at meetings of the Council;
- (b) if both the Mayor and the Deputy Mayor are absent, the Councillors present at the meeting will choose another Councillor to preside.
- (c) any power or duty of the Mayor to conduct a meeting including exercising a second or casting vote, may be exercised by the Councillor presiding at the meeting;
- (d) if the Mayor or Deputy Mayor arrive after the start of the meeting the Councillor then presiding will vacate the chair and the Mayor or Deputy Mayor will take the chair.
- (e) The ruling of the Mayor as to the application of these rules shall be final unless challenged by a Councillor who gains the support of two thirds of those Councillors present and voting.

## 9. QUORUM

The quorum of a meeting will be one quarter of the whole number of Councillors provided that the quorum of a Committee is not less than four Councillors, other than the Urgency Committee which is not less than three Councillors, and the quorum of a Sub-Committee is not less than two Councillors (although some Panels and Sub-Committees may have a quorum of three). The quorum of the Cobtree Manor Estate Committee and the Queens Own Royal West Kent Regiment Committee shall be three Councillors.

## 10. DURATION OF MEETING

- (a) Each unfinished meeting will adjourn at 10.30 pm unless a majority of Councillors present vote to extend the meeting to 11.00 pm at which time the meeting will stand adjourned;
- (b) The time and date of the continuation of the adjourned meeting will be decided by a majority of those Councillors present, or if no decision is reached, by the proper officer in consultation with the Mayor and group leaders/political group spokesmen, and it should normally take place within 10 working days of the meeting.

## 11. LOBBYING

For guidance on Lobbying, Councillors are referred to (5) "Lobbying of and by Councillors" in section 4.4 "Code of Conduct for Councillors and Officers Dealing with Planning Matters." This section sets out the rules on lobbying as they apply to Councillors who sit on Planning Committee. However, the rules also apply to other committees.

12. **PRESENTATION OF PETITIONS TO THE COUNCIL, COMMITTEES AND SUB-COMMITTEES**

(a) Subject to sub-paragraph (b) below all petitions received by the Council will be reported to the Council or to the appropriate Committee or Sub-Committee.

(b) If so required by a signatory to a petition, it may be presented in person at meetings of the Council or a Committee or Sub-Committee, subject to compliance with the following procedure:-

- (i) The wording of a petition to be presented to the Council or to a Committee or Sub-Committee must be given in writing to the proper officer at least two weeks before the day of the meeting. The Mayor or the Chairman may at his/her discretion waive this requirement. Ward Members will be notified of the wording of petitions when received;
- (ii) Only petitions containing signatures of 100 persons living in the Borough will be eligible for submission to the Council or to a Committee or Sub-Committee but the Mayor or the Chairman may at his/her discretion waive this requirement;
- (iii) If a petitioner has submitted a petition of at least 100 signatures (or less if agreed by the relevant Chairman) requesting a senior officer of the Council to attend, give evidence and provide information on activities for which they are responsible to that Committee, then that senior officer will attend (a senior officer is the Chief Executive, Director, or Head of Service).
- (iv) Petitions must be presented to the proper officer at least one clear working day before the day of the meeting (i.e. two days) of the Council, Committee or Sub-Committee;
- (v) Normally no more than three petitions may be presented per meeting, but the Mayor or the Chairman may relax this restriction;
- (vi) Only one person may speak to a petition for a maximum of five minutes (or three minutes in the case of a petition to the Planning Committee). They should have signed the petition and be a supporter of the body submitting the petition. This may include someone acting for the petitioner in a professional capacity;
- (vii) (a) At a Council meeting, at the conclusion of the speech of the presenter, at the discretion of the Mayor and only when a factual briefing note has been prepared by the Officers on the issues set out in the petition, a debate will take place on the petition for up to a period of twenty minutes (or if the petition has 1,500 signatures, with no time limit on the debate) with the intention that the petition and the views of the Council will then be referred to the appropriate decision making body. The debate will be subject to normal council debating rules with the exception that at the end of the debate no vote will be taken, but the petitioner will have an

opportunity to speak for a further period of three minutes responding to the issues raised in the debate.

If the Mayor determines that it is inappropriate to debate the petition or if no factual briefing note has been prepared by Officers, then the petition will be:

- referred without further discussion to the next ordinary meeting of the appropriate Committee or Sub-Committee when it will be included in the appropriate officer's report;
- considered at the meeting in conjunction with any report that has been placed on the agenda concerning the matter raised in the petition; or
- considered at the meeting if it is felt that a factual briefing note is not necessary.

(b) For Committees or Sub-Committees at the conclusion of the speech of the presenter the petition will be:

- referred without further discussion to the next ordinary meeting of the appropriate Committee or Sub-Committee when it will be included in the appropriate officer's report;
- considered at the meeting in conjunction with any report that has been placed on the agenda concerning the matter raised in the petition; or
- considered at the meeting if Councillors feel that a report is not necessary.

(viii) The item relating to a petition will be placed on the agenda immediately following the minutes of the previous meeting of the Council, Committee or Sub-Committee;

(ix) If more than one petition is notified to the proper officer to the same Council, Committee or Sub-Committee meeting, they shall rank in order of priority according to the time of notice given under (i) above;

(x) No petition may be presented relating to an application for a licence;

(xi) No petition may be presented to the Annual Meeting of the Council or the Audit, Governance and Standards Committee.

(c) Petitions which are not to be presented in person at meetings of the Council, appropriate Committee, or Sub-Committee will be reported to that body.

(d) Provision will be made for a facility to submit petitions electronically.

## **13. QUESTIONS BY MEMBERS OF THE PUBLIC**

### **13.1 General**

At ordinary meetings of the Council members of the public may ask questions of the Chairman of any Committee provided written notice has been given in advance as set out below.

This question and answer session will be limited to one hour. After the Chairman of any Committee has spoken, the Mayor will ask if any Group Leader/Representative present would also like to respond.

### **13.2 Order of questions**

Questions will be asked of the relevant Chairman in the order that notice of them was received, except that the Mayor may group together similar questions.

### **13.3 Notice of questions**

A question may only be asked if notice has been given by delivering it in writing (including by electronic mail) to the proper officer no later than close of the office one clear working day (ignoring the date of the meeting i.e. two days) before the day of the meeting. Each question must give the name and address of the questioner and must name the Councillor to whom it is to be put.

### **13.4 Number of questions**

At any one meeting no person may submit more than one question.

### **13.5 Scope of questions**

The proper officer may reject a question if in his/her opinion:

- (a) it is not about a matter for which the local authority has a responsibility or which affects the Borough;
- (b) it is defamatory, frivolous or offensive;
- (c) it requires the disclosure of confidential or exempt information (as described in the Access to Information Rules);
- (d) a member of the public seeking to ask a question has previously withdrawn questions on three consecutive occasions, any further question from that person will be refused unless that person confirms in writing that they will be attending the meeting to ask the question. If that person does not attend the meeting after confirming they will do so, no further action will be taken with regard to that question.

- (e) the question has been asked at a previous meeting of the Council either in the exact or similar form and/or;
- (f) the Council has resolved the issue raised and the question has been brought to a close.

### **13.6 Record of questions**

The proper officer will enter each question in a book open to public inspection and will immediately send a copy of the question to the Councillor to whom it is to be put. Rejected questions will include the reasons for rejection.

Copies of all questions will be circulated to all Councillors and will be made available to the public attending the meeting.

### **13.7 Asking the question at the meeting**

The Mayor will invite the questioner to put the question to the Councillor named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Mayor to put the question on their behalf. The Mayor may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

### **13.8 Supplementary question**

A questioner who has put a question in person may also put one supplementary question without notice to the Councillor who has replied to his/her original question. A supplementary question must arise directly out of the original question or the reply. The Mayor may reject a supplementary question on any of the grounds in Rule 12.5 above or because it does not arise directly out of the question or reply.

### **13.9 Written answers**

Any question which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Councillor to whom it was to be put, will be dealt with by a written answer, that is sent to the questioner.

All questions shall be responded to in writing and the response shall be published in the minutes of the meeting along with the question and placed upon the Council's website.

### **13.10 Reference of question to a Committee**

Unless the Mayor decides otherwise, no discussion will take place on any question, but any Councillor may move that a matter raised by a question be referred to the appropriate Committee or Sub-Committee. Once seconded, such a motion will be voted on without discussion.

## **14 QUESTIONS BY COUNCILLORS**

- (a) A Councillor may ask the Chairman of any Committee any question on:
  - (i) any matter then under consideration by the Council (without written notice);
  - (ii) the Council's powers or duties or any matter which affects the Borough, if notice of the question in writing has been given to the proper officer by 10.00 am one clear working day prior to the date of the Council meeting (excluding the Annual Meeting) (for example, on Monday for a Wednesday meeting). The proper officer will convey the question to the Chairman of that Committee.
  - (iii) urgent business (the Mayor to decide if the matter is of sufficient urgency to be raised).
- (b) Questions will not contain imputations of motives or reflections of a personal character on any member of the Council's staff.
- (c) Every question will be put and answered without discussion in the order in which they have been received.
- (d) An answer may take the form of:
  - (i) a direct oral answer; or
  - (ii) where the desired information is contained in a publication of the Council, a reference to that publication; or
  - (iii) where the reply to the question cannot conveniently be given orally, a written answer to the Councillor who asked the question and those Councillors who wish to receive a copy; or
  - (iv) when requested in writing at the time of the submission of the question both a direct oral answer and a written answer to the Councillor asking the question.
- (e) The Councillor who raised the original question may ask one supplementary question on the subject of the original question.
- (f) The form and content of reply to an original or a supplementary question will be at the discretion of the Councillor giving the reply, unless in respect of an original question a written request has been received specifying a specific form of reply or replies. S/he may decline to give a full or any reply

if in his/her opinion to do so would involve an unreasonable amount of labour or cost.

(g) The question and answer session will be limited to half an hour.

## **15 PUBLIC SPEAKING AT COUNCIL AND COMMITTEES**

15.1 Where the meeting is open to the public, a member of the public or a representative of an organisation may speak at the invitation of the Leader/Committee Chairman in respect of an item of the agenda. However notice of a request to speak must be given to Democratic Services by no later than 5pm one clear working day before the relevant meeting. Public speaking is subject to the following time limits:

the total time for speaking on an item on the agenda is 12 minutes;  
within that 12 minute period, each speaker has a maximum of 3 minutes;

15.2 In addition to the 12 minutes, a Parish or Town Council representative may be allocated a maximum of 3 minutes each; where there are several speakers, they will be asked to appoint a spokesperson to represent all views;

15.3 When these times have expired, speakers will not be allowed to speak further unless asked by the Leader/Committee Chairman to clarify a point of fact.

## **16 INVITATION OF THIRD PARTIES TO COUNCIL AND COMMITTEE MEETINGS**

16.1 An ordinary meeting of Council or a Committee may invite, through the Leader or Chairman, a third party to attend a meeting and speak and answer questions on a particular item on the agenda.

16.2 An item on the agenda of an ordinary meeting of Council/Committee may be deferred if Council or the Committee agrees that a third party contribution to the discussion is necessary.

## **17 MOTIONS ON NOTICE**

17.1 Except for motions which can be moved without notice under Rule 18, written notice of every motion must be delivered to the proper officer not later than six clear working days before the meeting of the Council at which it is to be moved. Motions will be set out in the summons for the Council in the order received, with the names of the signatories unless the Councillor giving notice states, in writing, that they propose to move it at a later meeting or withdraw it.

17.2 Notices of motions will be entered in a book open to public inspection.

- 17.3 If a motion set out in the summons is not moved by a Councillor who gave notice or by another Councillor it will, unless postponed by the Council, be withdrawn.
- 17.4 If the subject of a motion comes within the province of any Committee(s) or Sub-Committee(s) it will, on being moved and formally seconded, be referred to the relevant Committee(s) or Sub-Committee(s), or to other such forum as the Mayor may determine, but before such referral the Notice of Motion will be debated at the Council meeting and the debate will be subject to the following controls:
- (a) The debate will be at the discretion and control of the Mayor; and
  - (b) Where possible Officers will provide a factual briefing note to assist Councillors in the debate.
- However the Mayor may, if s/he considers it convenient and conducive to the dispatch of business or to be of sufficient urgency, allow the motion to be dealt with at the Council meeting.
- 17.5 If the mover of the motion is not a member of Committee(s) or Sub-Committee(s) to which it has been referred s/he will be entitled to attend the meeting of the Committee(s) or Sub-Committee(s) to put forward his/her view but not vote on the matter or propose or second any motion or amendment.
- 17.6 Every motion must be relevant to the Council's powers or duties or to a matter which affects the Borough.
- 17.7 Any motion which in the opinion of the proper officer after consultation with the Head of Legal Partnership is out of order, or illegal, will be submitted to the Mayor who will decide whether it is accepted and the proper officer will notify the Councillor(s) accordingly.

## **18 MOTIONS WITHOUT NOTICE**

The following motions may be moved without notice:

- (a) to appoint a chairman of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a Committee or Councillor arising from an item on the summons for the meeting;
- (f) to receive reports or adoption of recommendations of Committees or officers on any resolutions following from them;

- (g) to withdraw a motion;
- (h) to amend a motion;
- (i) to proceed to the next business;
- (j) to move;
- (k) to adjourn a debate;
- (l) to adjourn a meeting;
- (m) before the hour of 10.30 pm being reached to extend the meeting until 11.00 pm in accordance with Council procedure rule 10(a);
- (n) to suspend a particular Council procedure rule;
- (o) to exclude the public and press in accordance with the Access to Information Rules;
- (p) to not hear further a Councillor named under Rule 25.3 or to exclude them from the meeting under Rule 25.4 ;
- (q) to give the consent of the Council where its consent is required by this Constitution;
- (r) to extend the time limit for speeches;
- (s) to determine the time and date of the adjourned meeting in accordance with Council procedure rule 10(b); and
- (t) to put the motion in parts to the vote.

## **19 RULES OF DEBATE**

### **19.1 No speeches until motion seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

### **19.2 Right to require motion in writing**

Unless notice of the motion has already been given, the Mayor may require it to be written down and handed to him/her before it is discussed.

### **19.3 Secunder's speech**

When seconding a motion or amendment, a Councillor may reserve their speech until later in the debate.

#### **19.4 Content and length of speeches**

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed three minutes without the consent of the Mayor, except when moving a motion submitted in accordance with rule 17 above, when the mover will be entitled to speak for five minutes, or except when a Group Leader is moving his/her Group's budget proposals at the Budget Making Council, when the mover will be entitled to speak for ten minutes.

#### **19.5 When a Councillor may speak again**

A Councillor who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) to speak once on an amendment moved by another Councillor;
- (b) to move a further amendment if the motion has been amended since s/he last spoke;
- (c) if his/her first speech was on an amendment moved by another Councillor, to speak on the main issue (whether or not the amendment on which s/he spoke was carried);
- (d) in exercise of a right of reply;
- (e) on a point of order; and
- (f) by way of personal explanation.

#### **19.6 Amendment to motions**

- (a) An amendment to a motion must be relevant to the motion and will either be:
  - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
  - (ii) to leave out words;
  - (iii) to leave out words and insert or add others; or
  - (iv) to insert or add words.as long as the effect of (ii) to (iv) is not to negate the motion.
- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.

- (c) If an amendment is not carried, other amendments to the original motion may be moved.
- (d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (e) If there are no further amendments the Mayor will put the substantive motion to the vote.

### **19.7 Alteration of motion**

- (a) A Councillor may when moving a motion of which s/he has given notice alter it with the consent of the meeting and the other signatories. The meeting's consent will be signified without discussion.
- (b) A Councillor may alter a motion which s/he has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

### **19.8 Withdrawal of motion**

A Councillor may withdraw a motion which s/he has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Councillor may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

### **19.9 Right of reply**

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.
- (b) The mover of the amendment has a right of reply to the debate on his/her amendment (before the right of reply of the mover of the original motion).
- (c) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, if s/he has spoken on it.

### **19.10 Motions which may be moved during debate**

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;

- (d) to move;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) that the meeting continue until 11.00pm;
- (h) to exclude the public and press in accordance with the Access to Information Rules; or
- (i) to not hear further a Councillor named under Rule 25.3 or to exclude them from the meeting under Rule 25.4.

### **19.11 Closure motions**

- (a) A Councillor may move, without comment, the following motions at the end of a speech of another Councillor:
  - (i) to proceed to the next business;
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.
- (b) If a motion to proceed to next business is seconded and the Mayor thinks the item has been sufficiently discussed, s/he will give the mover of the original motion a right to reply and then put the procedural motion to the vote.
- (c) If a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, s/he will put the procedural motion to the vote. If it is passed s/he will give the mover of the original motion a right to reply before putting his/her motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, s/he will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

### **19.12 Point of order**

A Councillor may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Procedure Rules or the law. The Councillor must indicate the rule or law and the way in which s/he consider it has been broken. The ruling of the Mayor on the matter will be final.

### **19.13 Personal explanation**

A Councillor may make a point of personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Councillor (whether or not made at the meeting) which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

## **20 LEADERS REPORT ON CURRENT ISSUES**

- 20.1** At every Ordinary Meeting of the Council (except the Annual Meeting) after the Question and Answer session dealing with questions by Councillors, the Leader shall report to the Council on current issues.
- 20.2** The Leaders of every other Group shall then have the right to respond to the issues raised.
- 20.3** Each Group Leader may speak for up to five minutes.
- 20.4** After the Leader and the other Group Leader have spoken the Mayor will open the item to questions from Councillors for a period of fifteen minutes.
- 20.5** Questions to be asked by Councillors as set out in 20.4 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.

## **21 VOTING**

- 21.1** Unless this Constitution (or the law) provides otherwise, any matter will be decided by a simple majority of those Councillors voting and present in the room at the time the question was put.

### **21.2 Mayor's casting vote**

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote, regardless of whether s/he has used his/her first vote. There will be no restriction on how the Mayor chooses to exercise a casting vote.

### **21.3 Show of hands**

Unless a recorded vote is demanded under Rule 21.4 , the Mayor will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

## **21.4 Recorded vote**

If five Councillors present at a Council meeting, three Councillors present at a Committee or two Councillors present at a Sub-Committee meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

## **21.5 Right to require individual vote to be recorded**

Where any Councillor requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

## **21.6 Recorded votes at budget meetings**

Immediately after any vote is taken at a budget decision meeting of an authority there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

- (a) "budget decision meeting" means a meeting of the relevant body at which it —
  - (1) makes a calculation (whether originally or by way of substitute) in accordance with any requirements of the Local Government Finance Act 1992; or
  - (2) issues a precept under Chapter 4 of Part 1 of that Act,
- (b) references to a vote are references to a vote on any decision related to the making of the calculation or the issuing of the precept as the case may be.

## **21.7 Voting on appointments**

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

# **22 MINUTES**

## **22.1 Signing the minutes**

The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

## **22.2 No requirement to sign minutes of previous meeting at extraordinary meeting**

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

## **22.3 Form of minutes**

Minutes will contain all motions and amendments in the exact form and order the Mayor put them and shall record all questions and answers to questions from members of the public.

## **23 RECORD OF ATTENDANCE**

All Councillors present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance.

## **24 EXCLUSION OF PUBLIC AND RECORDING MEETINGS**

Members of the public and press may only be excluded in accordance with the Access to Information Rules in Part 3 of this Constitution or Rule 27 (Disturbance by Public).

Members of the public attending meetings of the Council or any Committees may record such meetings in open session using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media. Recording of any part of a meeting held in closed session is not permitted. Anyone filming a meeting is asked to focus only on those actively participating.

All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting signifies consent to this.

The Chairman of the meeting has the discretion to halt any recording for a number of reasons including disruption caused by the filming recording or transmission of such recording or the nature of the business being conducted.

## **25 COUNCILLORS' CONDUCT**

### **25.1 Standing to speak**

When a Councillor speaks at full Council they must usually stand and address the meeting through the Mayor. If more than one Councillor stands, the Mayor will ask one to speak and the others must sit. Other Councillors must remain seated whilst a Councillor is speaking unless they wish to make a point of order or a personal explanation.

### **25.2 Mayor standing**

When the Mayor stands during a debate, any Councillor speaking at the time must stop and sit down. The meeting must be silent.

### **25.3 Councillor not to be heard further**

If a Councillor persistently disregards the ruling of the Mayor by behaving improperly or offensively or deliberately obstructs business, any Councillor may move that the Councillor be not heard further. If seconded, the motion will be voted on without discussion.

### **25.4 Councillor to leave the meeting**

If the Councillor continues to behave improperly after such a motion is carried, the Mayor may move that either the Councillor leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

### **25.5 General disturbance**

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long as s/he thinks necessary, or may adjourn and re-convene elsewhere.

## **26 DISCLOSURE OF INTERESTS**

26.1 A Councillor with a Disclosable Pecuniary Interest or Other Significant Interest in a matter to be considered, or being considered at a meeting must:

- (a) disclose the interest; and
- (b) explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to paragraph 26.3 below); and unless they have been granted a dispensation;

- (c) not participate in any discussion of, or vote taken on, the matter at the meeting unless they have been granted a dispensation; and
- (d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
- (e) not seek improperly to influence a decision about that business.

26.2 A Councillor with an Other Significant Interest, may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. The Councillor will withdraw from the meeting room immediately after making representations, answering questions or giving evidence.

26.3 Where a Disclosable Pecuniary Interest or an Other Significant Interest has been agreed by the Monitoring Officer as being a Sensitive Interest, the Councillor need only disclose the existence of the interest but not its nature.

26.4 This Procedure Rule also applies to a Ward Councillor acting alone who discharges functions at ward level (if any).

## **27 DISTURBANCE BY PUBLIC**

### **27.1 Removal of member of the public**

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor will order their removal from the meeting room.

### **27.2 Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared and may adjourn the meeting and/or re-convene elsewhere.

## **28 SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES**

### **28.1 Suspension**

All of these Council Rules of Procedure except Rules 21.5, 21.6, 22.2 and 25.2 may be suspended by motion on notice or without notice if at least one half of the whole number of Councillors are present and the majority present approve. Suspension can only be for the duration of the meeting.

### **28.2 Amendment**

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council, unless already on the agenda and shall be referred to the Democracy Committee for consideration in advance of the next ordinary Council meeting.

29 **PROVISIONS RELATING TO PLANNING COMMITTEE**

29.1 **Public speaking at Planning Committee meetings (Amended 2.8.06)**

- (a) If a planning application is to be determined by the Planning Committee and a speaker wishes to address the Committee in respect of that application s/he must give notice of that request to the proper officer (the Head of Finance and Resources) by 4 p.m. on the working day before the relevant meeting.
- (b) The following speakers will be allowed to address the Committee for each planning application or enforcement matter (except exempt reports) in the following order.

Parished Areas

- An Objector } A petitioner, or a representative of a Residents' Association/ Amenity Group, or an individual objector
- A representative of the appropriate Parish Councils
- \*The applicant or his/her representative } The applicant or his/her representative (including a supporter), or a petitioner, or a representative of a Residents' Association/ Amenity Group

Non-Parished Areas

- A representative of a Residents' Association/Amenity Group
- An Objector } A petitioner, or a representative of a second Residents' Association/ Amenity Group, or an individual objector
- \*The applicant or his/her representative } The applicant or his/her representative (including a supporter), or a petitioner, or a representative of a second or third

\* The applicant or his/her representative would have priority.

In order to avoid repetition, a petitioner may present a petition but the appropriate speaker slot will be forfeited. A petitioner may speak for three minutes.

Each category of speaker will be limited to three minutes to address the Committee. s/he will not be allowed to ask a supplementary question, make a supplementary statement and will not be cross examined. Also, no written material or photographs may be handed out at the meeting.

When more than one person wants to speak for or against a planning application or more than one amenity group/organisation or residents association wishes to speak for or against a planning application, the first person or group to register their wish to speak will be afforded that right. However, the proper officer shall keep a reserve list of speakers for each application. If, at the meeting the original speaker is not in attendance, a speaker from the reserve list, depending on if the original speaker was a supporter or objector, i.e. an objector replaces an objector, taken in the order which they registered their right to speak shall be invited to address the Committee.

Visiting Members may address the Planning Committee for three minutes on individual matters but should give the same notice of their intention to speak to the Head of Finance and Resources as members of the public. If they do not do so, the application will not be brought forward on the agenda.

Visiting Members should sit away from the body of the Committee.

An objector or applicant may be represented by an agent at the Committee.

## **29.2 Deferral of planning decisions**

It is likely that from time to time the Planning Committee will defer a decision to a future meeting of the Committee, in order to enable the officers to report back on any areas of concern raised by the Committee. Minor applications should only be deferred if there is a need for additional information or if there are disputed facts within the report, otherwise they should be determined as reported with the proviso that there may be occasions when the Planning Officers may seek deferral/withdrawal of/consideration of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable. On the second occasion that the matter is discussed at Committee a decision must be made.

### 29.3 **Planning Decisions which have significant cost implications**

- (a) If the Head of Planning and Development, on the advice of the Legal Officer present at the meeting, believes that the Planning Committees reasons to justify refusal/the imposition of conditions are not sustainable, the decision of the Planning Committee will be deferred to its next meeting. The Committee itself may also agree to defer consideration of an application for the same reasons.
- (b) If, at that meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development, on the advice of the Legal Officer present, will request Councillors to refer the consideration of the application to Part II of the meeting, to offer Councillors further advice on the legal and financial implications, and the likelihood of success at appeal. If the Committee still decides to refuse the application/impose an unreasonable condition, the Head of Planning and Development will on the advice of the Legal Officer present, immediately after the vote has been taken, refer the application to the Planning Referrals Committee for determination.

#### VISITING MEMBERS –PLANNING COMMITTEE

(Minute 14 General Purposes Committee 13 June 1990)

In respect of the Planning Committee, if a visiting Member gives the requisite notification to the Head of Finance and Resources or his/her representative by 4.00 p.m. on the day preceding the meeting, the Chairman shall seek to give the relevant application some priority in the meeting, otherwise the application will be dealt with in the normal course of the meeting.

### 30 **APPLICATION TO COMMITTEES AND SUB-COMMITTEES**

All of the Council Rules of Procedure apply to meetings of full Council. Only Rules 3.1(b), 3.2, 4-16 21, 22.1, 22.2 and 23-27 apply to meetings of all Committees and Sub-Committees, and in this case references to the Mayor should be interpreted as 'Chairman'. Public questions at Committees shall be limited to half an hour at Committees and Sub-Committees under procedure rule 13.1. Rule 29 applies to Planning Committee only.

### 31 **ELECTION OF COMMITTEE CHAIRMAN**

- (1) Subject to the provision of the remainder of this Procedure Rule each newly appointed Committee will at its first meeting, before proceeding to any other business, elect a Chairman (with the exception of the Policy and Resources Committee where the Chairman is the Leader of the Council) and a Vice Chairman for the remainder of the municipal year. The Chairman and Vice Chairman of each service committee shall come from different political groups.
- (2) If there is an equality of votes for the election of Chairman at any meeting of a Committee the Committee may instead of the periods specified in sub-paragraph (3) below elect a Chairman for that meeting

only. If a temporary Chairman cannot be elected the meeting will stand adjourned to later the same day or another time and date agreed by the Committee.

- (3) Subject to the provisions of sub-paragraph (2) above each Chairman and Vice Chairman of a Committee will hold office:
  - a. During the residue of the term of office of the Committee of which s/he is the Chairman or Vice Chairman;
  - b. Such shorter time as may be specified by the Committee; or
  - c. During the pleasure of the Committee.whichever period of time may be the shortest.
- (4) When a Chairman or Vice Chairman is appointed for a period of time pursuant to sub-paragraph (3)(b) above the Committee may appoint another Councillor(s) to take the chair for a period(s) of time immediately following the initial or subsequent period of office.

## 32 **REVIEW OF SERVICE COMMITTEE DECISIONS**

- (1) When a decision is made by a Service Committee, any three Councillors may make a request in writing to the proper officer, within 5 working days of the decision being published<sup>1</sup>, that the decision be referred to the Policy and Resources Committee, giving a written explanation of the reasons why to the proper officer.
- (2) The Chairman of the Policy and Resources Committee, in consultation with the Vice Chairman and with advice from the Chief Executive may reject a referral, if in his/her opinion:
  - i. The matter is urgent and any delay would cause a significant loss or deficiency to the Council's funds or otherwise seriously prejudice the Council's interests;
  - ii. The reasons given cannot reasonably justify the referral in the circumstances of the case; or
  - iii. It is defamatory, frivolous or offensive.
- (3) The proper officer shall notify the Chairman of the referral and shall arrange to place the matter on the agenda of the next scheduled meeting of the Policy and Resources Committee unless that is more than 10 working days away, in which case the proper officer may call a meeting of the Committee on such date as s/he may determine, where possible after consultation with the Chairman of the Committee, and in any case within 10 working days of receipt of the notice.

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<sup>1</sup>

- (4) Any Councillor making such a referral shall attend and shall be able to take part in the discussion and debate as a non-voting member of the Committee unless:
  - a. the Councillor is already present as a full member of the Committee or a substitute member in which case the Councillor may also vote;
  - b. the Councillor has a Disclosable Pecuniary Interest in the matter, in which case the Councillor must withdraw from the room pursuant to Procedure Rule 26 or has a dispensation and is invited to remain.
- (5) The Policy and Resources Committee shall consider the matter; decide to endorse the original Committee decision; or may substitute a different decision in place of the decision of the Committee. The decision of the Policy and Resources Committee on the matter shall be final.
- (6) Where Councillors wish to refer a decision of the Policy and Resources Committee (other than a decision which has been referred from another Committee and has been determined by Policy and Resources Committee) then any five Councillors may refer the matter to full Council by giving written notice to the Mayor who may reject the referral in consultation with the Deputy Mayor and with advice from the Chief Executive in the same manner as set out above.
- (7) The Council shall consider the matter; decide to endorse the original Policy and Resources Committee decision; or may substitute a different decision in place of the decision of the Committee. The decision of the Council on the matter shall be final.
- (8) In either case should new and relevant information come to light, or a more acceptable course of action be proposed which may resolve the matter to the satisfaction of the Committee, then a Committee Chairman, at the request of any three Councillors in writing, may choose whether to call another meeting of the original Committee to re-consider the decision within five working days of receipt of a referral. The referral to Policy and Resources Committee or the Council would then fall away and the matter would be treated as having been dealt with by the original service Committee. No further referral of the matter would be permitted.

MEETING OF MEMBERS WITH REPRESENTATIVES OF OUTSIDE BODIES  
(Minute 195 of General Purposes Committee 21 March 1990)

Where a meeting is held with representatives of an outside organisation and reference is made to the actions or comments of a Member of the Council who is not present at that meeting, before including a note of the actions or comments in the Minutes of that meeting or accepting as correct any minutes prepared by the representatives of the outside organisation containing such a note, the relevant Director or duly authorised Officer shall verify the position with the Member concerned.

## **3.2 ACCESS TO INFORMATION PROCEDURE RULES**

### **1. SCOPE**

These rules apply to all meetings of the Council, Committees, Panels and Sub-Committees (together called meetings).

Some meetings involve Councillors and officers; they may be briefings or agenda planning meetings and these are not open to the public nor are meetings of the political groups on the Council.

### **2. ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information given elsewhere in this Constitution or by the law.

### **3. RIGHTS TO ATTEND AND RECORD MEETINGS**

Members of the public may attend all meetings subject only to the exceptions in these rules.

Members of the public attending meetings of the Council and Committees in open session may record the meeting using whatever non-disruptive methods that they consider appropriate, including filming, photographing, audio recording and use of social media. Recording of any part of a meeting held in closed session is not permitted. Anyone filming a meeting is asked to only focus on those actively participating.

All attendees should be made aware that they may be filmed or recorded whilst attending a meeting and that attendance at the meeting signifies consent to this.

The Chairman of the meeting has the discretion to halt any recording for a number of reasons including disruption caused by the filming, recording or its transmission or the nature of the business being conducted.

Questions should be addressed to the Democratic Services Team at [committeeservices@maidstone.gov.uk](mailto:committeeservices@maidstone.gov.uk) (members of the press should contact the Press Office).

### **4. NOTICES OF MEETINGS**

The Council will give at least five clear working days' notice of any meeting by posting details of the meeting at the offices of the Council unless the meeting is called at shorter notice, when details of the meeting will be posted as soon as it is called.

### **5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda

will be open to inspection from the time the item was added to the agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Councillors). Agendas and papers are available here: <http://www.maidstone.gov.uk/council/meetings,-minutes-and-agendas>

## **6. SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the proper officer thinks fit, copies of any other documents supplied to Councillors in connection with an item

to any person on payment of a charge for postage and any other costs, or electronically without charge.

## **7. ACCESS TO MINUTES ETC. AFTER THE MEETING**

The Council will make available for public inspection copies of the following for six years after a meeting:

- (a) the minutes of the meeting (or records of decisions taken, together with reasons), excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### **8.1 List of background papers**

The author of a report will set out in every report which is not confidential or exempt a list of those documents (called background papers) relating to the subject matter of the report and where they can be inspected which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and

(b) which have been relied on to a material extent in preparing the report

but this does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

## **8.2 Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting a copy of each of the documents on the list of background papers.

## **9. SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and be available to the public at the Council's main offices.

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

### **10.1 Confidential information – requirement to exclude public**

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information would be disclosed.

### **10.2 Exempt information – discretion to exclude public**

The public may be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that exempt information (see below) would be disclosed.

Where a meeting will determine any person's civil rights or obligations, or adversely affect their possessions Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6, or the person who is the subject of the hearing requests that the matter is determined in private.

### **10.3 Meaning of confidential information**

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure, or information which cannot be publicly disclosed by Court Order.

### **10.4 Meaning of exempt information**

Exempt information means information falling within the following categories:

Category	1 Condition
1. Information relating to any individual.	Information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
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 any 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.	

\* Information is not exempt under paragraph 3 if it is required to be registered at Companies House or on any other public register.

Information falling within any of paragraphs 1-7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

## **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the proper officer thinks fit, the Council may exclude access by the public to reports which in his/her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

## **12. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS**

All Councillors will be entitled to inspect any document which is in the possession or under the control of the Council or its Committees where they are able to demonstrate a "need to know" to the satisfaction of the Monitoring Officer or his/her Deputy.

### **Nature of rights**

These rights of a Councillor are additional to any other right he may have, for example a subject access right under the Data Protection Act.

### COUNCILLORS RIGHTS TO INSPECT DOCUMENTS AND TAKE COPIES (Minute 12 Council Meeting 16 October 1996)

In addition to Members' other rights, all documents of the Council should be available and open for inspection and copying by all Members, provided either that the documents do not disclose exempt information as described in Schedule 12A to the Local Government Act 1972, or that the Member has a need to know the information contained in the document and has made a written declaration stating why inspection of the documents is necessary for the performance of their duties as a Councillor, provided that access to the document will not be given if to do so would be a breach of the Data Protection Act or other legislation;

That all information obtained from an inspection and any copy document received shall be treated as confidential to the Member and shall be for his/her use as a Member of the Council only unless the Chief Executive, Director or duly authorised Officer concerned agrees at the time of inspection or supply of copy documents that this restriction can be relaxed; and

That in the event of the Chief Executive, Director or duly authorised Officer not agreeing that the restriction can be relaxed, the Member concerned shall have the right to require the matter to be referred to the relevant Committee and, if necessary, to the Council for final determination.

### **3.3 MAIDSTONE YOUTH FORUM PROCEDURE RULES**

#### **1. Operation of the Maidstone Youth Forum**

The way in which the Maidstone Youth Forum operates is set out in the Maidstone Youth Forum Constitution, as agreed by members of the Forum. This includes, but is not limited to, the following issues:

- **Membership**
- **Budget**
- **Voting**
- **Work Programming**
- **Meeting Arrangements**

#### **2. Reports from the Maidstone Youth Forum**

(a) Once it has formed recommendations on proposals, the Maidstone Youth Forum will prepare a formal report and submit it to the proper officer for consideration by the Policy and Resources Committee, or to the Council as appropriate (eg. if the recommendation would require a departure from or a change to the agreed budget or policy framework).

(a) The Committee/Council shall consider the report of the Maidstone Youth Forum within one month of it being submitted to the proper officer (Head of Finance and Resources)

#### **3. Protocol for Dealing with the Maidstone Youth Forum Reports Submitted to the Policy and Resources Committee**

(a) Reports from the Maidstone Youth Forum will be submitted to the Policy and Resources Committee as a whole if the issue is cross-cutting.

(b) When a report is submitted to the members of the Policy and Resources Committee, the Leader of the Council will assume responsibility for co-ordinating the response.

(c) If the Policy and Resources Committee substantively accepts the recommendations of the Maidstone Youth Forum it will respond in writing usually 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 Maidstone Youth Forum) be extended in order to give the Policy and Resources Committee sufficient time to consider the report.

(d) If members of the Policy and Resources Committee in considering the report do not substantively accept the recommendations, the Policy and Resources Committee will debate the issue and the Leader will subsequently respond in writing to the Maidstone Youth Forum, giving the reasons why, as soon as possible after the meeting.

(e) The Maidstone Youth Forum will then consider the response as its next meeting and may request the Leader or another member nominated by

him/her to attend the meeting. It will then forward any comments it may have on the response to the Policy and Resources Committee for consideration. Having considered the comments of the Forum, the Policy and Resources Committee 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 Maidstone Youth Forum to be submitted to full Council together with the response of the Policy and Resources Committee. The Council will then determine the issue.

### **3.4 MAIDSTONE CRIME AND DISORDER REDUCTION PARTNERSHIP PROCEDURE RULES**

#### **Introduction**

The Crime and Disorder Act 1998 requires various 'Responsible Authorities' to work together to develop and implement a Crime and Disorder Reduction Strategy for the area as well as a strategy for combatting the misuse of drugs, alcohol and other substances and a strategy for reducing re-offending. The Responsible Authorities are the Council, along with:

- Kent County Council;
- Kent Police and Crime Commissioner;
- Kent Chief Constable;
- Kent Fire and Rescue Authority;
- Clinical Commissioning Groups; and
- Probation providers

In exercising their functions the Responsible Authorities must also co-operate with various other bodies, known as 'Co-operating Authorities' including:

- Parish Councils
- NHS Trusts/NHS Foundation Trusts
- Governing bodies of schools
- Proprietors of independent schools
- Governing bodies of an institution
- Social landlords

The Safer Maidstone Crime and Disorder Reduction Partnership fulfils this function.

Every local authority must also establish a committee with responsibility for Crime and Disorder matters that has the power to:

- Review decisions made or action taken by the Responsible Authorities in connection with their crime and disorder functions; and
- Make reports or recommendations to the authority with regard to the discharge of these functions.

The Council has adopted the following rules and protocols for when the Communities, Housing and Environment Committee exercises the crime and disorder functions.

**1.** This document assumes:

- The continued operation of the Police and Justice Act 2006;
- The continued existence of a Crime and Disorder Committee function within the Maidstone Borough Council Communities, Housing and Environment Committee;

- The existence of a Crime and Disorder Reduction Partnership for the Borough of Maidstone (currently the Safer Maidstone Partnership);
  - A partnership approach, working with responsible authorities within the Borough (and, where appropriate, beyond) as a “critical friend”.
- 2.** The purpose of this document is to ensure effective interaction between the Safer Maidstone Partnership and the Crime and Disorder Committee to:
- Enhance the public accountability of the Safer Maidstone Partnership;
  - Establish acceptable and appropriate ways of working between the two bodies; and
  - Develop and maintain a positive working relationship for the benefit of the residents of the Borough of Maidstone.
- 3.** The protocols are based on the following principles:
- The Safer Maidstone Partnership should focus on supporting the reduction of crime and anti-social behaviour and reducing fear of crime and anti-social behaviour in the Borough of Maidstone.
  - Safer Maidstone Partnership should seek to minimise any unnecessary additional administrative burdens on responsible authorities.
  - Crime and Disorder Committee agendas need to be developed in conjunction with the Safer Maidstone Partnership.
  - It is the intention of the Crime and Disorder Committee to require the Safer Maidstone Partnership to demonstrate added value in the work it does.
- 4.** The Crime and Disorder Committee has the statutory power to:
- Consider Councillor Calls for Action made in relation to community safety matters (that is the ability for any Councillor to refer a matter to the Crime and Disorder Committee for consideration and for the Committee to place the matter on the agenda and consider the matter).
  - Review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions; and
  - Make reports or recommendations to the local authority with respect to the discharge of those functions.
- 5.** Maidstone Borough Council has a responsibility to work with Kent County Council and other district councils on community safety issues where this is possible, for example through joint development of work programmes.

## **6. Communication**

- 6.1 The Crime and Disorder Committee and the Safer Maidstone Partnership will each nominate a named officer to be the main point of contact. That officer will direct all correspondence to the appropriate person.
- 6.2 The Democratic Services Team will inform the Safer Maidstone Partnership of all Committee work programmes on a six monthly basis to give Partners the opportunity to comment on any items that they feel appropriate to their own work. The Safer Maidstone Partnership will also be invited to propose future work items for the Crime and Disorder Committee where it wishes to do so, though the Committee is under no obligation to take these on.
- 6.3 The Safer Maidstone Partnership will inform the Crime and Disorder Committee of its forthcoming work on a six monthly basis and consult the Committee on its work where appropriate. In particular, the Safer Maidstone Partnership should consult the Crime and Disorder Committee on its Partnership Plan.
- 6.4 Both parties will inform the other of structure changes and significant changes to priorities or future plans to ensure accuracy of information.

## **7. Information Sharing**

- 7.1 The Safer Maidstone Partnership will distribute public minutes of full Partnership, Policy group and Strategy group meetings to members of the Crime and Disorder Committee as soon as these are agreed.
- 7.2 The Crime and Disorder Committee may also request informal notes of delivery group meetings where this is relevant to work being carried out by the Committee.
- 7.3 The Safer Maidstone Partnership is required to respond to requests for information by the Crime and Disorder Committee "as soon as reasonably possible". These requests from councillors should be well focused and thought through.
- 7.4 Information provided to the Crime and Disorder Committee by responsible authorities should be depersonalised and should not include any information that would be reasonably likely to prejudice legal proceedings or current or future operations of the responsible authority. These requirements cannot be bypassed by Schedule 12A of the Local Government Act 1972 i.e. by putting an item onto Part II of a committee agenda.

## **8. Meeting Procedures and Protocols**

- 8.1 The Committee has a duty to meet at least once a year and is recommended to meet at 6 monthly intervals to ensure the ongoing building and maintenance of knowledge.

- 8.2 Review task and finish groups may meet outside of these formal meetings with the requirement to report findings in full at a Crime and Disorder designated meeting of the Communities Housing and Environment Committee.
- 8.2 Officers or employees of responsible authorities and co-operating persons or bodies are required to attend meetings of the Crime and Disorder Committee to answer questions or provide information. The Committee will endeavour to give at least one month's notice to persons requested to attend. The person required must attend on the specified date unless they have a reasonable excuse not to.
- 8.3 Prior to meetings between the Crime and Disorder Committee and the Safer Maidstone Partnership, the Democratic Services Team will:
- Agree meeting dates as far in advance as possible;
  - Provide meeting paperwork at least 5 working days prior to the meeting;
  - Provide the Safer Maidstone Partnership with a list of proposed questions or key areas of inquiry.
- 8.4 When representatives of the Safer Maidstone Partnership are invited to attend meetings of the Crime and Disorder Committee, the following protocols will apply:
- Committee Members should endeavour not to request detailed information from representatives of the Safer Maidstone Partnership at meetings of the Committee, unless they have given prior notice through the appropriate officer. If, in the course of question and answer at a meeting of the Committee, it becomes apparent that further information would be useful, the representative being questioned may be required to submit it in writing to members of the Committee through the appropriate officer.
  - In the course of questioning at meetings, representatives of the Safer Maidstone Partnership may decline to give information or respond to questions on the ground that it is more appropriate that the question be directed to a more senior representative.
  - Representatives of the Safer Maidstone Partnership may decline to answer questions in an open session of the Committee on the grounds that the answer might disclose information which would be exempt or confidential as defined in the Access to Information Act 1985. In that event, the Committee may resolve to exclude the media and public in order that the question may be answered in private sessions.
  - Committee members may not criticise or adversely comment on any individual representative of the Safer Maidstone Partnership by name.
- 8.5 A record will be made of the main statements of witnesses appearing before the Committee and will be agreed with the witness prior to publication or use by the Committee. Committee meetings may be electronically recorded and web-cast.

## **9. Reporting and Recommendations**

- 9.1 Section 19(2) of the Police and Justice Act 2006 states that where the Crime and Disorder Committee makes a report or recommendations, a copy shall be provided to each of the Responsible Authorities.
- 9.2 In accordance with Section 19(8) of the Police and Justice Act, the authority, person or body to which a copy of the report or recommendations is passed shall:
- a) Consider the report or recommendations;
  - b) Respond to the Crime and Disorder Committee indicating what (if any) action it proposes to take; and
  - c) Have regard to the report or recommendations in exercising its functions.
- 9.3 The relevant partner (or partners, including the full Safer Maidstone Partnership) will have 28 days to formally respond to any recommendations made by the Committee, or if this is not possible as soon as reasonably possible thereafter. The relevant partner(s) will inform the Crime and Disorder Committee Chairman if delays are expected.
- 9.4 The Democratic Services Team will ensure that drafts of Committee reports are made available for comment by the Safer Maidstone Partnership Strategy Group and any adverse comments or concerns reported to the Committee before the final report is published.
- 9.5 The Chairman of the Safer Maidstone Partnership will be given advance notice of the date of publication of the report and consulted on the text of any accompanying press release.

## **10. Co-option**

- 10.1 The Crime and Disorder Committee may co-opt additional members as it sees appropriate. These co-optees will be non-voting. The relevant Responsible Authority will be consulted as to the most suitable person prior to co-option, and the membership of the co-optee can be withdrawn at any time.
- 10.2 In addition to Co-option, the Crime and Disorder Committee will invite the Chief Inspector from Kent Police (Maidstone) to attend committee meetings when items on community safety are being considered.

## **11. Changing the Rules and Protocols**

These rules and protocols will be reviewed on an annual basis, at the first meeting of the Crime and Disorder Committee each Municipal Year by the Committee and the Safer Maidstone Partnership Chairman to ensure that they remain fit for purpose. The Communities Housing and Environment Committee may change these rules and protocols as considered appropriate and the Head of Legal Partnership may update these rules (in

the same way as the rest of the Council's Constitution) to deal with any changes in legislation and to remove ambiguity or inconsistency etc.

### **3.5 FINANCIAL PROCEDURE RULES**

#### **1 General**

- 1.1 Financial Procedure Rules regulate the Council's financial affairs and maintain an acceptable standard of financial administration. Financial Procedure Rules are Council policy and must be complied with.
- 1.2 No exceptions from any of the provisions of these Financial Procedure Rules will be made other than by agreement of the responsible Committee or Officer, whose reasons will be recorded in the decision record.
- 1.3 These Financial Procedure Rules should be read in conjunction with the Council's Contract Procedure Rules and delegations to officers Part 2 of the Constitution.

#### **2 Financial Administration - Relevant Legislation**

- 2.1 Section 151 of the Local Government Act 1972 states "Every Local Authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of these affairs".
- 2.2 The Chief Finance Officer is, for the purposes of Section 151 of the Local Government Act 1972, responsible for the proper administration of the Council's financial affairs.
- 2.3. Section 114 of the Local Government Finance Act 1988 states the person (referred to as the Chief Finance Officer of the Authority) having responsibility for the administration of the financial affairs of a relevant authority under Section 151 of the Local Government Act 1972, shall:
  - (a) Make a report under this section if it appears to him/her that the Authority, a Committee or Officer of the Authority, or Joint Committee on which the Authority is represented:-
    - (i) has made or is about to make a decision which involves or would involve the Authority incurring expenditure which is unlawful;
    - (ii) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Authority; or
    - (iii) is about to enter an item of account, the entry of which is unlawful.
  - (b) Make a report under this section if it appears to him/her that the expenditure of the Authority incurred or to be incurred in a financial year is likely to exceed the resources available to it to meet that expenditure (including sums borrowed).

### **3 Estimates**

#### **Medium Term Financial Strategy**

- 3.1. The Chief Finance Officer will prepare and maintain a Medium Term Financial Strategy giving a five year forward assessment (for the next budget year and the following four years) of revenue and capital commitments based on present levels of service and efficiency, and reflecting decisions taken on new commitments.
- 3.2. Directors and their duly authorised officers will, in consultation with the Chief Finance Officer, when giving consideration to significant individual proposals, also give consideration to resulting future commitments.
- 3.3 Reports to Councillors will include the following information:
  - (a) The revenue consequences of a decision over a five year period;
  - (b) In the case of capital expenditure the results of an options appraisal and the difference between any unique potential funding option and the option as agreed in the Treasury Management Strategy; and
  - (c) The implications of the new commitment for the medium term financial strategy.

#### **Annual Estimates**

- 3.4 In order to set a budget requirement as required by Local Government Finance Acts, annual revenue and capital estimates will be submitted by the Chief Finance Officer to the Council for approval. Such estimates will be prepared in accordance with the requirements of the Chief Finance Officer.
- 3.5 The Chief Finance Officer will provide annual guidelines including a timetable relating to the production of the annual estimates. Directors and duly authorised officers will produce all estimates that form part of their service responsibilities strictly in accordance with such guidelines.
- 3.6 Discretionary fees and charges will be reviewed and fixed each year by the Committee responsible for the function or the Service Director as appropriate having considered a report from the Director or duly authorised Officer in conjunction with the Chief Finance Officer, as part of the estimate cycle.
- 3.7 In addition, any officer of the Council will provide any information the Chief Finance Officer requires for the preparation of the annual estimates.
- 3.8 Policy and Resources Committee will co-ordinate the estimates and will then make budget recommendations to Council.
- 3.9 Following approval by the Council the estimates will be used by the Chief Finance Officer, Directors and duly authorised Officers for the control of

expenditure and the recovery of income. All monitoring will occur in the Financial Management System.

#### **4 Authority For The Incurring Of Expenditure**

##### **General Authority**

- 4.1 Directors and their duly authorised officers have authority to incur expenditure on items approved within the Council's Budget. Each Director will be responsible for the supervision of the expenditure of their Directorate and for reporting to the appropriate Committee any proposed expenditure not included, or in excess of, the amount included in their estimate.
- 4.2 A Committee or officer will, before incurring any expenditure not included in an approved estimate, consider the use of virement up to the sum shown in the Financial Limits Appendix between budget heads (also listed at the end of these Rules) or, if virement is not possible, submit to the Committee or Chief Finance Officer a request for a transfer from balances accompanied by a detailed statement in support of the expenditure, as long as the amount being taken from balances does not take balances below the minimum level set by Council. Any amount above or below these figures will require the approval of Council.
- 4.3 The Chief Finance Officer will keep the income and expenditure of the Council under review and throughout the year give the Committees and appropriate Director or duly authorised officer, such information as is necessary.

##### **Acceptance of Tenders**

- 4.4 The Chief Finance Officer has authority to accept tenders and quotations in excess of the sum shown in the Financial Limits Appendix on the recommendation of the appropriate Director or duly authorised officer:
  - (a) If the tender or quotation figure is within the financial provision; or
  - (b) Subject to prior consultation with the Committee Chairman including proposals for funding, where:
    - i. The tender or quotation figure is within the financial provision but the lowest tender is not to be accepted; or
    - ii. In the case of construction contracts, although the tender figure exceeds the financial provision it does not exceed such provision by more than 10%.
- 4.5 Directors are authorised to accept tenders and quotations not exceeding the relevant sums shown in the Financial Limits Appendix, subject to the criteria detailed in paragraph 4.4 (a) or (b) above.

- 4.6 Directors are authorised to accept quotations in excess of the limit for quotations shown in the Financial Limits Appendix, referred to in paragraph 4.4 above, where:
- (a) The quotation is below the limit set for the Chief Finance Officer;
  - (b) The relevant Director is satisfied that, on seeking quotes, it was reasonable to expect a quote would be returned that was within the specified limit for quotations; and
  - (c) The quote meets the criteria detailed in paragraph 4.4 (a) or (b) above.
- 4.7 All Committees have authority to incur expenditure, including the acceptance of tenders in excess of the sums shown in the Financial Limits Appendix, when the delegation to the Chief Finance Officer has not been exercised.

### **Revenue Overspending & Virement**

- 4.8 When a Director or duly authorised officer proposes to consider an overspend or under-recovery, the following will apply:
- (a) If a saving cannot be made from the same service budget, then an overspend or under-recovery may only occur if the appropriate Director or duly authorised Officer can produce a compensating saving from other service budget(s) under their control, subject to the Chief Finance Officer's approval to virement. The limit of the Chief Finance Officer's approval is shown in the attached Financial Limits Appendix;
  - (b) Committees have the power of deferred virement, which is to spend immediately on projects while accepting the requirement to specifically identify the funding budget at some later time during the financial year. The overall limit for the deferred virement is given in the Financial Limits Appendix;
  - (c) Where the authority of the Chief Finance Officer has been exceeded, all Committees have authority to approve virement up to the sum shown in the Financial Limits Appendix;
  - (d) The Chief Finance Officer may approve revenue supplementary estimates up to the sum shown in the Financial Limits Appendix;
  - (e) Where the Borough Emergency Coordinator has determined that an emergency exists or an incident has created the need to implement the Council's Business Continuity Plan, the Chief Finance Officer, in consultation with the Leader of the Council, may approve revenue supplementary estimates specific to expenditure on that situation, up to the sum shown in the Financial Limits Appendix.

- (f) Any proposal outside of 4.8 (a) to (c) above, or not approved by the Chief Finance Officer, will be submitted for the prior approval of the appropriate Committee, accompanied by a financial comment from the Chief Finance Officer on the effects of the proposal.
- 4.9 After consideration of paragraph 4.8 above, if virement is not possible or is insufficient, a Committee may make a request for a transfer from balances to Policy and Resources Committee. The request will be accompanied by a detailed statement in support of the expenditure as long as the amount being requested from balances does not reduce the level of balances below the minimum level set by Council. Any amount above these figures will require the approval of Council.
- 4.10 The Chief Finance Officer will report periodically to the Policy and Resources Committee on the total amount of virement and transfer from balances already approved during the financial year.

### **Carry Forward of Resources**

- 4.11 The Chief Finance Officer is authorised to carry forward to the next financial year resources allocated to specific projects which cannot be spent in the existing financial year subject to the following conditions:
- (a) The minimum carry forward is the sum set out in the Financial Limits Appendix;
  - (b) The resources carried forward must be capable of being and must be spent within the next financial year; and
  - (c) The resources must be allocated to specific projects only and must not be available as unallocated resources or for normal running costs.
- 4.12 The ability to carry forward resources will not be available if, in overall terms, it has been identified that the cash allocation is overspent.
- 4.13 The decisions made by the Chief Finance Officer under this delegation must be reported to the Policy and Resources Committee when the provisional revenue outturn for the previous financial year is reported.
- 4.14 When the Chief Finance Officer is unwilling to exercise the delegation the matter will be put to the Policy and Resources Committee for authority to carry forward the resources.

### **Capital Overspending**

- 4.15 When virement is required it is the responsibility of the appropriate Director or duly authorised Officer to find compensating savings on schemes within the Capital Programme. The scheme identified must be underspent at completion and the savings identified must be achievable in the financial year in which the virement is proposed.

- 4.16 A Committee has authority to approve any virement proposed by the appropriate Director or duly authorised officer where compensating savings are found from within the same Committee's budget.
- 4.17 When a request or proposal for additional finance cannot be met by compensating savings within the same Committee, a report by the Director or duly authorised Officer, accompanied by a comment from the Chief Finance Officer on the financial effects of the proposal, will be submitted for approval to the Policy and Resources Committee.
- 4.18 If, after consideration of paragraphs 4.15 to 4.17, virement cannot be found or is insufficient, a report on alternative funding proposals by the Director or duly authorised Officer, accompanied by a comment from the Chief Finance Officer on the financial effects of the proposal, will be submitted to the Council for consideration and if thought fit approval.

## **5 Treasury Management**

### **General Management**

- 5.1 This Council has adopted CIPFA's Code for Treasury Management in Local Authorities.
- 5.2 All money in the hands of the Council will be aggregated for the purpose of Treasury Management and will be under the control of the Chief Finance Officer.
- 5.3 All executive decisions on borrowing, investing, or financing are delegated to the Chief Finance Officer who is required to act in accordance with the adopted code of practice as detailed in paragraph 5.1 and the Council's Treasury Management Strategy as detailed below.

## **Treasury Management Strategy**

- 5.4 The Chief Finance Officer will prepare and maintain a Treasury Management Strategy for the forthcoming three years. This strategy will be reported annually to Policy and Resources Committee and approved by Council.
- 5.5 The strategy will follow the recommendations of the code of practice mentioned in paragraph 5.1 but allowing for the specific circumstances of the Council where these affect treasury management. In addition the strategy will set the "prudential indicators" as required to be set by the Local Government Act 2003.
- 5.6 The Chief Finance Officer will also report either to the Policy and Resources Committee or Audit, Governance and Standards Committee not less than once each financial year on the activities of the Treasury Management operation and on the exercise of the Treasury Management powers delegated to him/her. At least one report will be an Annual Report on Treasury Management for presentation on or around 30<sup>th</sup> June in the succeeding financial year.

## **6 Accounting Procedures**

- 6.1 All accounting records and procedures of the Council will be subject to the approval and overall control of the Chief Finance Officer.
- 6.2 The Chief Finance Officer will be responsible for keeping the Council's accounts having regard to statutory requirements, regulations and codes of practice in force at any one time. The Accounts and Audit Regulations 2015 require that the authority has a sound system of internal control which: -

*(a) facilitates the effective exercise of its functions and the achievement of its aims and objectives;*

*(b) ensures that the financial and operational management of the authority is effective; and*

*(c) includes effective arrangements for the management of risk.*

Every year the authority must review the effectiveness of its systems of internal control and prepare an annual governance statement.

- 6.3 The Chief Finance Officer will have sole responsibility for claiming Government grants and subsidies. All Officers of the Council will provide any information required by the Chief Finance Officer to submit or substantiate such claims.

## **7 Audit**

- 7.1 Internal Audit is an assurance function that primarily provides as independent and objective opinion to the organisation on the control environment comprising risk management, control and governance by evaluating its effectiveness in achieving the organisation's objectives, in line with the Public Sector Internal Audit Standards. The Council has adopted an Internal Audit Charter that provides more details of this role and reporting relationships.
- 7.2 Internal Audit is a statutory requirement for all local authorities, as set out in the Accounts and Audit Regulations 2015 which state that:  
*A relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance.*  
*Any officer or member of a relevant authority must, if required to do so for the purposes of the internal audit—*  
*(a) make available such documents and records; and*  
*(b) supply such information and explanations*  
*as are considered necessary by those conducting the internal audit.*
- 7.3 The Chief Executive, on behalf of the Council, is responsible for ensuring that an adequate and effective internal audit exists and has appointed a Head of Internal Audit Partnership to achieve this. The Head of Internal Audit Partnership reports to the Director of Environment and Shared Services (as client for the service), but also has unrestricted access to the Leader of the Council, the Chairman of the Audit, Governance and Standards Committee and the Chief Finance Officer.
- 7.4 The Head of Internal Audit Partnership will produce a strategic internal audit plan covering a three/four year period and an annual programme. The plan will be reported to Audit, Governance and Standards Committee for approval. The Council has also approved an Internal Audit Charter which is available from the Head of Internal Audit Partnership.
- 7.5 The Head of Internal Audit Partnership has authority to:
- (a) Enter at all reasonable times any premises or land under the control of the Council;
  - (b) Access all records, documents and correspondence relating to any financial and other transactions of the Council;
  - (c) Require and receive such explanations as are necessary concerning any matter under examination; and
  - (d) Require any officer of the Council to produce cash or any other Council assets under their control.

- 7.6 When any matter involves, or is thought to involve, irregularities concerning cash, property or other assets and interests of the Council or there is any suspected irregularity in the exercise of the functions of the Council, the Director or duly authorised Officer concerned will immediately notify the Head of Internal Audit Partnership who will take the steps that s/he considers necessary to investigate and report in accordance with the Council's Anti-Fraud and Corruption Policy.
- 7.7 A report which provides a summary of the work of Internal Audit will be submitted to the Audit, Governance and Standards Committee on a six monthly basis. Progress against the Audit plan will be shown.
- 7.8 If any severe control weakness is identified by Internal Audit and not immediately rectified, a report will be submitted to the next meeting of the Audit, Governance and Standards Committee. If the matter is considered by the Chief Finance Officer or the Chief Executive to be of such importance and materiality that it should be brought to the more immediate attention of Councillors, a special meeting will be convened or matters will be reported to the Policy and Resources Committee.

## **8 Risk Management**

- 8.1 The Head of Internal Audit Partnership will maintain and publish guidance and policies on sound risk management. The Chief Executive will maintain a strategic risk register. This register will be subject to annual review by the Corporate Leadership Team team and annual approval by the Policy and Resources Committee.
- 8.2 Directors or duly authorised officers must conform to the Council's policies on risk management and are responsible for ensuring that:
- (a) Strategic risks are identified and reported to the Chief Executive for inclusion in the strategic risk register;
  - (b) Service specific operational risk registers are maintained for all services. Such registers should be maintained and updated on an annual basis; and
  - (c) All employees follow guidance and policies on risk management, understand the nature of risk and accept responsibility for risk associated with their area of authority.
- 8.4 Where appropriate risk management issues should form a key part of all planning processes including strategic plans, service plans and project plans.

## **9. Placing of Contracts (Including Official Orders)**

9.1 Before placing a contract, regard will be had to the Contract Procedure Rules and to the various financial limits shown in the Financial Limits Appendix which determine and affect:

- (a) The form of contract to be used;
- (b) The need for a competitive approach;
- (c) The need for financial vetting;
- (d) Bonding arrangements;
- (e) Contract period; and
- (f) Liquidated damages.

(Note: The form of contract document to be used is prescribed in Contract Procedure Rule 1(5). Official Orders or a contract in a form approved by the Head of Legal Services must be used where that form of contract document does not apply.)

9.2 Contracts, including official orders, will not be issued for work, goods or services unless the cost is covered by an approved annual or supplementary estimate and the arrangement represents good value for money for the Council.

9.3 Except where the Contract Procedure Rules apply, periodical or petty cash payments are made, or in instances complying with paragraph 9.4 below, official orders, raised in the Financial Management System, will be issued in all instances for works, goods and services.

9.4 For items of an obligatory and continuous nature, such as electricity or telephone charges, other than for the initial commitment, it is not necessary to raise an official order. However a register detailing the location, usage, and amount of any charges must be maintained and regularly reconciled to the Financial Management System by the administrator of the register.

9.5 Official orders will describe, where applicable:

- (a) The nature and quantity of the work, goods or services required;
- (b) The quality of the work, goods and services where this can be quantified and is a factor in the placing of the order;
- (c) Any contract or agreement or agreed prices relating thereto;
- (d) The estimated total cost;
- (e) Any defects period;
- (f) Any retention of monies;
- (g) The rate of any liquidated damages to be applied; and

- (h) The dates for commencement and completion of the work or services, or the date for the delivery of goods.
- 9.6 Official orders will be authorised in the Financial Management System by the Director or duly authorised officer, whose names will be notified in writing for the agreement of the Chief Finance Officer specifying any financial limits to that authority.
- 9.7 The duties of requesting orders and the receipting of goods and services must not be performed by the same officer as the approval of official orders and the certifying of invoices.
- 9.8 It will not be possible to issue a verbal order except in cases of genuine emergency or other special circumstances that has been specifically approved by the Director or duly authorised officer. Such approval will be subject to the completion of an advisory purchase order within the Financial Management System as soon as possible. Such purchase orders will clearly state that a verbal order has already been given.

## **10 Fixed Term Supply Contracts**

- 10.1 The Council operates certain fixed term supply contracts with specified suppliers who are chosen as a result of competitive tendering. The purpose is to obtain the supply of goods and materials at prices most advantageous to the Council.
- 10.2 Individual purchases of goods and materials supplied under these contracts are subject to the requirements to raise official orders as detailed in paragraph 8 above regardless of the fact that a fixed term contract exists.

## **11 Payment of Invoices**

- 11.1 Invoices for the purpose of this Financial Procedure Rule include invoices from suppliers raised against purchase orders along with other items such as certificates, utility bills, reimbursements and payment requisitions.
- 11.2 Authorisation of the purchase order and the receipt of goods or services will be accepted by the Chief Finance Officer as authorisation for payment of an invoice where the following are true:
  - (a) The invoice relates to a valid purchase order raised and authorised by the Director or duly authorised Officer in the Financial Management System;
  - (b) Goods or services received transaction[s] have been created in the Financial Management System to match the invoice; and
  - (c) The invoice has a value no greater than 110% of the goods/services received value, as per the unit price approved on the purchase order.

- 11.3 An invoice that does not meet the requirements of paragraph 11.2 above must be specifically authorised by the Director or duly authorised Officer. Invoices will not be authorised for payment unless:
- (a) The goods or services have been received, examined and approved for quality and quantity, or the work has been done satisfactorily;
  - (b) For items of an obligatory and continuous nature not requiring the raising of a purchase order, details of the payments have been recorded in the appropriate register (see paragraph 8.4);
  - (c) The expenditure is:
    - i. Within the Budget; or
    - ii. Approved in accordance with Financial Procedure Rule 4, or in accordance with Financial Procedure Rule 12.2; and
    - iii. In accordance with the Council's Contract Procedure Rules.
  - (d) The prices, arithmetic, coding and treatment of VAT are correct, and any discount, credit or other allowances to which the Council is entitled have been deducted correctly;
  - (e) The invoice has not been certified for payment previously and is a proper liability of the Council; and
  - (f) The appropriate and proper entries have been made in a stores' stock record or inventory.
- 11.4 Where paragraph 11.3 applies, confirmation that the requirements for payment have been met will be by the Director or duly authorised Officer authorising the invoice concerned in one of the following ways:
- (a) Where the invoice has been processed in the Financial Management System and approval has been requested electronically, by the acceptance of that invoice within the Financial Management System; or
  - (b) By signature on the original invoice in all other cases. Such invoices will be authorised and passed to the Chief Finance Officer in time to enable payment 30 days from receipt of the invoice by the Council, unless alternative terms are required and explicitly agreed.
- 11.5 The Chief Finance Officer will examine, in so far as s/he considers necessary, invoices passed to him/her for payment and be entitled to have access at all times to such documents as appear to him/her to be necessary for the purpose of the examination and be entitled to such information and explanation as s/he thinks necessary.

11.6 Each Director or duly authorised officer will, after 31 March of each year and by such date as is necessary, give the Chief Finance Officer schedules of all invoices outstanding relating to that Directorate, and when such invoices are subsequently certified for payment, shall identify them accordingly.

## **12 Payment by Certificate**

12.1 When a contract (including official orders) provides for payments to be made on an interim or stage basis, the Director or designated duly authorised Officer will be responsible for the maintenance of a contract register. The register will, for each contract, specify the name of the contractor, the works to be executed or the goods to be supplied, the contract period and value, bonds, liquidated damages and all payments made in accordance with the contract.

12.2 Interim or stage payments will be authorised only on a certificate signed by:-

- (a) The appropriate Director or duly authorised Officer concerned; and
- (b) The named Supervising Officer or Engineer or Contract Administrator, whichever is appropriate, showing the total amount of the contract, the value of work executed to date, retention money, amount paid to date, the amount now certified and any deduction of liquidated damages.

12.3 The appropriate Director or duly authorised Officer will issue the final certificate for a contract or accepted estimate, provided the regulations relating to any overspending have been complied with. The appropriate Director or duly authorised Officer will be fully responsible for the accuracy of the final account supporting such final certificate. The Chief Finance Officer will inspect selected contracts during the currency of the work both on and off site and the appropriate Director or duly authorised Officer will provide the Chief Finance Officer with such vouchers/documents or other assistance as required.

## **13 Variations to Contracts**

13.1 Every variation on a contract (including official orders) will be authorised in writing by the appropriate person (referred to in 11.2) for that purpose.

13.2 If variations to a contract seem likely to result in the original contract sum (including any contingency sum) being exceeded, the main items will be reported, on each occasion, by the Director or designated duly authorised Officer to the Chief Finance Officer as soon as possible, and no variation will be certified in respect of additional costs to the original contract sum unless:

- (a) Such additional costs have been approved by the appropriate Committee; or

- (b) The effect of any additional costs do not result in the final value of completed work exceeding 5% of the original contract sum, and the Chief Finance Officer is satisfied the Director or duly authorised Officer is able:
  - i. In the case of any scheme funded from capital, to find compensatory savings from other schemes within the approved Capital Programme which will be underspent on completion; and
  - ii. In the case of any scheme funded from revenue, to find specific savings equivalent to the excess within the approved Revenue Budget.

13.3 Financial Procedure Rule 13.2 will not restrict the action of the appropriate person to issue a variation for additional costs exceeding the original contract sum if this would result in a stoppage of the contractual works or a breach of the contractual conditions or such other circumstances, which in the opinion of the Director or duly authorised Officer concerned, would prejudice the Council's financial interests. The Chief Finance Officer will be notified immediately wherever variations are issued in such circumstances.

13.4 The circumstances for issuing such a variation will be reported to the appropriate Committee by the Director or duly authorised Officer concerned, with comment, concerning the financial implications, from the Chief Finance Officer.

#### **14 Collection & Receipt of Banking**

14.1 The collection of all monies due to the Council, including the arrangements for dealing with postal remittances and monies collected by the Council on behalf of other parties will be under the overall control of the Chief Finance Officer.

14.2 All monies received by the Council, or its Officers, must be accounted for and receipted in a form and manner agreed by the Chief Finance Officer.

14.3 All receipts, tickets or other similar documents or stationery dealing with the receipt of monies will be subject to the approval of the Chief Finance Officer.

- 14.4 All monies received on behalf of the Council will be passed without delay (or in accordance with a frequency approved by the Chief Finance Officer), to the Chief Finance Officer or banked direct in the Council's name.
- 14.5 All monies received by the Council on behalf of a third party, will be accounted for and paid to the third party without delay, or in accordance with any agreement or instruction by the Chief Finance Officer, after deduction of any amounts due in respect of commission or other allowance due to the Council. Such commission or other allowance will be accounted for and paid in accordance with Financial Procedure Rule 14.4.
- 14.6 Each Director or duly authorised Officer will furnish such particulars, as the Chief Finance Officer may require, of charges to be raised on sundry debtor accounts for work done, goods supplied, services rendered by the Council or other monies due to the Council.

## **15 Writing off Debts**

- 15.1 Amounts due to the Council, including the council tax, business rates and rents, may be written off by the Chief Finance Officer or an Officer authorised by him/her after submission for such purposes by the Director or duly authorised Officer concerned, provided both Officers are satisfied recovery is impracticable, and the amount for any one debtor does not exceed the sum shown in the Financial Limits Appendix.
- 15.2 Amounts due to the Council, including the council tax, business rates, or other sums which exceed the sum shown in the Financial Limits Appendix for any one debtor require the approval of the Policy and Resources Committee, prior to being written off.
- 15.3 Submissions for write-off will be signed by the Director, or duly authorised officer, whose names will be notified in writing to the Chief Finance Officer.

## **16 Banking Arrangements & Control of Cheques**

- 16.1 All financial arrangements with the Council's bankers and other financial institutions concerning the Council's bank accounts will be made under the direction of the Chief Finance Officer. Financial arrangements include: *bank accounts, debit and credit card merchant accounts, electronic payment schemes and other transaction processing schemes.*

- 16.2 The Chief Finance Officer will be authorised to operate such subsidiary bank accounts as he thinks necessary.
- 16.3 Stocks of cheques ordered from the Council's bankers or authorised printers will only be on the authority of the Chief Finance Officer who shall make proper arrangements for the security of cheques.
- 16.4 All cheques drawn on behalf of the Council:
- (a) For amounts below the sum shown in the Financial Limits Appendix, may contain a printed facsimile signature of the Chief Finance Officer or may be signed by officers specifically authorised by the Council; and
  - (b) For amounts exceeding the sum shown in the Financial Limits Appendix, shall be signed by the Chief Finance Officer or officers specifically authorised by the Council.
- 16.5 Each payment in a BACS direct credit file, that exceeds the sum shown in the financial limits Appendix, will require approval of the Chief Finance Officer or Officers specifically authorised by the Council prior to being processed to the BACS system.
- 16.6 The Chief Finance Officer will be responsible for the maintenance of proper records to account for all cheques received from the Council's bankers or authorised printers and all cheques issued, spoilt or cancelled.
- 16.7 The Chief Finance Officer will ensure that a reconciliation of cash books and bank accounts is made not less frequently than monthly, by a person other than those authorised to sign cheques in 16.7.

## **17 Petty Cash Imprest & Cash Floats**

- 17.1 The issue and use of petty cash imprest and cash floats will be under the overall control of the Chief Finance Officer. Petty cash expenditure must be limited to minor items.
- 17.2 Vouchers must be obtained to support all items expended and must be presented, together with the standard summary of expenditure form, duly coded for reimbursement. Vouchers are to be supported by receipts in required VAT format and the total reimbursement certified by a duly authorised Officer.
- 17.3 Each Director or duly authorised officer will, at the end of each financial year complete and provide to the Chief Finance Officer a certified statement confirming all imprest and cash floats and the names of the officers directly responsible for/in possession of the amounts involved.

## **18 Credit & Purchasing Cards**

- 18.1 The issue and use of credit cards and purchasing cards will be under the overall control of the Chief Finance Officer.
- 18.2 Card backed purchases should be limited to minor items where purchase by card affords reduced cost or increased value for money for the Council over and above that available by use of standard purchase order procedures as outlined in section 9 above.
- 18.3 In all cases receipts must be obtained and where relevant these must be VAT receipts. Card statements must be reconciled to receipts, coded and authorised by a Director or duly authorised Officer. All documentation must then be passed without delay to the Chief Finance Officer.
- 18.4 When cards are used to purchase goods and services on the internet or by other electronic means, transactions must occur through a Council Laptop or PC connected to the internet through the Council's network.

## **19 Establishment, Salaries & Wages**

- 19.1 The Head of Human Resources Shared Service will maintain an Establishment Record of the agreed employment levels for officers within each section. The record will show the grade applicable, post holder and current pay point on the pay scale and any allowances and additional emolument attached to the post.
- 19.2 Each Director will maintain an Establishment Record of the employment levels for workers within their Directorate. The record will show the post title or number, pay rate applicable, post holder and any allowances and additional emolument attached to the post.
- 19.3 The payment of all salaries, wages, bonuses, pension, compensation or other emoluments to employees or former employees will be made under the control of the Head of Human Resources Shared Service, subject to any specific directions of the Chief Finance Officer.
- 19.4 The Head of Human Resources Shared Service will be responsible for the day to day administration of salaries and wages.

- 19.5 Directors or designated duly authorised Officers will notify the Head of Human Resources Shared Service as early as possible of all appointments, dismissals, resignations, absences from duty (other than for usual or special leave), transfers and changes which may affect the remuneration of employees.
- 19.6 The Head of Human Resources Shared Service will be provided with, for all new appointments, all information necessary to maintain records of service, superannuation, income tax and national insurance liability.
- 19.7 The Head of Human Resources Shared Service will report proposals relating to pay and conditions of service to the Chief Executive (except where there are specific delegations as set out in Part 2 of the Constitution) and will prepare the Pay Policy Statement for submission to Council before 31 March each year for the forthcoming year.
- 19.8 Timesheets (and other time-related records, controls and procedures) will be in a form approved by the Chief Finance Officer.
- 19.9 Starters and Leavers Forms, Overtime Claims and Subsistence/Allowance Claims will be signed by the Director or duly authorised Officer and notified in writing to the Head of Human Resources Shared Service. Timesheets and other time related records shall be certified by a responsible person authorised by the appropriate Director or duly authorised Officer.
- 19.10 The Head of Human Resources Shared Service will maintain a Staff Handbook which will contain items relating to conditions of service.

## **20 Travelling & Subsistence**

- 20.1 All certified claims for payment of car allowances, subsistence allowances, travelling and incidental expenses will be in a form approved by the Chief Finance Officer.
- 20.2 The certification by or on behalf of the Director will mean that the certifying Officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred, and the allowances are properly payable by the Council.

## **21 Insurances**

- 21.1 The Chief Finance Officer shall effect all insurance cover and maintain necessary records.
- 21.2 Before taking any action which might represent an insurable risk to the Council, a Director or duly authorised officer will consult the Chief Finance Officer.
- 21.3 Each Director or duly authorised officer will give prompt notification to the Chief Finance Officer of the extent and nature of all new risks in respect of assets purchased by, loaned to or bequeathed to the Council where the Council has an insurable interest and provide such details of identification as the Chief Finance Officer deems necessary to record the item.

- 21.4 Each Director or duly authorised officer will notify the Chief Finance Officer immediately in writing of any loss, claim, liability or damage covered by insurance in connection with the Directorate, or of any irregularity or other occurrence which might give rise to a claim against the Council. The Chief Finance Officer will process all claims to the Council's insurers.
- 21.5 When undertaking work for third parties, Directors must ensure that adequate indemnities are obtained from the third parties' insurers or from the Council's insurers to cover potential liabilities, as appropriate, and that evidence of any indemnity is provided to the Chief Finance Officer.

## **22 Stock**

- 22.1 Each Director and duly authorised officer will be responsible for the care, custody and accountability of any stock under his/her area of control.
- 22.2 Stock will not be held in excess of reasonable requirements and will be reviewed periodically by each Director or duly authorised officer concerned.
- 22.3 Stock records will be kept in a form approved by the Chief Finance Officer.
- 22.4 Stocktaking will be carried out at least once in each financial year by the Section concerned. The Director or duly authorised officer involved will ensure that the stocktaking is undertaken by sufficient senior and impartial officers to secure an independent and reliable result.
- 22.5 The Chief Finance Officer is entitled to check stock and will be supplied with such relevant information required for the accounting, costing and financial records of the Council.
- 22.6 Write-offs and adjustments to deficiencies to stock balances will be subject to the approval of the Chief Finance Officer or an officer authorised by him/her, provided the value of each item involved does not exceed the sum shown in the Financial Limits Appendix and the Chief Finance Officer or his/her authorised Officer is satisfied the reason(s) for the write-offs and adjustments are reasonable.
- 22.7 When the value of write-off or adjustment exceeds the sum shown in the Financial Limits Appendix for any one item, the item(s) will require the approval of the Chief Finance Officer or the Policy and Resources Committee.

## **23 Property**

- 23.1 The Head of Finance and Resources will maintain a register of all land and property owned or leased to or by the Council in a form approved by the Chief Finance Officer.
- 23.2 The Head of Legal Partnership will have custody of all title deeds and keep them under secure arrangements as agreed with the Chief Finance Officer.

- 23.3 Assets purchased by the Council will, as far as practical, be marked effectively as Council property.
- 23.4 Directors and duly authorised officers will have responsibility for introducing and maintaining adequate security for personnel, buildings, cash and confidential information. Full instructions on security matters will be given to appropriate staff.
- 23.5 The Chief Finance Officer will be consulted on the adequacy of security arrangements relating to cash and valuable items.
- 23.6 Inventories of the Council's property (other than stock) will be kept by each duly authorised officer concerned and in a manner and form approved by the Chief Finance Officer.
- 23.7 Duly authorised officers will be responsible for making sufficient arrangements for the safekeeping of any lost property.
- 23.8 Scrap, surplus or obsolete items which may have a value, will be disposed of at auction, normally via the appropriate purchasing officer. Where the auction of items is not considered to be the appropriate method of disposal, the manner of disposal will be determined by the appropriate Director or duly authorised officer following consultation with the Chief Finance Officer.
- 23.9 Wherever possible, an independent valuation of the item will be obtained, which will form the basis of any disposal value.

## **24 Information Technology**

- 24.1 All Directors and duly authorised officers must conform to the Council's IT Strategy and consult with the Head of Finance and Resources when appropriate.
- 24.2 Any development of new systems that involve a financial operation or produce output that may influence the allocation of resources must be subject to the approval of the Chief Finance Officer regarding mutually acceptable minimum standards of control.
- 24.3 Standalone systems which contain financial information which details, supports or affects the accounts of the Council, must be reconciled to the Financial Management System on a monthly basis by the relevant Systems Administrator.
- 24.4 Directors and duly authorised officers are responsible for the control of their own computer systems and the security and privacy of any data contained within them, which must accord with the Data Protection Act 1998.
- 24.5 Directors and duly authorised officers will make sound arrangements to ensure the continuation of service in the event of a disaster affecting their IT systems.

- 24.6 All Directors and duly authorised officers must ensure that they and their staff conform to the Council's Computer Security Policy. This includes the need to adhere to the specified arrangements relating to the use of passwords.
- 24.7 Directors and duly authorised officers must ensure that they and their staff conform to the Council's Internet Acceptable Use Policy.
- 24.8 Directors and duly authorised Officers must ensure that their systems of data handling and security are in accordance with the Council's IT Strategy.

## **25 Partnerships**

- 25.1 All partnerships must be developed as set out in the Council's Partnership Strategy.
- 25.2 Any partnership that involves a financial operation or includes consequences that may influence the Council's resources will be subject to the approval of the Chief Finance Officer.
- 25.3 Before entering into a partnership arrangement Directors or duly authorised Officers will ensure that there is a documented and sound business case for such a partnership. The business case must include:
- (a) Details of the need for the partnership;
  - (b) An analysis of the options available and the reason for rejection of alternatives;
  - (c) Details of any market testing of the service provision;
  - (d) Details of the financial and performance benefits to the Council and its partners;
  - (e) An exit strategy for all members of the partnership;
  - (f) Insurance and indemnity arrangements that have been accepted by the Chief Finance Officer;
  - (g) A risk assessment of the partnership, its activities, and the exit strategy; and
  - (h) Details of monitoring processes, financial controls, and performance criteria that are at least similar in structure to those expected of the Council by the Council's Constitution.
- 25.4 All partnership arrangements must offer demonstrable financial and/or performance improvements to Council services.

## **26 Financial Limits Relating To Contract And Financial Procedure Rules**

26.1 Financial limits will be reviewed and agreed on an annual basis by the Chief Finance Officer after taking account of relevant inflation indices and following consultation with Directors. The current financial limits are attached as an Appendix to these Financial Procedure Rules.

## **FINANCIAL LIMITS APPENDIX**

### **FINANCIAL LIMITS RELATING TO CONTRACTS AND FINANCIAL PROCEDURE RULES**

In the case of contracts for the provision of goods, materials or services for a period exceeding one year, the financial limits specified in this Appendix shall be for the actual or estimated price or value for the provision of such goods, materials or services for the full period of the contract.

#### **CONTRACTS**

##### Contract Procedure Rules

- [3.5] All contracts to the value of £10,000 or more shall be the subject of a written risk assessment.
- [5.3.6] All contracts of the value of £25,000 or more must be included on the Council's Contract Register.
- [5.3.7] Separate files recording details of contract awards, waivers and extensions shall be kept for all contracts of a value of £25,000 or above.
- [7.4] Thresholds for quotes/tenders – see table 7.4 for Contract Procedure Rules.
- [8.3] The common seal of the Council shall be affixed to every contract in excess of £75,000, unless the Head of Legal Partnership considers that this is not necessary or appropriate.

##### Financial Procedure Rule

- 4.2 The overall limit for virement is £100,000.
- 4.4 The Chief Finance Officer is authorised to accept tenders or quotations on the recommendation of the Director or duly authorised Officer and subject to the conditions shown in Financial Procedure Rules in excess of £75,000. Directors are authorised to accept tenders not exceeding this sum.
- 4.7 All Committees are authorised to incur expenditure, including the acceptance of tenders, where the delegation to the Chief Finance Officer has not been exercised, in excess of £75,000.
- 4.8(a) The limit of the authority for the Chief Finance Officer to authorise virement is £50,000 per item.
- 4.8(b) & (c) The overall limit for deferred virement and Committee virement is £100,000.
- 4.8(d) The limit to the authority for the Chief Finance Officer to authorise supplementary estimates is £50,000 per item.

- 4.8(e) The limit to the authority of the Chief Finance Officer to authorise supplementary estimates in relation to a confirmed emergency or the activation of the Business Continuity Plan is £100,000 per emergency.
- 4.11(a) The minimum carry forward is £6,000.
- 15.1 & 22.6 The limit to the authority of the Chief Finance Officer or an Officer authorised by him/her to write-off individual amounts due to the Council including the council tax, business rates and housing rents and to authorise adjustments to stores balances is £12,000 per item.
- 15.2 & 22.7 The approval of the Policy and Resources Committee is required before amounts can be written off or stores balances can be adjusted in excess of £12,000 per item.
- 16.4(a)&(b) Any payment to a single supplier which exceeds £40,000 requires authorisation of a bank signatory.

## Agreed Council Budget Heads

No	Description		Committee
1.	Alcohol Entertainment & Taxi Licensing	5EN	Communities, Housing and Environment
2.	Animal & Public Health	5EN	Communities, Housing and Environment
3.	Balances	7BL	Balances
4.	Building Control	6PT	Strategic Planning, Sustainability and Transport
5.	Capital Grants & Contributions	3CS	Policy & Resources
6.	Cemetery, Cremation & Mortuary Services	5EN	Heritage, Culture and Leisure
7.	Community Development	2CL	Communities, Housing and Environment
8.	Community Safety	2CL	Communities, Housing and Environment
9.	Corporate Management	1LD	Policy & Resources
10.	Corporate Support Services	3CS	Policy & Resources
11.	Culture and Heritage	4EC	Heritage, Culture and Leisure
12.	Democratic Representation & Management	3CS	Policy & Resources
13.	Development Control	6PT	Strategic Planning, Sustainability and Transport
14.	Economic Development	4EC	Policy & Resources
15.	Elections	3CS	Policy & Resources
16.	Emergency Planning	3CS	Policy & Resources
17.	Environment Safety & Routine Maintenance	6PT	Strategic Planning, Sustainability and Transport
18.	Environmental Health and Protection	5EN	Communities, Housing and Environment
19.	Environmental Services	5EN	Communities, Housing and Environment
20.	External Interest Payable	3CS	Policy & Resources
21.	Flood Defence & Land Drainage	5EN	Communities, Housing and Environment
22.	General Grants, Bequests & Donations	2CL	Communities, Housing and Environment
23.	Health & Safety	5EN	Communities, Housing and Environment
24.	Housing Benefit	3CS	Policy & Resources
25.	Housing General fund	2CL	Communities, Housing and Environment
26.	Interest & Investment Income	3CS	Policy & Resources
27.	Local Land Charges	6PT	Strategic Planning, Sustainability and Transport
28.	Local Tax Collection	3CS	Policy & Resources
29.	Noise and Pest Control	5EN	Communities, Housing and Environment
30.	Non-Distributed Costs	3CS	Policy & Resources
31.	Open Spaces	2CL	Heritage, Culture and Leisure
32.	Parking Services	6PT	Planning, Sustainability and Transportation
33.	Pensions Fund Management	3CS	Policy & Resources
34.	Planning Policy	6PT	Strategic Planning, Sustainability and Transport

35.	Precepts & Levies	3CS	Policy & Resources
36.	Public Conveniences	5EN	Communities, Housing and Environment
37.	Public Health	2CL	Communities, Housing and Environment
38.	Public Transport	6PT	Planning, Sustainability and Transportation
39.	Recreation & Sport	2CL	Heritage, Culture and Leisure
40.	Street Cleansing	5EN	Communities, Housing and Environment
41.	Tourism	4EC	Heritage, Culture and Leisure
42.	Travellers sites	2CL	Communities, Housing and Environment
43.	Waste and Recycling Collection	5EN	Communities, Housing and Environment
	Appropriation Account		Policy & Resources
	Pensions Fund Appropriation		Policy & Resources
	Council Tax Requirement		Policy & Resources
	Business Rates		Policy & Resources

## **3.6 CONTRACT PROCEDURE RULES**

### **1. Introduction – Purpose of the Contract Procedure Rules**

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Procedure Rules is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
  - 1.1.1 Furthers its corporate objectives
  - 1.1.2 Uses its resources efficiently
  - 1.1.3 Purchases appropriate quality goods, services and works
  - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
- 1.3 These Contract Procedure Rules are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Procedure Rules do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide.

### **2. General Principles – Application and Compliance with Contract Procedure Rules**

- 2.1 These Contract Procedure Rules apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2 These Contract Procedure Rules apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Procedure Rules do not apply to:
  - 2.3.1 Employment contracts
  - 2.3.2 Contracts relating solely to the purchase or sale of interests in land
  - 2.3.3 Contracts for retention of legal representation and the appointment of expert witnesses in legal proceedings

- 2.3.4. Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies
- 2.3.5. Joint arrangements to collaborate with other authorities that involve the delegation of functions.

### 3. **General Principles Applying to All Contracts**

- 3.1. All purchases however small shall be in writing.
- 3.2. As a minimum, all contracts shall include clauses which set out:
  - 3.2.1. The works, supplies (goods), services, material, matters or things to be carried out or supplied.
  - 3.2.2. The contract value or a pricing schedule by which the price to be charged for the works, supplies or services provided can be calculated.
  - 3.2.3. The time within which the contract is to be performed.
  - 3.2.4. Quality requirements and/or standards which must be met.
  - 3.2.5. Requirements on the contractor to hold and maintain appropriate insurance.
  - 3.2.6. What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part).
  - 3.2.7. Requirements on the contractor to comply with all relevant equalities and health and safety legislation.
  - 3.2.8. Requirements on the contractor to comply with relevant sustainability guidelines.
  - 3.2.9. That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010.
  - 3.2.10. Requirements regarding freedom of information, data protection, data quality and copyright legislation.
  - 3.2.11. Requirements regarding business continuity.
  - 3.2.12. Conditions of termination, including the Council's obligations under regulation 73 of the Public Contracts Regulations 2015.
  - 3.2.13. Payment clauses as required by Regulation 113 of the Public Contracts Regulations 2015 which should specify that the Council will pay the contractor within 30 days from the date on which the relevant invoice is regarded valid and undisputed and oblige

contractors to include similar provisions in any subsequent sub-contract entered into by the contractor.

- 3.3. Written contracts shall not include non-commercial terms or terms unrelated to the actual performance of the contract, unless these are necessary to achieve best value for the Council.
- 3.4. All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Purchasing Guide.
- 3.5. All contracts of a value of £10,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file.
- 3.6. All contracts over a value of £10,000 or for the provision of consultancy services shall be in a form of contract approved by the Head of Legal Partnership.

#### **4. Regulatory Context**

- 4.1. All purchasing shall be conducted in accordance with Regulatory Provisions which are:
  - 4.1.1. All relevant statutory provisions.
  - 4.1.2. The relevant European Community Treaty Principles and EU Rules, which are defined in the Council's Purchasing Guide.
  - 4.1.3. The Council's Constitution including these Contract Procedure Rules, the Council's Financial Procedure Rules and Scheme of Delegation.
  - 4.1.4. The Council's Purchasing Guide and other policies and procedures of the Council as appropriate.
- 4.2. In the event of conflict between the above, the EC Treaty Principles and EU Rules will take precedence, followed by UK legislation, then the Council's Constitution, the Council's Purchasing Guide and guidelines, policies and procedures.

#### **5. Responsibilities of Directors and Responsible Officers**

- 5.1. Each Director shall:
  - 5.1.1. be responsible for the purchasing undertaken by his/her Directorate.
  - 5.1.2. be accountable to the Council for the performance of his/her duties in relation to purchasing.

- 5.1.3. comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation.
  - 5.1.4. appoint a Responsible Officer in writing who shall be an authorised signatory.
  - 5.1.5. take immediate action in the event of breach of these Contract Procedure Rules.
- 5.2. A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.
- 5.3. A Responsible Officer's duties in respect of purchasing are to ensure:
- 5.3.1. compliance with all Regulatory Provisions and integrity of the tender process.
  - 5.3.2. compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process.
  - 5.3.3. that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used.
  - 5.3.4. the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
  - 5.3.5. compliance with the Council's decision making processes.
  - 5.3.6. ensuring that all contracts of a value of £25,000 or more are included on the Council's Contract Register.
  - 5.3.7. making sure that proper records of all contract award procedures, waivers/exemptions and extensions are maintained, with separate files for each purchase of a value of £25,000 or more.
  - 5.3.8. that the works, supplies or services procured are appropriate and proportional to the council's needs.
  - 5.3.9. that value for money is achieved.
  - 5.3.10. that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.
- 5.4. In considering how best to procure works, supplies and services Directors and/or Responsible Officers (as appropriate in the context) shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing

methods, the Public Services (Social Value) Act 2012 and the availability of local authority charging and trading powers under the Local Government Act 2003 and Localism Act 2011.

- 5.5. It is a disciplinary offence to fail to comply with these Contract Procedure Rules and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Procedure Rules to their line manager or to the Monitoring Officer or the Head of Audit Partnership.
- 5.6. Any officer or Councillor who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to their line manager or the Council's Monitoring Officer and Head of Audit Partnership.
- 5.7. Where permissible under applicable EU Rules, any person or company against who any misconduct or corruption referred to in clause 5.6 is proved will be immediately disbarred from consideration in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services.

## 6. **Scheme of Delegation**

- 6.1. Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme(s) of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Head of Service.
- 6.2. Officers shall, where appropriate, be informed by their Head of Service of the extent of any delegated authority and applicable financial thresholds.

## 7. **Financial Thresholds and Procedures**

- 7.1. The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2. There is a general presumption in favour of competition. Wherever possible contract opportunities should be advertised by way of a public notice. The Council must consider the potential cross border interest in the opportunity effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the EU Threshold levels outlined below in Table 7.4. For any contract opportunity with a value of £25,000 or more, whenever the Council places a public notice in relation to a contract opportunity it must also, within 24 hours of first publication of the public notice, place a notice on the Contracts Finder website as required by the Public Contracts Regulations 2015.

7.3. The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals or Official Journal of the European Union ("OJ") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media but it is important to note the Council's obligations to publish notices on Contracts Finder as referred to at 7.2 above.

**7.4. Table setting out financial thresholds and procedures**

<b>Total value £</b>	<b>Type of contract</b>	<b>Procedure to be used</b>
0 to 10, 000	works, supplies and services	At least one written quote in advance
10,001 to 24,999	works, supplies and services	At least three written quotes in advance
25,000 to 74,999	works, supplies and services	At least three written quotes in advance and, if a public notice is placed, then a corresponding notice on Contracts Finder also
75,000 to 172,513**	works, supplies and services	At least three written tenders in advance, following advertisement by public notice and on Contracts Finder
172,514** plus  **EU Threshold for supplies and services	Supplies and services	EU Rules apply – full competitive process following advertisement in the OJ and on Contracts Finder for supplies and services. For services listed in Schedule 3 to the Public Contracts Regulations 2015 reduced requirements apply under the EU Rules but there is a presumption in favour of advertising and a competitive process
172,514 to 4,322,011**	Works	Full competitive process with tenders following advertisement by public notice and on Contracts Finder
4,322,012** plus **EU Threshold for works	Works	EU Rules apply – full competitive process with tenders following OJ advertisement and Contracts Finder advertisement

\* For the purposes of the EU Rules services are divided into two types and the EU Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts;

\*\* or relevant threshold in force at the time under the EU Rules.

7.5. Where contracts are of a type and value which means that they are subject to the EU Rules then there are a number of EU procedures available under the Public Contracts Regulations 2015. Care must be taken to ensure that the correct and most appropriate procedure is used. For any procedure where it is anticipated that there will be negotiation with tenderers, justification as to the choice of procedure is likely to be needed based on the nature and complexity of the contract and assistance on the choice and use of EU procedure should be sought.

7.6. Responsible Officers should always consider whether it is appropriate to undertake some form of market consultation before the formal procurement process is commenced. Market consultation can help to prepare for a more efficient and streamlined process but should be carried out in accordance with the Public Contracts Regulations 2015 where applicable and steps should be taken to ensure that this does not distort competition or prejudice the subsequent procurement process.

## 8. **Financial Thresholds and Processes Applying to Approval and Execution of Contracts**

8.1. For contracts over the relevant EU Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the Head of Finance and Resources (or an Officer authorised in writing by him/her) in advance.

8.2. When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Procedure Rules ensure, in particular, that:

8.2.1. the appropriate approvals have been obtained to authorise that decision; and

8.2.2. where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.

8.2.3. where the contract value is £10,000 and below authorisation is delegated to the appropriate officer in accordance with the previously advised financial sign off level.

8.2.4. Where the contract value is between £10,001 and £74,999 written authorisation must be obtained from the appropriate Director prior to awarding the contract.

8.2.5. Where the contract value is £75,000 or above, written authorisation must be obtained from Chief Finance Officer prior to awarding the contract.

8.2.6. In the event that the contract is not awarded to the tender which represents the best value for money the Chief Finance Officer must consult with the relevant Committee Chairman before confirming the

award.

8.2.7. A contract award notice is published in the OJ where required by the EU Rules, and a contract award notice is placed on Contracts Finder.

8.3. Any contracts valued at £75,000 or above shall be executed as a deed, unless in the opinion of the Head of Legal Partnership a deed is unnecessary. All other contracts may be signed by officers with appropriate delegated authority.

8.4. Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Head of Audit Partnership.

## 9. **Calculating the Contract Value**

9.1. The starting point for calculating the contract value for the purposes of these Contract Procedure Rules is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

9.2. There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Procedure Rules.

9.3. The EU Rules can cover contracts which are below the stated EU threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the EU Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

## 10. **Principles Underlying Procurement Processes and Evaluation**

10.1. All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

10.1.1. Sufficient time is given to plan and run the process

10.1.2. Equal opportunity and equal treatment

10.1.3. Openness and transparency

10.1.4. Probity

10.1.5. Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

## 11. **Submission and Opening of tenders**

- 11.1. An Invitation to Tender shall be issued by the Council for all contracts over £75,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender and the EU Rules.
- 11.2. Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:
  - 11.2.1. addressed to the Director of Regeneration and Communities or other nominated Director not involved in the Tender process.
  - 11.2.2. in a sealed envelope marked "Tender" followed by the subject matter to which it relates.
  - 11.2.3. kept in a safe place by the Director of Regeneration and Communities or other nominated Director.
  - 11.2.4. retained unopened until the date and time specified for its opening.
- 11.3. Where the Council has indicated in the Invitation to Tender and/or where the EU Rules require that a tender can or must be submitted electronically, then those tenders shall be:
  - 11.3.1. in the format specified in the Invitation to Tender.
  - 11.3.2. stored securely with a secure method of opening.
  - 11.3.3. retained unopened until the date and time specified for their opening.
- 11.4. No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Director of Regeneration and Communities or other nominated Director is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.
- 11.5. Tenders shall be opened by the Head of Finance and Resources or other nominated officer or a member of their staff designated by them and an immediate record shall be made of tenders received including names and addresses and the date and time of opening.

## 12. **Evaluation of Quotes and Tenders**

- 12.1. All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenderers.
- 12.2. Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.

12.3. Save in exceptional circumstances approved in advance by the Head of Finance and Resources contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

### 13. **Waivers**

13.1. The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £10,000 may be waived in the following circumstances.

13.1.1. For contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or

13.1.2. the circumstances set out in Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or

13.1.3. the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or

13.1.4. at the discretion of the Head of Finance and Resources who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.

13.2. A Responsible Officer who seeks a waiver of Contract Procedure Rules other than Procedure Rules 13.1.3 shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Procedure rules is set out in the Council's Purchasing Guide.

13.3. All waivers from these Contract Procedure Rules must be:

13.3.1. Fully documented

13.3.2. Subject to a written report in an approved format to be submitted in advance to the appropriate Director which shall include reasons for the waiver which demonstrate that the waiver is genuinely required

13.3.3. Subject to approval in advance by the appropriate Director who shall consult the relevant Committee Chairman and record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.

13.4. All decisions on waivers must take into account:

- 13.4.1. Probity
- 13.4.2. Best value/value for money principles.
- 13.5. For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.
- 13.6. A waiver shall not be applied for reasons of poor contract planning.

#### 14. **Extensions to Existing Contracts**

- 14.1. Where extensions to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.
- 14.2. Any extension must be:
  - 14.2.1. Fully documented
  - 14.2.2. Subject to a written report in an approved format to be submitted to a Director which shall include reasons for the extension which demonstrate that the need for the extension is genuinely beneficial.
  - 14.2.3. Subject to approval by the Director who shall record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely beneficial.
- 14.3. Any extension must take into account:
  - 14.3.1. Probity
  - 14.3.2. Best value/value for money principles.
- 14.4. For contracts subject to EU Rules, any extension must meet the conditions set out in the EU Rules in addition to the more general requirements set out above.

#### 15. **Purchasing Schemes**

- 15.1. A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.
- 15.2. Responsible Officers must check in advance that:
  - 15.2.1. The Council is legally entitled to use the Purchasing Scheme

- 15.2.2. The purchases to be made do properly fall within the coverage of the Purchasing Scheme
  - 15.2.3. The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.
- 15.3. A "Purchasing Scheme" may include:
- 15.3.1. Contractor prequalification lists/select lists
  - 15.3.2. Framework arrangements (including those set up by the Office of Government Commerce)
  - 15.3.3. Purchasing arrangements set up by central purchasing bodies and commercial organisations
  - 15.3.4. Consortium purchasing
  - 15.3.5. Collaborative working arrangements
  - 15.3.6. Formal agency arrangements
  - 15.3.7. E-procurement/purchasing schemes and methods
  - 15.3.8. Other similar arrangements
- 15.4. Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Procedure Rules in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.
- 16. Review and Changes to these Contract Procedure Rules**
- 16.1. These Contract Procedure Rules shall be reviewed and updated on a regular basis. Save in the case of revisions to the EU Thresholds in Contract Procedure rule 7, amended Contract Procedure Rules shall be agreed and adopted by the Council. Revisions to the EU Thresholds shall be updated by the Head of Finance and Resources.

### **3.7 CONTRACT PROCEDURE RULES RELATING TO LAND TRANSACTIONS**

#### **1. DEFINITIONS**

In all the Rules relating to the sale, purchase, management and development and appropriation of land the following definitions apply:

- (a) Land shall mean land and buildings.
- (b) Sale shall mean the disposal of any interest in land including the grant of a lease or tenancy of any duration.
- (c) Purchase shall mean the acquisition of any interest in land including the taking of a lease or tenancy of any duration.
- (d) Development shall mean development as defined by the Town & County Planning Acts.

#### **2. SALE OF LAND**

- (1) Subject to Rule 6 all sales of land and buildings are to be authorised by the Policy and Resources Committee unless authority has been delegated to Officers. All operational land must be declared surplus prior to sale.
- (2) The method of sale will be decided by the Head of Finance and Resources in consultation with the Chairman of Policy and Resources Committee.

#### **3. SALES BY PUBLIC AUCTION**

A reserve price shall be determined by the Head of Finance and Resources having consulted with the Chairman of Policy and Resources Committee and the land shall not be sold at the auction for a price lower than the reserve price. The results of the auction shall be reported to the Chairman of Policy and Resources Committee subsequent to the auction. The Head of Finance and Resources is authorised to sell a property by private treaty subsequent to the auction at not less than the reserve price.

#### **4. SALE BY TENDER**

- (1) Advertisements containing particulars of the land offered for sale by tender and of the date by which tenders are to be received shall be inserted by the Head of Finance and Resources in a local newspaper circulating in the Borough, and such other publications as s/he shall consider appropriate in the circumstances as well as placed on the Council's website and any other relevant websites.

- (2) Tenders received shall be dealt with in accordance with Rule 7.

## **5. SALES BY PRIVATE TREATY**

In a case where the Head of Finance and Resources has agreed that the land should be disposed of by private treaty either to a specified purchaser or persons or by public invitation to negotiate, the Head of Finance and Resources, or a member of his/her staff, shall conduct the negotiations and shall ensure that a written record is kept of the negotiations, such note to be made immediately following the negotiations. Negotiations shall normally take place in the Council's offices, at the offices of the Council's solicitors or agents or the offices of the prospective purchaser or his/her solicitors or agents or at the property in question within normal office hours.

## **6. SPECIAL CATEGORIES OF SALE**

- (1) Rules 2 to 5 shall not apply to the following special categories of sale ("the special categories"):-
- (a) sales under the right to buy scheme.
  - (b) sales of dwellings in the possession of the Council as mortgagee.
  - (c) sales of non-operational land not exceeding .025 hectares.
  - (d) sales of sites for electricity substations and gas governors.
  - (e) the grant, surrender and renewal of licences, easements, wayleaves and rights of way.
  - (f) the grant, surrender and renewal of leases and tenancies where the land concerned has previously been let on a lease or tenancy.
  - (g) a transfer to the Highway Authority of land forming part of the highways and highway verges to be adopted by the Highway Authority.
- (2) In the case of transactions falling within the special categories all necessary action shall be taken by the Head of Finance and Resources in line with Council policy objectives subject in the case of (c) to prior consultation with the Chairman of Policy and Resources Committee.

## **7. RULES FOR THE PURCHASE OF LAND**

- (1) The purchase of land shall be authorised by the Head of Finance and Resources in consultation with the Chairman of Policy and

Resources Committee and s/he will set an upper limit on the acquisition price or lease rental and stipulate any condition that s/he would wish to apply to the purchase; or the Policy and Resources Committee itself, depending upon value.

- (2) Negotiations for the acquisition shall be conducted by the Head of Finance and Resources or a member of his/her staff who shall ensure that a written record is kept of the negotiations, such note to be made immediately following the negotiations.
- (3) The outcome of the negotiations shall be reported back to the Chairman of Policy and Resources Committee.
- (4) Such negotiations shall normally take place in the Council's offices or at the offices of the vendor/lessor or his/her solicitors or agents or at the property in question within normal office hours.

## **8. RULES FOR MANAGEMENT AND DEVELOPMENT OF LAND**

- (1) The management and development of all operational land shall be the responsibility of the Head of Finance and Resources.
- (2) The management and development of all non-operational land shall be the responsibility of the Head of Finance and Resources in consultation with the Chairman of the Policy and Resources Committee.
- (3) Investment strategy shall be determined by the Policy and Resources Committee and shall have regard to the CIPFA Prudential Code for Capital Finance for local authorities.
- (3) All land shall be managed in accordance with the current policies of the Council and all consents or approvals given to tenants, licensees and occupiers shall be subject to the grant of any necessary planning permission, listed building consent and consent under the Building Regulations which it will normally be the responsibility of the tenant or licensee or occupier to obtain.
- (4) Before any development is allowed to commence on Council owned land all necessary planning permissions and listed building consents must first have been obtained by the Council, the tenant, the licensee, the occupier or the developer as the case may be.

## **9. APPROPRIATION OF LAND**

- (1) All appropriations of land from within the responsibility of one Committee to another shall be authorised by the Head of Finance and Resources.

- (2) The appropriate Committee Chairmen shall be informed of details of the appropriation figure.
- (4) Unless the Head of Finance and Resources determines otherwise, the date of appropriation shall be the date of his/her decision.

**10. DISPOSAL AND APPROPRIATION OF OPEN SPACE**

- (1) The following additional procedures shall apply where it is proposed to dispose of or appropriate Open Space.
- (2) Before making a final decision on the proposed appropriation or disposal of Open Space the Head of Finance and Resources shall advertise the proposal in accordance with the provisions of the relevant Act and shall consider any representations made as a result of the advertisement in making any decisions.

### **3.8 OFFICER EMPLOYMENT PROCEDURE RULES**

#### **1. Recruitment and appointment**

(a) Declarations

- (i) A candidate for any Council appointment will, when making application, inform the duly authorised officer or Head of Human Resources Shared Service of any relation they know to be a Councillor or senior officer of the Council. A candidate who knowingly fails to disclose a relationship will be disqualified for the appointment and if appointed be liable to dismissal without notice. Councillor or senior officer of the Council will inform the Chief Executive of any relationship known to him/her with any person he knows is a candidate for an appointment. The Chief Executive will report any such disclosure to the Council or appropriate Councillor or officer making the appointment.
- (ii) This rule will be included in any form of application.
- (iii) For the purpose of this rule "senior officer" means any Council Officer designated Grade 14 or above. Persons will be deemed to be related if they are - husband, wife, civil partner, co-habiting partner son, daughter, grandson, grand-daughter, brother, sister, nephew or niece of a Councillor/candidate.

(b) Seeking support for an appointment

- (i) Canvassing of Councillors directly or indirectly for any job appointment will disqualify the candidate. Every advertisement inviting applications and application form will include a note to this effect.
- (ii) A Councillor shall not solicit for any person any Council appointment or give a written testimonial of a candidate's ability, experience or character for an application for appointment with the Council.

#### **2. Recruitment of Head of Paid Service and Directors**

Where the Council proposes to appoint a Head of Paid Service or Director and it is not proposed that the appointment be made exclusively from among the existing officers, the Council will:

(a) Draw up a statement specifying:

- (i) The duties of the officer concerned; and

- (ii) Any qualifications or qualities to be sought in the person to be appointed;
  - (b) Make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
  - (c) Make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
3. **Appointment or Dismissal of Head of Paid Service, or Dismissal of the Chief Finance Officer or Monitoring Officer**
- (a) The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a Panel appointed by the Employment Committee. The authority must approve the appointment before an offer of appointment is made to that person.
  - (b) If a complaint of misconduct is received about the Chief Executive, Chief Finance Officer or Monitoring Officer, the complaint will be dealt with in accordance with The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
  - (c) The dismissal of any of the Head of Paid Service, the Chief Finance Officer or Monitoring Officer may only be made by the Council following consideration and recommendation by an advisory Panel drawn from the Employment Committee, to include at least one, preferably two, Independent Persons appointed under section 28(7) of the Localism Act 2011. (Note: At least two Independent Persons must be invited to the Panel and if the Council does not have more than one Independent Person, the Panel should invite such Independent Persons who may have been appointed to other authorities as they consider appropriate.) The Council must appoint to the Panel such relevant independent persons who have accepted an invitation, in accordance with the following priority order:
    - (i) an independent person who has been appointed by the authority and who is a local government elector;
    - (ii) any other independent person who has been appointed by the authority;
    - (iii) an independent person who has been appointed by another authority or authorities.
  - (d) Before taking a vote at a Council meeting on whether or not to approve such a dismissal, the authority must take into account, in particular—
    - (a) any advice, views or recommendations of the Panel;
    - (b) the conclusions of any investigation into the proposed dismissal; and
    - (c) any representations from the relevant officer.

- (e) The authority must approve the dismissal before notice of dismissal is given to that person.

#### 4. **Appointment of Directors**

Appointment of Directors is the responsibility of the Employment Committee.

#### 5. **Other appointments**

- (a) **Officers below Director level.** Appointment of officers below Director level will be delegated to the Chief Executive or his/her nominee, and may not be made by Councillors. Discipline of Chief Officers other than the Statutory Officers above is also the responsibility of the Chief Executive.
- (b) **Political assistants.** No appointment will be made to any post allocated to a political group until each of the groups which qualify for one has been allocated a post. No allocation of a post will be made to a political group which does not qualify for one. Only one post will be allocated to any political group.

#### 6. **Disciplinary Action**

Councillors will not be involved in any disciplinary action nor dismissal against any officer (other than the Statutory Officers mentioned above) except where such involvement is necessary for any investigation or inquiry into alleged misconduct. However, the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Councillors in respect of disciplinary action or capability from decisions made by the Chief Executive or the involvement of Councillors in consultation with the Chief Executive in relation to disciplinary matters.

# Maidstone Borough Council Constitution

## Part 4 Codes and Protocols

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### Part 4 Codes and Protocols

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## 4.1 COUNCILLORS' CODE OF CONDUCT

### Preamble

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:
  - (a) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a Councillor.
  - (b) Fail to disclose the interest at Meetings where the interest is not entered in the Authority's register.
  - (c) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the Authority's register and is not the subject of a pending notification.
  - (d) Take part in discussion or votes, or further discussions or votes, at Meetings on matters in which you have the interest which are being considered at the meeting.
  - (e) Fail to notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority.
  - (f) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.
  - (g) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

## **THE CODE**

### **1. Interpretation**

In this Code:

**“Associated Person”** means (either in the singular or in the plural):

- (a) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- (e) any body in respect of which you are in a position of general control or management:
  - (i) exercising functions of a public nature; or
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

**“Authority”** means Maidstone Borough Council.

**“Authority Function”** means any one or more of the following interests that relate to the functions of the Authority:

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to Councillors of the Authority;
- (e) any ceremonial honour given to Councillors of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

**“Code”** means this Code of Conduct.

**“Co-opted Member”** means a person who is not an elected Councillor of the Authority but who is a member of:

- (a) any Committee or Sub-Committee of the Authority, or

- (b) and represents the Authority on, any joint committee or joint sub-committee of the Authority; and
- (c) who is entitled to vote on any question that falls to be decided at any Meeting.

**"Disclosable Pecuniary Interest"** means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:

- (a) your interest; or
- (b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

**"Interests"** means Disclosable Pecuniary Interests and Other Significant Interests.

**"Meeting"** means any meeting of:

- (a) the Authority;
- (b) any of the Authority's committees, sub-committees, joint committees and/or joint sub-committees.

**"Member"** means a person who is an elected Councillor of the Authority and includes a Co-opted Member.

**"Other Significant Interest"** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

- (a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than the majority of: -
  - (i) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (ii) (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; or
- (b) relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgement of the public interest.

**"Register of Members' Interests"** means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

**"Sensitive Interest"** means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

## **Scope**

**2.** You must comply with this Code whenever you act in your capacity as a Councillor or Co-opted Member of the Authority.

## **General obligations**

**3.** (1) You must, when using or authorising the use by others of the resources of the Authority:

- (a) act in accordance with the Authority's reasonable requirements; and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

(2) You must not:

- (a) bully any person;
- (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Councillor (including yourself) has failed to comply with this Code;
- (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- (d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (i) you have the written consent of a person authorised to give it; or
  - (ii) you are required by law to do so; or
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - reasonable and in the public interest; and
    - made in good faith and in compliance with the reasonable requirements of the Authority;
- (e) prevent another person from gaining access to information to which that person is entitled by law;
- (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
- (g) use or attempt to use your position as a Councillor improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

## **Registering Disclosable Pecuniary Interests**

- 4.(1) You must, before the end of 28 days beginning with the day you become a Councillor or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
- (2) In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.
- (3) Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.

## **Declaring Interests**

- 5.(1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (2) Where you are present at a meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the meeting, you must:
  - (a) disclose the Interest; and
  - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation or are acting under para 5(4):
  - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
  - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
  - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority, you must:
  - (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and

- (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
  - (c) not seek improperly to influence a decision about the matter.
- (4) Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:
- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
  - (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

### **Sensitive Interests**

- 6.(1) Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.
- (3) The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

### **Gifts and Hospitality**

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.

- (2) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- (3) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.
- (4) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

## **Dispensations**

- 8.**(1) The Monitoring Officer may, on a written request (as appointed Proper Officer for the receipt of applications for dispensation) by a Councillor with an Interest, grant a dispensation relieving the Councillor from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Monitoring Officer considers that:
  - (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
  - (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
  - (c) granting the dispensation is in the interests of persons living in the Authority's area; or
  - (d) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

**THE SEVEN PRINCIPLES OF PUBLIC LIFE**

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Councillors and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached.

**SELFLESSNESS:** Holders of public office should act solely in terms of the public interest.

**INTEGRITY:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**OBJECTIVITY:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**ACCOUNTABILITY:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**OPENNESS:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**HONESTY:** Holders of public office should be truthful.

**LEADERSHIP:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

**Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:**

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

**“the Act”** means the Localism Act 2011

**“body in which the relevant person has a beneficial interest”** means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

**“director”** includes a member of the committee of management of an industrial and provident society

**“land”** excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

**“M”** means a councillor of the relevant authority

**“member”** includes a co-opted member

**“relevant authority”** means the authority of which M is a councillor

**“relevant period”** means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act

**“relevant person”** means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

**“securities”** means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

<b>Interest</b>	<b>Description</b>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a Councillor, or

	<p>towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge):</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

## **4.2 ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF ALLEGED BREACHES OF THE COUNCILLORS' CODE OF CONDUCT**

### **1. Context**

1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that Maidstone Borough Council has adopted for dealing with complaints that an elected Councillor or co-opted member or parish councillor has failed to comply with the Code of Conduct.

### **2. Interpretation**

2.1 'Borough Council' means Maidstone Borough Council.

2.2 'Code of Conduct' means the Code of Conduct, which the Borough and Parish Council have adopted under section 27(2) of the Localism Act 2011.

2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.

2.4 'Disclosable Pecuniary Interest' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Councillors' Code of Conduct.

2.5 'Hearing Panel' means the panel appointed by the Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.

2.6 'Independent Person' means a person or persons appointed by the Council under section 28(7) of the Localism Act 2011:

(a) whose views must be sought and taken into account by the Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member;

(b) who may be consulted by the Subject Member about the complaint.

2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Council, an officer of another authority or an external investigator.

2.8 The 'Monitoring Officer' is a senior officer appointed by the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the

arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer or other person nominated by the Monitoring Officer to act on his/her behalf.

- 2.9 'Parish Council' means the relevant parish council within the Borough of Maidstone.
- 2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 2.11 'Subject Member' means an elected member or co-opted member of the Borough or Parish Council against whom a complaint has been made alleging a breach the Councillors' Code of Conduct.

### **3. Appointment of Independent Person**

- 3.1 The Council shall appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.
- 3.2 The Independent Person (and any substitute) shall be treated as if they were a member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members and in respect of the receipt of allowances.

### **4. Making a complaint**

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form at the end of Annex 1 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 1 to these Arrangements).
- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex 1 to these Arrangements.

## **5. Criminal conduct**

5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:

- (a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
- (b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
- (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (e) take part in discussions or vote at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4(4) of Annex 1 to these Arrangements.

## **6. Anonymous complaints**

6.1 Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer in consultation with the Independent Person, providing it is accompanied by corroborating evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint.

## **7. Role of Independent Person**

7.1 The Independent Person must be consulted and have their views taken into account before the Authority makes a finding as to

whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **8. Preliminary tests**

8.1 The Monitoring Officer will, in consultation with the Independent Person, put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex 1 to these Arrangements.

8.2 In the event that the Independent Person is unavailable or unable to act, the time limits specified in paragraph 1 of Annex 1 may either be extended by the Monitoring Officer or the Monitoring Officer may act alone in taking the decision or action.

## **9. Informal resolution**

9.1 The Monitoring Officer, in consultation with the Independent Person, may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements.

## **10. Investigation**

10.1 If the Monitoring Officer, in consultation with the Independent Person, decides that the complaint merits formal investigation, they will, within 10 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.

10.2 The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

## **11. Hearing**

11.1 If the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Hearing Panel to determine the outcome of the complaint in accordance with Annex 3 to these Arrangements.

## **12. Sanctions**

12.1 Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with paragraph 4 of Annex 3 to these Arrangements.

13. **Appeal**

13.1 There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Hearing Panel.

14. **Revision of these Arrangements**

14.1 The Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter, in accordance with the principles of natural justice.

**PROCEDURE ON RECEIPT OF A COMPLAINT**

**1. Preliminary tests**

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below.

**1.2 Legal jurisdiction criteria test:**

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc.

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

**1.4 Local assessment criteria test:**

If the complaint satisfies the jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;

- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (g) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (h) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken; or the alleged misconduct took place so long ago that the complaint should not be pursued;
- (i) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (j) The complaint is about a deceased person;
- (k) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

1.5 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

## 2. **Notification of complaint to Subject Member**

2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk] of the complaint.

2.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member [and/or Parish Clerk] after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer,

providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.

### **3. Asking for additional information**

3.1 The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish Clerk] for additional information before deciding how to deal with the complaint.

### **4. What process to apply - informal resolution or investigation and/or no action?**

4.1 The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough or Parish Councillor make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Monitoring Officer in consultation with the Independent Person may refer the complaint for investigation when:

(a) it is serious enough, if proven, to justify the range of sanctions available to the Audit, Governance and Standards Committee (see paragraph 4 of Annex 4 to these Arrangements);

(b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

4.3 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 3 to these Arrangements.

4.4 If the complaint identifies potential criminal conduct or a potential breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and, in consultation with the Independent Person, will apply the local assessment criteria test in paragraph 1.4 above.

- 4.5 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.4 above;
  - (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
  - (c) the investigation might prejudice another investigation or court proceedings;
  - (d) on-going investigation by another prosecuting or regulatory authority;
  - (e) genuine long term (3 months or more) unavailability of a key party;
  - (f) serious illness of a key party.
- 4.6 Within 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 2):
- (a) not to refer the complaint for investigation; or
  - (b) to refer the complaint for investigation; or
  - (c) to apply the informal resolution process either before or after an investigation; or
  - (d) following investigation, to refer the complaint to the Hearing Panel; or
  - (e) to take no action and close the matter; or
  - (f) to refer the complaint to the relevant political group leader for action.
- 4.7 The decision notice will be published on the Borough Council's website. There is no right of appeal against the Monitoring Officer's decision. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these

Arrangements, in which case it shall be treated as a fresh complaint.

## 5. Confidentiality

5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assess the complaint (see paragraph 1 above).

5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g. a witness):

- (a) is either vulnerable or at risk of threat, harm or reprisal;
- (b) may suffer intimidation or be victimised or harassed;
- (c) works closely with the Subject Member and is afraid of the consequences, e.g. fear of losing their job;
- (d) suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- (e) may receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

- (a) may lead to evidence being compromised or destroyed; or
- (b) may impede or prejudice the investigation; or
- (c) would not be in the public interest.

5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- (a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;

- (b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- (c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- (d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

## 6. **Informal resolution**

- 6.1 These Arrangements enable the Monitoring Officer, in consultation with the Independent Person, to resolve complaints informally, either before or after investigation. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.
- 6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:
- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough or Parish Council procedures; or
  - (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
  - (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
  - (d) The conduct complained of appears common to a number of members of the Borough or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough or Parish Council procedures etc; or

- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough or Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted; or
- (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough or Parish Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the Borough or Parish Council's procedures;
- (f) conflict management;
- (g) development of the Borough or Parish Council's protocols;
- (h) other remedial action by the Borough or Parish Council;
- (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Audit, Governance and Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action.

- 6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Audit, Governance and Standards Committee.

## **COMPLAINT FORM**

[To be completed]

EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g. REFERRAL FOR INVESTIGATION

*Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature, or may be personal information.*

### **Complaint No:**

(a) Complaint

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to refer the complaint for investigation.

#### **(i) Potential breaches of the Code of Conduct identified**

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

## **Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- [Clerk to the relevant Parish or Town Council]
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both Borough and County level*)

(ii) **What happens now**

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

(iii) **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

### **Additional Help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

**Signed:**

**Date**

**Print name:**

Monitoring Officer  
Address xxx

**PROCEDURE FOR INVESTIGATING THE COMPLAINT**

**1. Preliminaries**

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
  - (a) provide details of the complaint to the Subject Member;
  - (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
  - (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
  - (d) request contact details of any potential witnesses;
  - (e) require that confidentiality is maintained and that details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.

- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the [Monitoring Officer] [Hearing Panel].

## 2. **The draft report**

- 2.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.
- 2.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'CONFIDENTIAL' and will detail:
  - (a) the relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
  - (b) a summary of the complaint;
  - (c) the Subject Member's response to the complaint;
  - (d) relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
  - (e) a list of any documents relevant to the matter;
  - (f) a list of those persons/organisations who have been interviewed;
  - (g) a statement of the Investigating Officer's draft findings of fact and reasons;
  - (h) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
  - (i) that the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 2.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL'.

### 3. **Consideration of Investigating Officer's final report**

- 3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.
- 3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.
- 3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:
  - (a) take no action; or
  - (b) seek informal resolution; or
  - (c) refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 2 to these Arrangements.

**HEARING PANEL PROCEDURE****1. Rules of procedure**

- 1.1 The Hearing Panel consists of three voting elected Councillors drawn from the Audit, Governance and Standards Committee, one of whom shall be elected as Chairman
- 1.2 The quorum for a meeting of the Hearing Panel is three elected Members.
- 1.3 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.
- 1.5 Once a hearing has started, the Borough Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 1.6 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.7 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.[1]

2. **Right to be accompanied by a representative**

The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow councillor, friend or colleague.

3. **The conduct of the hearing**

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- (e) introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

3.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

3.3 The Hearing Panel may adjourn the hearing at any time.

3.4 **Presentation of the complaint**

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;

- (c) The Hearing Panel may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

### **3.5 Presentation of the Subject Member's case**

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Hearing Panel may question the Subject Member and any witnesses called by the Subject Member.

### **3.6 Summing up**

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

### **3.7 Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

### **3.8 Deliberations of the Hearing Panel Deliberation in private**

- (a) The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

### **3.9 Announcing decision on facts found**

- (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct

- (b) Where the Hearing Panel considers that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.
- (c) When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
  - (i) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
  - (ii) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (iii) Has there been a breach of trust?
  - (iv) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - (v) What was the result/impact of failing to follow the Borough or Parish Council's Code of Conduct?
  - (vi) How serious was the incident?
  - (vii) Does the Subject Member accept that they were at fault?
  - (viii) Did the Subject Member apologise to the relevant persons?
  - (ix) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - (x) Has the Subject Member previously breached of the Borough or Parish Council's Code of Conduct?
  - (xi) Is there likely to be a repetition of the incident?
- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.

- (e) If evidence presented to the Hearing Panel highlights other potential breaches of the Borough or Parish Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

### 3.10 Final Decision

- (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
  - (i) the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
  - (ii) the sanctions (if any) to be applied;
  - (iii) the recommendations (if any) to be made to the Borough or Parish Council or Monitoring Officer;
  - (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

## 4. Range of possible sanctions

4.1 Subject to paragraph 4.4 below, where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended: -

- (a) Censuring the Subject Member or;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of an ungrouped Subject Member, to the Borough or Parish Council that they be removed from committees or sub-committees of the Council;
- (c) Instructing the Monitoring Officer [or recommending to the Parish Council] to arrange training for the Subject Member;

- (d) Recommending to the Borough or Parish Council that the Subject Member be removed from one or more outside appointments to which they have been appointed or nominated by the Borough or Parish Council;
  - (f) Recommending to the Borough or Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
  - (g) Recommending to the Borough or Parish Council the exclusion of the Subject Member from the Borough or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough or Parish Council committee and sub-committee meetings;
  - (h) Reporting the Panel's findings to the Borough or Parish Council for information;
  - (i) Instructing the Monitoring Officer to apply the informal resolution process;
  - (j) Sending a formal letter to the Subject Member;
  - (k) Recommending to the Borough or Parish Council to issue a press release or other form of publicity;
  - (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.
- 4.2 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3 The Hearing Panel may specify or recommend that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

## **5. Publication and notification of the Hearing Panel's decision and recommendations**

- 5.1 Within 10 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Borough Council's website.
- 5.2 Within 10 working days of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

- (a) the Subject Member;
- (b) the Complainant;
- (c) [the Clerk to the Parish Council;]
- (d) Kent County Council's Standards Committee (*applicable only where the Subject Member is serving at both Borough and County level*);
- (e) the Borough Council's Audit, Governance and Standards Committee (*applicable only where the Subject Member is serving at both Borough and County level*).

5.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to the next ordinary meeting of the Audit, Governance and Standards Committee for information.

[\[1\]](#) Janik v Standards Board for England & Adjudication Panel for England (2007)

## **TEMPLATE - DECISION NOTICE (of Hearing Panel)**

### **Complaint No: xxxx**

On [insert date], the Hearing Panel of Maidstone Borough Council considered a report of an investigation into the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Findings**

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s):

[Summarise the finding of facts and the Hearing Panel's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel's findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

### **Sanctions applied**

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

### **Appeal**

There is no right of appeal against the Hearing Panel's decision.

### **Notification of decision**

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- Monitoring Officer
- [Clerk to the xxxx Parish Council];
- Kent County Council's Monitoring Officer *[applicable only where the Councillor is serving at both Borough and County level]*

### **Additional help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on [insert telephone number] or email [insert email address].

**Signed:**

**Date**

**Print name:**

Chairman of the Hearing Panel

flow chart to be added

# **MAIDSTONE BOROUGH COUNCIL CONSTITUTION**

## **4.3 PROTOCOL ON COUNCILLOR/OFFICER RELATIONS**

**Adopted by Council on 5 December 2001**

**Amended by Council on 5 March 2003**

**Amended by Council on 22 October 2003**

**Amended by Council with effect from 23 May 2015**

## **CONTENTS**

### Part 4.3 Protocol on Councillor/Officer Relations

- 1 Introduction
- 2 Principles
- 3 Roles of Councillors
- 4 Role of Officers
- 5 The Mayor
- 6 Officer/Chairman Relationships
- 7 Party Groups
- 8 Ward Councillors
- 9 Councillors' Access to Information and to Council Documents
- 10 Correspondence
- 11 Support Services to Councillors

## **4.3 PROTOCOL ON COUNCILLOR/OFFICER RELATIONS**

### **1. Introduction**

- 1.1 The purpose of this protocol is to guide Councillors and officers of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol is a written statement of current practice and convention. It seeks to promote greater clarity and certainty as well as respect between Councillors and officers.
- 1.4 In this protocol, "officers" applies to all employees of the Council.

### **2. Principles**

- 2.1 This protocol also seeks to enhance and maintain the integrity (real and perceived) of local government. Councillors and officers should ensure that they demonstrate high standards of personal conduct at all times.
- 2.2 Councillors and officers have separate and distinct roles. Both Councillors and officers should recognise this and respect their varying roles.
- 2.3 The basic principles underlying the Councillor/officer relationship in both directions should therefore be:-
  1. honesty
  2. openness
  3. respect for the different roles; and
  4. courtesy and manners

in the spirit of the Seven Principles of Public Life set out in the Annex to Part 1 of the Constitution.

- 2.4 In addition, both Councillors and officers have their own personal lives which should be respected. Except in cases of emergency, contact out of office hours on matters relating to Council business should be avoided.
- 2.5 A Councillor may not attempt or purport to give instructions to any officer nor to involve him/herself in staffing matters other than as part of the Council's adopted employment practices.
- 2.6 Councillors should never subject an officer to unfair treatment or criticism and Councillors and officers should have mutual respect for each other at

all times even if their views differ. Disputes or differences should be considered in private and not played out in front of a Committee, in the office, on social media or in public. Councillors should appreciate that officers are responsible for their conduct to their line manager. Where a Councillor is not satisfied with the response of an Officer they should raise the issue with the officer's Head of Service or Director.

- 2.7 If a Councillor has a complaint or a concern about an officer they should report this confidentially to the officer's Head of Service or Director. Where any complaints or concerns appear to be justified, these will be dealt with in accordance with the Council's policies relating to employee relations. The Employment Development Panel is politically accountable for staff policy issues and the Chief Executive is responsible for the management of staff including disciplinary and other operational matters.
- 2.8 Information given by Councillors to officers on Council business will routinely be passed on to other officers of the Council. Councillors should not therefore expect nor ask that information given by them to officers be kept confidential as this would conflict with the officers' responsibilities to their managers and their Chief Officer.
- 2.9 Where any officer has a complaint about the conduct of a Councillor they should raise it with their Head of Service or Director who may consider it appropriate to refer it to the Leader or Whip of the appropriate political group on the Council or where the complaint is serious and amounts to a potential breach of the Councillors' Code of Conduct, may submit a complaint to the Monitoring Officer pursuant to the Code.
- 2.10 Close personal relationships between Councillors and officers should be avoided, but where they subsist they should be declared to a more senior manager and professional interaction should be avoided so far as possible.

### **3. Roles of Councillors**

- 3.1 Councillors are responsible to the electorate and serve so long as their term of office lasts (usually four years).
- 3.2 Councillors have a variety of roles which will differ depending on their particular role within the Council (e.g. the Mayor or a Chairman).
- 3.3 The Council proposes to introduce a list of key roles for Councillors. In brief, Councillors are expected to:-
  1. make policy
  2. contribute to the good governance of the area
  3. represent the interests of their Ward and Constituents fairly and impartially
  4. participate in the governance of the Council and represent the Council on outside bodies
  5. maintain the highest standards of conduct and ethics
  6. comply with their obligations under the Constitution.

3.4 Councillors when carrying out their normal representational roles on behalf of local residents are recommended to refer their requests for information or other concerns directly to Heads of Service or a wide range of identified officer contacts across the organisation which for on-going matters may also include the relevant case officer. This should be done in a considered way and, with the exception of urgent issues, sufficient notice should be given to allow a considered response or advice to be provided.

#### 4. **Role of Officers**

4.1 Through the management structures officers are responsible to the Council as a whole, as their employer. Where officers work in a shared service then they may have responsibilities to more than one Council and more than one manager, although it should be clear who is their line manager for employment purposes.

4.2 Whether or not the officer holds a politically restricted post, officers must be seen to be politically impartial and must not allow their political views to influence their actions.

4.3 Officers are responsible for giving advice to all Councillors and for implementing the proper decisions of the Council.

4.4 Officers have various roles depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs and managing other officers.

4.5 The Head of the Paid Service and the Chief Officers are responsible for the day to day running of the Council in accordance with the decisions of the Council and under delegated authority.

4.6 The Head of the Paid Service and the Chief Officers are therefore responsible for the management of the Officers and are responsible consequently for giving instructions and disciplining officers. In a Chief Officer's absence, contact will normally be with the Head of Service. This support will relate to those matters of policy and principle for which the Councillor is responsible, but will not include matters of a political nature.

4.7 Officers are equipped with the professional and technical competencies, trained professionally to carry out the operations for which they are responsible in accordance with Council policy. They are insured for this activity and are entitled to certain indemnity in the event of legal challenge or claim (provided they act in good faith); the distinction between policy and operational issues is therefore a significant one.

4.8 From time to time officers will receive requests for information or concerns will be raised by Councillors as part of their role as elected representatives. Councillors will direct their requests to Heads of Service, other managers or, on occasion case officers where there may be an on-going matter. Any information requested should be provided in a timely way and confidentiality should be respected. Any concern raised by an

elected member should be responded to promptly; where needed guidance and advice concerning the response should be sought from senior officers. Officers should be mindful of nature of the political environment.

4.9 As well as following the officers' Code of Conduct at part 4.6 of the Constitution, an Officer may also be subject to the rules and codes of conduct of his/her own particular profession.

4.10 Heads of Service are primarily responsible for the management of staff within units and the operation of Council services on a day-to-day basis.

## **5 Mayor**

5.1 The role of the Mayor is shown in greater detail in Part 1 of the Constitution.

5.2 The Mayor should during his/her term of office not engage in any controversial activity which could call into question the integrity or impartiality of the office.

5.3 The support provided to the Mayor should be used solely in discharging the civic functions associated with the office.

5.4 The Mayor should be careful not to engage in political activities which are properly the function of the Leader of the Council (and vice versa).

5.5 Officers shall go through the agenda of Council meetings with the Mayor and shall help him or her answer questions to the extent of supplying him or her with facts. Officers must avoid straying into areas of politics or personalities.

## **6 Officer/Chairman Relationship**

6.1 It is clearly important that there should be a professional working relationship between the Chairman of a Committee and Chief Officer and other senior officers of any unit. However such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other Councillors and other party groups.

6.2 In relation to action between meetings, it is important to remember that the law only allows for decisions relating to the discharge of any of the Council's functions to be taken by a Committee, a Sub-Committee or an Officer.

6.3 The Chairman's role is primarily to ensure that the business transacted at a meeting is conducted efficiently and effectively, ensuring that all Councillors on the Committee have the opportunity to participate in the discussions of the Committee.

- 6.4 Finally, it must be remembered that officers are accountable to their Chief Officer and that whilst officers should always seek to assist a Chairman (or indeed any Councillor) they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Chief Officer. If any officer is concerned about their position, they should report their concern to their Chief Officer and/or the Monitoring Officer.

## **7 Party Groups**

- 7.1 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Party groups may not call on officers to support and contribute to their deliberations, although Officers may be asked to provide information, research and best practice in delivering Council functions.
- 7.2 Councillors must not ask officers to act in any way which would conflict with the Officers' Code of Conduct or which would affect or be seen to affect the political impartiality of officers.

## **8 Ward Councillors**

- 8.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue the Ward Councillors should be notified at the outset of the exercise.
- 8.2 Officers may only attend meetings called by Ward Councillors in an official capacity if this attendance is approved by a Chief Officer/Head of Service.
- 8.3 Ward Councillors may not ask officers to provide advice or undertake work for organisations with which they are involved unless that service has been approved by the relevant Chief Officer/Head of Service.
- 8.4 In dealings with local groups officers should as far as possible respect the representational role that Councillors have in their Wards.

## **9 Councillors' Access to Information and to Council Documents**

- 9.1 Councillors are free to approach any officer to provide them with such information explanation and advice (about that officer's functions) as they may reasonably need in order to assist them in discharging their role as Councillors. This can range from a request for general information about some aspect of a unit's activities to a request for specific information and advice on behalf of a constituent.

Officers approached by Councillors to provide information or copies of documents, where insufficient information is provided by the Councillor to

enable the Officer to identify and locate the information/documents sought, or where a request is ambiguous, should, as far as practicable, provide assistance to the Councillor to enable him/her to describe more clearly the information requested. The aim of such assistance is to clarify the nature of the information sought, not to determine the aims or motivations of the applicant.

9.2 In addition to Councillors' common law and statutory rights to inspect documents, the Council has agreed that Councillors should have the following rights:

9.2.1 That all documents (including reports to the Chief Officer Management Team and the minutes but excluding letters/e-mails received from Councillors, unless the Councillor has expressly agreed in writing that the letter/e-mail may be copied/inspected) of the Council should be available and open for inspection and copying by all Councillors, provided either that the documents do not disclose exempt information as described in the Access to Information Procedure Rules in Part 3.2 of the Constitution, or that the Councillor has a "need to know" the information contained in the document (and has made a written declaration stating why inspection of the documents is necessary for the performance of their duties as a Councillor). Access to the document will not be given if to do so would be a breach of the Data Protection Act or other legislation;

9.2.2 That all information obtained from an inspection and any copy document received shall be treated as confidential to the Councillor and shall be for his/her use as a Councillor unless the Chief Executive, Director or duly authorised officer concerned agrees at the time of inspection or supply of copy documents that this restriction can be relaxed; and

9.2.3 That in the event of the Chief Executive, Director or duly authorised officer not agreeing that the restriction can be relaxed, the Councillor concerned shall have the right to require that the matter to be referred to the relevant Committee and, if necessary, to the Council for final determination.

9.3 Further and more detailed advice regarding Councillors' rights to inspect Council documents may be obtained from the Head of Legal Partnership.

9.4 Any Council information provided to a Councillor must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as a Member of the Council. Disclosure of confidential or exempt information without proper authority could amount to a breach of the Councillors' Code of Conduct.

## **10 Correspondence**

- 10.1 An Officer shall not copy his/her correspondence to a Councillor to any third parties (other than to other Council Officers and/or to the recipients of the Councillor's original letter/e-mail) without the express written consent of the Councillor. If an Officer does copy his/her correspondence with a Councillor to another person this should be made clear to the Councillor. In other words, a system of "silent copies" shall be avoided.
- 10.2 Officers shall not, without the consent of a Councillor, share any responses to requests for information, casework, advice or other information received from or given to a Councillor with any other Councillor, unless the Monitoring Officer considers this to be justified in the particular circumstances of the case, for example to comply with a legal obligation.
- 10.3 Official letters on behalf of the Council which create legally binding obligations, or give instructions on behalf of the Council, should never be sent out in the name of a Councillor.

## **11 Support Services to Councillors**

- 11.1 Support to a Councillor shall be provided solely in order for the Councillor to fulfil his/her duties.
- 11.2 This support shall only be provided with the approval of the Chief Executive who shall be entitled to inspect any documents produced.

## **4.4 LOCAL CODE OF CONDUCT FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS**

**Adopted by the Council on 23 October 2002  
Amended by Planning Committee on 17 March 2004 and by  
Standards Committee on 5 April 2004  
Further Amended by Planning Committee on 27 April 2005 and by  
Standards Committee on 27 April 2005 and by  
Council on 27 April 2005  
Further Amended by the Planning Committee 19 January 2006  
Further Amended by Council on 26 July 2006  
Further Amended by Council on 25 April 2007  
Further Amended by the Monitoring Officer in June 2007 and July 2013  
and  
to take into account the new Code of Conduct, the Localism Act 2011 and  
the Officer restructure  
Further Amended with effect from 23 May 2015 as a result of the  
Council's change to Committee Governance.**

## **CONTENTS**

### **Part 4.4 Local Code of Conduct for Councillors and Officers dealing with planning matters**

- 1 The General Role and Conduct of Councillors and Officers
- 2 Registration of Interests by Councillors
- 3 Declaration of Interests
- 4 Development Proposals Submitted by Councillors and Officers; and Council Development
- 5 Lobbying of and by Councillors
- 6 Pre-Application Discussions
- 7 Councillors' Involvement During the Life of a Planning Application
- 8 Officer Reports to Committee
- 9 Public Speaking at Planning Committee
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- 11 Reference of Applications to Planning Committee by Councillors
- 12 Site Visits:
  - 12.1 Purpose of Visits
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- 13 Regular Review of Decisions
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- 15 Section 106 Arrangements
- 16 Deferral of Planning Decisions
- 17 Planning Decisions which have Significant Cost Implications
- 18 Attendance of Members at Planning Committee
- 19 Appeals
- 20 Training
- 21 Urgent Update Appeals

## **BACKGROUND TO THE CODE**

The Code is based on the Local Government Association publication "Probity in Planning; the Role of Councillors and Officers" which was produced to help ensure that planning authorities make planning decisions in an open, impartial manner, with sound judgement and for justifiable reasons. This Code has been updated many times to take account of new legislation and the change in governance model of the Council in May 2015. Public disquiet over aspects of the planning system, reflected in inquiries into the conduct of Brent, North Cornwall, Warwick and Bassetlaw Councils, emphasised the need for a code which would set out best practice and produce more standard procedures for the consideration of planning matters. The need for such a Code was also endorsed by the Nolan Committee on Standards in Public Life. The code applies to Councillors in relation to planning applications, local development plan documents and planning enforcement.

### **1. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- Councillors and officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors and it follows that instructions may only be given to Officers through a decision of the Council or a Committee or Sub-Committee. Any other system which develops is open to question. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust which underpins it, must never be abused or compromised.
- Both Councillors and officers are guided by Codes of Conduct. The Codes of Conduct adopted by Maidstone Borough Council, provide standards and guidance for Councillors and officers and they are set out at 4.1 and 4.6 of this Constitution. Councillors and officers are obliged to register and declare certain interests as well as relationships. In addition, staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. The Council's Codes and Procedure rules govern the conduct of Council business.

(a) The Code of Conduct for Councillors was adopted by Maidstone Borough Council on 5 July 2012. It sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but it also deals with a Councillor's relationships with other Councillors, staff and the public, which will impact on the way in which Councillors participate in the planning process. Of particular relevance to Councillors serving on planning committees or who become involved in making a planning decision (relating to an application, enforcement or planning policy) is the requirement that a Councillor:

*"must not, use or attempt to use your position as a Councillor **improperly** to confer on or secure for yourself or any other person, an advantage or disadvantage;" (Paragraph 3 (2)(g) of the Councillors' Code).*

Councillors serving on the Planning Committee or who otherwise become involved in making a planning decision must represent their constituents as a body and vote in the interests of the whole Borough. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Planning Committee should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Planning Committee. Councillors should also be very cautious about accepting gifts and hospitality. The Code requires any Councillors receiving any gift, benefit or hospitality or a series of gifts, benefits and hospitality **in their official capacity as Councillors**, over the value of £100, to provide written notification of the details to the Monitoring Officer of the Council within 28 days of its receipt. Receipt of the gift must also be declared at meetings of the Council by the recipient, where it relates to the matter being considered (if the gift was received in the last 3 years).

- (b) Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of a minimal level and declare its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the Council's register of gifts and hospitality whether or not accepted. This register is reviewed regularly by Directors of the Council.

Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as certain political activity and serving on another Council.

A requirement for staff to act impartially is a requirement of the Employees' Code of Conduct. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Councillors in the Model Code. Councillors are placed under a requirement by paragraphs 3(2)(c) of the Code:

- not to do anything that compromises or is likely to compromise the impartially or integrity of those who work for, or on behalf of, the authority.

- (c) The Council has agreed that no member will be able to serve on the Planning Committee without having agreed to undertake a minimum period of training on the policies, procedures, legislation and guidance relevant to the Committee as specified by the Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the Committee for newly appointed Councillors and substitutes of the Committee. If the specified training has not been completed by the due date, the Councillor will cease to be a member/substitute member of the Committee until the training has been completed. The Head of Finance and Resources will keep a record of the training requirements of the Committee and of the Councillor's compliance with the requirements. Existing members and substitute members of the Committee should be updated regularly on changes of legislation and procedures and must receive refresher training on an annual basis. Failure to undertake the refresher training will result in the Councillor ceasing to be a member/substitute member of the Committee until the refresher training has been completed. All members of the Council will be provided with training on planning processes.

## **2. REGISTRATION OF INTERESTS BY COUNCILLORS**

The Localism Act 2011 and the Code place requirements on Councillors relating to the registration and declaration of their interests and sets out the consequences for the Councillor's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Advice may be sought from the Council's Monitoring Officer on these issues. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of Councillors' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection and be published on the Council's website. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of his/her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

## **3. DECLARATION OF INTERESTS**

The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act – it being a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's Code:

*Where a Councillor considers s/he has a DPI or OSI in a matter, s/he must always declare it, not participate or vote on the matter and must withdraw from the room when the matter is discussed.*

If the Council allows members of the public to address meetings, then a Councillor with an OSI may attend a meeting to make such representations, but must leave the room immediately after making those representations. If a Councillor wishes to take advantage of this, they should seek guidance from the Monitoring Officer.

Translated to a Councillor's involvement in planning issues, the interests test will require a Councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the Councillor, his/her family, friends or employer (other than the limited right to attend meetings to make representations and then leave).

In certain circumstances a Councillor with a DPI or OSI may seek a dispensation to participate, notwithstanding their interest, from the Monitoring Officer.

The Policy and Resources Committee is responsible for economic development. Councillors on that Committee may be members of the authority's Planning Committee or other decision-making body for planning matters. There may be occasions when such Councillors will wish to press for a particular development which they regard as beneficial to the development of the area. *Should those Councillors be able to vote on any planning application relating to that development?*

The appropriate action is not clear cut, and may depend on the particulars of the case. However, the general advice would be that a Councillor in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, a Councillor may be seen as the chief advocate on behalf of the authority for the development in question. In such circumstances, the appropriate approach is likely to be that the Councillor is able to speak in favour of the development but should not vote on the relevant application, (unless the Councillor has conducted high-profile, active lobbying for a particular outcome, in which case s/he should not participate in the debate nor vote on the application.)

Any Councillor who is also a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Planning Committee when considering taking up an appointment on that Committee, but provided that the Councillor does not believe him/herself to be under an obligation to vote in the same way as the Parish Council recommends, dual membership should not be a bar to sitting on the Planning Committee when considering such applications. However, such membership should be notified to the Committee. If the application has actually been made by another Council of which the

Councillor is a member or a senior member of staff, the interest is likely to be an Other Significant Interest.

#### **4. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS; AND COUNCIL DEVELOPMENT**

Proposals to their own Authority by serving and former Councillors and officers and their close associates and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or development plan proposals.

It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

- Councillors who act as agents for people pursuing a planning matter with the Authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council which they serve, they should take no part in its processing.
  - Proposals for a Council's own development must be treated in accordance with Government advice
  - Applications submitted by Councillors and officers, and for Council development, should be dealt with by the Planning Committee.
  - Proposals for a Council's own development should be treated in the same way as those of private developers, in accordance with DoE Circular 19/92, particularly in relation to officers' advice.

#### **5. LOBBYING OF AND BY COUNCILLORS**

- It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Councillor or to a Member of the Planning Committee. As the Nolan Committee's Third Report states:

*"It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves" (paragraph 288).*

Any code of conduct which fails to take account of the realities of the political/representative process will not carry credibility with experienced elected Councillors.

- However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called in question. When being lobbied, Members of the Planning Committee should take care about indicating

that they have already made up their mind on the issue before they consider the matter in Committee when full information about the application will be considered by Councillors. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the Head of Planning and Development in order that their opinions can be included in the report to the Planning Committee or the delegated report. If they do express an opinion, they should make it clear that they will reserve their position as to how they will vote until the meeting of the Planning Committee which considers the application. The Localism Act (Section 25) does provide that a decision maker is not to be taken to have, or to appear to have, a closed mind when making a decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, and the matter was relevant to the decision. However, to avoid allegations of bias, prejudice or pre-determination, which could lead to the Council's decision being quashed, Councillors should be careful not to have, or appear to have had, a closed mind when dealing with planning applications.

- It should be remembered that the reports on North Cornwall and Warwick were both greatly concerned with the issue of lobbying. In both cases, lobbying had caused considerable public mistrust of the Councils.
- Councillors, and Members of the Planning Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a planning application will be processed and determined in a transparently open and fair manner, in which Councillors making the decision will take account of all the officers' advice and representations made before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality and risks challenge to the decision taken.
- Determining a planning application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Council that any Councillor has breached the Code of Conduct.
- In reality, of course, Councillors will often form a view about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Planning Committee's proceedings (as set out in the paragraph above) is that Members of the Planning Committee should not finally make up their mind or openly declare which way they intend to vote in advance of the Planning Committee meeting.

- Political reality suggests that it is often important to distinguish between the role of the Planning Committee Member who is, and who is not, a Ward Councillor for the area affected by a particular planning application.

A Planning Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Planning Committee meeting before declaring one way or the other.

A Planning Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Councillor to argue convincingly when the Planning Committee comes to take its decision that s/he has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Planning Committee. Although not amounting to an interest according to the Code of Conduct, the proper course of action for such a Councillor would be to make an open declaration and not to vote. In most cases short of such high-profile, active lobbying for a particular outcome (in which case the Councillor on the Planning Committee should not participate in the debate or vote on the matter), it should be possible for a Councillor to give some support to a particular body of opinion whilst waiting until the Planning Committee before making a final decision, and making it clear to those lobbying that s/he will not finally decide how to vote until the Planning Committee meeting.

Councillors must make oral declarations at Committee of significant contact with Applicants and Objectors (lobbying).

It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement, when taking decisions on planning matters, to take account of all arguments in an open-minded way.

- It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Councillor, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct and the law relating to bias/predetermination.
- Given that the point at which a decision on a planning application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Planning Committee meeting must not be used to decide how Councillors should vote. (The view of the Ombudsman in relation to the former national Code was that the use of political whips to seek to influence the outcome of a planning application could amount to

maladministration. There is nothing in the Code of Conduct which would serve to change this advice).

- Unless they have decided to play no role in the determination of the application, Members of the Planning Committee should avoid organising support for or opposition to a planning application, and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.
- Councillors should not put improper pressure on officers for a particular recommendation or delegated decision and should not do anything which compromises, or is likely to compromise, their impartiality.
- Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Councillor.
- Councillors and Officers shall avoid indicating the likely decision on an application or otherwise committing the Council during contact with Applicants and Objectors; but Officers may indicate what their recommendation to Committee will be, however this should be accompanied by a statement that it will be for the Committee to decide the outcome and that the recommendation cannot be relied upon as a decision.
- Where a Councillor receives written representations directly in relation to a planning application s/he should pass the correspondence to the Head of Planning and Development in order that those representations may be taken into account and referred to in any Committee report.
- Unless they have an interest in the item being discussed, members of the Planning Committee are encouraged to remain in the meeting for the whole time that an item is being debated and are strongly encouraged not to vote on the matter unless they have done so.
- Members of the Planning Committee should not leave the meeting to discuss decisions just taken with Applicants/Objectors, since to do so may give the wrong impression to the public.

## **6. PRE-APPLICATION DISCUSSIONS**

Discussions between a potential Applicant and Council Officers prior to the submission of an application can be of considerable benefit to both parties. It is encouraged by the Local Government Association and the National Planning Forum with the recognition of the need to allow and encourage Councillors to be champions of their local communities. Councillor engagement in pre-application discussions on major development may be necessary to allow Councillors to fulfil their role. However, it would be easy for such discussions with Councillors to become, or be seen (especially by Objectors) to become, part of a lobbying process.

In order to avoid such perceptions, pre-application discussions should take place within clear guidelines. The following guidelines have been adopted by the Council to govern such discussions:

- The Human Rights Act requires a fair and impartial tribunal to determine the rights of individuals. This applies to the work of Councils' Planning Committee. If a balance is to be struck between impartiality and the wish to be seen as engaged, positive, open and transparent, Councillors need to exercise caution in engaging with Applicants. In engaging with Applicants, the principles of the Code of Conduct should remain in the forefront of the Councillors' minds.
- If a Councillor, particularly of Planning Committee, argues strongly in favour of or against an application prior to it being considered by Committee such that their mind is or appears to be closed when they attend Committee, they should take no part in the determination of the application. The proper place for the determination of an application is at the Planning Committee once Councillors have heard all the evidence and representations in relation to that application.
- However, to enable Councillors to participate in pre-application discussions, they should be aware of the distinction between giving and receiving information and engaging in negotiations in their discussions with Applicants or their agents regarding planning proposals, legal agreements or any other planning matters.
- Members of Planning Committee should be invited to pre-application meetings to give support to non-Planning Committee Ward Members. To assist all Councillors to participate successfully in pre-application discussions, planning training will be offered to all Councillors.
- Pre-application meetings relating to major applications could take place in a number of different situations:-
  - A - A meeting between a Developer and the community at which Councillors are present, most likely as a Ward Member.
  - B- A presentation by the Developer to all Members including Members of the Planning Committee.
  - C - A specific meeting to discuss the detail of a proposal and obtain advice.
- For the purposes of this Guidance, major applications are those which relate to:-
  - residential development of more than 10 dwellings or where the site area is larger than 0.5 hectares;
  - commercial development where the floor space is larger than 1000 sq. metres; or
  - any development where the site area is larger than 1 hectare.

- In all of these meetings Councillors, if they wish to remain impartial, should observe the following guidance:-
  - The purpose of the meeting is for the Developer to outline its proposals and for Councillors to question the Developer on factual matters. In relation to C outlined above, it is for the officers to provide:-
    - Policy advice
    - Advice on technical/design matters.
  - The aim of these discussions is to improve the understanding of all parties including that of the Developer.
  - Councillors should maintain an impartial role (unless they choose not to, and understand the consequences of that) and should avoid expressing a final view on the application or giving advice. However, Councillors have a legitimate role as representatives of the local community and it is correct that they should ask questions and express concerns about a development on behalf of the local community.
  - Questions to clarify aspects of a proposal or the expressions of policy or detailed concerns are legitimate, so long as they do not develop into negotiations.
  - Where appropriate, such meetings described at B and C may take place on site but they will need to be carefully managed by the Planning Officer present to ensure that impartiality is maintained, as well as providing a written record of the meeting.
  - In relation to meetings within A and B, it should be clear at the outset of the meeting that the discussions are not binding and that the views expressed are not part of the determination process. However, in relation to pre-application meetings falling within C, the Developer will be looking for unequivocal advice on policy, technical matters and the detail of the scheme in order to form a view as to whether the proposal is acceptable. In this type of meeting Councillors will be able to ask questions about all aspects of the scheme but should not enter into negotiations with the Developer. The role of the officers in this type of meeting is set out in the leaflet "Grand Designs".
  - It should be clear that any statements by Councillors should be categorised as without prejudice to their final decision on the application.
  - Officers should be present in relation to meetings falling within A, and must be in the case of B and C. In these meetings, the Officer should explain that the meeting is taking place at the request of the Applicant and that Councillors and officers will be free to ask questions about the proposal. If the Applicant requests the view of the Authority this should be communicated subsequently and in writing by the Officer. The Officer will make it clear that any views expressed, prior to the formal determination

of an application, are preliminary. The Officer taking part in the discussions will make it clear if they are the decision maker.

- Advice and observations should be based on the Adopted Plan and Material Considerations. A written note of the proceedings must be kept to include a record of Officer attendance and will form a background document to any future planning application.
  - Officers of appropriate seniority should attend such meetings. The involvement of any Councillors should be recorded in any subsequent Committee Report.
  - Following the meeting a letter should be sent to the Applicant emphasising the informative nature of the meeting.
  - In discussions which have touched on commercially sensitive or confidential information, this information may remain confidential, subject to the requirements of the Freedom of Information Act.
  - In addition, Councillors should not seek to influence officers or pressure their officers to support a particular course of action.
  - Unless developers illustrate, at the time of submitting a major application, how they have met the requirements of the Statement of Community Involvement in relation to pre-application discussions with the Community and Councillors, Regulation 4 of the Town and Country Planning Applications Regulations will be used to put the application on hold until the developer has demonstrated how the requirements have been met; and this should include pre-application discussion with Councillors.
- If Councillors follow this advice, they should be able to participate in pre-application discussions without affecting their partiality.
  - The Head of Planning and Development may guide Parish Councillors if they wish to participate in pre-application discussions.

## **7. COUNCILLORS' INVOLVEMENT DURING THE LIFE OF A PLANNING APPLICATION**

- It is considered that Councillors' input into the pre-application stage would assist in the collation and provision of information to the Applicant on the views of the local community and matters that may concern Councillors and the community and should not be seen as negotiation but an exchange of information.
- However, during the life of an application, it is considered that discussion between Councillors and the Applicant may be considered as negotiation which will affect the view of the partiality of the Councillor(s). For this reason it is considered that Councillors should not be involved in discussions with Applicants during the life of a major application.
- If Councillors are concerned about such an application, either before or after its consideration by Planning Committee, then a meeting should

take place between Councillors and officers to detail that concern, and subsequently between officers and the Developer to set out concerns. This process should include applications deferred by Committee.

- The alternative would be to either refuse an application or seek an application's withdrawal and then for Councillors to be engaged in the pre-application discussions prior to the submission of a new application.
- The advantage of these approaches is that Councillors' impartiality remains but the Council's actions, particularly in the latter approach, could be regarded as 'heavy handed' and there is the question of additional appeals. The preferred approach would be to use officers as 'informed go-betweens'.

## **8. OFFICER REPORTS TO COMMITTEE**

Earlier inquiries found serious shortcomings by Councils in the way in which planning applications were reported to Committee. These gave rise to criticisms of inadequate consideration of the issues, inconsistency of decision-making, that the reasoning behind a recommendation was unclear or non-existent, and that sometimes there was no recommendation. This led to public concern and a loss of confidence.

All these problems can be avoided by having regard to the following points. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 38 of the Planning and Compulsory Purchase Act 2004:

- All applications considered by Planning Committee will be subject to full, written reports from officers.
- Reports should be accurate and cover, among other things, the substance of objections and the views of people who have been consulted, as recommended by the Ombudsman.
- Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations.
- Reports will have a written firm recommendation of action. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.
  - Reports should contain a technical appraisal which clearly justifies the recommendation.
- If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

- Reasons for granting permission must be clearly stated and minuted.
- Significant contact between officers and Applicants or Objectors will be recorded on the application file which will be publicly available.

## 9. PUBLIC SPEAKING AT PLANNING COMMITTEE

Public participation in respect of planning applications has been agreed by the Council and the procedure is as set out below.

- (a) If a planning application or enforcement issue (unless an exempt item) is to be determined by the Planning Committee and a speaker wishes to address the Committee in respect of that application, s/he must give notice of that request to the Head of Finance and Resources by 4 p.m. on the working day before the relevant meeting.
- (b) The following speakers will be allowed to address the Committee for each planning application or planning enforcement matter (except Exempt reports) in the following order

### Parished Areas

- |   |   |   |
|---|---|---|
| <ul style="list-style-type: none"> <li>• An Objector</li> </ul>   | } | <p>A petitioner, or a representative of a Residents' Association/ Amenity Group, or an individual Objector</p>  |
| <ul style="list-style-type: none"> <li>• A representative of the appropriate Parish Councils</li> <li>• *The Applicant or his/her representative</li> </ul> | } | <p>The Applicant or his/her representative (including a supporter), or a petitioner, or a representative of a Residents' Association/ Amenity Group</p> |

### Non-Parished Areas

- |  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>• A representative of a Residents' Association/Amenity Group</li> </ul> |   |   |
| <ul style="list-style-type: none"> <li>• An Objector</li> </ul>  | } | <p>A petitioner, or a representative of a second Residents' Association/ Amenity Group, or an individual Objector</p> |
| <ul style="list-style-type: none"> <li>• *The Applicant or</li> </ul>  | } | <p>The Applicant or his/her</p>   |

his/her  
representative

representative (including  
a supporter), or a  
petitioner, or a  
representative of a  
second or third  
Residents' Association/  
Amenity Group

\* The Applicant or his/her representative would have priority.

In order to avoid repetition, a petitioner may present a petition but the appropriate speaker slot will be forfeited. A petitioner may speak for three minutes. If more than one petition is received these may be presented in accordance with the Council's rules on petitions.

Each speaker will be limited to three minutes to address the Committee. S/he will not be allowed to ask a supplementary question, make a supplementary statement and will not be cross examined. Also, no written material or photographs may be handed out at the meeting.

When more than one person wants to speak for or against a planning application or more than one amenity group/organisation or residents association wishes to speak for or against a planning application, the first person or group to register their wish to speak will be afforded that right. However, the Head of Finance and Resources shall keep a reserve list of speakers for each application. If, at the meeting the original speaker is not in attendance, a speaker from the reserve list, depending on if the original speaker was a supporter or objector, i.e. an objector replaces an objector, taken in the order which they registered their right to speak shall be invited to address the Committee.

Visiting Members may address the Planning Committee for three minutes on individual matters but should give the same notice of their intention to speak to the Head of Finance and Resources as members of the public. If they do not do so, the application will not be brought forward on the agenda.

Councillors who have Other Significant Interests in the issue being discussed, but who are exercising their right to make representations, must give the same notice of their intention to speak to the Head of Finance and Resources as members of the public.

Visiting Members and Councillors with Other Significant Interests who are exercising their right to make representations, should sit away from the body of the Committee.

A Councillor with an Other Significant Interest who wishes to make representations will always be the first speaker to address the Committee on an item and will leave the room immediately after making the representations.

Councillors are urged not to hold conversations whilst being addressed by visitors, since to do so may give the impression that the points being made are not being considered.

## **10. DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

The law requires that where the Development Plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 of the Planning and Compulsory Purchase Act 2004). This gives rise to two main issues:-

- - Firstly, all applications which are not in accordance with the Development Plan must be identified as soon as possible. They must be advertised as such, in accordance with the requirements of the Town and Country Planning (General Development Procedure) (England) Order 2010.
- Secondly, if it is intended to approve such an application, the material considerations which lead to this conclusion must be clearly identified and how they justify overriding the Development Plan clearly demonstrated. The application may then have to be referred to the Secretary of State depending upon the type and scale of development proposed. If the Officer's report recommends approval of a departure, the justification for this should be included, in full, in that report and in the minutes.
- If the Planning Committee makes a decision contrary to the Officer's recommendations (for refusal) a detailed minute of the Planning Committee's reasons (which should be full, clear and convincing) should be made and a copy placed on the application file. The Officer should also be given the opportunity to explain the implications of any decision contrary to his recommendation. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an Applicant will rarely provide such grounds.
- The wording of reasons for refusal should be clearly understood before the Planning Committee votes on a motion to refuse an application, rather than leaving the drafting to officers to do following the meeting, even if this requires the deferral of the application or a short adjournment in order to draft the wording.
- Conditions should be clearly understood before the Committee votes on applications to grant permission.

## **11. REFERENCE OF APPLICATIONS TO PLANNING COMMITTEE BY COUNCILLORS**

If a Ward Councillor or a Political Group Spokesperson of the Planning Committee wishes an application to be dealt with by the Planning Committee (rather than by the Head of Planning and Development under delegated powers) s/he must notify the Head of Planning and Development in writing within 21 days of the receipt of a weekly list advising him/her of the application.

When so doing, the Councillor shall offer his/her views on the application, but if the Councillor is a member of the Planning Committee they should ensure that they have not pre-determined the application.

The application shall only be referred to the Planning Committee (unless for other reasons delegated authority cannot be exercised) if determination of the application would differ from the Councillor's views.

Additionally, if a Councillor or Parish Council requests that an application is determined by Committee, that Councillor or Parish Council should attend the Committee to address the planning issues they have raised.

## **12. SITE VISITS**

### **12.1 Purpose of Visits**

- (i) The purpose of a site visit is to enable Councillors to inspect the site of a proposed development to enable them better to understand the impact of that proposed development.
- (ii) It is not the function of the visit to receive representations or debate issues.

### **12.2 Decisions to Conduct a Site Visit**

- (i) Visits will take place if voted for by a majority of the Planning Committee.
- (ii) Site visits will only take place where the Committee believes that there is a clear benefit to be gained.
- (iii) Arrangements for visits will not normally be publicised nor made known to Applicants or agents, Objectors or Parish Councils except where permission is needed to go on land.

### **12.3 Procedures on Site Visits**

- (i) The site will be inspected from the viewpoint of both Applicant(s) and other persons making representations and will normally be unaccompanied by the Applicant, other persons making representations or Parish Councils.
- (ii) Where it is necessary to enter a building to carry out a visit, representatives of both Applicant(s) and any other persons making

representations will normally be given the opportunity to be present. If either party is not present or declines to accept the presence of the other, Councillors will consider whether to proceed with the visit.

- (iii) Where Applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

#### **12.4 Decision Making**

- (i) No decision will be taken on site. The application will normally be considered at the next ordinary meeting of the Planning Committee.
- (ii) Substitutes who have attended the site visit are strongly encouraged to attend the meeting of the Committee when the decision is due to be made in order to act on behalf of the Councillor they represented at the site visit.
- (iii) Members of the Planning Committee are strongly encouraged not to vote on planning applications where there has been a site visit, unless they attended the site visit.

### **13. REGULAR REVIEW OF DECISIONS**

- Councillors should visit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of planning policy.
- Such a review will be undertaken at least annually. It should include examples from a broad range of categories, such as, major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The Planning Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practice.

### **14. COMPLAINTS AND RECORD KEEPING**

- Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local Code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- The Council already has a fully developed local complaints system.
- So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning

application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Planning Committee. These principles apply equally to enforcement and Development Plan matters. Monitoring should be undertaken regularly. Every report should contain a full planning history of the site.

## **15. SECTION 106 AGREEMENTS**

- A system shall be put in place and maintained to ensure the co-ordination, management, monitoring and enforcement of Section 106 Obligations by the Head of Planning and Development.
- Interim progress and final statements of all Section 106 Obligations shall be reported to Planning Committee by the Head of Planning and Development.
- A system shall be put in place by the Head of Planning to identify the monetary and non-monetary outcomes of Section 106 Obligations.
- All reports (both delegated and Committee) which cover matters which require planning obligations should explain how the obligations relate to the tests set out in the Community Infrastructure Levy (CIL) regulations.

## **16. DEFERRAL OF PLANNING DECISIONS**

It is likely that from time to time the Planning Committee will defer a decision to a future meeting of the Committee, in order to enable the officers to report back on any areas of concern raised by the Committee. Minor applications should only be deferred if there is a need for additional information or if there are disputed facts within the report, otherwise they should be determined as reported, with the proviso that there may be occasions when the Planning Officers may seek deferral/withdrawal of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable. On the second occasion that the matter is discussed at Committee, a decision must be made.

## **17. PLANNING DECISIONS WHICH HAVE SIGNIFICANT COST IMPLICATIONS**

- (a) If the Head of Planning and Development, on the advice of the Legal Officer present at the meeting, believes that the Planning Committee's reasons justifying a resolution to refuse/impose conditions are not sustainable, that decision of the Planning Committee will be deferred to its next meeting. The Head of Planning and Development will give advice on this before any vote is taken. The Committee itself may also agree to defer consideration of an application for the same reasons.

- (b) If, at that next meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development on the advice of the Legal Officer present will request Councillors to refer the consideration of the application to Part II of the meeting (private session), to offer Members further advice on the legal and financial implications, and the likelihood of success at appeal. If the Committee still decides to refuse the application/impose an unreasonable condition, the Head of Planning and Development will on the advice of the Legal Officer present, immediately after the vote has been taken, refer the application to the Planning Referrals Committee for determination.

## 18. **ATTENDANCE OF MEMBERS AT PLANNING COMMITTEE**

As a matter of courtesy, if a member of the Planning Committee knows that s/he will not be able to attend the whole of the meeting s/he should, wherever practicable, so advise the Committee at the beginning of the meeting.

## 19. **APPEALS**

- In cases of appeals against non-determination, the Legal Officer taking the case should manage the appeal process to ensure that the Committee's instructions are taken sufficiently early to enable the Council's case to be established before statements of case and witness statements are exchanged with the Appellant/sent to the Inspectorate.
- If the Planning Committee decides to refuse planning permission on grounds which they are advised cannot be sustained, the Legal Officer managing any subsequent appeal should give serious consideration to calling the Chairman or other representative of the Committee to give evidence.

## 20. **TRAINING**

- All Members of the Planning Committee and substitute Members should receive training on grounds of refusal and imposition of conditions.
- All Councillors should receive basic training on planning issues.
- Please also see paragraph 1(c) of this Code.

## 21. **URGENT UPDATE REPORTS**

The urgent update report will be prepared one clear day before the day of the meeting of the Planning Committee and e-mailed to Councillors and posted on the website that evening, giving Councillors and the public the opportunity to read it before the meeting. Persons who have given notice of their intention to address the Planning Committee shall be informed if there is an urgent update report in respect of the application on which

they wish to speak and advised that they may inspect the update on the website or obtain an oral update from the Planning Department. If there is any further communication between the day that the urgent update report is published and the day of the meeting which raises material considerations, this will be reported to the meeting.

**4.5 LOCAL CODE OF CONDUCT FOR  
COUNCILLORS AND OFFICERS  
DEALING WITH LICENSING MATTERS**

**Adopted by the Licensing Act 2003 Committee on 28 April 2005  
By the Standards Committee on 13 June 2005  
And by the Council on 27 July 2005**

**Further Amended by Licensing Committee and Licensing Act 2003  
Committee in October 2013 to take into account the new Code of  
Conduct, Localism Act 2011 and the officer restructure.**

**Further amended to reflect the change to Committee Governance with  
effect from 23 May 2015.**

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- 8 Regular Review of Decisions
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## BACKGROUND TO THE CODE

The Code is based on the Local Government Regulation (formerly LACORS) Guidance (Updated January 2010): The Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, which was produced to help ensure that Councillors make licensing decisions in an open, impartial, and lawful manner, with sound judgement and for justifiable reasons. For Licensing Committee, also read this as covering Licensing Sub-Committee.

### 1. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- Councillors and Officers have different, but complementary, roles. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council (not by individual Councillors) and it follows that instructions may only be given to Officers through a decision of the Council or a Committee or Sub-Committee. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each others' positions. This relationship, and the trust which underpins it, must never be abused or compromised.
- Both Councillors and Officers are guided by Codes of Conduct. The Codes of Conduct adopted by Maidstone Borough Council, provide standards and guidance for Councillors and Officers and they are set out at 4.1 and 4.6 of this Constitution. Councillors and Officers are obliged to register and declare certain interests and relationships. In addition to these Codes, the Council's procedure rules set down rules which govern the conduct of Council business.

- (a) The Code of Conduct for Councillors was adopted by Maidstone Borough Council on 5 July 2012. It sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but it also deals with a Councillor's relationship with other Councillors, staff and the public, which will impact on the way in which Councillors participate in the licensing process. Of particular relevance to Councillors serving on Licensing Committees, Sub-Committees, or who become involved in making a licensing decision is the requirement that a Councillor:

*"must not use or attempt to use your position as a Councillor **improperly** to confer on or secure for yourself or any other person, an advantage or disadvantage;" (Paragraph 3(2)(g) of the Councillors' Code).*

Councillors serving on the Licensing Committee, or Sub-Committee, or who otherwise become involved in making a licensing decision will represent their constituents as a body and vote in the interests of the whole Borough. The basis of

the licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Licensing Committee should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

The role of an Elected Member on the Licensing Committee will involve balancing the multiple needs and interests of the community, whilst giving priority to the Four Licensing Objectives of the Licensing Act 2003, namely:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Licensing Committee.

Councillors should also be very cautious about accepting any gifts and hospitality. The Code requires any Councillors receiving any gift or hospitality **in their capacity as a Councillor**, over the value of £100, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. Receipt of the gift must also be declared at meetings of the Council by the recipient, where it relates to the matter being considered (if the gift was received in the last 3 years). However, Members of the Licensing Committee should not accept any gifts of hospitality from persons involved in licensing applications.

- (b) Similarly, Officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a licensing proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of a minimal level and register its receipt as soon as possible, having obtained the approval of their line manager. Such offers must be recorded in the Council's register of gifts and hospitality whether or not accepted. This register is reviewed regularly by the Council's Monitoring Officer.

Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council.

A requirement for staff to act impartially is also included within the Council's Employees' Code.

Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Councillors in the Code of Conduct. Councillors are placed under a requirement by paragraphs 3(2)(c) of the Code:

*Not to do anything that compromises, or is likely to compromise, the impartially or integrity of those who work for, or on behalf of, the authority.*

- (c) The Council has agreed that no Councillor will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies procedures, legislation and guidance relevant to of this Committee as specified by the Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the Committee for newly appointed members and substitute members of the Committee. If the specified training has not been completed by the due date, the Councillor will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Housing and Community Services will keep a record of the training requirements of this Committee and of Councillors' compliance with the requirements. Existing members and substitute members of the Licensing Committee should be updated regularly on changes of legislation and procedures and must receive refresher training on an annual basis. Failure to undertake the refresher training will result in the Councillor ceasing to be a member/substitute member of the Committee until the refresher training has been completed.

## **2. REGISTRATION OF INTERESTS BY COUNCILLORS**

The Localism Act 2011 and the Councillors' Code place requirements on Councillors relating to the registration and declaration of their interests and sets out the consequences for Councillors' participation in consideration of an issue, in light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Advice may be sought from the Council's Monitoring Officer on these issues. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of Councillors' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection and be published on the Council's website. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of his/her election, or appointment to office. Any changes to those

interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

### 3. DECLARATION OF INTERESTS

The Code sets out definitions of Disclosable Pecuniary Interest (DPI) (which must be registered under the Localism Act – it being a criminal offence not to do so) and Other Significant Interests (OSI) which must be registered/disclosed under the Council's Code.

Where a Member considers s/he has a DPI or OSI in a matter, s/he must always declare it, ***not participate or vote on the matter and must withdraw from the room when the matter is discussed.***

- If the Council allows members of the public to address meetings, then a Councillor with an OSI may attend a meeting to make such representations, but must leave the room immediately after making those representations. If a Councillor wishes to take advantage of this, they should seek guidance from the Monitoring Officer.
- Translated to a Councillor's involvement in licensing issues, the interests test will require a Councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the Councillor, his/her family, friends or employer (other than the limited right to attend meetings to make representations and then leave).
- In certain circumstances a Councillor with a DPI or OSI may seek a dispensation to participate, notwithstanding their interest, from the Council's Monitoring Officer.
- A potentially difficult issue may arise in where a Councillor on the Policy and Resources Committee is also a member of the authority's Licensing Committee or other decision-making body for licensing matters. There may be occasions when that Councillor will wish to press for a particular development which the Councillor regards as beneficial to the development of the area. Should that Councillor be able to vote on any licensing application relating to that proposal? The appropriate action is not clear cut and may depend on the particulars of the case. However, the general advice would be that a Councillor in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that s/he may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the Member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the Councillor becomes almost the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the Member is able to speak in favour of the development but should not vote on the relevant applications (unless the Councillor has

conducted high-profile, active lobbying for a particular outcome, in which case s/he should not participate in the debate nor vote on the application.)

- Any Councillor who is a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Licensing Committee when considering taking up an appointment on that Committee, but provided that the Councillor does not believe him/herself to be under an obligation to vote in the same way as the Parish Council recommends, dual Membership should not be a bar to sitting on the Licensing Committee when considering such applications. However, such membership should be notified to the Committee. If the application has actually been made by another Council of which the Councillor is a member or a senior member of staff, the interest is likely to be an Other Significant Interest.

#### **4. APPLICATIONS SUBMITTED BY COUNCILLORS AND THE LOCAL AUTHORITY**

Proposals to their own Authority by serving and former Councillors, Officers, and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development.

Local Authorities may apply for their own Premises Licenses so as to licence areas of public space (either indoor or outdoor). Indeed the Government's guidance encourages this:

*10.20 "Local authorities should bear in mind their ability to seek premises licenses from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres, and similar public areas where festivals and carnivals might take place."*

Such applications must be and seen to be dealt with in exactly the same manner in all other applications, with no regard given to the interests of the Council itself. During such an application process, it is therefore important to be aware of any potential appearance of bias.

It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

- Councillors who act as agents for people pursuing a licensing matter with the authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council they should take no part in its processing.
- The Monitoring Officer shall be informed of such proposals by the Councillor concerned and by Officers when they submit licensing applications on behalf of themselves or their spouses.

- Applications submitted by Councillors, Officers and by the Council itself will be dealt with by the Licensing Sub-Committee.

## **5. LOBBYING OF AND BY COUNCILLORS**

- Local Democracy – the Licensing Act 2003 sets out the grounds for making representations on licensing. Councillors may make representations themselves or on behalf of “other persons”. It should be borne in mind that one of the key aims of the Licensing Act 2003 is to localise decision making or “democratise” the process and members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment and employment as well as the undesirability of crime and public nuisance.
- Since January 2010, Councillors are regarded as interested parties/other persons in their own right. They are entitled to make representations or call for reviews in respect of any licensed premises in any Ward within the Council’s area. They do not have to await instructions from residents or other organisations, but can act on their own initiative.
- It is important to recognise that lobbying is a normal and a perfectly proper part of the political process. Those who may be affected by a licensing decision will often seek to influence it through an approach to their elected Ward Councillor or to a Member of the Licensing Sub-Committee. However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called in question. When being lobbied, Members of the Licensing Committee should not express an opinion which may be taken as indicating that they have already made up their mind on the issue before they consider the matter in Committee. In such situations, they should restrict themselves to giving procedural advice and refer the lobbyist to his/her Ward Member, who is not a Member of the Licensing Committee or the Licensing Officer who can explain the process of decision making.
- Councillors, and Members of the Licensing Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a licensing application will be processed and determined in a transparently open and fair manner, in which Councillors will take account of all the Officers’ advice and other relevant representations made before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality. Determining a licensing application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Standards Board that any Councillor has breached the Code of Conduct.

- In reality, of course, Councillors will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Licensing Committee's proceedings (as set out in the paragraph above) is that Members of the Licensing Committee must not decide which way they intend to vote in advance of the Licensing Committee meeting.
- Political reality suggests that it is often important to distinguish between the role of the Licensing Committee Member who is, and who is not, a Ward Member for the area affected by a particular licensing application.
- A Licensing Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Licensing Committee meeting before declaring one way or the other.
- A Licensing Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Councillor to argue convincingly when the Licensing Committee comes to take its decision that s/he has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Licensing Committee. Although not amounting to an Other Significant Interest according to the Code of Conduct, the proper course of action for such a Councillor would be not to participate in consideration of the application but they may wish to act as/or represent an 'other person', or may wish to act in their capacity as an other person in their own right.
- It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement when taking decisions on licensing matters to take account of all arguments in an open-minded way.
- It cannot be stressed too strongly that striking this balance is, ultimately, the responsibility of the individual Councillor, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct.
- Given that the point at which a decision on a licensing application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Licensing Committee meeting must not be used to decide how Councillors should vote.
- Members of the Licensing Committee should avoid organising support for or opposition to a licensing application and avoid lobbying other

Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.

- Councillors should not put improper pressure on Officers for a particular application and should not do anything which compromises, or is likely to compromise, their impartiality.
- Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Councillor.
- Where a Councillor receives written representations directly in relation to a licensing application, s/he shall pass the correspondence to the Licensing Officer in order that those representations may be referred to in any Committee report.
- Members of the Licensing Committee will remain in the meeting for the whole time that an item is being debated and will not be able to vote on the matter unless they have done so.

## **6. PRE-APPLICATION DISCUSSIONS**

Councillor(s) will not be involved in discussions with an applicant or agent concerning a licensing proposal when a licensing application is imminent or has been submitted and remains to be determined. This is because the Councillor could all too easily compromise or be seen to compromise his/her own position or the position of the Council.

## **7. SITE VISITS**

The Protocol for site visits, which take place during a hearing, is as follows:-

### **7.1 Purpose of Visits**

- (iii) The purpose of the site visits is to enable Councillors to inspect proposed application sites to enable Councillor to better understand the impact of that proposal;
- (iv) It is not the function of the visit to receive representations or debate issues.

### **7.2 Selecting Site Visits**

- (iv) Visits will take place if voted for by a majority of the Licensing Sub-Committee;
- (v) Site visits will only take place where the Sub-Committee believes that there is a clear substantial benefit to be gained and the hearing will be adjourned.

### **7.3 Procedures on Site Visits**

- (iv) The site will be inspected from the viewpoint of both applicant(s) and other persons making representations;

- (v) Where applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

#### **7.4 Decision Making**

- (i) No decision will be taken on site.

### **8. REGULAR REVIEW OF DECISIONS**

- Councillors should visit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of licensing policy.
- Such a review will be undertaken at least annually and should include examples from a broad range of categories. The Licensing Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

### **9. COMPLAINTS AND RECORD KEEPING**

- Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- The Council already has a fully developed local complaints system.
- So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every licensing application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Licensing Committee. These principles apply equally to enforcement. Monitoring should be undertaken regularly.

## **4.6 OFFICERS' CODE OF CONDUCT**

### **INTRODUCTION**

The public is entitled to expect the highest standards of conduct from all staff who work in local government and therefore the Borough Council. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist the Council and its staff in their day-to-day work. The Code is produced in the light of the challenges which staff face in the new and more commercially orientated environment of today. However the Code cannot be exhaustive and officers should seek guidance on any matter where they are unsure of the standards required.

### **AIMS OF THE CODE**

The aim of the Code is to lay down guidelines for Maidstone Borough Council staff which will help maintain and improve standards and protect staff from misunderstanding or criticism. The Code sets out the minimum standards that should apply.

### **STATUS OF THE CODE**

Whilst the Code lays down guidelines, adherence to the Code forms a condition of employment of all Council staff. As such it is a guide to the behaviour required and expected of staff. A breach of the Code may result in the application of the formal disciplinary procedure and staff should ensure that they are conversant with its terms.

### **1. STANDARDS**

1.1 All staff are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to Councillors and fellow staff with impartiality. Staff are expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Staff must make themselves aware of the Council's Contract Rules and Financial Rules and abide by their provisions. Staff must report to the appropriate manager any impropriety or breach of procedure.

### **2. DISCLOSURE OF INFORMATION**

2.1 It is generally accepted that open government is best. The law requires that certain types of information must be available to Councillors, auditors, government departments, service users and the public. The Council itself may decide to be open about other types of information and there is guidance in the Local Government Transparency Code published in October 2014 and available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/360711/Local\\_Government\\_Transparency\\_Code\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360711/Local_Government_Transparency_Code_2014.pdf) Staff must be aware of which information the Council does make public and act

accordingly. In particular both individual and corporate liability under Data Protection legislation must be observed and safeguarded.

- 2.2 Staff should not knowingly use any information obtained in the course of their employment for personal gain or benefit, nor should they knowingly pass it on to others who might use it in such a way. Any particular information received by a member of staff from a Councillor which is personal to that Councillor and does not belong to the Council should not be divulged without the prior approval of that Councillor, except where such disclosure is required or sanctioned by law.

### **3. POLITICAL NEUTRALITY**

- 3.1 Staff serve the Council as a whole. It therefore follows they must serve all Councillors and not just those of any leading or controlling group, and must ensure that the individual rights of all Councillors are respected.
- 3.2 No officer should act in any manner or advise any political group of the Council in such a way as may compromise their political neutrality either as to the work of the group or as to the work of the Council; neither shall they be required to attend any meeting of any political group where their neutrality may be compromised.
- 3.3 The Local Government and Housing Act 1989 and Regulations made under the Act impose, as a result of the salary level or scope of duties, restrictions on the political activities of certain officers. Full details will be provided to officers in such politically restricted posts.
- 3.4 Staff, whether or not politically restricted, must follow every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.

### **4. RELATIONSHIPS**

- 4.1 Staff are responsible to the Council through its senior managers. Mutual respect between staff and Councillors is essential to good Local Government. Close personal familiarity between staff and individual Councillors can damage the relationship and prove embarrassing to other staff and Councillors and therefore should be avoided. The Council's approved Protocol on Councillor/Officer relations is available at 4.3 of this Constitution.

#### **4.2 The Local Community and Service Users**

Staff should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within the community as defined by the policies of the Council.

#### **4.3 Contractors**

All relationships of a business or private nature with external contractors, or potential contractors, must be made known to your Section Manager. Orders and contracts must be awarded on merit, by fair competition against other tenderers, and no special favour must be shown to any businesses. Additional caution must be exercised where friends, partners or close personal associates are involved with the potential contractor.

4.4 Staff who engage or supervise contracts or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, must declare their relationship in writing in the register kept by the Monitoring Officer, pursuant to Section 117 Local Government Act 1972.

#### **4.5 With Other Members of Staff**

Close personal relationships between Council staff will sometimes occur. It is very important that any relationship is not seen to bring advantage to either party and close personal relationships between a senior manager and one of their staff should be avoided. If a close personal relationship develops between a manager and a member of their staff, it may be necessary to relocate one of the members of staff to alternative work.

#### **4.6 Media**

Each Department will set guidelines which will identify staff authorised to talk to the media. Employees who are not authorised to deal with representatives of the media should refer any enquiries they receive to their Head of Service, line manager or Head of Policy and Communications. Employees who have specific authority to deal with such enquiries should only reply to requests for information or questions which relate to the facts of the situation. Where an expression of opinion or statement of policy is required the head of department must first be consulted. Every assistance should be given to Councillors who need information to deal with questions from the media. Employees should refer to the Head of Policy and Communications for guidance.

An employee, who speaks as a private individual direct to the press, or at a public meeting, or where their remarks may be reported to the press, should ensure that nothing they say might lead the public to think they are acting in their official capacity as a Council employee. Where employees are speaking on behalf of a recognised trade union this must be made clear.

### **5. APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

5.1 Staff involved in the appointment of others must ensure that these are made on the basis of merit. It would be unlawful for a member of staff to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, staff must not be involved in an appointment

where they are related to an applicant, or have a close personal relationship in or outside work with him or her.

- 5.2 Similarly, staff must not be directly involved in decisions relating to discipline, promotion or pay adjustments for any other member of staff who is a relative, or who has a close personal relationship with him/her.
- 5.3 Where a relationship exists with an applicant for a post with the Council, that relationship must be clearly stated on the application form. Where a member of Council staff is aware that a relation is applying for a post they must bring this to the attention of the appropriate Section Manager as soon as is possible.

## **6. OUTSIDE COMMITMENTS**

- 6.1 Officers graded local grade 8 and above shall devote their whole-time service to the work of the Council and shall not engage in any other business or take up any additional appointment or employment without the express consent of their Director.

Such officers shall not place themselves in a position where their duty and their private interests conflict. The Council will not attempt to preclude officers from undertaking additional employment, but any such employment must not, in the view of the Council, conflict with or react detrimentally to the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.

- 6.2 In accordance with the Copyright Designs and Patents Act 1988 the ownership of copyright or design right in any literary, dramatic, musical or artistic work or design created by an officer during the course of his/her normal duties will belong to the Council. This also applies to the ownership of copyright and design right in any such work created by an employee in the course of duties falling outside his/her normal duties but specifically assigned to him/her.

This intellectual property also includes inventions, computer programmes, original/creative drawings, writings and drawings. Officers are, by virtue of the nature of their duties and the responsibilities arising from them, under a special obligation to further the interests of the Council.

This also applies to the ownership of any invention made by an employee in the course of their duties falling outside his/her normal duties but specifically assigned to him/her.

- 6.3 Officers are under an obligation to sign any documents or to do anything else which is necessary to apply for and obtain any patent registered design or other protection in the name of the Council. The Council will indemnify the officer in respect of all costs incurred by him/her in complying with these requirements.

In certain circumstances officers may be entitled to receive compensation from the Council for inventions under Section 40 of the Patents Act 1977.

## 7. PERSONAL INTERESTS

7.1 Staff must record in the Register the following interests:-

- i) All paid employment (other than by the Borough Council) and occupations, including Directorships, Partnerships and Consultancies.
- ii) Ownership of any land which is within the Borough.
- iii) Companies or other Corporate Bodies having a place of business within the Borough and in which the Officer has a beneficial interest in a class of securities with a nominal value greater than £25,000 or 1/100 of the issued share capital, whichever is the less.
- iv) Any tenancy or licence of land or premises in the Borough.
- v) Membership of any organisation that falls within the following definition:

*'Any lodge, chapter, society, trust or regular gathering or meeting, which:*

*(a) is not open to members of the public who are not members of that lodge, chapter, society or trust; and*

*(b) includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society, gathering or meeting;*

*and*

*(c) includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering, or meeting.' A lodge, chapter, society, trust, gathering or meeting as defined above, should not be regarded as a secret society if it forms part of the activity of a generally recognised religion."*

- vi) Any other financial or non-financial interest which could conflict with the Council's interests.

7.2 Staff must not allow the impression to be created that they are, or may be, using their position to promote a private or personal interest, rather than forwarding general public interest. Private and personal interests include those of their family and friends, as well as those arising through membership of, or association with, clubs, societies and other organisations.

7.3 Information concerning private affairs of a member of staff will not be made public unless the Council is legally required to do so or unless the member of staff has given their permission.

- 7.4 Staff must not process any claim or application to the Council from themselves, a relative or personal friend. In addition, staff must not process any claim in respect of a property owned or part owned by them, their family or a friend. They must disclose any such claim or application to their supervisor or manager who will arrange for it to be dealt with by another member of staff.
- 7.5 All staff must complete a Registration of Interests form upon appointment; must notify the Monitoring Officer immediately of any changes in their interests; and must complete the form when it is circulated every three years.
- 7.6 The Register of Interests shall be kept by the Monitoring Officer and any potential conflict of interest will be discussed with the relevant Head of Service.
- 7.7 If an officer is present at a meeting of the Council, its Committees or Sub Committees, or management meetings when an issue in which s/he has a personal interest is being discussed, he must declare the interest and its nature and leave the meeting, unless invited to remain.

## **8. EQUALITY AND DIVERSITY ISSUES**

- 8.1 All members of staff should ensure that the policies relating to equality issues agreed by the Council are complied with in addition to the requirements of the law. All members of the local community, customers and other staff have the right to be treated with fairness and equity.

## **9. SEPARATION OF ROLES DURING TENDERING**

- 9.1 Staff involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. Senior staff that have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 9.2 Staff in contractor and client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 9.3 Staff who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information to any unauthorised party or organisation.
- 9.4 Employees should ensure that no special favour is shown to current or former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.
- 9.5 Staff contemplating a "spin out" through a mutual or a management buyout should, at the earliest possible moment inform their Director or the Chief Executive as appropriate and withdraw from any in-house processes.

## **10. CORRUPTION**

10.1 Staff must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made it is for the member of staff to demonstrate that any such rewards have not been corruptly obtained. All staff should be aware of the Bribery Act 2010 and ensure that they follow the guidance in the Code of Conduct. Staff should report any behaviours which lead them to believe that others may have breached the Act.

## **11. USE OF FINANCIAL RESOURCES**

11.1 Staff must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

## **12. GIFTS AND HOSPITALITY**

### **Introduction**

12.1 The acceptance of gifts, hospitality or other benefits, even on a modest scale may arouse suspicion of impropriety and extreme caution and discretion should be exercised in accepting either. In principle you should refuse any personal gift offered to you or to your family by any person or company who has or seeks dealings of any kind with the Council. Staff should be aware of their responsibilities under the Bribery Act 2010 and ensure that the acceptance of a gift or hospitality does not cause them to breach the requirements of the Act.

### **Gifts**

12.2 Only useable gifts of a nominal value may be accepted by individual staff, (e.g. pens, pencils, rulers, calendars, diaries). Other small gifts such as chocolates, biscuits and flowers may be accepted, provided that they are shared (as appropriate) within the Section or Directorate. The receipt of these gifts and the action taken must be recorded in the Directorate's Gifts and Hospitality Register which is kept by the Monitoring Officer.

12.3 Any other gift (including all wines and spirits of whatever value) to an individual (or group of individuals) must be politely refused on the basis that it would offend against the Council's Code of Conduct for staff. The offer and refusal of these gifts must be recorded in the Directorate's Gifts and Hospitality Register. If it is not possible, for any reason, to refuse the gift at the time (e.g. if the donor refuses to take it back) then the gift must be passed to your Section Manager to return it to the donor.

12.4 In pursuit of your duties you may be offered gifts for the Council as a corporate body. Any such gifts should not be refused, whether it is an actual gift or a "gift in kind" until the Chief Executive has been informed and been given the opportunity to determine whether the Council should receive such a gift, and if so the purpose to which it should be put

(occasionally such gifts, for example, may be used in raffles in support of the Mayor's charity). The action taken in respect of any such corporate gift should be recorded by the Chief Executive in a Corporate Gift/Sponsorship Register, to be maintained by him/her, whether the gift is accepted or refused.

## **Sponsorship**

12.5 The same principles would apply to sponsorship of corporate activities, events and functions. The register should include details of the name of sponsors, descriptions of the sponsorship offered and whether it is accepted or declined. Generally speaking, sponsorship entails a payment (in cash or account) to the Council, for which there is no tangible consideration from the Council to the sponsor (see also Paragraph 13 below).

## **Hospitality**

12.6 All hospitality should be appropriate and necessary (e.g. a working lunch) and wherever possible, have the prior sanction of the Director or relevant Section Manager. Such hospitality must be recorded in the Gifts and Hospitality Register maintained by the Monitoring Officer. This provision relates to drinks, meals, sports events and other entertainment. Staff will be expected to show foresight in obtaining, wherever possible, management approval to hospitality in advance of it being accepted. If it is not possible to obtain approval in advance, approval should be sought as soon as possible after receipt of the hospitality. Approval should be written.

Examples of acceptable hospitality include:

- i) A working lunch of modest standard, provided to allow business discussions to continue
- ii) An open day organised by a company where other organisations are guests

Examples of hospitality which are unacceptable include:

- i) Offers of holiday accommodation
- ii) Theatre tickets
- iii) Hotel accommodation
- iv) Use of company flat
- v) Sports events such as professional league football matches or first class cricket games

It will usually be more acceptable to join in hospitality offered to a group than to accept something unique to yourself (e.g. tickets to the theatre).

When a particular person or body has a matter currently in issue with the Council (e.g. the award of a contract, or a contract dispute), any offers of hospitality must be refused, even if in normal times they would be acceptable.

Offers of hospitality which have been declined must also be recorded in the Register. This is to ensure that offers of excessive hospitality and their refusal are recorded in order to protect the officer concerned and allow their manager to be aware of such offers.

### **Free Seminars/Conferences/Product Familiarisation Sessions**

12.7 Attendance by staff at relevant seminars, training sessions, conferences, courses or trips for product/service familiarisation is acceptable but must be recorded in advance in the Directorate's Gifts and Hospitality Register. In all cases, the Director/Section Manager must give consent prior to attendance and satisfy him/herself that no immediate or subsequent purchasing decisions are compromised by the employee attending. Where visits to inspect equipment etc. are required, staff must ensure that the Council meets the costs of such visits to avoid jeopardising the integrity of any subsequent purchasing decision. Where modest meals or refreshments are provided by the other party, and to refuse would give offence or be unreasonable, these may be accepted and recorded in the Gifts and Hospitality Register, but, as before, these should be authorised in advance in writing by the Director/Section Manager wherever possible. Where this is not possible, the written sanction of the Director/Section Manager should be obtained and recorded as soon as possible after the event.

### **Review of Gifts and Hospitality Registers**

12.8 The Monitoring Officer shall review the Gifts and Hospitality Registers (and in the case of the Chief Executive also the Corporate Gift/Sponsorship Register) on a three-monthly basis and will sign the Register to signify that they are satisfied to the best of their knowledge that there is full compliance with the provisions relating to gifts and hospitality. The Monitoring Officer will ensure that reminders are sent to staff at least annually.

### **Note**

12.9 Heads of Service should obtain approval under these provisions from their Director; Directors should obtain approval from the Chief Executive, and the Chief Executive should consult the Leader of the Council with regard to the receipt of gifts and hospitality.

## **13. SPONSORSHIP - GIVING AND RECEIVING**

13.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

13.2 Where the Council wishes to sponsor an event or service, neither a member of staff nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to the

Monitoring Officer, appropriate Director or to the Chief Executive of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, staff must ensure that impartial advice is given and that there is no conflict of interest involved.

#### **14. STANDARD OF APPEARANCE**

- 14.1 The Council has the right to expect high standards of appearance from staff whilst undertaking their duties. Employees should be neat, well groomed and professional in appearance whilst dressing appropriately for the task they are undertaking. Unless dictated by the task in hand, and agreed in advance with their Section Manager, casual clothing such as denim-type items, casual or sports clothing are not considered suitable.
- 14.2 Where provided, safety equipment and protective clothing must be worn as instructed. No such equipment may be tampered with and any defects apparent must be brought to the attention of the appropriate manager without delay.
- 14.3 For the protection of the public and employees it is important that Council staff are easily identifiable whilst at work either within the offices or within the community. Cardkey identification cards, where provided, must be worn, so as to be clearly visible, at all times whilst undertaking work on behalf of the Council. When making visits to the homes or premises of the public, official Council identification should be presented promptly and where appropriate ahead of being requested.

#### **15. FRAUD AND THEFT**

- 15.1 The Council will not tolerate fraud or theft committed by employees at or during the course of their work. If evidence comes to light that fraud or theft has occurred the matter will be fully investigated internally and if sufficient evidence is available of possible involvement in fraud or theft, staff will be suspended.
- 15.2 Disciplinary Policy - If sufficient evidence is available that a loss has been incurred by the Council and by implication a criminal act has occurred, the matter will be referred to the Police who may undertake their own quite separate investigation.
- 15.3 Under the Council's Disciplinary Policy staff may be subject to disciplinary action or dismissed if there is evidence to suggest either fraud or theft has been committed. Offences committed outside work may also be dealt with under the Disciplinary Policy (for example where there is an impact on the duties and responsibilities of the member of staff, or any breach of the duty of trust and confidence, perhaps through inappropriate use of social media) and you should therefore ensure that you understand how your actions outside work could affect your employment with the Council.

#### **4.7 PROTOCOL TO GUIDE COUNCILLORS WHEN ELECTING THE MAYOR/APPOINTING THE DEPUTY MAYOR AND ORDER OF SENIORITY OF COUNCILLORS**

1. Other than in exceptional circumstances, the Mayor should have held the post of Deputy Mayor in the year preceding the Mayoral election.
2. Where there are exceptional circumstances (where the Mayor has not been the Deputy Mayor) the election of the Mayor should be made on the same basis as that for the appointment of Deputy Mayor.
3. The most Senior Councillor at the Council (as set out in the order of seniority by length of service of Councillors) who has not previously held the office of Mayor, and who wishes to take up that office should be appointed to the position of Deputy Mayor (or Mayor and Deputy if there are exceptional circumstances).
4. At the penultimate ordinary meeting of the Council of the Municipal Year the proposed Mayor and Deputy Mayor should usually be chosen.
5. If, following discussions, there is more than one Councillor with the same seniority (ignoring ranking according alphabetical order) wishing to be Deputy Mayor (or Mayor in exceptional circumstances), then the current Mayor shall draw lots and advise Councillors of the outcome to guide them when casting their votes.
6. Members of the Council will rank in the following order of seniority at Civic functions.
  - The Mayor;
  - The Deputy Mayor;
  - The Leader; and
  - Councillors, according to their date of election (those elected at the same time ranking according to alphabetical order)

If a person after ceasing to be a Councillor is subsequently re-elected within four years, his/her seniority will be determined by the total length of service as a Member of the Council.

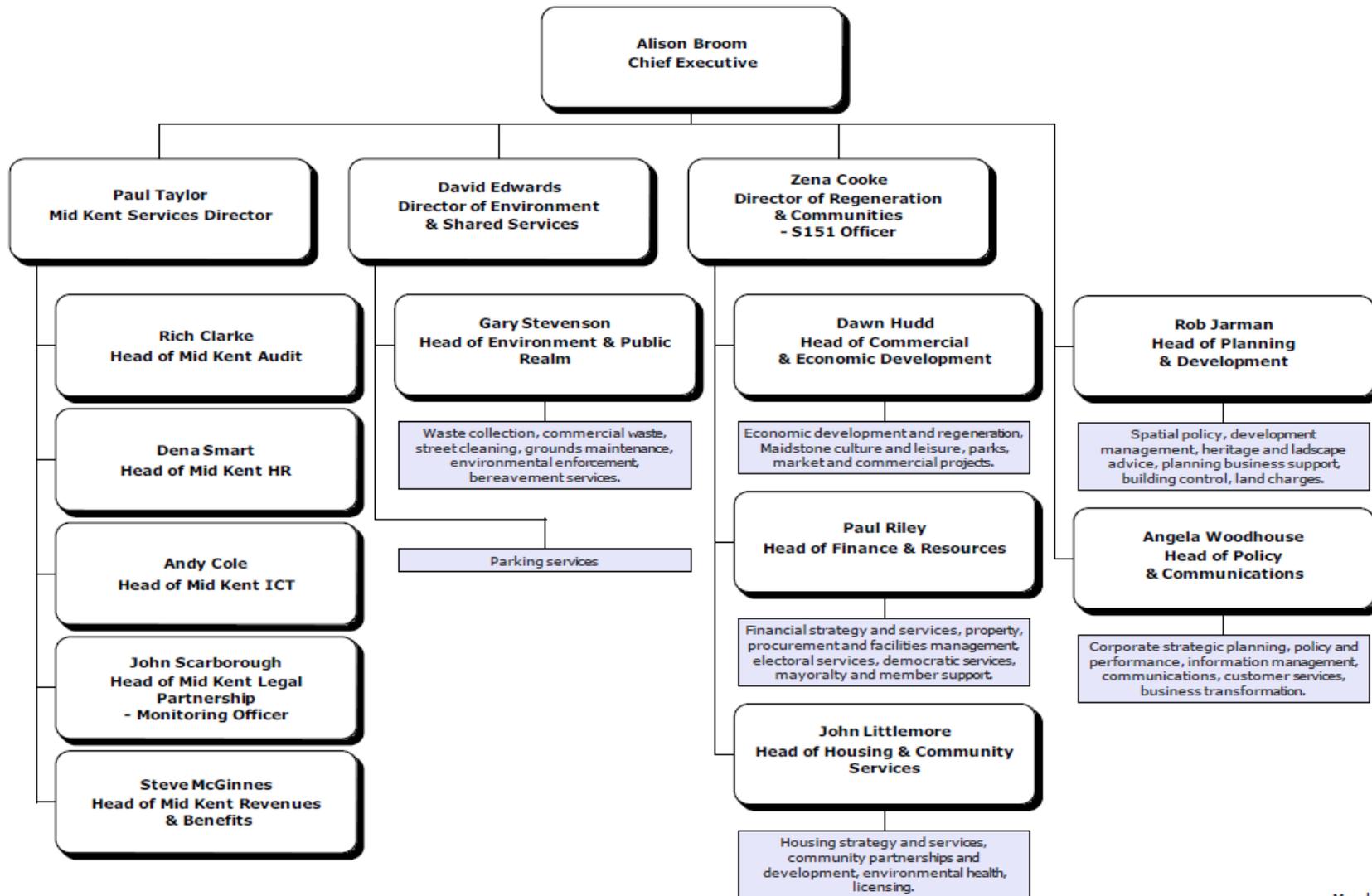
# Maidstone Borough Council Constitution

## Part 6

### Management

### Structure

## Maidstone Borough Council - Organisation Structure



March 2015



## **GLOSSARY OF TERMS**

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
AtoI	Access to Information	Provisions inserted in Part VA Schedule 12(A) Local Government Act 1972 which enable Councillors to consider reports and information in private session (or Part II) when conducting local authority meetings or making decisions. There are numerous categories of "exempt" information, but they are also subject to a public interest test and "confidential" information. The Access to Information Procedure Rules are set out at Part 3.2 of the Constitution.
	Authority (or local authority)	A council or local authority; this includes bodies such as fire, police, and the National Park Authorities.
	Best Consideration	A requirement to obtain the highest value in money or money's worth when disposing of land (other than on a short tenancy) under land disposals powers (i.e. S123 Local Government Act 1972).
BV	Best Value	A duty to secure "continuous improvement in the way in which functions are exercised having regard to economy, efficiency and effectiveness" (Section 3(1) Local Government Act 1999). Best Value authorities should have regard to Government Guidance in a Circular.
CIPFA	Chartered Institute of Public Finance and Accountancy	CIPFA represents local authority Finance Officers and has a trading arm set up as a company called the Institute of Public Finance (IPF).
CFO	Chief Finance Officer	The person designated by the authority as the Officer responsible for the proper administration of the Council's financial affairs under Section 151 Local Government Act 1972 and Sections 114-115 Local Government Finance Act 1988, with duties to report to the Council in the event of unlawful expenditure or inability of the Council to cover its liabilities. This post attracts Statutory Protection.
	Clear Day	Excludes Saturdays and Sundays, Bank, statutory and Council holidays, the day on which notice is given, or a petition is presented, and the day of the meeting.
	Committee	Means a group of Councillors set up by the Council with terms of reference to decide certain matters or make recommendations in an advisory capacity.
	Community Strategy	A strategy which every local authority must prepare to promote well being in their area under s.4 Local Government Act 2000.
	Confidential	Means information given to the Council under an

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
	Information	obligation of confidence; and for the purpose of the Access to Information Procedure Rules in Part 3.2 of this Constitution information supplied by a Government Department on terms that forbid its disclosure or pursuant to a Court Order that prevents disclosure.
	Co-Opted Member	A Co-Opted Member is somebody who is appointed to a Committee or Sub-Committee who is not an elected Councillor. Generally speaking Co-Opted Members may only vote on advisory committees or pursuant to specific legislation, otherwise they are not entitled to a vote.
CMT	Corporate Management Team	Usually the Chief Executive, Directors and Heads of Service who meet at regular intervals.
	Council	A statutory corporation created by statute or royal charter; and meetings to which all of the Councillors are invited.
Cllr	Councillor	An elected councillor of a local authority, sometimes also known as a "member" of the Council.
DPA	Data Protection Act 1988	This sets out a number of Data Protection principles governing the use of personal data about individuals in computerised and manual systems. Data must only be processed in accordance with 8 Data Protection principles and must be disclosed following a request by an individual seeking access to their own information upon payment of a fee (usually £10), not otherwise unless permitted or required by law.
DCLG	Department for Communities and Local Government	The Government Department responsible for the majority of decisions affecting local authorities.
DWP	Department for Work and Pensions	This government department helps to develop and deliver government policy on pensions, welfare and benefits matters and is also responsible for managing the State Pension.
	Development Plan	As set out in Section 38(6) of the Planning & Compulsory Purchase Act 2004, an authority's development plan consists of the relevant <i>Regional Spatial Strategy</i> and the <i>Development Plan Documents</i> contained within its <i>Local Development Framework</i> .
DPI	Disclosable Pecuniary Interest	Those financial and other interests that are specified by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, details of which are set out in a Schedule to the Regulations. Failure to declare such interests may be a criminal offence. The Schedule to the Regulations is reproduced at Annex 2 to the Councillors' Code of Conduct at 4.1 to this

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
		Constitution. A Disclosable Pecuniary Interest may be that of a Councillor or a spouse or civil partner with whom the Councillor is living.
	Dispensation from Restrictions on Participating and Voting	The Monitoring Officer may, on written request by a Councillor with an interest, grant a dispensation allowing the Councillor to participate in discussions and/or vote on items of business on the agenda at committee meetings. The grounds for granting a dispensation are set out in paragraph 8(2) of the Councillors' Code of Conduct at 4.1 of this Constitution.
EMRO	Early Morning Alcohol Restriction Order	An Early Morning Alcohol Restricting Order (EMRO) is a power in the Licensing Act 2003 to enable licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 12 midnight and 6am, if considered appropriate for promotion of the licensing objectives.
FoI or FoIA	Freedom of Information Act 2000	An Act which requires all local authorities to prepare a Scheme for the disclosure of information and which requires authorities to deal with requests for information irrespective of the purpose of the requestor. Whilst there are limited exemptions, only a small proportion are "absolute" and the other "qualified" exemptions are subject to a Public Interest test, meaning that the Council must balance the interests of keeping the information confidential with the public interest in disclosure. Further information is available from the Information Commissioner's website at: <a href="https://ico.org.uk/for-the-public/">https://ico.org.uk/for-the-public/</a>
	General Power of Competence	Power given to local authorities in Section 1 Localism Act 2011 to do anything that an individual may do, unless there is any prohibition or limitation on other powers to achieve the Council's plans.
HPS (or HoPS)	Head of Paid Service	The Chief Executive who is designated as Head of the Paid Service under the Local Government and Housing Act 1989. This post attracts Statutory Protection.
HRA	Housing Revenue Account	A separate account required in relation to the landlord costs of local authority housing.
HRA	Human Rights Act 1998	Implementing the European Convention on Human Rights in the UK.
JNC	Joint Negotiating Committee	Usually a Committee which offers a consultative forum between the local authority and the Trade Unions to discuss matters relating to local authority employment, consult about local policy changes and reviews of national Conditions of Service. There are different Joint Negotiating

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
		Committees for Chief Executives, Chief Officers and other local authority staff in each area.
JR	Judicial Review	A method of challenging local authority public law decisions through the high court if a Council exceeds its powers or acts irrationally or perversely. Private law decisions are not covered and any appeal process must usually be exhausted first.
	Late Night Alcohol Levy	Is a power conferred on licensing authorities by the Police Reform and Social Responsibility Act 2011 to charge a levy to persons licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the cost of policing the late-night economy. The levy is payable by the holder of any premises licence or club premises certificate in the authority's area, which authorises the sale or supply of alcohol at or after midnight and before 6am.
	Leader	The person appointed as Leader of the largest group on the authority or appointed by the Council as the Leader of the Council at a meeting of the full Council.
	Leader of the Opposition	Means the Leader of the second largest political group on the Council.
LGA	Local Government Act	Specific local government legislation with key dates including 1972, 2000 and 2003.
LGA	Local Government Association	A member organisation of most local authorities based in London.
	Local Government Ombudsman	The Commissioner for Local Administration investigates and decides upon complaints and disputes from people who feel aggrieved and who have suffered injustice. The decisions and recommendations of the Ombudsman have to be formally considered by the Council. This may involve recommendations for the payment of compensation and may require changes to practices and procedures. The role and powers are decided by Parliament under the LGA 1974.
LGPS	Local Government Pension Scheme	This is a statutory public service pension scheme for local government employees and employees of Admission Bodies and Resolution Bodies in England and Wales. It operates through around 100 Administering Authorities maintaining their own fund (or funds). It is governed by the Superannuation Act 1972 and various Regulations. For Maidstone Borough Council the LGPS is run by Kent County Council.
	Mayor	A Civic or Ceremonial Mayor is the person who chairs the Council meeting and is the first citizen of the Borough. [Maidstone does not have a

ABB.	EXPRESSION	DESCRIPTION
		directly elected Mayor, e.g. Boris Johnson as Mayor of London or one of around 12 Authorities which has an Elected Mayor (e.g. Middlesbrough, and Watford).]
	Member (or elected member)	A Councillor, i.e. someone elected by the voters of a particular Ward onto the Council.
MO	Monitoring Officer	The person designated by the Council under Section 5 Local Government and Housing Act 1989 as the Council's Monitoring Officer. This post attracts Statutory Protection. He or she may appoint a Deputy who is authorised to act in his/her absence or when otherwise unable to act, or to perform specific functions under the Local Government Act 2000. The Monitoring Officer has an obligation to report to full Council where there is any proposal, decision or omission by the authority or any Officer which has or is likely to give rise to any contravention of an enactment or rule of law. The Monitoring Officer also has a range of responsibilities under the Local Government Act 2000 dealing with the ethical framework for Councillor conduct, the declaration of interests for decision making and Council constitutions.
OSI	Other Significant Interest	<p>An interest, other than a Disclosable Pecuniary Interest, or an interest in an authority function (housing, SSP, benefits etc) which:</p> <p>(a) May reasonably be regarded as affecting the financial position of a Councillor and/or an Associated Person to a greater extent than the majority of:</p> <ul style="list-style-type: none"> <li>• Other Council Tax payers, rate payers or inhabitants of the electoral division or ward affected by the decision; or of the Council's area generally; or</li> </ul> <p>(b) Relates to the determination of an application made by a Councillor alone or jointly, for any approval, consent, licence, permission or registration, or that of an associated person; and</p> <p>where in either case, a member of the public, with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice a Councillor's judgement of the public interest. An Associated Person for these purposes is</p>

ABB.	EXPRESSION	DESCRIPTION
		<p>(f) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or</p> <p>(g) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or</p> <p>(h) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or</p> <p>(i) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or</p> <p>(j) any body in respect of which you are in a position of general control or management:</p> <ul style="list-style-type: none"> <li>(iv) exercising functions of a public nature; or</li> <li>(v) directed to charitable purposes; or</li> <li>(vi) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).</li> </ul>
	Procedure Rule	A procedural rule or series of rules which the Council adopts to cover procedural, financial, procurement or staffing matters. These are contained in Part 3 of the Council's constitution, which the Council is obliged to have under the Local Government Act 2000.
PPP	Public Private Partnership	Usually a partnership involving a private sector organisation and a public sector organisation such as a local authority/police authority with the objective of delivering local authority functions.
	Register of Members' Interests	The Council's Register of Disclosable Pecuniary Interests and Other Significant Interests maintained by the Monitoring Officer pursuant to Section 29 Localism Act 2011.
	Sub-Committee	Means a group of Councillors created by Council or a Committee with terms of reference to decide certain matters or make recommendations in an advisory capacity.
	Vires	Local authorities are statutory corporations and therefore have to act within the powers designated by an Act of Parliament; or something that can be inferred from the language of an Act of Parliament, or is calculated to facilitate or conducive or incidental to an authority's functions

<b>ABB.</b>	<b>EXPRESSION</b>	<b>DESCRIPTION</b>
		(under section 111 LGA 1972). Not only does an authority have to identify a power it must then exercise that power properly, i.e. for proper purposes taking into account all relevant considerations etc in order to successfully avoid an ultra vires challenge (i.e. outside the powers), by way of judicial review.
	Ward	The electoral area for which a councillor is elected.
	Working Day	Excludes Saturdays and Sundays, Bank, statutory and Council holidays.