

COUNCIL

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CONSTITUTIONAL MATTERS – NEW LEGISLATIVE REQUIREMENTS

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Summary

This report advises the Cabinet of the content of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which were laid before Parliament on 15 August and came into effect on 10 September 2012. These regulations clarify and extend the circumstances in which local authority executive decisions are to be open to the public. The Council is asked to agree the required changes to Medway's Constitution.

In addition the Council is asked to agree to adopt a revised Communications Protocol to replace the version in Part 5 of the Council's Constitution in order to reflect the Medway Protocol with the latest model Code of Recommended Practice on Local Authority Publicity.

1. Budget and Policy Framework

- 1.1 The Council's Constitution sets out the how the Council operates, how decisions are made and the procedures to ensure these are efficient, transparent and accountable to local people.
- 1.2 The Monitoring Officer has delegated authority to make minor changes to the Constitution, including those changes to executive decision making agreed by the Leader, with a copy of such changes being supplied all Group Leaders and Whips within 14 days. Any other changes can only be approved by the Council.

2. Executive Arrangements

- 2.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 revoke and replace regulations made in 2000. In summary the new regulations establish the presumption that meetings of a local authority executive (either a Mayor and Cabinet executive or Leader and Cabinet executive), its Committees and Sub-committees must be held in public. The Regulations prescribe the circumstances in which such

meetings may be held in private. They also set out circumstances in which written records relating to executive decisions are to be made and when those records are to be open to the public.

- 2.2 Before making the regulations the Government took soundings from the Local Government Association (LGA), Society of Local Authority Chief Executives, Association of Council Secretaries and Solicitors, Centre for Public Scrutiny and CIPFA. The LGA opposed the regulations and said they are unnecessary on the basis that local authorities are committed to transparency and accountability and that the current rules and regulations already allow for maximum transparency. However the Government has proceeded to introduce the new regulations because it believes the current regulations only allow, rather than require, maximum transparency and this has resulted in practice in more meetings being held in private than could be properly justified on the basis of well founded reasons.
- 2.3 The timescale for implementation of the provisions in the new regulations was extremely tight. The regulations were laid before Parliament on 15 August and came into effect on 10 September 2012. They have required some changes to procedures for managing the business of the Cabinet. In addition some sections of the Constitution need to be amended and are submitted for approval by the Council. It should be noted that whilst the Constitution will have to reflect the new legal provisions, established working arrangements in Medway are already in line with best practice in transparent and open executive decision-making. Current practice in Medway exceeds minimum requirements set out in the relevant regulations. For example, the Council's Constitution says key decisions should only be taken by the Leader/Cabinet, normal practice is for non-key decisions to be taken by the Leader/Cabinet to be also listed in the Forward Plan and the Cabinet endeavours to minimise the extent to which the press and public are excluded from meetings by ensuring that as much information as possible contained in reports is available in the public domain.
- 2.4 A Members Briefing Note was issued in September so that all Members of the Council were fully briefed on the changes to executive decision-making arrangements before the effective date of 10 September. The proposed changes to the Constitution are set out in Appendices A and B to the report.

3. Options

- 3.1 The Council is required to align provisions in Medway's Constitution relating to executive decision-making and access to information with the new 2012 regulations. The Cabinet, at its meeting on 4 September 2012, noted the option of setting up working arrangements which only meet the minimum requirements. However the Cabinet has agreed to continue with established working arrangements (insofar as this is possible under the new regulations) as these demonstrate a high level of transparency and accountability and have served the Council well since a Leader/Cabinet executive was introduced in Medway in October 2001.

4. Changes required to executive decision-making and access to information arrangements

- 4.1 This section of the report sets out the principal changes required to bring Medway's working arrangements for executive decision-making and access

to information into line with the provisions in the new regulations. The changes required to the Constitution are set out in full at Appendices A and B for approval by the Council.

- 4.2 **Publicity in connection with key decisions:** Previously, the Leader was required to publish a Forward Plan of key decisions to be taken by the Leader/Cabinet covering a four - month period which had to be published on a monthly basis, ten working days before the start of the period covered. This requirement was repealed with effect from 10 September.

Instead, effective from 10 September 2012, a document must be published 28 clear days before the Leader/Cabinet makes a key decision setting out the key decision to be made and a range of other information similar in content to the previous Forward Plan. In effect this means that the legal obligation to list forthcoming key decisions only applies to the next Cabinet meeting rather than the next three to four meetings, although in practice it is anticipated that this document will continue to cover the next three to four meetings. If compliance with the 28-day notice period is not possible there is a continuing requirement to notify the relevant Overview and Scrutiny Committee Chairman and wait five clear days before the decision is taken (unless the special urgency provisions are followed).

There is then a new requirement to publish a notice explaining why compliance with the usual 28-day notice requirement has not been possible.

- 4.3 In making these changes it is proposed to take the opportunity of aligning the definition of a key decision in Medway's Constitution with the definition in the 2012 regulations as set out in Appendix A.

The Cabinet has agreed that the Forward Plan should continue to include a list of all reports expected for forthcoming Cabinet meetings rather than be restricted to the reports for the meeting 28 days ahead and that the Plan should now be updated more frequently than once a month. This will enhance transparency and enable Overview and Scrutiny Committees to continue to identify items for pre-decision scrutiny. Any reduction in the level of pre-decision scrutiny could give rise to an increase in call-ins.

- 4.4 **Procedures prior to Cabinet meetings where the public may be excluded:** New provisions now apply ahead of any meeting of the Leader/Cabinet (and Committees and Sub Committees of the Cabinet) where the public are to be excluded due to disclosure of confidential or exempt information. 28 days before the meeting notice of the intention to hold the meeting in private must be published giving reasons. Even if there is ultimately no private session of the meeting, it will be necessary to publish the notice where there are exempt parts of a report, as it might be necessary for the Cabinet to go in to private session to discuss the exempt Appendix. Further notice of the intention to hold the meeting in private must then be published 5 clear days before the meeting, setting out any representations received about why the meeting should be open to the public and the response of the Leader/Cabinet to these. The Leader has delegated authority to the Monitoring Officer to determine, in consultation with the Leader, a response to any representations received about why a Cabinet meeting should be open to the public following publication of a notice of intention to meet in private.

Where it is not possible to meet the timescales for publication of these new notices the meeting may only proceed and the decision be taken if the relevant Overview and Scrutiny Chairman has agreed that the meeting is urgent and cannot reasonably be deferred. A notice to this effect must then be published.

These new notices are being published as part of the revised Forward Plan and as part of the relevant Cabinet agenda (where a response to representations relating to an intention to meet in private is required).

- 4.5 **Cases of special urgency:** These provisions remain the same as set out Rule 16 of the Council's Access to Information Rules except in future a notice must be published by the decision-maker where special urgency procedures have been invoked setting out the reasons for urgency and why the meeting could not be reasonably deferred. The regulations provide choice for the Council in terms of the timescales within which the Leader must report any executive decisions taken under the urgency provisions to Full Council as long as this is done at least once a year. It is proposed to preserve the requirement in Medway's Constitution for this to be done quarterly (or annually if there have been none).
- 4.6 **Inspection of background papers:** There is now a requirement for the list of background papers in Cabinet reports and at least one copy of each document listed to be available for public inspection at the Council's Offices and on the Council's website. This represents a departure from current working arrangements. Currently report authors are expected to retain paper copies of background documents listed in reports for public inspection for a period of at least four years beginning on the date of the related decision. In future a web link will need to be provided to these documents in Cabinet reports and where this is not possible an electronic copy of the document provided to Democratic Services for publication on the Council's website via modern.gov.
- 4.7 **Additional rights of access to documents for Members of local authorities:** The regulations strengthen the rights of local authority Members to access to information relating to business to be discussed at a public meeting of the executive, or business transacted at a private meeting, or decisions made by individual Cabinet Members and officers under executive arrangements. Members must be able to inspect any report or background paper to be discussed at least five clear days before a public meeting is held or from the time the meeting is convened if this is less than 5 clear days ahead (previously there was no 5 day rule). In the case of a Cabinet meeting where there is a closed session or for executive decisions taken by an individual Cabinet Member or officer, reports and background papers must be available for inspection by any Member of the Council, on request within 24 hours. In Medway full copies of all Cabinet agendas and records of decisions will continue to be provided to all Members of the Council.
- 4.8 The Council is asked to note that there has been widespread concern about the new requirement for local authorities to publish records of all executive decisions taken by officers in connection with the discharge of executive functions. As notified to all Members of the Council in the recent briefing note, arrangements for putting this into effect have been delayed whilst the Monitoring Officer seeks clarification from DCLG about the intended scope of the new provision. Along with other Councils, the Leader and Cabinet asked

the Monitoring Officer to express serious concern to the Secretary of State about the potentially significant administrative and costly process associated with this new burden, particularly in the current financial climate. It is hoped the Secretary of State will repeal the provision with a return to the previous system for publicity in relation to key decisions which has worked well for many years. Representations to this effect were made to the Rt Hon Eric Pickles MP on 4 September 2012 with a copy to the Efficiency and Reform Team at the Cabinet Office, which is taking forward the Government's Deregulation and Red Tape Challenge. At the point of despatch of the Council agenda, a reply had not been received. The Cabinet has authorised the Monitoring Officer, in consultation with the Leader, to put in place appropriate arrangements to comply with the requirements for recording executive decisions by officers as set out in the regulations, taking into account any advice received from DCLG on this matter and to report any consequential changes to the Constitution to Full Council for approval if required.

- 4.9 **Additional rights of access to documents for Members of Overview and Scrutiny Committees:** The rights of Members of Overview and Scrutiny Committees have been strengthened by the regulations which now stipulate a 10 day deadline for responding to any request for a report or background paper that contains material relating to a Cabinet decision or a decision taken by a Cabinet Member or officer under executive arrangements.

If the Cabinet denies a request for information under this regulation there is a new requirement for the reason for the refusal has to be reported to the relevant Overview and Scrutiny Committee.

- 4.10 **Reporting of Cabinet proceedings:** The new regulations require reasonable facilities for taking reports to be made available at public Cabinet meetings to any person attending the meeting for the purpose of reporting the proceedings. Under a heading "New legal rights for citizen reporters", a DCLG press release issued on 23 August 2012 says that this provision will now oblige local authorities "to provide reasonable facilities for Members of the public to report the proceedings as well as accredited newspapers and this will make it easier for new "social media" reporting of Cabinet meetings thereby opening proceedings up to internet bloggers, tweeting and hyperlocal news forums".

5. Communications Protocol

- 5.1 This report also brings forward a number of proposed revisions to the Communications Protocol within the constitution. These changes acknowledge the most recent Code of Recommended Practice on Local Authority Publicity and make minor amendments to ensure the protocol is up-to-date.
- 5.2 It is recommended that the proposed changes are made to the communications protocol to ensure it reflects the most recent national code and current practice. This will ensure that the council's constitution is consistent with the national code as issued under section 4 of the Local Government Act 1986.
- 5.3 The proposed changes also update the protocol to reflect the council's centralised delivery of marketing, changes to internal communications tools

and the management of social media within the council. The revised Communications Protocol is set out in Appendix C.

6. Risk management

6.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Implementation of regulations	The Council fails to implement the provisions in the 2012 regulations on executive decision-making by 10 September	Report to Cabinet on 4 September setting out new requirements to apply with immediate effect so as to cover the Cabinet meeting on 2 October. Changes to Constitution to be agreed by the Council on 18 October
Publication of background documents	Officers could be deemed to commit an offence by intentionally failing to meet the new obligation to provide web links or electronic versions of background papers listed in Cabinet reports	Democratic Services to advise each Director and Directorate management team of the new requirements and incorporate advice into the report writing guidance on the intranet
Non-compliance with the Code of Recommended Practice on Local Authority Publicity	If the council's communications protocol is not consistent with the national code, the council risks inadvertently breaching the national code	Make changes as proposed to the communications protocol

7. Financial and legal implications

7.1 This report arises from the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The legal implications are set out in full in the body of the report.

7.2 Compliance with Code of Recommended Practice on Local Authority Publicity is not legally binding as the code is considered as guidance. However it is not mere advice - the Council must consider it carefully and have cogent reasons

if it wishes to depart from it. Failure to do so may result in any decision being challenged, either by way of judicial review or by way of an objection to the External Auditor.

- 7.3 Subject to the Secretary of State responding to representations being made about the scope of the new requirement to publish executive decisions being taken by officers, it is expected that the changes required to the arrangements for executive decision-making can be accommodated within existing budget and staffing levels.

8. Recommendations

- 8.1 To agree the changes required to the Constitution as set out in Appendices A and B.
- 8.2 To note the working arrangements for executive decision-making and access to information as set out in the revisions to the Constitution together with the proposed approach described in paragraphs 4.1 to 4.10 which took effect on 10 September 2012 to ensure compliance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations.
- 8.3 To note that the Monitoring Officer has been given authority by the Leader and Cabinet to put in place arrangements for the publication of executive decisions taken by officers, if required, once a reply from the Secretary of State as the intended scope of this provision has been received.
- 8.4 To note that the Leader has delegated authority to the Monitoring Officer to determine, in consultation with the Leader, a response to any representations received about why a Cabinet meeting should be open to the public following publication of a notice of intention to meet in private.
- 8.5 To agree the revised Communications Protocol, as set out in Appendix C to the report.

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Background papers

Medway Council's Constitution:

<http://www.medway.gov.uk/councilanddemocracy/council/constitution.aspx>

Appendix A

The Local Authorities (Executive Arrangements) Meetings and Access to Information (England) Regulations 2012 – consequential changes to Medway Council's Constitution

Current Constitutional provisions	Suggested change
Chapter 1 – Summary and Explanation Page 1.3 Section 7 Local People's Rights Para 7.4	Add below bullet point 4 <ul style="list-style-type: none">• To make representations about why a Cabinet meeting, or part of a Cabinet meeting, should be open to the public when notice of an intention to meet in private is published.
Article 3 – Local People and the Council Page 2.5 Para 3.1 (b) Information	Add additional bullet point <ul style="list-style-type: none">• To make representations about why a Cabinet meeting, or part of a Cabinet meeting, should be open to the public when notice of an intention to meet in private is published

Article 12 – Decision making

Page 2.29 Para 12.3 (b) Key decisions

(b) **Key decisions**

~~i) A key decision is one which~~
~~The regulations~~
~~define a key decision as one which~~ is likely:

- to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
- to be significant in terms of its effects on communities living or working in an~~the~~ area comprising two or more wards in Medway.

ii) For the purpose of determining what is to be regarded as significant expenditure or savings reference will be made to the financial and risk thresholds set out in the relevant parts of the Constitution which clearly set out what must be determined by the Cabinet or full Council. These include the scheme of delegation, the section on financial limits and the Financial and Contracts rules

A decision taker may only make a key decision in

	<p>accordance with the requirements of the Leader and Cabinet rules set out in chapter 4 of this constitution.</p> <p><u>Generally, key decisions will should only be made by memberthe Leader/Cabinet, a Committee of the Cabinet, a Joint Committee (or Sub Committee thereof) or an area Committee (if any).</u></p>
<p>Chapter 3 - Responsibility for Functions Part 4 Employee Delegation Scheme</p> <p>Page 3.25 Delegations to the Chief Executive – Democratic Services</p> <p>Page 3.27 Delegations to Assistant Director, Legal and Corporate Services</p>	<p>Add:</p> <p>To require a report to full Council when requested by the Chairman of an Overview and Scrutiny Committee on behalf of the Committee in circumstances where the Committee are of the opinion that an executive decision has been made and should have, but has not, been treated as a key decision</p> <p>Add – Democratic Services</p> <p>To act as the proper officer for the purposes of the access to information rules, including determination, in consultation with the Leader of the Council, of a response to any representations received about why a Cabinet meeting, or part of a Cabinet meeting, should be held in public following publication of a notice of intention to meet in private.</p>

<p>Chapter 4 – Rules Part 2 – Access to Information Rules Pages 4.21 to 4.32</p>	<p>Appendix B sets out the proposed changes to Access to Information Rules</p>
<p>Chapter 4 – Rules Part 4 – Leader and Cabinet Rules Page 4. 43, Paragraph 1.7, Public Meetings of the Cabinet</p>	<p>Add:</p> <p>The Leader may exercise any lawful power to exclude a member or members of the public to maintain orderly conduct or prevent misbehaviour. In these circumstances the Leader will follow the procedures for disturbance at meetings set out in Council Rule 11.2</p>

PART 2 - ACCESS TO INFORMATION RULES

Contents

Rule	Page
1. Scope	4.23
2. Additional rights to information	4.23
3. Right to attend meetings	4.23
4. Notice of meeting	4.23
5. Access to agenda and reports before the meeting	4.23
6. Supply of copies	4.23
7. Access to minutes, etc, after the meeting	4.2324
8. Background papers	4.24
9. Summary of public's rights	4.24
10. Exclusion of access by the public to meetings	4.2425
11. Exclusion of access by the public to reports	4.2526
12. Application of rules to the Cabinet	4.2527
13. Procedure before taking key decisions <u>prior to a private meeting of the Cabinet</u>	4.2627
14. <u>Publicity in connection with key decisions</u>	4.27
<u>15.</u> The forward plan <u>of key decisions</u>	4.2628
15 <u>16.</u> General exception	4.2729
16 <u>17.</u> Special urgency	4.2830
17 <u>18.</u> Report to Council	4.2830
18 <u>19.</u> Record of decisions	4.2931
19 <u>20.</u> Cabinet meetings relating to matters which are not key decisions	4.2932
20 <u>21.</u> Notice of meetings of the Cabinet	4.2932
21 <u>22.</u> Attendance at meetings of the Cabinet	4.2932

Rule		Page
22 <u>23</u> .	Decisions by individual Members of the Cabinet	4. 30 <u>33</u>
23 <u>24</u> .	<u>Rights of access to documents for Members of</u> Overview and Scrutiny Committees' access to documents	4. 30 <u>33</u>
24 <u>25</u> .	Additional rights of access <u>to documents</u> for Members <u>of the Council</u>	4. 31 <u>34</u>

1. **RULE 1 - SCOPE**

These rules apply to ~~all~~ meetings of the Council, Overview and Scrutiny Committees ~~(with some statutory exceptions)~~, area Committees ~~(if any)~~, the Councillor Conduct Committee and regulatory Committees and public meetings of the Cabinet (together called meetings).

2. **RULE 2 - ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information contained elsewhere in this constitution or the law.

3. **RULE 3 - RIGHT TO ATTEND MEETINGS**

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

4. **RULE 4 - NOTICE OF MEETING**

The Council will give at least five ~~clearworking~~ days notice of any meeting by posting details of the meeting in public buildings, on its website, in newspapers and at its offices, unless the law provides otherwise in special circumstances.

5. **RULE 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 Chatham Community Hub at least five ~~clearworking~~ days before the meeting. Copies will also be sent to Gillingham Library and Strood Library. Where a meeting is convened at shorter notice a copy of the agenda and associated reports will be open to inspection from the time the meeting is convened. If an item is added to the agenda later, the revised agenda and additional reports will be open to inspection from the time the item was added to the agenda. Agendas and reports will also be published on the ~~internet~~council's website.

6. **RULE 6 - SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) if the Chief Executive thinks appropriate, 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 reasonably incurred.

A reasonable number of copies of the agenda and of the reports will be made available at the meeting.

7. RULE 7 - ACCESS TO MINUTES ETC AFTER THE MEETING

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

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

8. RULE 8 - BACKGROUND PAPERS

8.1 List of background papers

The Chief Executive will set out in every report that is open to public inspection a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based;
- (b) have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in rule 10) and, in respect of Cabinet reports, the advice of a political ~~adviser~~assistant.

8.2 Public inspection of background papers

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

In relation to Cabinet decisions the Council will make available on the council's website and at the council's offices (at all reasonable hours) a copy of the background papers included within the list.

9. RULE 9 - SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents is kept at the Chatham Community Hub, Gillingham Library and Strood Library and is available to the public.

10. RULE 10 - EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential information – requirement to exclude public

The public shall 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 would be disclosed. Such reports will be marked "not for publication", together with the category of information likely to be disclosed. Where possible any exempt information ~~will should~~ be contained in an appendix to enable discussion of the main item to be held in public. Any resolution to exclude the public due to disclosure of exempt information must identify the part of the proceedings to which it applies and the description of exempt information being used.
- Where the 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.

10.3 Meaning of confidential information

Confidential information means information given to the Council by a government department on terms (however expressed) which forbid its public disclosure or information which cannot be publicly disclosed under any enactment or by Court Order.

10.4 Meaning of exempt information

Exempt information means information falling within the following 7 categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	
2. Information which is likely to reveal the identity of an individual.	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Information within paragraph 3 is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act as set out in paragraph 8 of Schedule 12A of the Local Government Act 1972 (as amended). Financial or

Category	Condition
	business affairs includes contemplated as well as past or current activities.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under the authority.	Information within paragraph 4 is only exempt if and for so long as its disclosure to the public would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter. "Labour relations matters" are as specified in paragraphs (a) to (g) of section 218 of the Trade Unions and Labour Relations Act 1992, ie matters which may be the subject of a trade dispute.
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	Information within paragraph 6 is exempt only while disclosure might give an opportunity to a person affected by the notice, order or direction to defeat the purpose for which the notice, order or direction is to be given or made.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	

10.5 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.

10.6 Information which falls within any of paragraphs 1 to 7 above and which is not prevented from being exempt by either the condition to paragraph 3 or paragraph 10.5 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.

11. RULE 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 or 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. RULE 12 - APPLICATION OF RULES TO THE CABINET

12.1 ~~12.1~~—Rules 13 – ~~24-25~~ below apply to the Cabinet and any Cabinet Committees. If the Cabinet or its Committees meet to take a ~~key key~~ decision then it must also comply with rules 1 – 11 unless rule ~~15-16~~ (general exception) or rule ~~16-17~~ (special urgency) apply. While a Cabinet meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

12.2 A key decision is defined in ~~article~~ Article ~~12.3~~ of this constitution.

~~12.2~~—If the Cabinet or its Committees meet to discuss a key decision to be taken collectively, with an employee other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, then it must also comply with rules 1 – 11 unless rule 15 (general exception) or rule 16 (special urgency) apply. A key decision is as defined in article 12.3 of this constitution. This requirement does not include meetings, whose sole purpose is for employees to brief members.

13. RULE 13 - PROCEDURE PRIOR TO A PRIVATE MEETING OF THE CABINET

13.1 Subject to 13.2 a decision by Cabinet to hold a meeting, or part of a meeting, in private may not be taken unless:

- (a) a notice has been published in the Forward Plan at least 28 clear days before the meeting in question and made available on the council's website and at Chatham Community Hub. This notice is to include a statement of the reasons for the meeting being held in private;
- (b) a further notice is included on the agenda and published on the council's website and at Chatham Community Hub five clear days before the meeting. This notice is to include:
 - i) a statement of the reasons for the meeting to be held in private
 - ii) details of any representations received by the Cabinet about why the meeting should be open to the public
 - iii) a statement of its response to any such representations.

13.2 If a matter has not been included in accordance with rule 13.1 then the decision to hold a meeting, or part of a meeting, in private may still be taken if the Cabinet obtains the agreement of the chairman of the relevant Overview and Scrutiny Committee (or in that person's absence the Mayor and in the Mayor's absence the Deputy Mayor) that the meeting is urgent and cannot reasonably be deferred. As soon as it is practicably possible a notice will be published on the council's website and Chatham Community Hub setting out the reason why the meeting is urgent and cannot be reasonably deferred.

14. RULE 134 -- PUBLICITY IN CONNECTION WITH KEY DECISIONS

14.1 Subject to rule ~~15-16~~ (general exception) and rule ~~16-17~~ (special urgency), a key decision may not be taken unless:

- (a) a notice ~~(called here a forward plan)~~ has been published in the Forward Plan in connection with the matter in question;
- (b) the notice referred to in (a) has been available for public inspection for at least 28 clear days at Chatham Community hub and on the Council's website at least three clear working days have elapsed since the publication of the forward plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet or its Committees/Sub Committees, notice of the meeting has been given in accordance with rule 4 (notice of meetings).

14.15. RULE 14-15 - THE FORWARD PLAN OF KEY DECISIONS

14.1 -- Period of forward plan

~~Forward plans will be prepared by the Leader to cover a period of four months. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.~~

14.12 Contents of forward plan

The forward plan will contain matters which ~~the Leader has reason to believe~~ will be the subject of a key-key decision to be taken by the Cabinet, a Committee of the Cabinet, individual Members of the Cabinet, ~~employees,~~ area Committees or under joint arrangements in undertaking their responsibilities ~~during the period covered by the plan~~. It will give the following details ~~where the information is available or can be obtained~~:

- (a) (a) -- that a key decision is to be made on behalf of Medway Council;
- (b) the matter in respect of which the decision is to be made; issue to be decided;
- (c) where the decision taker is an individual, his/her name and title, if any; and where the decision taker is a body, its name and details of membership a list of its Members;
- (d) (e) -- the date on which, or the period within which, the decision will be taken;
- (e) a list of the documents to be submitted to the decision taker for consideration;

~~(f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;~~

~~(g) that other documents relevant to those matters may be submitted to the decision maker; and~~

~~the procedure for requesting details of those documents (if any) as they become available.~~

~~(h)~~

~~(d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision, if any;~~

~~(e) how such consultation will be done;~~

~~(f) the steps anyone who wishes to comment can take, and the date by which they should comment;~~

~~(g) a list of the documents to be submitted to the decision taker for consideration.~~

~~The forward plan will contain any proposals to change the level of employee delegations.~~

~~The forward plan of key decisions must be published a on the council's website and at Chatham Community Hub at least 28 clear days least 10 working days before a decision is made the start of the period covered. The Chief Executive will publish once a year a notice in at least one newspaper circulating in the area, stating:~~

~~(a) that key decisions are to be taken on behalf of the Council;~~

~~(b) that a forward plan containing details of these decisions will be prepared on a monthly basis for the four months ahead;~~

~~(c) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices, and will contain the list of documents to be submitted, and where copies of the plan and the documents can be obtained;~~

~~(d) that there may be more documents to come and how they may be obtained;~~

~~(e) the dates on which updates to the forward plan will be published and made available.~~

~~Confidential, Exempt information or particulars of the advice of a political assistant need not be included in the forward plan and confidential information cannot be included.~~

4516. RULE 165 - GENERAL EXCEPTION

~~If a matter that is likely to be a key decision has not been included in the forward plan, then Subject to rule 16-17 (special urgency), where the publication of the intention to make a key decision under Rule 15 is impracticable, that decision may only be made the decision may still be taken if: where:~~

- ~~(a) — the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;~~
- ~~(a**b**) notice of the matter about which the decision is to be made and the reasons why it has been impracticable to apply Rule 15 has been given in writing to the chairman and spokespersons of the relevant Overview and Scrutiny Committee ~~have been informed~~ or in their absence where written notice has been sent to each Member of that Committee and made available at the Chatham Community Hub and on the Councils website and~~
- ~~(b) at least five clear days have elapsed since the notice given in paragraph (a) was made available.~~
~~a notice made available at the Chatham Community Hub, Gillingham Library and Strood Library;~~
- ~~(c) — at least five clear working days have elapsed since these steps have been taken.~~

~~Where such a decision is taken collectively, it must be taken in public unless exempt or confidential information is being considered.~~

1617. RULE 16-17 - SPECIAL URGENCY

~~Where the date by which a key decision must be made makes compliance with Rule 16 (general exception) impracticable the decision may only be made where the decision maker has obtained agreement from the If, by virtue of the date by which a decision must be taken, rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual), or the chairman of the body making the decision, obtains the agreement of the chairman of the relevant Overview and Scrutiny Committee (or if there is no chairman of the relevant overview and scrutiny committee that person's absence the Mayor and in the Mayor's absence the Deputy Mayor) that the taking of the decision(s) is urgent and cannot ~~be~~ reasonably be deferred.~~

~~As soon as reasonably practicable after the decision maker has obtained this agreement the decision maker must publish a notice in the Forward Plan setting out the reasons that the meeting is urgent and cannot be reasonably deferred which must be made available at Chatham Community Hub and on the Council's website.~~

1718. RULE 17-18 - REPORT TO COUNCIL

4718.1 When an Overview and Scrutiny Committee can require a report

~~Where a relevant~~ ~~If an~~ Overview and Scrutiny Committee thinks that ~~an~~ executive decision has been made and was not treated as a key decision and the Committee are of the opinion that the decision should have been treated as a key decision the Committee may require the Leader/Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the Committee when so requested by the chairman. ~~key decision has been taken which was not:~~

- ~~(a) — included in the forward plan; or~~
- ~~(b) — the subject of the general exception procedure; or~~
- ~~(c) — the subject of an agreement with a relevant Overview and Scrutiny Committee chairman under rule 16;~~

~~— the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the Committee when so requested by the chairman. Alternatively the requirement may be raised by a resolution passed at a meeting of the relevant Overview and Scrutiny Committee.~~

4718.2 Cabinet report to Council

The Leader/Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within five clear days working days of receipt of the written notice, or of the request from the Committee the resolution of the Committee, then the report may be submitted to the meeting after that. A report to Council under this Rule must include details of the decision and the reasons for the decision, the decision maker by which the decision was made and if the Leader/Cabinet are of the opinion that the decision was not a key decision, the reasons for that decision. ~~The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.~~

4718.3 Quarterly reports on special urgency decisions

In any event the Leader will submit, a quarterly- quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in rule ~~176~~ (special urgency) in the preceding three months, or annually where there have been none. The report will include the particulars of each decision made and a summary of the matters in respect of which each decision was made. ~~number of decisions so taken and a summary of the matters in respect of which those decisions were taken.~~

1819. RULE ~~18-19~~ - RECORD OF DECISIONS

~~As soon as reasonably practicable a~~After any meeting ~~of of a decision making body at which an executive decision was made~~the Cabinet or any of its Committees, ~~whether held in public or private~~, the Chief Executive or the person presiding at the meeting, will produce a record of every decision ~~made~~taken at that meeting ~~as soon as practicable~~. The record ~~will~~ must include:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
- (d) a record of any conflict of interest relating to the matter decided which is declared by any Member of the decision-making body which made the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted.

~~a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.~~

1209. RULE ~~19-20~~ - CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

The Cabinet will hold all meetings in public except where exempt reports are to be considered.

2021. RULE ~~20-21~~ - NOTICE OF MEETINGS OF THE CABINET

Members of the Cabinet or its Committees will be entitled to receive five clear ~~working~~ days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

Where a meeting is convened at shorter notice a copy of the agenda and associated reports will be open to inspection from the time the meeting is convened. If an item is added to the agenda later, the revised agenda and additional reports will be open to inspection from the time the item was added to the agenda.

Notice and papers will also be sent to all other Members of the Council as requested and electronically where possible.

Copies will also be made available at the Chatham Community Hub Council's main administrative buildings and on the Council's website.

2122. RULE ~~21-22~~ - ATTENDANCE AT MEETINGS OF THE CABINET

All Members of the Council are entitled to attend all meetings of the Cabinet. Non-executive Members may be allowed to address meetings of the Cabinet with the Cabinet's Leader's approval in advance. Political assistants may also attend meetings of the Cabinet.

The Chief Executive, the Chief Finance Officer and the Monitoring Officer, together with any director who is a signatory to a report being considered by the Cabinet, and their nominees, are entitled to attend meetings of the Cabinet.

~~Non-executive members wishing to speak should ask the Leader in advance for permission to speak to the Cabinet.~~

2223. RULE 22-23 - DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

2223.1 Reports intended to be taken into account

Where an individual Member of the Cabinet receives a ~~report that~~ report that he/she intends to take into account in making key decisions, the decisions will not come into force until five clearworking days after the decision has been taken.

2223.2 Provision of copies of reports to Overview and Scrutiny Committees

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chairman of the relevant Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

2223.3 Record of individual decisions

~~As soon as reasonably practicable of Within two working days of~~ a Cabinet decision being taken by an individual Member of the Cabinet, ~~or a key decision being taken by an employee,~~ he/she will prepare, or instruct employees to prepare, a record of the decision, a statement including:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the Member when making the decision;
- (d) a record of any conflict of interest declared by any Cabinet Member who is consulted by the Member which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted.

~~of the reasons for it and any alternative options considered and rejected.~~ The provisions of rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

2324. RULE 243 -- RIGHTS OF ACCESS TO DOCUMENTS FOR MEMBERS OF OVERVIEW AND SCRUTINY COMMITTEE OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

2324.1 Rights to copies

Subject to rule ~~23~~24.2 below, a Member of an Overview and Scrutiny Committee ~~(including its Sub-Committees)~~ will be entitled to a copy of any copies of any document which is in the possession or control of the Cabinet or its Committees and which contains material relating to:

- (a) any business that has been transacted at a meeting of ~~the~~ Cabinet or its Committees;
- (b) any decision taken by an individual Member of the Cabinet or an officer of the Council in accordance with executive arrangements.

Subject to 24.2 below where a Member of an overview and scrutiny committee requests a document which fall within (a) or (b) this must be provided by the Cabinet as soon as reasonably practicable and in any case no later than 10 clear days after the request is received by the Cabinet.

2324.2 Limit on rights

No Member of an Overview and Scrutiny Committee will ~~not~~ be entitled to:

- (a) any report document that is in draft form;
- ~~(b)~~ (b)—any report or part of a document report or background paper that contains exempt or confidential information, unless that information is relevant to
 - i) an action or decision they are reviewing or scrutinising or
 - ii) any review contained in any programme of work of that Overview and Scrutiny Committee or
- ~~(c)~~ a document or part of a document containing advice provided by a political assistant.
intend to scrutinise;
- ~~(c)~~—the advice of a political assistant.

Where it is determined by the Cabinet that a Member of an Overview and Scrutiny Committee is not entitled to a copy of a document or part of any such document for a reason set out above it must provide the Overview and Scrutiny Committee with a written statement setting out its reasons for that decision.

2425. RULE 24-25 - ADDITIONAL RIGHTS OF ACCESS TO DOCUMENTS FOR MEMBERS OF THE COUNCIL

2425.1 Copies of all exempt reports to Council will be provided to all Members and copies of all exempt reports to Committees established by the Council will be provided to the Members of the committee.

25.2 Subject to paragraph 25.4 any document which is in the possession of or under the control of the Leader and Cabinet and contains material relating to any business to be transacted at a public meeting must be available for inspection by any Member of the Council at least five clear days before the meeting. Where the meeting is convened at shorter notice these documents must be available for inspection when the meeting is convened and where an item is added to the agenda at shorter notice the document must be available for inspection when the item is added to the agenda**Material relating to previous business**

25.3 Subject to paragraph 25.4 any document which is in the possession of, or under the control of the Leader and Cabinet and contains material relating to any business transacted at a private meeting or any decision made by an individual Member of the Cabinet or an officer in accordance with executive arrangements must be available for inspection by any Member of the Council when the meeting concludes or immediately after the decision has been made and this must be within 24 hours. However, copies of all exempt reports to Cabinet will be sent to all Members of the Council.

25.4 Notwithstanding Rules 25.2 and 25.3 nothing in these Rules requires any document to be made available for inspection if it appears to the Proper Officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the Local Government Act 1972 unless—All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its Committees and contains material relating to any business previously transacted at a private meeting unless the document contains exempt information of a description falling within paragraph 3 of Schedule 12A to the 1972 Act and as set out in Rule 10.4 (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract) or paragraph 6. either (a) or (b) below applies:

- (a) ~~it contains exempt information falling within paragraphs 3 and 6 of the categories of exempt information;~~
- (b) ~~it contains the advice of a political adviser.~~

25.5 Nothing in this Rule requires any document to be made available for inspection if it appears to the Proper Officer that it discloses the advice of a political assistant.

~~Copies of all exempt reports to Council will be provided to all members and copies of all exempt reports to regulatory Committees will be provided to all members of the relevant Committee. In addition, copies of all exempt reports to the Cabinet (or Cabinet Committees or an individual Cabinet member) will be sent to the chairman and Group spokespersons of the relevant Overview and Scrutiny Committee and to the Leaders of all party groups not represented on the Cabinet.~~

~~24.2—Material relating to key decisions~~

~~—All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its Committees which relates to any key decision unless paragraph (a) or (b) above applies.~~

~~24.25.63~~ **Nature of rights**

~~—These rights of a Member set out in Rule 25 are additional to any other rights he/she may have.~~

~~24.4~~ **Significant decisions**

~~—A copy of all significant decisions will be circulated to members at least two days prior to the proposed date of implementation of that decision unless the urgency of that decision makes it impractical to do so.~~

References:

Sections 100A – H and schedule 12A Local Government Act 1972

Section 22 of The Local Government Act 2000

Chapter 7, DETR Guidance

[The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\)\(England\) Regulations 2012](#)

APPENDIX C

PART 5 – COMMUNICATIONS PROTOCOL

1. Introduction

- 1.1 Medway Council is committed to communicating with the public, keeping residents and partners informed, and involving them in the process of local decision making. Our communications activity should be guided by best practice and must respond to the requirements of the law on local government publicity.

Media relations require a careful and co-ordinated approach in any large organisation. Marketing is a specialist profession which can help the successful delivery of public services.

- 1.2 The benefits of a co-ordinated approach to media-relationscommunications are clear:

- the cCouncil is presenting a united and co-ordinated message
- the appropriate spokesperson is identified for each issue
- the flow of information on media inquiries and releases to Councillors is maintained
- we can monitor that we are responding promptly to media inquiries to ensure information provided to the public is accurate and timely
- accurate information about council services and activities is provided quickly through websites and social media

- 1.3 This protocol explains how the cCouncil will achieve a co-ordinated approach to media-relationscommunications and will ensure that all media-relationscommunications activity meets legal requirements. It covers:

Section 2 The legal position

- Code of recommended practice on local authority publicity, issued under section 4 of the Local Government Act 1986. The Local Government Act 1986
- The Code of Practice on Local Government Publicity

Section 3 Medway Council's local protocol

- The role of Medway's Councillors in communications
 - Spokespeople
 - Reporting Cabinet decisions
 - Reporting overview and scrutiny recommendations
 - Reporting Full Council decisions
 - Party political publicity

- The role of Medway’s officers in communications
 - The ~~corporate communications~~Communications and Marketing team
 - The role of managers and other Council staff
 - The role of political assistants
- Targets for responding to media inquiries
- Communications, marketing and publicity with partner organisations
- Assisting others with publicity
- Using external marketing and public relations support
- Cost effective publicity
- Monitoring compliance with this protocol and penalties for non compliance

2. The legal position

2.1.2.4 Local government communications and publicity are strictly regulated by law and national guidelines. All members and officers must follow these when communicating on behalf of the Council. The Communications and Marketing team can provide advice and guidance about the relevant laws, guidelines and codes of conduct that should be followed. The following sections describe the relevant law and guidelines.

2.2 In particular the Code of Recommended Practice on Local Authority Publicity sets out a number of important principles. It stipulates that local authority publicity should be:

- be lawful
- be cost effective
- be objective
- be even-handed
- be appropriate
- have regard to equality and diversity
- be issued with care during periods of heightened sensitivity

2.3 The code provides substantial supporting detail relating to each of these principles that should be considered in the council’s communications and marketing activities. This information is available to view at <http://www.communities.gov.uk/publications/localgovernment/publicitycode2011>

~~The Local Government Act 1986 (section 2) (amended in 1988 and 2001)~~

2.2—~~The main point of the Act is:~~

~~A Council must not publish any material which in whole or in part appears designed to affect support for a political party. It cannot give financial or other assistance to any other organisation to publish such political material.~~

2.3—~~The key test is:~~

~~□ Does the material refer to a political party or persons identified with a political party or promote or oppose a point of view on a question of political controversy which is identifiable as the view of one party and not another.~~

2.4—~~However the following factors also need to be taken into account:~~

~~□ The content and style of the material — there is a greater risk with material which seeks to persuade~~

~~□ The time and circumstances of publication and the likely effect on those to whom it is directed — there will be a different threshold for material issued close to an election~~

~~□ Where the material is part of a campaign the effect which the campaign appears designed to achieve~~

~~□ Material mentioning the name of a political party greatly increases the chance of it being seen as political~~

~~□ Strident language or emotive terminology is inappropriate~~

~~□ Verbatim use of language in leaflets or press releases issued by a political party should be avoided~~

~~□ Publicity designed to support a particular issue rather than a political party can be in breach of the act where the issue is one of political controversy supported by one party and not another or where the publicity appears designed to enhance one party or harm another~~

~~□ Criticism or support for government policies (as opposed to the party of government) is not in itself unlawful. However, the more directly it is done, the more likely it is that a court would consider the publicity relates to the political party behind the constitutional body.~~

2.5—~~This restriction applies to:~~

~~□ members~~

- ~~☐ Council employees (including school based staff)~~
- ~~☐ other organisations and contractors communicating with the media or issuing publicity on the Council's behalf~~
- ~~☐ communications issued jointly by the Council with partners or by partners on behalf of the Council~~
- ~~☐ other organisations issuing publicity with Council funding (for example voluntary organisations) including information we display on their behalf. The definition is wide enough to include theatrical productions and artistic events. It will cover attacks on political parties' policies by such organisations.~~

~~2.6 — 'Publicity' should be understood to include any communication addressed to the public at large or to a section of the public or any communication which will or may come in to the public domain:~~

- ~~☐ Newspapers — including statements and press releases issued by the Council~~
- ~~☐ Newsletters — including Medway Matters and the Pulse~~
- ~~☐ Leaflets~~
- ~~☐ Plans and publications including statutory and other plans~~
- ~~☐ Posters~~
- ~~☐ Campaigns~~
- ~~☐ Advertising~~
- ~~☐ The web site and other electronic publishing for example digital TV~~
- ~~☐ Conferences and exhibitions~~
- ~~☐ Consultation in any form~~
- ~~☐ General publicity information on t-shirts, carrier bags, badges and the like~~

~~2.7 — Local authority agendas and minutes are excluded from the Act. However any secondary publication of a Council decision is not. Therefore where for example Council passes an overtly party political motion a Council press release should not quote directly from the minute and must be modified to ensure it does not contravene the Act.~~

~~———— **The Code of Practice on Local Government Publicity**~~

~~2.8 The Code of Practice gives more detailed guidance on principles of good practice. Councils are ‘required to have regard to the provisions of any such code in coming to any decision on publicity.’~~

~~The code covers a number of areas which are expanded on below in terms of operation of the code in Medway:~~

~~2.9 Publicity for individual Councillors~~

~~The Code of Practice was revised in April 2001. A consequence of the amendments is the replacement of previous guidance on publicity for individual Councillors:~~

- ~~□ Publicity about individual Councillors can include contact details, the positions they hold in the Council (for example Cabinet member or Overview and Scrutiny Committee chairman) and their responsibilities.~~
- ~~□ The code permits the publication of information about individual Councillors’ proposals and recommendations *only where this is relevant to their position and responsibilities within the Council*. Comments on proposals should when made by portfolio holders be relevant to their portfolio and refer to facts only.~~
- ~~□ The code accepts it may be appropriate to quote ward Councillors if the issue relates to their ward. Any quotation must remain factual for example “I welcome the decision to spend £... in my ward” or “I will be expressing the views of my constituents at the overview and scrutiny or Council meeting”.~~
- ~~□ In all circumstances, publicity should be objective and explanatory and personalisation of issues and personal image making should be avoided. However it will sometimes be appropriate for a member who has been driving an issue to take credit for their work. As long as the publicity is about the policy and achievements this will usually comply with the code.~~
- ~~□ The justification for any proposals or recommendations must not be done in party political terms, expressly advocating the policies of a particular political party or opposing those of another.~~

~~The code also stresses that publicity should not be, or liable to misrepresentation as being, party political. While it may be appropriate to describe policies put forward by an individual Councillor which are relevant to their position and responsibilities in the Council, this should not be done in party political terms and should not directly attack the policies and opinions of other parties, groups or individuals.~~

~~2.10 The content and style of publicity~~

~~Publicity material may be produced to:~~

- raise awareness of Council services to inform existing clients and attract new ones – in certain cases, such as sport and leisure facilities entertainment provided, attracting tourism or investment promotional material will be appropriate
- support the running of the authority (such as recruitment advertisements)
- explain/justify the Council's policies, generally or on specific topics – for example as a background to consultation

Publicity should be relevant to the functions of the local authority and should not unnecessarily duplicate material produced by other bodies. The new power to promote economic, environmental and social well-being does however give the Council power to issue publicity on matters of local interest, not just about Council functions. In coming to a conclusion on whether this power can be used regard must be had to:

- Is the action likely to promote or improve the well-being of Medway?
- Is the primary purpose of the action to raise money?
- Is what we propose explicitly prohibited by other legislation?
- Are there any explicit limitations and restrictions on the face of other legislation?

To rely on these powers we must be able to answer yes to the first question and no to the following three.

Publicity on the Council's policies and aims should be objective, concentrating on facts.

Where publicity comments on the proposals of other bodies (for example neighbouring Councils, the Government) the comments must be objective, balanced, informative and accurate. The publicity should explain the reason for the Council's view. Councils are allowed to have a view on controversial issues – but publicity must be presented clearly in a balanced, objective, informative and accurate way. A prejudiced, unreasoning or political attack on the proposal or the person putting that proposal forward will never be acceptable. Consultation must be balanced and if options are being given the publicity must explain the pros and cons of each.

There is not a need to give equal text inches to opposing views. However this should usually be proportionate to other publicity. It is good practice to summarise the views the Council disagrees with and direct people to for example a full report or consultation paper setting out those views.

Campaign publicity is acceptable, for example to promote services or to attract tourism or investment. Campaigns can also be used to influence behaviour or attitudes on matters such as health, crime, environmental issues

~~and equal opportunities. Considerable care is required where campaigns are mounted to persuade the public to hold a particular view on a question of policy or where an issue does not concern a specific function of the Council.~~

~~Political groups are of course able to issue their own releases—but this must not use any Council resources or imply the release is issued on behalf of the Council and must be at their own expense.~~

~~2.11 Making publicity available~~

~~The main purpose of local authority publicity is to increase public awareness of services, explain the reasons for particular policies and priorities and generally to improve public accountability.~~

~~Information and publicity produced by the Council should be made available to all those who want or need it. Local authorities should not discriminate against or in favour of individuals or groups in the compilation of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.~~

~~Where material is produced covering issues affecting vulnerable sections of the community, such as the elderly and children, particular care should be taken to ensure it is unambiguous, easy to understand, unlikely to cause needless concern, and personal details are not divulged.~~

~~Local authority newspapers, leaflets or other material distributed unsolicited from house to house and information on the website reach far wider audiences than publicity available on application to the Council. Councils should give particular consideration to the use of electronic and other new media communication systems, but should not rely solely on them, to avoid excluding those without easy access to such systems.~~

~~Where it is important to target a particular audience, consideration should be given to using the communications networks of other bodies, such as voluntary organisations, and making use of electronic communications systems.~~

~~2.12 Cost effective publicity~~

~~The code emphasises the need for publicity to be cost effective. This and the Local Government Act 1999 covering best value reinforce the need to assess all publicity to ensure it offers value for money.~~

~~2.13 Advertising~~

~~Advertising can be a highly intrusive and expensive medium. In certain circumstances, however, it will be the most cost effective means of publicising a local authority's activities to promote the social, economic and environmental well-being of an area.~~

~~The primary consideration on whether to use advertising should be cost-effectiveness.~~

~~Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals.~~

~~Advertising in media covering an area significantly wider than the authority's is not likely to be an appropriate means of providing information, rather than attracting people to the authority's area or to use its facilities.~~

~~The attribution of advertising material, leaflets and other forms of publicity that reach the public should be clearly set out.~~

~~It is not accepted to pay for advertising as a disguised means of subsidy to a voluntary, industrial or commercial organisation.~~

~~Any decision to take advertising space in a publication produced by a voluntary, industrial and commercial organisation should be made only on the grounds that it provides an effective and efficient way of securing the desired publicity.~~

~~Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.~~

~~2.14~~ ~~Publicity in the run up to elections~~

~~The Council must not issue proactive publicity about candidates and other politicians directly involved in an election from the time the notice of an election is served until after the election itself. Publicity on controversial issues or where the views of individual groups or Councillors can be identified should also be avoided. The best practice is to avoid mention of any Councillor who is seeking re-election. If it is necessary to do so that publicity should be balanced with a reference to the relevant politicians from opposing parties. Proactive events should not involve politicians up for election. A comment in reaction to a decision which has been made can be used providing it is a factual comment subject to the balance set out above.~~

~~The same extent of control does not apply to by-elections. Subject to compliance with the Act and code publicity about individual Councillors who are not involved in the by-election is permitted.~~

3. Medway Council's local communications and marketing protocol

- 3.1** The following sections describe the local protocols for communication and publicity marketing adopted by the Council. These take into account the legal framework and good practice.

The role of Councillors in communications

3.2 Spokespeople

Executive functions and agreed Council policy

The Leader, Deputy Leader and Cabinet portfolio holders collectively hold executive (decision making) positions. These members will be the designated spokespeople on executive functions and agreed Council policy on behalf of the Council to the press, broadcast and other media.

The Leader and each Cabinet member have portfolios - the relevant portfolio holder will be the nominated spokesperson on the area of his/her special responsibility. Where a portfolio holder is for any reason unavailable the Leader or Deputy Leader will determine the most appropriate spokesperson.

It is possible that situations may arise, for example emergencies, when a member who does not have Cabinet responsibilities may act as spokesperson. An example would be a ward member speaking either solely or in conjunction with another spokesperson on behalf of the Council in response to an incident in the area they represent.

Overview and scrutiny and other standing Committees

Other members of the Council have been designated with special responsibilities

- Chairs of the Overview and Scrutiny Committees
- Chair of the Planning Committees
- Chairs of remaining standing Committees (Licensing, Employment Matters Appointments) when appropriate
- The Mayor (or Deputy Mayor in his/her absence)

These members may, subject to this protocol, comment on behalf of the Council to the press, broadcast and other media, on all matters relating to their special responsibilities.

The role of spokespeople

Any member acting as Council spokesperson is speaking for the Council and not in a party political capacity.

In addition to acting as Council spokespeople, members with special responsibilities will also represent the Council at official events such as openings and launches and at events run by partner agencies.

3.3 Ward members

Ward members have an important role in communicating with their constituents. However ward members too must bear in mind the restrictions on publishing political material using Council resources.

When using Council headed paper or e-mailing using Council resources or a medway.gov e-mail address the correspondence should **not** include an overtly party political stance.

Groups are mechanisms recognised by the Council and in law. There is a distinction to be made between a political group of the Council and a political party. As such members may, if they wish, sign their letters with reference to 'member / of x group'. Members should however be aware that reference to any political affiliation will increase the likelihood of correspondence being perceived as party political. It is not appropriate to give party membership – for example labour / conservative/ liberal democrat member for x.

If members wish to make political statements in correspondence Council headed notepaper should not be used.

The Medway logo must not appear on notepaper which includes the logo of a political party or group. This could be interpreted that the group or party stance is that of the Council.

3.4 Reporting Cabinet decisions

~~An IT database has been established on the~~The Council's website ~~to~~ publishes the decisions of Cabinet. However, this may not necessarily reflect the detail and full implications of the issues discussed and there will be a need to publicise and expand on these executive decisions through news releases and the Council's website.

Issues for discussion by Cabinet will be published in the forward plan. The agenda and papers for the meeting are made available to the media and public in advance. Releases issued prior to a Cabinet meeting will be factual only. If an approach is made by the media for an interview before Cabinet – it will be for Cabinet leader or portfolio holder to decide whether or not they wish to comment.

Cabinet representatives and the media team will identify any individual issues warranting other media and website publicity after each meeting. It is possible that journalists attending the meeting or reading the press release will also request interviews with Cabinet members and every effort will be made to accommodate this.

~~Where necessary t~~The media relations team in ~~corporate~~ Communications and Marketing will liaise with the Leader/Deputy Leader and relevant portfolio holder to prepare news releases following Cabinet meetings. Cabinet news releases, as with all others, should be issued as promptly as possible after the meeting/event to maximise coverage and to ensure they remain contemporaneous.

Releases will be factual, outlining the decision, the context in which it was made, issues relating to it and any action to be taken. Any quotes included will relate to the member's Council responsibility and will not be party political. Releases on Cabinet decisions will outline the call-in procedure.

The media [relations](#) team will respond to media inquiries about decisions of Cabinet, referring journalists, wherever appropriate, to the Leader or portfolio holder.

~~A digest of Cabinet decisions will be included in the Pulse.~~

3.5 Reporting overview and scrutiny recommendations

Overview and scrutiny business and recommendations are also reported on the website. Overview and scrutiny Committees deal with two main types of business – policy development and scrutiny of Cabinet and officer decisions.

(i) Policy development

Releases will be issued, if necessary, in advance. Any media inquiries beforehand will be referred to the relevant chair. If publicity is required on policy investigations this can be discussed with [the communications and marketing team](#).

Publicity about overview and scrutiny will focus on factual information about the issue/s under scrutiny, those involved, how the process works and the recommendations made. It will explain the process for the recommendations being considered by Cabinet.

(ii) Scrutiny of decisions

News releases may be issued following consultation with the relevant chair prior to scrutiny consideration of all called-in items to maintain the flow of information about decisions made and implemented. The release will focus on factual information about the decision and how call-in works. Publicity, if issued following scrutiny deliberation will focus on factual information about the issue/s called in, those involved, how the process works and the recommendations made. Where the course of action recommended is contrary to that proposed by Cabinet, this will be explained and the process for resolving the issue and making a final decision outlined.

Where an issue is referred to ~~f~~Full Council for decision, publicity will be restricted to the process involved. No proactive publicity will be issued until a final decision has been made.

If publicity is required for any matters being scrutinised by overview and scrutiny this should be discussed with the [communications and marketing](#) team.

~~A summary of the recommendations made by Overview and Scrutiny Committees will be included in the Pulse.~~

3.6 Reporting the decisions of Full Council

The decisions of ~~f~~Full Council are included on the Council's website. A press release ~~will~~may also be issued after each ~~f~~Full Council summarising the decisions made.

Where issued rReleases will be factual, outlining the decision, the context in which it was made, issues relating to it and any action to be taken. Any quotes included will relate to the member's Council responsibility and will not be party political. Releases will give contact details for the communications and marketing team.

3.7 Party political publicity

All parties are of course free to issue their own releases. No ~~c~~Council resources however must be used in their preparation or distribution. If Council resources are used the publicity is covered by the restrictions on political neutrality in the 1986 Act and are subject to the code.

4. The role of officers in communications

4.1 The political neutrality of officers

- All officers must operate within the legal restrictions on publicity described in section 2.
- All officers must, in carrying out their jobs act in a politically neutral way.

Senior officers above spinal point 44 (except school based staff) are also bound by the Widdicombe laws on political neutrality included in the Local Government and Housing Act 1989 which restricts their political activity outside work.

Senior officers may not:

- seek election as an MP or Councilor
- act as a political agent or sub agent
- participate in branch activities of a political party
- speak to the public or a section of the public with the apparent intention of affecting public support for a political party
- write artistic work which could have similar impact

Under the Council's local protocol, particular officers fulfill specialist roles.

4.2 The role of the communications and marketing team in media, ~~and~~ public relations and marketing for the council

The media team is responsible for media relations for and on behalf of the cCouncil. This includes:

- issuing proactive press releases
- responding to day-to-day inquiries from the media by issuing statements and/or arranging interviews with members or officers as appropriate
- responding to enquiries or mentions of the council on social media

Any manager or employee who receives a media inquiry must redirect it to the media relations team immediately in communications. Any mentions or coverage of the council on social media should also be passed to the media relations team for assessment and, where appropriate, response.

The media relations team will offer advice to members with responsibility as Council spokespeople and managers on the most appropriate approach to media issues. They will also advise on the appropriateness and legality of any proposed proactive and reactive publicity, if necessary seeking further advice from the Council's legal officers.

(i) Proactive releases

The media relations team may issue proactive press releases in a range of circumstances and in conjunction with others, for example emergency services. For example:

- to inform about a member decision/recommendation
- to publicise how to access a service – particularly if changes are being made

- to publicise an event
- to promote a campaign or raise awareness of a topic of local interest
- to pass on good news for Medway
- to publicise Medway's good practice and to raise Medway's profile in support of the Council's core values and other objectives
- to publicise an inspection report – good or bad
- to publicise the fact that consultation is taking place and how to become involved in it
- to inform residents what to do in cases of an emergency or to give safety alerts
- to give forward notice of things likely to disturb residents for example road-works
- to announce an appointment, election, reshuffle
- to appeal (in the case of a missing person)

The content of proactive releases is drawn up in consultation with relevant officers to ensure factual accuracy.

(ii) News releases

All news releases issued by the media team will be copied on email (~~or by post where a member is not on the email~~) to the relevant portfolio holder and any other member that the portfolio holder thinks is relevant, and made available in accordance with the 'sharing information on media inquiries and releases' protocol (paragraph (v) below)

Where issues relate to matters of decision by the Leader and/or Cabinet, a draft release will be emailed to the Leader or portfolio holder in advance of release, so that the content can be discussed and agreed.

(iii) Statements/response to media inquiries

The media relations team will, in consultation with relevant officers, issue statements in response to media inquiries. If the inquiry relates to a matter of agreed Council policy rather than simple factual checks the media team will liaise with the relevant portfolio holder.

Where the media team is informed by the journalist making the inquiry that they are responding to a political group issued release the officers' response will be limited to any factual clarification only. The journalist will

be given details of the portfolio holder or relevant spokespeople (as relevant depending upon which group has issued the release). The media relations team will inform the relevant member that an inquiry has been received and that a journalist may make contact on the issue. The response to a release issued by a political group thus remains with politicians, ensuring that officers' political neutrality cannot be called into question.

(iv) Proactive public relations, marketing and campaigns

The ~~public relations~~communications and marketing team ~~are is~~ responsible for proactive public relations, marketing and campaigns. Any officer wishing to develop proactive public relations or campaign publicity proposals must discuss ideas with the communications team.

The council has a centralised approach to planning and delivering marketing. Employees should not instigate and conduct marketing campaigns. If a service identifies a potential need for a marketing campaign or materials to support effective delivery of a service, they should seek advice from the communications and marketing team to enable the team to assess requirements and plan accordingly.

The communications and marketing team will not issue any release or promotional material if the content appears to be in breach of the publicity code or other legislation.

(v) Sharing information on media inquiries and releases

Copies of all news releases issued and a summary of media inquiries will be sent to the Leader, Deputy Leader, Cabinet, group leaders, nominated media contacts and corporate management team on a daily basis or at the earliest opportunity.

(vi) Media monitoring

~~Current resources do not permit the Council to buy a media monitoring service. The media relations team will prepare a weekly digest of stories relevant to the Council covered in the local and national papers. They will also list broadcast media coverage where the interviews have been arranged through the media team/they know coverage is planned. This weekly digest will be published in the Pulse. purchase relevant local newspapers and hold reference copies for access by staff. Free online monitoring tools are used to monitor council media coverage online.~~

4.3 The role of managers and other Council staff

Any manager or employee who receives a media inquiry should redirect it to the media team immediately. It is not appropriate for officers to initiate contact with the media or respond to media inquiries independently without first consulting with the media team.

The media team may offer an officer for media interview where the subject matter is purely factual or a journalist is seeking a background briefing. In other circumstances where comments are required on matters of Council policy or the outcomes of member decision making (see above) the most appropriate spokesperson is likely to be a member – that decision will be made by the media team in consultation with the Leader/relevant portfolio holder or Chief Executive and directors in the absence of the Leader or portfolio holder.

~~The only exceptions to this are publicity issued for arts and theatre activities and programmes – this is handled by the arts team, and publicity on adult education courses – this is handled by community and adult education. However, any arts and theatre and adult education publicity concerning Council policy or other matters beyond publicising shows/exhibitions/courses will be handled centrally as described above.~~

Staff should not under any circumstances go to the press with grievances of any kind – these should be handled through normal line management arrangements or by using the whistle blowing policy.

4.4 The role of political assistants

Section 9 of the Local Government and Housing Act 1989 permits the appointments of assistants for political groups (not for political parties). The purpose of the appointment must be to assist in the discharge of functions by members of a political group as members of the authority. The Act does not permit political assistants to be used in any additional political or other activity.

Political assistants can support Councillors in preparing press releases for their group if those releases relate to members' work as Councillors. Releases prepared in this way must of course not purport to come from the Council. Political assistants may not issue press releases in their own right.

Political assistants may not assist with general press releases for the local/national political party or releases that are not associated with the functions of the group on the Council.

5. Targets for responding to media inquiries

- 5.1 The media team has a target of responding to all media inquiries within a maximum 24 hours. Some inquiries may require an even quicker response to meet press deadlines. In the case of TV and radio, responses are required almost instantly and sometimes hourly. The media team will make clear the priority of the inquiry when media staff contact members and officers. Responding on target is only possible with the co-operation of all members acting as spokespeople and all officers asked for information. It can be damaging to the Council's reputation to fail to respond to inquiries.

6. Communications and publicity with partner organisations

- 6.1 ~~Increasingly~~ ~~I~~the Council ~~is~~-work~~s~~ing in partnership with other agencies. This includes issuing joint communications and publicity. The terms of this protocol and local government publicity law **must** be followed when the Council issues such joint publicity. This is the case even if publicity is issued jointly with organisations not themselves covered by local government publicity law. Any officers discussing potential joint communications activity with other agencies must ensure that partners understand that compliance with this protocol is a condition of any joint arrangements.
- 6.2 The communications team will ensure that all appropriate checks are carried out on any such publicity, and reserves the right to withdraw the Council from joint publicity arrangements if this protocol is not being followed.

7. Assisting others with publicity

7.1 The principles of the publicity code should also be taken into account if the Council is assisting others to issue publicity. The Council must:

- incorporate the relevant principles of the code in published guidance for application of grants
- make the observance of that guidance a condition of the grant or other assistance
- monitor to ensure the guidance is observed.

7.2 It is appropriate for local authorities to help charities and other voluntary organisations by arranging for pamphlets and other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision.

8. Using external public relations and publicity support

8.1 The Council's in house ~~public relations and design~~communications and marketing teams provide high quality, cost-effective services in comparison to external providers. ~~However, they may not always have the capacity to take on all public relations and design work. Officers should not commission design, creative, print or production services from external suppliers without prior reference to the communications and marketing team. Where the in-house team is able to provide the services required, then the work should be done in house where this represents value for money for the council. Where this kind of work is placed with external companies this should be done through the communications and marketing team.~~

Officers should wherever possible predict their needs and plan ahead to maximise the use of in house resources.

8.2 ~~In terms of design and print, a framework of select list of external print providers has been drawn up by corporate contracts and corporate communications procured by the Communications and Marketing team.~~ They have negotiated competitive rates for the Council as part of a wider consortium. If external ~~design or~~ print services are to be purchased, companies from this list **must** be used. It is not permissible to go to other companies under any circumstances. -

8.3 ~~In terms of public relations support, any appointment of external agencies must follow agreed Council contract procedures. A member of the public relations team should be fully involved in the selection process from the outset. Clear written working arrangements between the external provider and the Council's public relations team must be established to ensure that all releases are cleared with the Council's media team to ensure compliance with this protocol prior to issue.~~

8.4 Any external public relations or marketing agency acting on behalf of the Council must abide by the terms of this protocol and local government publicity law. These must be conditions of any appointment and written into the contract defining the service the Council will receive and it would be good practice to test their knowledge of the Act and code as part of any evaluation process leading to appointment.

9. ~~Cost effective publicity~~

~~9.1 Local authorities are accountable to the public for the efficiency and effectiveness of their spending on publicity, in the first instance through their audit arrangements. National guidelines state that publicity must be justifiable and cost effective and in deciding on the nature or scale of publicity, Councils must take into account:~~

- ~~Whether it is statutorily required or discretionary~~
- ~~The purpose to be served by the publicity where it is statutorily required~~
- ~~Whether the proposed cost is in keeping with the purpose and expected effect of the publicity.~~

~~All officers should bear in mind these guidelines when planning or commissioning publicity either through the in-house team or external providers.~~

10. Monitoring compliance with this protocol and penalties for non compliance

10.1 Compliance with this protocol will be monitored on an ongoing basis by the communications team. They will liaise as necessary with legal officers and the monitoring officer. It is though the responsibility of all members and staff to understand their responsibilities and obligations under local government publicity law and this local protocol.

10.2 Failure to comply with the code can result in:

- Complaints through the Council formal complaints procedure
- Complaints to the Local Government Ombudsman alleging maladministration
- Complaint to the external audit service over the Council's expenditure
- Judicial review of the Council's decision
- Damaging and unwanted media attention over unlawful publicity

- Reference to the Council's Overview and Scrutiny Committees for a possible investigation