

# Constitution of the Council

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## CHAPTER 1 – SUMMARY AND EXPLANATION

### 1. The Council's Constitution

1.1 Medway Council has agreed a Constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law whilst others are matters for the Council to ~~choose~~ determine.

1.2 The Constitution is divided into 15 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols ~~at the end of the document~~ in other parts of the Constitution.

### 2. What's in the Constitution?

2.1 Article 1 of the Constitution sets out the purpose of the Constitution ~~Council's vision and commits the Council to providing a lead in turning Medway's vision into reality.~~

~~2.2.~~ — Articles 2-15 explain the rights of local people and how the key parts of the Council operate. These are:-

- Members of the Council (article 2);
- Local people and the Council (article 3);
- The Full Council (article 4);
- Chairing the Council (article 5);
- Overview and Scrutiny Committees (article 6);
- The Leader and Cabinet (article 7);
- Regulatory and other committees (article 8);
- Councillor Conduct Committee (article 9);
- Joint arrangements (article 10);
- Employees (article 11);
- Decision making (article 12);
- Finance, contracts and legal matters (article 13);

- Review and revision of the [C](#)onstitution (article 14);
- Suspension, interpretation and publication of the [C](#)onstitution (article 15).

### 3. How the Council operates

- 3.1 The Council is composed of 55 Councillors, ~~After 2003 they will be~~ elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 3.2 Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Councillor Conduct Committee ~~trains and~~ advises them on the code of conduct [and organises appropriate training](#).
- 3.3 All Councillors meet together as the Council. Meetings of the Council are normally open to the public. Here Councillors decide the Council's overall policies and set the budget each year. The Council appoints a Leader for a four-year term who appoints the Cabinet. The Council also appoints committees.

### 4. How decisions are made

- 4.1 The Cabinet is the part of the Council that is responsible for most decisions. The Cabinet is made up of a Leader and up to nine Councillors. When major decisions are to be discussed or made, as far as possible, these are published in the Cabinet's forward plan. Cabinet meetings will generally be open to the public except where exempt or confidential matters are being discussed. The Cabinet has to make decisions that are in line with the Council's overall policies and budget. If it wishes to make a decision that is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

### 5. Overview and [S](#)crutiny

- 5.1 There are four [O](#)verview and [S](#)crutiny [C](#)ommittees which support the work of the Council as a whole. They allow Councillors and local people to have a greater involvement in Council matters by holding public inquiries into matters of local concern. These lead to reports and recommendations to the Cabinet and the Council as a whole on its policies, budget and service delivery. [O](#)verview and [S](#)crutiny [C](#)ommittees also monitor the decisions of the Cabinet. They can 'call-in' a decision that has been made by the Cabinet or employees but not yet implemented. This enables them to consider whether the decision is appropriate. They may recommend that the [decision is reconsidered by the decision maker or refer the matter to Full Council](#)~~Cabinet reconsider the decision~~. The Cabinet and the Council will sometimes consult a scrutiny committee on forthcoming decisions and the development of policy.

## 6. The Council's staff

6.1 [The](#) Council has people working for it to [employees](#) give advice, implement decisions and manage the daily delivery of its services. Some employees have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between employees and members of the Council ([this is set out in Chapter 5 of this Constitution](#)).

## 7. Local people's rights

7.1 The Council welcomes participation by local people in its work and will often offer local people the chance to be consulted on matters of interest and concern.

7.2 Local people have a number of rights in their dealings with the Council. These are set out in more detail in article 3. Some of these are legal rights, while others depend on the Council's own rules. The local Citizens' Advice Bureau can advise on individuals' legal rights.

7.3 Where members of the public use specific Council services, for example as a parent of a school pupil or as a Council tenant, they have extra rights. These are not covered in this [Constitution](#).

7.4 Local people have the right to:

- vote at local elections if they are registered;
- contact their local Councillor about any matters of concern to them;
- attend meetings of the Council and its committees except where, for example, exempt or confidential matters are being discussed;
- participate in the Council's question time and contribute [by invitation](#) to investigations [and reviews undertaken](#) by the overview and scrutiny committees;
- 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;
- find out, from the Cabinet's forward plan, what major decisions are to be discussed by the Cabinet or decided by Cabinet members or employees, and when;
- attend meetings of the Cabinet where decisions are being discussed or decided unless exempt or confidential information is being discussed;

- see reports and background papers, and any record of decisions made by the Council, the -and executive Cabinet and officers (in certain circumstances);
- complain to the Council;
- complain to the Local Government Ombudsman<sup>1</sup> if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints procedure;
- complain to the Councillor Conduct Committee if they have evidence which they think shows that a Councillor has not followed the Council's code of conduct;
- petition to request a referendum on whether to have a mayor;
- inspect the Council's accounts and make their views known to the external auditor;
- obtain a copy of this Constitution;
- submit a petition to the Council and receive a response under the Council Petition Scheme.
- to report on meetings subject to guidelines published on the Council's website and available at meetings.

If you would like more information about your rights or how the Council works contact the Chief Legal Officer, or visit our web site at [www.medway.gov.uk](http://www.medway.gov.uk)

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<sup>1</sup> Or, through a designated person, to the Housing Ombudsman in relation to social housing matters.



## CHAPTER 2 – ARTICLES OF THE CONSTITUTION

### 1. **ARTICLE 1 – INTRODUCING THE CONSTITUTION: ~~THE COUNCIL'S VISION FOR MEDWAY AND ITS COMMUNITY LEADERSHIP ROLE~~**

~~1.1 — The Council's vision for Medway is that Medway will be thriving, confident and healthy, a place where people are proud to live, work and learn. There will be opportunities for everyone to achieve and succeed, and to get the most out of life. We will celebrate the diversity of our communities, tackling disadvantage in all its forms. The local economy will grow an increasing number and range of jobs created by the expansion of existing businesses and the attraction of new ones. With a University for Medway offering opportunities for all local people, we will have a highly educated and skilled workforce, able to meet the needs of employers. Economic prosperity and progress will not however, be achieved at the expense of the environment. People living in Medway will enjoy a high quality of life, with decent, affordable housing. The Council also has responsibilities to improve the health of Medway residents and provide local leadership for public health. There will be a responsive transport system, helping to reduce traffic congestion. We will improve the environment and maintain it for future generations.~~

~~1.2 — This can only be achieved through the participation of all — the community, the Council, businesses and others sharing ambition and responsibility. We will listen to local people and jointly take pride in improving the place where we live. Networks of voluntary groups working with local people will be encouraged.~~

~~1.3 — Medway Council will provide high quality services, always working to improve value for money. Over and above this the Council will consult and involve local people so that decisions are taken on spending limited resources together. The Council will co-ordinate partnerships across boundaries to achieve common objectives. Medway Council will seek to set an example as a good and fair employer.~~

~~1.4 — Medway matters — there is no limit to what we can achieve. Working together we will shape the future of Medway and create an environment of flourishing communities with people who fulfil their potential.~~

#### 1.51 **This Constitution**

This Constitution and all its appendices, is the Constitution of Medway Council. The Council will exercise all its powers and duties, and move forward towards its vision set out within the Council Plan in accordance with the law and this Constitution.

#### 1.62 **Purpose of the Constitution**

The purpose of the Constitution is to:

- enable the Council to provide clear leadership to the community in partnership with local people, businesses and other organisations;

- provide a means of improving the delivery of services to the community;
- support the active involvement of local people in the process of local authority decision-making;
- help Councillors represent their constituents more effectively;
- enable decisions to be taken efficiently and effectively;
- create a powerful and effective means of holding decisions-makers to public account;
- ensure that no one will review or scrutinise a decision in which they were directly involved; and
- ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions.

### 1.73 Interpretation and review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will choose the option that it thinks is closest to the purpose stated above.

The Council will monitor and evaluate the operation of the Constitution as set out in article 14.

*Reference:*

*Section 37, LGA 2000*

*Chapter 10, DETR Guidance*

*The Local Government Act 2000 (Constitutions) (England) Direction 2000*

## 2. ARTICLE 2 – MEMBERS OF THE COUNCIL

### 2.1 Composition and eligibility

#### (a) Composition

The Council will comprise 55 Members (otherwise called Councillors). Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Boundary Commission for England and confirmed by a legal order ~~Electoral Commission and approved by the Secretary of State~~ and before both Houses of Parliament.

#### (b) Eligibility

There are certain qualifying and disqualifying criteria for people who stand for election as a Councillor. These are set out in the Local Government Act 1972 and the Local Government and Housing Act 1989.

### 2.2 Election and terms of Councillors

Elections are held every four years. The terms of office of Councillor will start on the 4<sup>th</sup> day after being elected and, except for the Leader, Mayor and Deputy Mayor, will finish on the 4<sup>th</sup> day after the date of the next regular election, unless they are ~~relected~~re-elected.

### 2.3 Roles and functions of all Councillors

#### (a) Key roles

All Councillors ~~shall~~shall:

- collectively be the Council's policy-makers and carry out a number of strategic and corporate leadership functions;
- represent their communities and bring their views into the Council's decision-making process to be the advocate of their communities;
- deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- balance different interests identified within the ward and/or the Council's area as a whole and represent them accordingly;
- be involved in review of the Council's decisions and services and in the services provided by others in Medway;
- maintain the highest standards of conduct and ethics;

- promote equality and diversity in the Council's policies and practices;

- and may also be available to represent the Council on other bodies.

(b) **Rights and duties**

- Councillors have rights to access the documents, information, ~~employee~~ professional advice, land and buildings of the Council needed to undertake their duties.
- Councillors must not disclose or make public confidential or exempt information or information given in confidence except where
  - they have the consent of the person authorised to give it;
  - they are required by law to do so;
  - the disclosure is reasonable and in the public interest and made in good faith and does not breach any reasonable requirements of the Council.

Councillors are encouraged to seek advice from the Monitoring Officer if contemplating the disclosure of confidential or exempt information.

- For these purposes, “confidential” and “exempt” information are defined in the access to information rules in part 2 of chapter 4 of this Constitution.

**2.4 Conduct**

Councillors will at all times observe the members' code of conduct and the protocol on member/employee relations set out in chapter 5 of this Constitution.

**2.5 Allowances**

Councillors will be entitled to receive allowances in accordance with the members' allowances scheme set out in chapter 6 of this Constitution.

*References:*

*Part 1, Part VA and Section 79, Local Government Act 1972*

*Chapter 2, DETR Guidance*

*Section 18, Local Government and Housing Act 1989 and regulations thereunder*

*Section 7, Superannuation Act 1972 and regulations thereunder*

Section 3, 5, 7(9) and 245 Local Government Act 1972

Section 91, Local Government Act 2000

Section 149 Equalities Act 2010

### 3. ARTICLE 3 – LOCAL PEOPLE AND THE COUNCIL

#### 3.1 Rights

Local people have the following rights. Their rights to information and to participate are explained in more detail in the access to information rules in part 2 of chapter 4 of this [Constitution](#):

##### (a) Voting and petitions

Citizens on the electoral roll for the area have the right to vote, and to sign a petition to request a referendum for an elected mayor form of [Constitution](#).

##### (b) Information

Local people have the right to:

- attend meetings of the Council and its Committees except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;
  - attend meetings of the Cabinet when decisions are being considered except where exempt or confidential matters are being discussed;
  - find out from the forward plan what decisions will be taken by the Cabinet and when;
  - see reports and background papers, and any records of decisions made by the Council, ~~and~~ the [Cabinet and some officer decisions executive](#) insofar as these are not confidential or exempt;
  - inspect the Council's accounts and make their views known to the external auditor;
  - to report on meetings subject to guidelines published on the Council's website and available at meetings; and
  - 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.
- 
- [Inspect the Members' Register of Interests – available on the Council's website](#)
  - [Make a request for information under the Freedom of Information Act 2000.](#)

(c) **Participation**

Local people have the right to participate in the Council's question time and contribute, by invitation, to investigations and ~~public~~ inquiriesreviews undertaken by Overview and Scrutiny Committees.

(d) **Complaints**

Citizens have the right to complain to:

- the Council itself under its complaints scheme;
- the local government ombudsman<sup>1</sup>; and
- the Councillor Conduct Committee about a breach of the members' code of conduct. These complaints should be addressed to the Monitoring Officer, Medway Council, Gun Wharf, Dock Road, Chatham.

3.2 **Individuals' responsibilities**

Citizens should not be violent, abusing or threatening to Councillors or employees and should not harm things owned by the Council, Councillors or employees.

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<sup>1</sup> Or through a designated person, to the Housing Ombudsman in relation to social housing matters.

## 4. ARTICLE 4 – THE FULL COUNCIL

### 4.1 Meanings

#### (a) Policy framework

The policy framework means the following plans and strategies:

~~□ Children and Young People's Plan~~

- Community Safety Plan
- Council Plan
- Development Plan\*
- Local Transport Plan
- Statement of Gambling Policy
- Sustainable Communities Strategy
- Youth Justice Plan

\* Plans and other strategies which together comprise the Development Plan (ie Local Development Framework and Regional Spatial Strategy) with reference to Part 2 of, and Schedule 8 to, the Planning and Compulsory Purchase Act 2004.

Any other plan or strategy that the Council determines should be designated as a Policy Framework Document and adopted or approved by Full Council.

#### (b) Budget

The budget is the approved allocation of financial resources to services, projects and contingency funds. It also includes, for the purpose of this [Ce](#)constitution, the processes of approving the Council tax base, the budget, the Council tax level itself and the borrowing requirement, the setting of controls on capital expenditure and any limits on budget ~~transfers~~virements.

#### (c) Housing land transfer

Housing land transfer means the approval or adoption of applications to the Secretary of State for a programme of disposal of 500 or more properties under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under Sections 32 or 43 of the Housing Act 1985.

## 4.2 Functions of the Full Council

Only the Council will exercise the following functions subject to the delegation in part 4 of chapter 3 of this [Constitution](#):

- adopting and changing the [Constitution](#)<sup>1</sup>;
- approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any housing land transfer;
- making decisions about matters outside the policy framework or contrary to/or not wholly in accordance with the budget; subject to the urgency procedure contained in the access to information rules in part 2 of chapter 4 of this constitution,
- appointing and removing the Leader;
- [electing the Mayor](#);
- agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;
- appointing representatives to outside bodies;
- adopting an allowance scheme set out [in Chapter 6 in this Constitution under article 2.5](#);
- changing the name of the area, or conferring the freedom of the borough;
- confirming the appointment of the [Head of Paid Service](#);
- [confirming the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer](#);
- making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills;
- all local choice functions set out in chapter 3 of this [Constitution](#) [except where those functions have been delegated by the Council](#);
- all other matters which, by law, must be reserved to Council.

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<sup>1</sup> [Except as provided by Article 14 of this Constitution.](#)



### 4.3 Council meetings

There are three types of Council meeting:

- [The](#) annual meetings;
- ordinary meetings;
- special -meetings [\(extraordinary meetings\)](#).

and they will be conducted in accordance with [the Council Procedure Rules](#) chapter 4 of this [C](#)onstitution.

[The Council will maintain the tables in Chapter 3 of this Constitution, setting out the responsibilities for the Council functions, which are not the responsibility of the Cabinet.](#)

*References:*

*Local Authorities (Functions and Responsibilities) (England) Regulations 2000  
Chapters 2 and 9, DETR Guidance*



## 5. ARTICLE 5 – CHAIRING THE COUNCIL

### 5.1 Role and function of the Mmayor

The Council will elect the Mayor annually. The Mayor will have the following responsibilities:

- to uphold and promote the Constitution, and to interpret the Constitution at meetings of the Council, on advice from the Monitoring Officer where necessary;
- to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Mmembers who are not on the Cabinet are able to hold the Leader and Cabinet to account;
- to promote public involvement in the Council's activities;
- to attend such civic and ceremonial functions as the Council and he/she determines appropriate;
- Such other duties that may fall to the Mayor to exercise by virtue of statute of this Constitution.

The Deputy Mayor, elected at the Annual Meeting of the Council, will have the following responsibilities:

- To assist and deputise for the Mayor in carrying out the responsibilities of office;
- In the absence of the Mayor the Deputy Mayor will chair meetings of the Council. In the absence of both the Mayor and the Deputy Mayor, the Council will, as a first item of business appoint one of its members to chair the meeting.
- To attend such civic and ceremonial functions as the Council and Mayor may determine appropriate.

#### References:

Sections 3, 5, 245; schedule 2, 12; Local Government Act 1972  
Schedule 3, Local Government Act 2000  
Chapters 2, 4 and 9, DETR Guidance



## 6. ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES

### 6.1 Introduction

The overview and scrutiny function is central to the Council's Constitutions.  
Overview and Scrutiny Committees:

- meet in public to discuss and make recommendations on the development of policy;
- provide effective challenge by holding hold the Leader and Cabinet to account for their actions and decisions;
- ~~have a key role~~ provide community focus in considering matters of local concern;

### 6.2 There will be four Overview and Scrutiny Committees

Within their terms of reference, Overview and Scrutiny Committees will:

- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- make reports and/or recommendations to the Full Council and/or the Cabinet and/or any joint Committee in connection with the discharge of any functions;
- consider any matter affecting the area or its inhabitants;
- exercise the right to call-in; any decision that has been made, but not implemented, by the Leader and Cabinet, an individual Member of the Cabinet or a Committee of the Cabinet or a key decision made by an officer but not yet implemented for reconsideration, decisions made but not yet implemented by the Cabinet and/or any joint Committees;
- establish ad hoc short life Task Groups panels to undertake specific in-depth review tasks;
- ~~consider crime and disorder matters raised under Councillor Call for Action procedures.~~

### 6.3 Joint NHS Health Scrutiny Committee

There will be one Joint NHS Health Scrutiny Committee with Kent County Council. Its terms of reference are set out in chapter 4, part 5 - Overview and Scrutiny Rules.

### 6.4 Specific functions

#### (a) Policy development and review

Within allocated budgets Overview and Scrutiny Committees may:

- assist the Council and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues;
- conduct research, community consultation and other consultation;
- consider and implement mechanisms to encourage and enhance community participation in the development of policy;
- question members of the Cabinet and/or Committees and employees about their views on issues and proposals affecting the area;
- liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
- ~~require representatives of relevant NHS bodies and relevant health service providers to attend the relevant Overview and Scrutiny Committee to discuss policy issues relating to the planning, provision and operation of health services in Medway.~~

~~(b)~~ **Scrutiny**

~~Within allocated budgets Overview and Scrutiny Committees may:~~

- review and scrutinise the decisions, initiatives and projects and performance of the Cabinet and/or Committees and Council employees in relation to individual decisions, initiatives and projects;
- review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- question members of the Cabinet and/or Committees and employees about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- make recommendations to the Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;
- review and scrutinise any matter relating to the planning, provision and operation of the health service in Medway
- review and scrutinise the performance of other public bodies and relevant partners in the area and invite reports from them by requesting (and in the case of the Community Safety Partnership and relevant NHS bodies and relevant health service providers requiring them) to address the Overview and Scrutiny Committee and local people about their activities and performance;
- question and gather evidence from any person with their consent.

~~(c)~~ **Finance**

Overview and Scrutiny Committees may exercise overall responsibility for the finances made available to them.

~~(d)~~ **Reporting**

Overview and Scrutiny Committees ~~must will~~ report to each ordinary Council meeting on their workings ~~and make recommendations for future work programmes and amended working methods if appropriate.~~

~~(e)~~ **Employees**

~~Overview and Scrutiny Committees may exercise overall responsibility for the work programme of the employees employed to support their work.~~

6.5 **Proceedings of Overview and Scrutiny Committees**

Overview and Scrutiny Committees will conduct their proceedings in accordance with the overview and scrutiny rules set out in part 5 of chapter 4 of this ~~C~~constitution.





## 7. ARTICLE 7 – THE LEADER AND CABINET

### 7.1 Introduction

Medway Council has decided to adopt the Leader and Cabinet form of executive, and the Cabinet is at the heart of the decision-making process.

Chapter 4 sets the rules for how the Leader and Cabinet will operate. These include arrangements for meetings, individual decision-making, and the scheme of delegation and sub-delegation of functions.

~~The Cabinet (meaning the Leader and such other Members of the Council as the Leader may appoint) will carry out all the authority's functions which are not the responsibility of any other part of the Council, whether by law or under this constitution.~~

### 7.2 Role

The Cabinet (meaning the Leader and such other Members of the Council as the Leader may appoint) will carry out all the authority's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

The Leader may take decisions on every matter that is not assigned to anyone else by this Constitution. The Leader may however, make arrangements to delegate some matters to the Cabinet, a Cabinet Committee, individual Cabinet members, or to employees.

### 7.3 Form and composition

The Cabinet will consist of the Leader together with not less than two but not more than nine other members of the Council appointed by the Leader. There are no co-optees, deputies or substitution of Cabinet members.

### 7.4 Leader

The Leader will be a Councillor elected by the Council at the Annual Meeting of the Full Council following on from the ordinary election of all Councillors. The Leader will hold office for four years and will remain in position until the day of the next Annual Meeting following the ordinary election of the Councillors unless:

(a) he/she resigns from the office; or

~~(b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or~~

~~(c)~~(b) he/she is no longer a Councillor except where the Leader fails to be returned as a Councillor following an ordinary election of all Councillors when unless the Leader resigns, is disqualified or is otherwise removed

from office he/she shall continue as Leader until the day of the Annual Meeting; or

~~(d)~~(c) until the Council passes a resolution to remove the Leader.

In the event of there being a vacancy in the office of Leader the Council shall elect a new Leader at its next ordinary meeting.

If the Council passes a resolution to remove the Leader, a new Leader shall be elected at the meeting at which the Leader is removed from office or at a subsequent meeting of the Council.

## 7.5 Deputy Leader and Cabinet members

~~Only Councillors may be appointed to the Cabinet. Neither the Mayor nor Deputy Mayor of the Council may be appointed to the Cabinet. The Leader and Cabinet members may not be members of an Overview and Scrutiny Committee.~~

The Leader must appoint one Member of the Cabinet to be his deputy. The Deputy Leader, unless he resigns as Deputy Leader, is removed by the Leader, ~~is suspended following a standards investigation~~, or ceases to be a Member of the Council, will hold office until the end of the term of office of the Leader.

Only Councillors may be appointed to the Cabinet. Neither the Mayor nor Deputy Mayor of the Council may be appointed to the Cabinet. The Leader and Cabinet members may not be members of an Overview and Scrutiny Committee.

Cabinet members appointed by the Leader shall hold office until:

(a) they resign; or

~~(b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or~~

~~(e)~~(b) they are no longer Councillors; or

~~(d)~~(c) they are removed from office by the Leader who must deliver written notice of any removal to the Chief Executive and to the Cabinet member concerned. The removal will take effect immediately after receipt of the notice by the proper officer.

If for any reason the Leader is unable to act or the office of Leader is vacant the Deputy Leader must act in his place.

If for any reason the Leader is unable to act or the office of the Leader is vacant **and** the Deputy Leader is unable to act or the office of Deputy Leader is vacant the Cabinet must act in the Leader's place or must arrange for a Member of the Cabinet to act in his place.

In the event of there being no Leader, Deputy Leader or Cabinet Members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules.

#### 7.6 **Proceedings of the Cabinet**

The Cabinet will operate in accordance with the rules set out in chapter 4 of this [Constitution](#).

#### 7.7 **Responsibility for functions**

The Leader will maintain the list in chapter 3 of this [Constitution](#) setting out whether any individual members of the Cabinet, Committees of the Cabinet, employees or joint arrangements have responsibility for any matters that would otherwise be the responsibility of the Leader and Cabinet, and if so who.

#### *References:*

*Section 11 and schedule 1, paragraphs 1,2,3, Local Government Act 2000  
Chapters 4, 14, and 15, DETR Guidance*



## 8. ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

### 8.1 Appointment Planning and licensing

The Council will appoint the Committees set out in Part 2 of Chapter 3 of this Constitution to undertake the responsibilities set out in that part and also Part 3 there.

### 8.2 Sub Committees

The Committees appointed pursuant to Article 8.1 may appoint Sub-Committees to consider and where appropriate, determine as delegated any matter falling within the remit of the Committee.

### 8.3 Membership of Committees

The Council shall determine the size and membership of the Committees and appoint Members in accordance with the rules on political proportionality contained in the Local Government and Housing Act 1989 where this applies.



## **9. ARTICLE 9 - THE COUNCILLOR CONDUCT COMMITTEE**

### **9.1 Councillor Conduct Committee**

The Council has established a Councillor Conduct Committee

### **9.2 Composition**

#### **(a) Political Balance**

The Councillor Conduct Committee will be politically balanced

#### **(b) Quorum**

The Quorum of the Councillor Conduct Committee shall be three Councillors.

### **9.3 Role and Function**

The Councillor Conduct Committee will have the following roles:

- To promote and maintain high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- To advise the Council on the adoption or revision of the Councillor Code of Conduct or on revision to the adopted arrangements for investigation or making decisions on complaints;
- To monitor the operation of the Councillor Code of Conduct;
- To advise, train or arrange to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Councillor Code of Conduct;
- The assessment against published criteria, investigation and hearing of allegations of Councillor misconduct and recommending any action which the Council has the power to take;
- The exercise of all of the above in relation to the parish Councils wholly or mainly in its area and the members of those parish Councils save where the functions are delegated.
- The adoption of any procedures necessary in order to undertake any of the above functions.
- To grant dispensations to Councillors or co-opted members in accordance with s33 of the Localism Act 2011 allowing Councillors or co-opted members to take part in debate and vote on any item in which they have a disclosable pecuniary interest,

#### 9.4 **Assessment, investigation and resolution of complaints**

The Councillor Conduct Committee will deal with complaints in the following way

- (a) The Committee will receive allegations that a Councillor or co-opted member of the Council or the 11 Parish Councils has breached the Councillor Code of Conduct.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Committee shall decide either:
  - (i) to refer the allegation to the relevant Leader and Whip of a political group for resolution
  - (ii) to refer the allegation to a Parish council for resolution
  - (iii) to refer the allegation to the Monitoring Officer for informal resolution such as the provision of training
  - (iv) to refer the allegation to the Monitoring Officer for investigation of the allegation;
  - (v) to decide that no action should be taken in respect of the allegation;

and shall ask the Monitoring Officer to notify the person making the allegation and the member concerned of that decision.

- (d) The Committee shall state reasons for its decision.

#### 9.5 **Considering the outcome of an investigation**

- (a) If the Committee decides to refer the allegation to the Monitoring Officer for investigation it shall receive the report of any investigator and the opinion of the Independent Person.
- (b) The Committee may on receipt of the report, the opinion and any written representations decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.
- (c) The Committee may on hearing all relevant parties and in accordance with an agreed procedure, decide whether a breach of the Councillor Code of Conduct has occurred and if so what action to recommend.
- (d) The Committee shall state reasons for its decision.



## 10. ARTICLE 10 – JOINT ARRANGEMENTS

### 10.1 Arrangements to promote well-being

The Leader, ~~in order to promote the economic, social or environmental well-being of its area,~~ may:

- enter into arrangements or agreements with any person or body;
- co-operate with, or facilitate or co-ordinate the activities of, any person or body;
- exercise on behalf of that person or body any functions of that person or body.

### 10.2 Joint arrangements

- (a) the Council may establish joint arrangements with one or more local authorities;
- (b) the Leader may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint Committees with these other local authorities;
- (c) except as set out below, the Leader may only appoint Cabinet members to a joint Committee and those members need not reflect the political composition of the local authority as a whole;
- (d) the Leader may appoint members to a joint Committee from outside the Cabinet in the following circumstance:
  - the joint Committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Leader may appoint to the joint Committee any Councillor who is a member for a ward which is wholly or partly contained within the area.

In this case the political balance requirements do not apply to such appointments;

- (e) details of any joint arrangements including any delegations to joint Committees will be found in the Council's scheme of delegation in chapter 3 of this ~~C~~constitution, with the exception of joint overview and scrutiny arrangements, details of which will be found in the Overview and Scrutiny Rules in ~~C~~chapter 4, ~~P~~part 5 of the ~~C~~constitution.

### 10.3 Access to information

- (a) The access to information rules in chapter 4 of this Constitution apply;
- (b) If all the members of a joint Committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet;
- (c) If the joint Committee contains members who are not on the Cabinet of any participating authority then the access to information rules in the Local Government Act 1972 will apply.

### 10.4 Delegation to and from other local authorities

- (a) The Council may delegate non-executive and, in some circumstances, with the agreement of the Cabinet, executive functions to another local authority, or in certain circumstances the Cabinet of another local authority;
- (b) The Leader may delegate executive functions to another local authority or the Cabinet of another local authority subject to the Council's Overview and Scrutiny Committees being able to require employees and/or members of the other local authority to co-operate with and if requested appear before any relevant Overview and Scrutiny Committee;
- (c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.

### 10.5 Contracting Out

The Council (for functions which are not executive functions) and the Cabinet (for executive functions) may contract out to another person, body or organisation, functions which may be exercised by an officer and which are subject to an order under Section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles.

#### References:

Sections 2, 19, 20 LGA 2000

Chapters 6 and 9, DETR Guidance,

The Local Authorities (Arrangements for the Discharge of Functions) (England Regulations 2000

Section 1 Localism Act 2011

## 11. ARTICLE 11 – EMPLOYEES

### 11.1 Management structure

#### (a) General

The Council may engage such staff (referred to as employees) as it considers necessary to carry out its functions. “Employees” or officers means all employees and staff employed by the Council to carry out functions. The term employee or officer covers those engaged under short term agency or other non employed situations as well as those employed on a permanent basis-are covered.

The Council will engage people for the following posts, who will be designated as Chief Officers:

Post	Functions and areas of responsibility
Chief Executive (and Head of Paid Service)	<p>Overall corporate management and operational responsibility (including overall management responsibility for all employees)</p> <p>Provision of professional advice to all parties in the decision making process</p> <p>Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council’s decisions.</p> <p>Representing the Council on partnership and external bodies (as required by statute or the Council)</p> <p>Finance and legal services</p>
Director of Regeneration, Culture, Environment and Transformation	Front Line Services, Physical and Cultural Regeneration and Transformation
Director of Children and Adults Services	Statutory Officer for Children’s Services (schools and social care) adult social care, commissioning and strategic development and inclusion and improvement (schools).
Director of Public Health	The principal adviser on all public health matters, with responsibility spanning the three domains of public health: health improvement, health protection and healthcare public health.

(b) **Head of Paid Service, Monitoring Officer and Chief Finance Officer and Scrutiny Officer**

The Council will designate the following posts as shown:

Post	Designation
Chief Executive	Head of Paid Service
Chief Finance Officer	Chief Finance Officer
Chief Legal Officer	Monitoring Officer
Head of Democratic Services	Scrutiny Officer

Such posts will have the functions described in article 11.2–11.45.

(c) **Structure**

The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of employees. This is set out at chapter 7 of this Constitution.

## 11.2 Functions of the Head of Paid Service

(a) **Discharge of functions by the Council**

The Head of Paid Service, [when he considers appropriate](#), will report to Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of employees required for the discharge of functions and the organisation of employees.

(b) **Restrictions on functions**

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

(c) [Politically restricted posts](#)

[The Head of Paid Service will grant and supervise exemptions from political restrictions, in consultation with the Monitoring Officer.](#)

(d) [Dispensations](#)

[The Head of Paid Service will consider and determine written requests for dispensations when Cabinet Members are making decisions and when individual Cabinet Members are being consulted by officers over a decision being taken by either an officer or another Cabinet Member, in accordance with the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\)\(England\) Regulations 2012.](#)

### 11.3 Functions of the Monitoring Officer

(a) **Maintaining the Constitution**

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, employees and the public.

(b) **Ensuring lawfulness and fairness of decision making**

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council or to the Leader and Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by the Council or Cabinet as appropriate.

(c) **Supporting the Councillor Conduct Committee**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Councillor Conduct Committee.

(d) **Proper officer for access to information**

The Monitoring Officer [is the Proper Officer for this purpose and](#) will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.

(e) **Advising whether Cabinet decisions are within the budget and policy framework**

The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

(f) **Providing advice**

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.

(g) **Restrictions on posts**

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

References: (Section 5), Local Government and Housing Act 1989  
Chapters 8 and 9 DETR Guidance  
Sections 26-33 Localism Act 2011  
[Section 3A Local Government and Housing Act 1989](#)  
[Section 4 \(2\) Local Government and Housing Act 1989](#)  
[Section 270 Local Government Act 2000](#)

#### 11.4 Functions of the Chief Finance Officer

(a) **Ensuring lawfulness and financial prudence of decision making**

After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council or to the Leader and Cabinet in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

(b) **Administration of financial affairs**

The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.

(c) **Contributing to corporate management**

The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

(d) **Providing advice**

The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and employees in their respective roles.

(e) **Give financial information**

The Chief Finance Officer will provide financial information to the media, members of the public and the community.

#### 11.5 Functions of the Scrutiny Officer

The Scrutiny Officer may not be the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer and will discharge the following functions:

- promote the role of the Council's Overview and Scrutiny Committees;

- provide support to the Council's Overview and Scrutiny Committees and the members of those Committees;
- provide support and guidance to Councillors, members of the Cabinet and Council officers in relation to the functions of Medway's Overview and Scrutiny Committees.

**11.6 Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer**

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

**11.7 Conduct**

Employees will comply with the employee code of conduct and the protocol on member/employee relations set out in chapter 5 of this Constitution.

**11.8 Employment**

The recruitment, selection and dismissal of employees will comply with the employment rules set out in chapter 4 of this Constitution.

*References:*

*Chapter 8 and 9 DETR Guidance*

*Section 9FB Local Government Act 2000*





## 12. ARTICLE 12 – DECISION MAKING

### 12.1 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in chapter 3 of this Constitution.

### 12.2 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- Good decision making goes beyond observing the legal requirements to have regard to all relevant considerations and ignore all irrelevant factors. It also involves the realistic evaluation of alternatives and due consultation through effective access for the public to decision making and decision makers;
- Decision makers will have due regard to:
  - (a) proportionality (i.e. the action must be proportionate to the desired outcome);
  - (b) due consultation and the taking of professional advice from employees;
  - (c) respect for human rights (see below for further details);
  - (d) a presumption in favour of openness;
  - (e) clarity of aims and desired outcomes.

### 12.3 Types of decision

#### (a) Decisions reserved to Council

Decisions relating to the functions listed in para article 4.2 of article 4 will be made by the Council and not delegated subject to the delegation in part 4 of chapter 3 of this Constitution.

#### (b) Key decisions

- (i) A key decision is an executive decision ~~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 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 accordance with the requirements of the Leader and Cabinet rules set out in chapter 4 of this Constitution.

Generally, key decisions will only be made by the Leader/Cabinet, a committee of the Cabinet, a joint committee (or sub-committee thereof) or an area committee (if any).

*References: Chapter 7, DETR Guidance  
Regulations made under section 22, Local Government Act 2000.*

#### **12.4 Decision making by the Council**

Subject to ~~para article~~ 12.8 in article 12, the Council meeting will follow the Council rules set out in chapter 4 of this Constitution when considering any matter.

#### **12.5 Decision making by the Cabinet**

Subject to ~~para article~~ 12.8 in article 12, the Cabinet will follow the Leader and Cabinet rules set out in chapter 4 of this Constitution when considering any matter.

#### **12.6 Decision making by Overview and Scrutiny Committees**

Overview and Scrutiny Committees will follow the Overview and Scrutiny Rules set out in chapter 4 of this Constitution when considering any matter.

#### **12.7 Decision making by other Committees and Sub-Committees established by the Council**

Subject to ~~para article~~ 12.8 in article 12, other Council Committees and Sub-Committees will follow those parts of the Council rules set out in chapter 4 of this Constitution as apply to them.

#### **12.8 Decision making by Council bodies acting as tribunals**

The Council, a Councillor or an employee acting as part of a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes

of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

*References:*

*Chapter 7, DETR Guidance*

*Deciding Rights – applying the Human Rights Act to good practice in local authority decision making, Local Government Association/JUSTICE fact sheet available from IDeA Publication Sales ISBN 1 84049 189 2 code no. CA116*



## **13. ARTICLE 13 – FINANCE, CONTRACTS AND LEGAL MATTERS**

### **13.1 Financial management**

The management of the Council's financial affairs will be conducted in accordance with the financial rules set out in chapter 4 of this Constitution.

### **13.2 Contracts**

Every contract made by the Council will comply with the contracts rules set out in chapter 4 of this Constitution.

### **13.3 Legal proceedings**

The Chief Legal Officer is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where he or she considers that such action is necessary to protect the Council's interests.

### **13.4 Authentication of documents**

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by Chief Legal Officer, or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any contract entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing and in accordance with section paragraph 4.4 of the Contract Procedure Rules. Such contracts must either be signed by at least two employees of the authority or made under the common seal of the Council attested by at least one employee.

### **13.5 Common seal of the Council**

The common seal of the Council will be kept in a safe place in the custody of the Chief Legal Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The common seal will be affixed to those documents which in the opinion of the Chief Legal Officer, should be sealed and those documents that are required to be sealed under the Contract Rules. The affixing of the common seal will be attested by the Chief Legal Officer, or some other person authorised by him/her.

#### *References:*

*Sections 135, 151, 223 & 234, Local Government Act 1972  
Part VIII, Local Government Finance Act 1988*



## 14. ARTICLE 14 – REVIEW AND REVISION OF THE CONSTITUTION

### 14.1 Duty to monitor and review the Constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

### 14.2 Protocol for monitoring and review of Constitution by Monitoring Officer

In undertaking this task the Monitoring Officer may:

- observe meetings of different parts of the Member and employee structure;
- undertake an audit trail of a sample of decisions;
- record and analyse issues raised with him/her by Members, employees, the public and other relevant stakeholders;
- compare practices in this authority with those in other comparable authorities, or national examples of best practice.

### 14.3 Changes to the Constitution

#### ~~(a) — Approval~~

The Monitoring Officer has delegated authority to make minor changes to the Constitution, with a copy of such changes being supplied to all Group Leaders and Whips within 14 days. All other changes to the Constitution will only be approved by the Council after consideration of the proposal by the Monitoring Officer.

#### ~~(b) — Change from a Leader and Cabinet form of executive to alternative arrangements, or vice versa~~

~~— The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals.~~

#### References:

Sections 30 and 37, Local Government Act 2000  
Chapters 10 and 15, Guidance





## 15. ARTICLE 15 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

### 15.1 Suspension of the ~~constitution~~Constitution

#### (a) Limit to suspension

The articles of this ~~C~~eonstitution may not be suspended. The rules specified below may be suspended by the Council to the extent permitted within those rules and the law.

#### (b) Procedure to suspend

A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the ~~C~~eonstitution set out in article 1.

#### (c) Rules capable of suspension

The following rules may be suspended in accordance with ~~para article~~ 15.1 of Article 15:

- As set out in Council Rule 16.1 all of the Council rules may be suspended by agreement if at least one half of the whole number of Members of the meeting are present. Suspension can only be for the duration of the Council meeting. ~~Rules of Debate~~

### 15.2 Interpretation

The ruling of the Mayor as to the construction or application of this ~~C~~eonstitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this ~~C~~eonstitution contained in article 1.

### 15.3 Publication

- (a) The Chief Executive shall provide access to a ~~give a printed~~ copy of this ~~C~~eonstitution to each ~~M~~m member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the ~~M~~m member first being elected to the Council.
- (b) The Chief Executive shall ensure that a printed copy the Constitution is ~~ies are~~ available for inspection at the Chatham Community Hub and is available on-line and for Council offices, libraries and other appropriate locations, ~~and can be~~ purchased by members of the local press and the public on payment of a reasonable fee.



## CHAPTER 3 – RESPONSIBILITY FOR FUNCTIONS

### PART 1 - RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

- 1.1 The various parts of this chapter set out the responsibility for functions. These are divided between the Council and the Cabinet. In both cases these are subject to onward delegations to employees.
- 1.2 The table below sets out the Council's decisions on where local choice functions will be exercised.

Function	Responsible body
1. Any function under a local Act <a href="#">other than a function specified or referred to in Regulation 2 or Schedule 1 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000</a>	Cabinet
2. The determination of an appeal against any decision made by or on behalf of the authority	Council
3. The appointment of review boards under regulations under subsection (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998.	Council
4. <del>The making of arrangements for Independent Review Panels in relation to decisions to exclude pupils from maintained schools. The making of arrangements pursuant to subsection (1) of section 67 of, and Schedule 18 to, the 1998 Act (appeals against exclusion of pupils).</del>	Council
5. The making of arrangements pursuant to section 94(1), <a href="#">1(A)</a> and (4) of, and Schedule 24 to, the School Standards and Framework Act 1998 (admission appeals).	Council
6. The making of arrangements pursuant to section 95(2) of, <del>and Schedule 25 to,</del> the 1998 Act (children to whom section 87 applies: appeals by governing bodies).	Council
7. <del>The making of arrangements under section 20 (questions on police matters at Council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a police authority.</del>	Council
8. <del>The making of appointments under paragraphs 2 to 4 (appointment of members by relevant Councils) of Schedule 2 (police authorities established under section 3) to the Police Act 1996.</del>	Council
97. Any function relating to contaminated land under Part 11A of the Environmental Protection Act 1990 and subordinate legislation under that Part.	Cabinet

Function	Responsible body
<p><b>408.</b> The discharge of any function relating to the control of pollution or the management of air quality under the Pollution Prevention and Control Act 1999, Part IV of the Environment Act 1995, Part I of the Environmental Protection Act 1990 and the Clean Air Act 1993.</p>	Cabinet
<p><b>419.</b> The service of an abatement notice in respect of a statutory nuisance under section 80 of the Environmental Protection Act 1990.</p>	Cabinet
<p><b>4210.</b> The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area under section 8 of that Act.</p>	Cabinet
<p><b>4311.</b> The inspection of the authority's area to detect any statutory nuisance under section 79 of the Environmental Protection Act 1990.</p>	Cabinet
<p><b>4412.</b> The investigation of any complaint as to the existence of a statutory nuisance under section 79 of the Environmental Protection Act 1990.</p>	Cabinet
<p><b>4513.</b> The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.</p>	Cabinet
<p><b>4614.</b> The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.</p>	Cabinet
<p><b>4715.</b> The making of agreements for the execution of highways works under section 278 of the Highways Act 1980.</p>	Council
<p><b>4816.</b> The appointment of any individual:</p> <ul style="list-style-type: none"> <li>a) to any office other than an office in which he is employed by the authority;</li> <li>b) to any body other than – <ul style="list-style-type: none"> <li>(i) the authority;</li> <li>(ii) a joint Committee of two or more authorities or</li> </ul> </li> <li>c) to any Committee or Sub-Committee of such a body</li> </ul> <p>and the revocation of any such appointment.</p>	Council
<p><b>4917.</b> The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.</p>	Cabinet
<p><b>2018.</b> Any function of the Council in the capacity of a harbour authority. The levels of employee delegation supporting these responsibilities are contained in part 4 of this chapter`.</p>	Cabinet

Function	Responsible body
<del>21. Functions relating to the preparation, submission and modification of a Local Area Agreement under sections 106, 110, 111 and 113 of the Local Government and Public Involvement in Health Act 2007.</del>	Council

*References:*

*Chapter 5, Guidance*

*The Local Authorities (Functions and Responsibilities) (England) Regulations 2000*  
*(as amended)*

*Section 13, Local Government Act 2000*

~~*The Local Authorities (Functions and Responsibilities) (England) (Amendment)*~~  
~~*Regulations 2008 No. 516*~~



**PART 2 - RESPONSIBILITY FOR COUNCIL FUNCTIONS**

<b>Committee</b>	<b>Membership</b>	<b>Functions</b>	<b>Delegation of functions</b>
Appointments	Up to 6 members of the authority	The appointment of the Chief Executive and first and second tier posts and any others identified by the Employment Matters Committee.	
<u>Appointments</u>	<u>Up to 8 members of the authority</u>	<u>The appointment of the Director or Children and Adult Services</u>	
Audit	Up to 5 members of the authority chaired by a member free from other executive or scrutiny responsibilities	To provide independent assurance on the adequacy of the risk management framework and the associated control environment.  To provide an independent review of the Council's financial and non-financial performance.	
Councillor Conduct Committee	8 members of the authority	<ul style="list-style-type: none"> <li>• To promote and maintain high standards of conduct by Councillors, co-opted members and church and parent governor representatives;</li> <li>• To advise the Council on the adoption or revision of the Councillor Code of Conduct or on revision to the adopted arrangements for investigation or making decisions on complaints;</li> <li>• To monitor the operation of the Councillor Code of Conduct;</li> </ul>	

Committee	Membership	Functions	Delegation of functions
		<ul style="list-style-type: none"> <li>• The assessment against published criteria, investigation and hearing of allegations of Councillor misconduct and recommending any action which the Council has the power to take;</li> <li>• The exercise of all of the above in relation to the Parish Councils wholly or mainly in its area and the members of those Parish Councils save where the functions are delegated.</li> <li>• The adoption of any procedures necessary in order to undertake any of the above functions.</li> <li>• To grant dispensations to Councillors or co-opted members in accordance with s33 of the Localism Act 2011 allowing Councillors or co-opted members to take part in debate and vote on any item in which they have a disclosable pecuniary interest,</li> </ul>	
Employment Matters	Up to 7 members of the authority	To deal with all employment matters noting that the determination of the annual pay award is a matter for the Full Council if it exceeds the budgetary provision.	



Committee	Membership	Functions	Delegation of functions
Governor Ad Hoc	4 members of the authority (note: The Council usually agrees to waive the requirements of political balance on this committee insofar as the overall calculation of allocation of seats on committees is concerned – the membership of the committee is comprised of the Group Whips and the relevant Portfolio Holder)	To consider the removal of Council appointed school governors as and when necessary.	
Health and Wellbeing Board	<p>Seven Councillors to be nominated by the Leader (who should not also be members of either the Health and Adult Social Care (HASC) or Children and Young People (CYP) Overview and Scrutiny Committees*). The requirements of political balance will not apply.</p> <p>Medway Healthwatch (statutory member) – one representative (who should not also be a member of either the HASC or CYP Overview and Scrutiny Committees*)</p>	To prepare the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy and to encourage an integrated approach in the planning and delivery of health and social care services as well as services related to the wider determinants of health.	

Committee	Membership	Functions	Delegation of functions
	<p>Director of Children and Adults Services (statutory member)</p> <p>Director of Public Health (statutory member)</p> <p>Deputy Director, Children and Adults Services (under the provision allowing the appointment of such other persons (or representatives of such other persons) as the local authority thinks appropriate)</p> <p>Medway Clinical Commissioning Group – three representatives (one statutory seat and two additional seats (under the provision allowing the appointment of such other persons (or representatives of such other persons) as the local authority thinks appropriate)</p>		

Committee	Membership	Functions	Delegation of functions
	<p>NHS <u>England (Southeast) Commissioning Board</u>/Kent and Medway <u>Area Team</u> – one representative – under the provision allowing the appointment of such other persons (or representatives or such other persons) as the local authority thinks appropriate.</p> <p><b>(Note*</b> - Substitutes appointed to attend meetings of the Health and Wellbeing Board (HWB) may not also be members of the Health and Adult Social Care or Children and Young People Overview and Scrutiny Committees).</p>		

Committee	Membership	Functions	Delegation of functions
Licensing and Safety	Between 10 –15 members of the authority	<p><b>Taxi, gaming, alcohol, entertainment, food, scrap metal and miscellaneous licensing</b></p> <p>Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005, <del>Scrap Metal Dealers Act 2013</del> and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees.</p> <p><b><u>Scrap Metal Dealers Act 2013</u></b></p> <p><u>To act in an advisory quasi-judicial capacity to the Chief Legal Officer, when considering representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence;</u></p> <p><u>To consider and make recommends to Cabinet on policy relating to the Scrap Metal Dealers Act 2013;</u></p>	Chief Executive

Committee	Membership	Functions	Delegation of functions
		<p><b>Health and safety</b></p> <p><u>Functions under any of the “relevant statutory provisions” within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.</u> <del>Functions relating to health and safety under any “relevant statutory provision” within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer.</del></p>	<p>Chief Executive</p>

<b>Committee</b>	<b>Membership</b>	<b>Functions</b>	<b>Delegation of functions</b>
Planning	Up to 15 members of the authority	<p><b>Planning and conservation</b></p> <p>Functions relating to town and country planning and development management as specified in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations).</p> <p><b>Commons registration</b></p> <p>The registration of common land or town and village greens and to register the variation of rights of common as set out in Schedule 1 to the Functions Regulations.</p> <p><b>Highways use and regulation</b></p> <p>The exercise of powers relating to the regulation of the use of highways as set out in Schedule 1 to the Functions Regulations.</p>	<p>Director of Regeneration, Culture, Environment and Transformation</p> <p>Chief Legal Officer</p> <p>Director of Regeneration, Culture, Environment and Transformation</p>
School Transport and Curriculum Appeals	Up to 7 members of the authority	Determining appeals regarding home to school transport and complaints regarding the curriculum.	
South Thames Gateway Building Control Joint Committee	3 members (one each from Medway, Gravesham and Swale)	<p>Enforcement activity.</p> <p>Staffing matters (in accordance with Medway Council's policies and procedures).</p>	

- 1.1 The details of the onward delegation to employees are contained in part 4 of this chapter.
- 1.2 The terms of reference of the Committees established by the Council and their sub-committees are set out below:

## Terms of reference for each committee

### 1. Appointments Committee

#### 1.1 Up to 6 members

To appoint the Chief Executive and to appoint all first and second tier posts and any other posts identified by the Employment Matters Committee as requiring appointment by the Appointments Committee.

Note: The appointment of the Director of Public Health will comply with the Council's employment rules and also the requirements of the Health and Social Care Act 2012 and statutory guidance from the Department of Health, in relation to the joint role of Public Health England on behalf of the Secretary of State and an advisory appointments committee constituted in accordance with statutory guidance.

#### 1.2 Up to 8 members

To appoint the Director of Children and Adult Services.

### 2. Audit Committee

- To provide independent assurance on the adequacy of the risk management framework and the associated control environment, including consideration of the Council's approach to risk management and the assurance framework, the production of the annual governance statement, arrangements for delivering value for money and the Council's anti-fraud arrangements and anti-corruption measures;
- To receive reports in line with the Council's whistleblowing, anti-bribery, covert surveillance policies and anti-money laundering policies;
- To monitor the Council's compliance with its own published standards and to consider any proposals for changes to Financial Rules and Contract Rules, Codes of Practice on tenders and contracts;
- To monitor financial policies and processes, including endorsement of improvement plans to strengthen the control environment;
- To approve the annual governance statement;
- To approve the annual accounts;
- To scrutinise the Council's treasury management, investment strategy, minimum revenue provision policy statement along with treasury management practices and associated schedules and approve the annual treasury outturn;
- To discuss with the external auditor new accounting standards, changes to the reporting framework and the basis of the annual audit, including the content of performance work;

- To receive all reports by the external auditor including all performance reports and the annual audit letter;
- To oversee Internal Audit activity;
- To monitor the effectiveness of internal audit.
- To provide an independent review of the Council's financial and non-financial performance.

### **3. Councillor Conduct Committee**

- To promote and maintain high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- To advise the Council on the adoption or revision of the Councillor Code of Conduct or on revision to the adopted arrangements for investigation or making decisions on complaints;
- To monitor the operation of the Councillor Code of Conduct;
- To advise, train or arrange to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Councillor Code of Conduct;
- The assessment against published criteria, investigation and hearing of allegations of Councillor misconduct and recommending any action which the Council has the power to take;
- The exercise of all of the above in relation to the parish Councils wholly or mainly in its area and the members of those parish Councils save where the functions are delegated.
- The adoption of any procedures necessary in order to undertake any of the above functions.
- To grant dispensations to Councillors or co-opted members in accordance with s33 of the Localism Act 2011 allowing Councillors or co-opted members to take part in debate and vote on any item in which they have a disclosable pecuniary interest.

### **4. Employment Matters Committee**

- To consider and determine, where appropriate, matters concerning the employment of staff and their terms and conditions of employment or secondment and to determine the terms of the annual pay award provided it is within the approved budget;
- To advise on and determine policies concerning any staffing matter including equal opportunities and the allocation and utilisation of human resources within the authority;



- To advise on and determine arrangements for consulting and communicating with staff and trades unions;
- To hear and determine dismissal appeals relating to conduct, performance capability, some other substantial reason and ill-health capability;

~~• To report its decisions and recommendations to the Cabinet and Business Support Overview and Scrutiny Committee;~~

- To grant exemptions for politically restricted posts.

#### **5. Employment Matters Appeals Panel**

- To hear and determine final appeals by employees on behalf of the Council relating to their conditions of service, discipline, performance or termination of employment.

#### **56. Governor Ad Hoc Committee**

- To consider the removal of Council appointed school governors as and when necessary.

#### **67. Health and Wellbeing Board**

##### **A. Operating principles**

In line with nationally agreed operating principles the Medway Health and Wellbeing Board (HWB) will seek to:

- (i) provide collective leadership to improve health and well-being across the local authority area, enable shared decision-making and ownership of decisions in an open and transparent way;
- (ii) achieve democratic legitimacy and accountability, and empower local people to take part in decision-making;
- (iii) address health inequalities by ensuring quality, consistency and comprehensive health and local government services are commissioned and delivered in the area; and
- (iv) identify key priorities for health and local government commissioning and develop clear plans for how commissioners can make best use of their combined resources to improve local health and well-being outcomes in the short, medium and long term.

##### **B. Key functions**

- (i) To prepare the Joint Strategic Needs Assessment (JSNA) which identifies the current and future health and wellbeing needs of the local population and may address needs around wider determinants of health.
- (ii) To prepare a Joint Health and Wellbeing Strategy for Medway to meet the needs identified in the JSNA.
- (iii) To prepare the Medway Pharmaceutical Needs Assessment.
- (iv) To encourage persons who arrange for the provision of any health or social care services in the area to work in an integrated manner for the purpose of advancing the health and wellbeing of the people in Medway.

- (v) To encourage persons who arrange for the provision of any health related services (ie services that may have an effect on the health of individuals but are not health or social care services) in Medway to work closely with the Board.
- (vi) To encourage persons who arrange for the provision of any health or social care services in Medway and those who arrange for the provision of any health-related services in its area to work closely together.
- (vii) To provide advice, assistance or other support appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 (ie arrangements under which NHS bodies and local authorities agree to exercise specified functions of each other).
- (viii) To keep NHS commissioning plans under review to ensure they are taking into account the JSNA and local HWB Strategy, referring back to the Clinical Commissioning Group (CCG) or the NHS Commissioning Board where they do not.
- (ix) To advise Medway Council's Cabinet of its views on whether the local authority is discharging its duty to have regard to the JSNA and Joint Health and Wellbeing Strategy in discharging its relevant functions.
- (x) To involve users and the public in the work of the Board, as appropriate.
- (xi) To play a formal role in the annual assessment of the Medway Clinical Commissioning Group.
- (xii) To undertake any other functions assigned to Health and Wellbeing Boards in legislation.

Governance arrangements for the operation of the Medway Health and Wellbeing Board were agreed by Council on 25 April 2013.

- (i) **Appointment of Chairman and Vice Chairman:** The Chairman and Vice Chairman of the Board will be appointed at the first meeting of the Board after each Annual Council meeting, discounting the Joint Meeting of all Committees on the evening of Annual Council. The Chairman will be appointed from among the councillors serving on the Board.
- (ii) **Meetings:** The Board will meet a minimum of four times a year and be administratively supported by Medway Council's Democratic Services Team. Meetings will take place in public with provision for exclusion of the press and public where confidential or exempt information is likely to be disclosed.
- (iii) **Sub-committees:** The Board may set up advisory sub-committees but any proposal to delegate the functions of the Board to a sub-committee or an officer (or from a sub-committee to an officer) insofar as this is permitted, shall be subject to agreement by the Council.
- (iv) **Attendance:** The quorum for Board meetings will be a quarter of the membership and meetings may only proceed if at least one local authority

member and one CCG representative are present. Substitutions are permitted with notification to the Democratic Services Officer ahead of the meeting.

- (v) **Conduct of meetings:** Meetings will be conducted in accordance with the procedural rules applicable to Council meetings as appropriate.
- (vi) **Voting:** All members of the Board will have the right to vote, subject to the law and procedures for registering and declaring interests which will require non-participation and withdrawal from meetings when conflicts of interest arise.
- (vii) **Programming of business:** the Board will determine its own work programme and pre-agenda processes taking into account statutory requirements relating to notice of meetings and publication and availability of agenda papers and will use the templates and standards in place for reports to other Council committees.
- (viii) **Communications and engagement:** the Board will develop a Communications and Engagement Strategy ~~during 2013/14~~ which will set out how the Board will engage with stakeholders and the public and how communications on behalf of the Board will be managed.
- (ix) **Operational links:** the Board will work collaboratively with other partnership bodies including the Children’s Trust, the Medway Safeguarding Children Board, the Adult Safeguarding Board and the Community Safety Partnership, taking into account the need for alignment between the Joint Health and Wellbeing Strategy and other key plans and strategies.
- (x) **Overview and scrutiny:** the Board will be subject to overview and scrutiny and will respond to requests for information and representation at overview and scrutiny committees as appropriate.
- (xi) **Review:** the terms of reference of the HWB and the governance arrangements will be kept under periodic review.

## **78. Licensing and Safety Committee**

- Functions relating to licensing and registration as set out in schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005, Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009, ~~the Scrap Metal Dealers Act 2013~~ and other licensing functions reserved by law to the Council’s Licensing and Safety Committee and its Sub-Committees;
- To act in a quasi-judicial capacity to consider appeals that may require determination upon receipt of representation from an aggrieved party where a licence has either been refused, amended or revoked by officers and make decisions related thereto;
- To act in a quasi-judicial capacity to determine application of licences where there is substantial objection by other parties to the grant of a licence or where

in the officer's opinion the issue is of a sensitive nature and make decisions related thereto;

- To act in an ~~an advisory quasi-judicial~~ capacity to the Chief Legal Officer, when considering representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence;
- To consider objectively other ad hoc matters relating to the licensing process which officers or the Council deems appropriate;
- To recommend to Council to determine a policy not to permit casinos, in accordance with section 166 of the Gambling Act 2005;
- To recommend to Council final approval of the Statement of Gambling Act Policy;
- To recommend to Council approval of the Statement of Licensing Policy;
- To consider and make recommends to Cabinet on policy relating to the Scrap Metal Dealers Act 2013;
- To recommend to Council approval of the Statement of Policy in respect of Sex Establishments and Sexual Entertainment Venues;
- Functions under any of the “relevant statutory provisions” within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer. To determine matters relating to health and safety under any ‘relevant statutory provision’ within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer.

Note: For the purpose of these terms of reference the term “licence” or “licensing” includes any such controlling measure such as permit, certificate or registration.

#### **(A) Licensing Sub-Committee**

- To determine hackney carriage private hire, ~~scrap metal dealers~~ and other licensing issues not covered by the Licensing Act 2003 nor the Gambling Act 2005.

#### **(B) Licensing Hearing Panel**

- To consider all Licensing Act 2003 matters;
- With regard to Licensing Act 2003 matters, to determine:
  - (i) an application for a personal licence if there is a police objection
  - (ii) an application for a personal licence with relevant unspent convictions

- (iii) an application for a premises licence/club premises certificate, if relevant representation made
- (iv) an application to vary a Designated Premises Supervisor, if there is a police objection
- (v) an application for provisional statement, if a relevant representation made
- (vi) an application to vary premises licence/club premises certificate, if a relevant representation made
- (vii) an application for a minor variation to a premises licence or club premises licence, if a relevant representation is made
- (viii) an application for transfer of premises licence, if there is a police objection
- (ix) applications for interim authorities, if there are police objections
- (x) an application to review premises licence/club premises certificate
- (xi) a decision to object when the local authority is a consultee and not the relevant authority considering the application
- (xii) a police objection to a temporary event notice.

Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003.

- With regard to Gambling Act 2005 matters, to determine:
  - (i) applications for premises licences where representations have been received and not withdrawn
  - (ii) applications for a variation to a licence where representations have been received and not withdrawn
  - (iii) applications for a transfer of licence where representations have been received by the Commission
  - (iv) applications for a provisional statement where representations have been received and not withdrawn
  - (v) a review of a premises licence
  - (vi) applications for club gaming/club machine permits where objections have been made and not withdrawn
  - (vii) a cancellation of club gambling/club machine permits
  - (viii) a decision to give a counter notice to a temporary use notice.

**(C) 1982 Act Hearing Panel**

- To determine any applications under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 where relevant representations have been received or where conditions have been proposed by officers but not accepted by the applicant.

## **9. Planning Committee**

- To determine all planning applications submitted pursuant to the Town and Country Planning Act 1990 (as amended), the Planning Listed Buildings and Conservation Areas Act 1990 and the Planning (Hazardous Substances) Act 1990, including those applications falling for decision under officer delegated powers which a Council member has requested to be referred for Committee determination, except that all applications recommended for approval in respect of development which is in fundamental conflict with the Development Plan or any approved proposals for amendment thereof shall be reserved for determination by the Council;
- To consider written objections received to Tree Preservation Orders made under Section 198 or 201 of the Town and Country Planning Act 1990 and notifications under Section 211 of that Act;
- To determine all applications for approvals required by a Development Order or by conditions imposed on the grant of a planning permission;
- To authorise the issue of Building Preservation Notices pursuant to Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 except that cases where the Director of Regeneration, Culture, Environment and Transformation and Chief Legal Officer, consider that compensation may be payable shall be referred to the Council;
- To exercise powers under the Town and Country Planning Act 1990 in relation to the service of Enforcement Notices and Stop Notices under Parts VII and VIII, Planning Contravention Notices under Section 171(c) an Breach of Condition Notices under Section 187(a) and to take all necessary further steps up to and including prosecution except that cases where the Director of Regeneration, Culture, Environment and Transformation and Chief Legal Officer, consider that compensation may be payable shall be referred to the Council;
- To exercise powers in relation to the service of Listed Building Enforcement Notices under the provisions of the Planning (Listed Buildings in Conservation Areas) Act 1990 and to take all necessary further steps up to and including prosecution;
- To recommend to the Council the making of Orders for the modification or revocation of planning permission;
- To issue Completion Notices under Section 94 of the Town and Country Planning Act 1990;
- To submit views on behalf of the Planning Authority in relation to the consultations under the Pastoral Measures 1968;

- To lodge objections in connection with Goods Vehicle Operators' Licences;
- To consider and approve/acknowledge planning obligations offered by developers under Section 106 of the Town and Country Planning Act 1990 (as amended by Section 12 of the Planning and Compensation Act 1991);
- To consider and determine development management issues in respect of the Channel Tunnel Rail Link/M2 Widening.

#### **910. School Transport and Curriculum Appeals Committee**

- To determine appeals relating to the application of the Council's policy for assisting with transport for pupils and students at schools and colleges;
- To consider complaints regarding school curriculum and related matters.

#### **4011. South Thames Gateway Building Control Joint Committee**

- To exercise the powers and assume the responsibilities of the partner authorities in relation to building control under the Building Act 1984 and other related legislation;
- To implement the first Business Plan of the Joint Committee;
- To develop an annual Business Plan for approval by each partner authority and adoption and implementation by the Joint Committee;
- To make recommendations to each partner authority to provide resources as required to secure the delivery of the Business Plan and to support the aims and objectives;
- To prepare and submit as required all reports, business cases and supplementary information as may be required by central government and or any agency or organisation on behalf of central government in relation to the delivery of the Business Plan and/or to obtain additional funding to support the aims and objectives;
- To enter into dialogue with central government and/or any agency or organisation on behalf of central government to secure the delivery of the Business Plan and/or to obtain additional funding to support the aims and objectives;
- To consult with appropriate persons and to commission research and public opinion surveys into matters relevant to the aims and objectives and the Business Plan;
- To influence, advise and lobby central government and other agencies (whether locally, nationally and internationally) where this is felt to be consistent with the aims and objectives and the Business Plan.



### PART 3 - RESPONSIBILITY FOR CABINET FUNCTIONS

The table below sets out a summary of the information presented to the annual meeting of the Council by the Leader of the Council and will be revised if necessary following each annual meeting. In addition, where the Leader makes any change to a portfolio, a Portfolio Holder or the themes within a portfolio, during the course of a municipal year the Leader shall produce a revised version of the table which shall be copied to all members and the Chief Executive, following which it shall replace any previous version in the ~~constitution~~Constitution.

Portfolio	Portfolio Holder	Themes
Leader	Alan Jarrett	<ul style="list-style-type: none"> <li>• Strategic leadership of the Council</li> <li>• Communications and marketing</li> <li>• Finance</li> </ul>
Deputy Leader and Housing and Community Services	Howard Doe	<ul style="list-style-type: none"> <li>• Adult learning</li> <li>• Development and management of the Council's housing stock</li> <li>• Disabled adaptations to housing</li> <li>• Events and Festivals</li> <li>• Greenspaces</li> <li>• Heritage</li> <li>• Homelessness and Housing Options</li> <li>• Housing Landlord Services (HRA)</li> <li>• Housing Management and Allocations</li> <li>• Housing Strategy</li> <li>• Leisure Services</li> <li>• Libraries and Community Hubs</li> <li>• Private sector housing</li> <li>• Sporting Legacy</li> <li>• Theatres and Arts</li> <li>• Tourism</li> <li>• Voluntary sector</li> </ul>
Adult Services	David Brake	<ul style="list-style-type: none"> <li>• Adults' Mental Health</li> <li>• Better Care Fund</li> <li>• Community care</li> <li>• Health</li> <li>• Independent Safeguarding and Review Service</li> <li>• Older people</li> <li>• Partnership Commissioning (Adults)</li> <li>• Public Health – Lead Member, including Health and Wellbeing Board, commissioning of treatment services for drugs and alcohol</li> <li>• Services for people with learning and physical disabilities</li> <li>• Telecare/Telemedicare</li> </ul>

Portfolio	Portfolio Holder	Themes
Business Management (Cross Cutting Portfolio)	Rupert Turpin	<ul style="list-style-type: none"> <li>• Bereavement Services</li> <li>• Business Management</li> <li>• Commissioning</li> <li>• Community centres</li> <li>• Community officers</li> <li>• Emergency Planning</li> <li>• Income generation</li> <li>• Registration</li> <li>• Revenue &amp; Benefits</li> <li>• Risk Management</li> </ul>
Children's Services  (See Note 1)	Mike O'Brien	<ul style="list-style-type: none"> <li>• Adoption</li> <li>• Children and Adolescent Mental Health Services</li> <li>• Children with disabilities</li> <li>• Children's Social Care</li> <li>• Early help, including Medway Action for Families</li> <li>• Early years</li> <li>• Educational Improvement</li> <li>• Further education</li> <li>• Inclusion</li> <li>• Looked After Children (including fostering, care leavers and residential care)</li> <li>• Partnership Commissioning (Children)</li> <li>• Primary and secondary education</li> <li>• Safeguarding</li> <li>• School organisation and Student Services</li> <li>• School services</li> <li>• Special educational needs</li> <li>• Youth Services</li> </ul>
Corporate Services  (See Note 2)	Andrew Mackness	<ul style="list-style-type: none"> <li>• CCTV</li> <li>• Community Safety Partnership</li> <li>• Customer Contact</li> <li>• Democracy and governance</li> <li>• HR</li> <li>• ICT</li> <li>• Internal Audit</li> <li>• Legal</li> <li>• Travellers</li> </ul>

Portfolio	Portfolio Holder	Themes
Front Line Services	Phil Filmer	<ul style="list-style-type: none"> <li>Local Growth Fund transport projects</li> <li>Parking</li> <li>Public transport</li> <li>Roads</li> <li>Street cleaning and waste collection/recycling/waste disposal</li> <li>Traffic management</li> <li>Transport Strategy</li> <li>Travel Safety</li> </ul>
Inward Investment, Strategic Regeneration and Partnerships	Rodney Chambers OBE	<ul style="list-style-type: none"> <li>Heritage Champion</li> <li>Inward investment</li> <li>Medway Ambassador</li> <li>Strategic Partnerships</li> <li>Strategic Regeneration and Planning</li> </ul>
Planning, Economic Growth and Regulation  (See Note 3)	Jane Chitty	<ul style="list-style-type: none"> <li>Economic Development</li> <li>Local Plan</li> <li>Markets</li> <li>Planning Policy</li> <li>Regulation – Environmental Health, Trading Standards, Enforcement and Licensing (executive functions only)</li> <li>Social Regeneration</li> <li>South Thames Gateway Building Control Partnership</li> </ul>
Resources	Adrian Gulvin	<ul style="list-style-type: none"> <li>Administration Hubs</li> <li>Category Management / Procurement</li> <li>Council Plan</li> <li>Joint ventures</li> <li>Performance and service improvement</li> <li>Property</li> <li>Transformation</li> </ul>

**\*Note 1:**

The roles and responsibilities of the Portfolio Holder for Children’s Services are set out in statutory guidance “The roles and responsibilities of the Lead Member for Children’s Services and the Director of Children’s Services, under sections 18(7) (Director of Children’s Services) and 19(2) (Lead Member for Children’s Services) of the Children Act 2004:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271429/directors\\_of\\_child\\_services\\_-\\_stat\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271429/directors_of_child_services_-_stat_guidance.pdf)

**\*Note 2:**

The following services will fall within the remit of the Corporate Services Portfolio, in relation to the Community Safety Partnership:

- Tobacco control, excluding smoking cessation services
- Community safety aspects of alcohol and drug misuse
- Public health aspects of promotion of community safety, violence prevention and response.

**\*Note 3:**

The Leader and Full Council have delegated the Council's building control functions to the South Thames Gateway Building Control Joint Committee. The Terms of Reference of the South Thames Gateway Building Control Joint Committee are set out within the Council's Constitution and include executive and non-executive functions. Councillor Chitty is appointed to sit on the South Thames Gateway Building Control Joint Committee.

Addresses and wards of Cabinet Members can be found here:

<http://democracy.medway.gov.uk/mgMemberIndex.aspx?bcr=1>

3.1 If for any reason the Leader is unable to act or the office of Leader is vacant the Deputy Leader must act in his place. If for any reason the Leader is unable to act or the office of the Leader is vacant **and** the Deputy Leader is unable to act or the office of Deputy Leader is vacant the Cabinet must act in the Leader's place or must arrange for a Member of the Cabinet to act in his place.

3.2 ~~For the avoidance of doubt the Council has adopted the strong leader model and d~~Decisions which fall during recess or are required urgently may be made by the Leader subject to compliance with the Access to Information Rules. The Leader has presently delegated functions to Portfolio Holders to the extent necessary to permit collective decision making by Cabinet. In the event of there being no Leader, Deputy Leader or Cabinet Members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules.

3.3 Nothing in the above table or rule 3.2 above shall fetter or restrict the right of the Leader:

- subject to compliance with rule 7.3 of Article 7 of Chapter 2 of this ~~C~~onstitution- to increase or decrease the size of Cabinet
- subject to compliance with rule 7.5 of Article 7 of Chapter 2 of this ~~C~~onstitution to appoint or dismiss members of the Cabinet.

3.3.1 To reorganise the portfolios.

3.3.2 To reorganise or re-allocate the portfolio theme.

3.3.3 To delegate executive functions or withdraw any delegation.

- 3.3.4 To exercise all rights contained in Article 7 of Chapter 2 of this Constitution or the Leader and Cabinet Rules.
- 3.3.5 To exercise any other rights set out in the Constitution.
- 3.4 The Cabinet as a whole has responsibility to ensure the effective operation of risk management in the Council and this is also included in the themes allocated by the Leader to the Business Management Portfolio Holder.
- 3.5 Details of joint arrangements in accordance with Article 10 of the Council's Constitution.
- 3.5.1 Bus Lane Adjudication Service Joint Committee (BLASJC) – Terms of Reference
  - To appoint (re-appoint and dismiss) subject to the Lord Chancellor's consent Bus Lane Adjudicators for the purpose of the Transport Act 2000
  - To appoint a Proper Officer and Deputy
  - To provide or secure the provision of accommodation and administrative staff for the Bus Lane Adjudicators
  - To determine after consultation with the relevant Participating Authority where the Bus Lane Adjudicators are to sit
  - To commission and receive an annual report upon the Bus Lane Adjudication Service from the Bus Lane Adjudicators
  - To make an annual report to the Secretary of State as appropriate on the discharge of the functions of the Bus Lane Adjudicators and to publish the same
  - To establish and approve annual budgets and receive annual accounts and regular monitoring reports on associated expenditure
  - Such other associated functions as the Participating Authorities may lawfully arrange for the BLASJC to perform as they from time to time consider appropriate.
- 3.6.1 South East Local Enterprise Partnership (SELEP) Accountability Board – Terms of Reference

The SELEP Accountability Board is an executive joint committee of the following authorities. It is constituted under S.101 and S.102 LGA 1972 and Reg. 11(6) of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (2012/1019).

East Sussex County Council

Essex County Council

Kent County Council

Medway Council

Southend on Sea Borough Council

Thurrock Borough Council

### **Membership**

9 members appointed as follows

### **Voting Members**

1 member appointed by each of the 6 member councils (6)

### **Non-voting Co-opted members**

A business Vice Chairman of the SELEP Strategic Board appointed by the Strategic Board

One member appointed by the Accountability Board on the nomination of the higher education sector (1)

One member appointed by the Accountability Board on the nomination of the further education sector (1)

### **Chairman**

The business Vice Chairman of the SELEP Strategic Board appointed to the Accountability Board shall be the Chairman of the Accountability Board.

### **Quorum**

One third of the members including at least two voting members

### **Terms of Reference**

Within the Partnership's Growth Deal and Strategic Economic Plan and such other plans as may be approved by the Strategic Board, the Accountability Board will be responsible for the implementation of the Partnership's Accountability and Assurance framework and all processes by which bids are assessed, risks considered, approvals made and performance managed including

- Appraisals and approvals, including those of grants and loans, in accordance with Board recommendations
- Monitoring project assessment and delivery
- Ensuring accountability from each of the federated areas relating to expenditure and programme delivery
- Approving variations to schemes
- Quarterly performance reporting on an exceptions basis to the Strategic Board
- Reporting on progress to central government

- Any other accountability or assurance function required by central government or recommended by the Partnership’s auditors or the Chief Finance Officer of the Partnership’s accountable body.

The Accountability Board will be advised by the Accountable Body’s ~~chief~~  
~~Chief finance~~ ~~Finance officer~~ Officer.





**PART 4 - EMPLOYEE DELEGATION SCHEME**

<b>General scheme of delegation</b>	
<b>Description of delegation</b>	<b>Responsibility delegated from</b>
<b>1. General scheme of delegation to Chief Executive and directors</b>	
1.1 The Chief Executive should be responsible for management arrangements across the whole Council and directors shall have the responsibility to manage the department and service area for which they are responsible	Council/ Leader/Cabinet
1.2 In managing the service all directors shall be authorised in their discretion to exercise such powers as may be provided by the relevant legislation including the service or receipt of notices, the making of agreements, the making, revoking or amending of orders, the authorisation of any action or the institution, defence or conduct of proceedings, appeals and enforcement byelaws, authorisation of named employees to enforce specific powers and making of grants or loans within the budget and policy framework. Where the areas of responsibility and powers of an employee refer to specific acts of parliament, regulations, orders or guidance any subsequent re-enactment or amendment of the same shall apply	Council/ Leader/Cabinet
1.3 Where the Council is by law required to designate a proper officer, the Chief Executive and Directors are authorised to act as proper officers within their area of responsibility save for where a different proper officer is designated either by law or by this <a href="#">constitution</a> <a href="#">Constitution (see Appendix A to the Employee Delegation Scheme)</a>	Council/ Leader/Cabinet
1.4 It is the responsibility of the Directors, Deputy Directors and Assistant Directors referred to in this scheme to delegate matters to ensure matters are dealt with at the appropriate level to maintain the balance between efficiency and control. Employees shall be under a duty to consult and, where appropriate, agree with other appropriate employees before exercising their delegated powers and to consult the Chief Executive in cases of doubt	Council/ Leader/Cabinet
<b>2. Financial delegations</b>	
2.1 Directors may <del>transfer</del> <a href="#">vire</a> resources between their directorate budget heads, subject to the budget and policy framework rules and the financial rules	Council/ Leader/Cabinet

Description of delegation	Responsibility delegated from
<p>2.2 The financial delegations permit directors to:</p> <ul style="list-style-type: none"> <li>• incur expenditure within approved revenue budgets and generate income;</li> <li>• sell items which become surplus to service;</li> <li>• write off irrecoverable debts in accordance with financial limits forming part of the <del>financial rules</del><u>Constitution</u>;</li> <li>• enter into contracts subject to compliance with financial and contract rules;</li> <li>• commit variations to capital schemes in accordance with the financial rules;</li> <li>• accept the most economically advantageous tender.</li> </ul>	Council/ Leader/Cabinet
<p>2.3 A Director shall have authority to award without competition a contract where the particular needs of an individual (either an adult or a child) require a particular social care package, or where an individual has special educational needs which are only available from a particular provider in the opinion as appropriate of the Director of Children and Adults Services.</p>	Council
<p><b>3. Personnel delegations</b></p>	
<p>3.1 Directors may agree to reorganisations within their departments subject to there being:</p> <ul style="list-style-type: none"> <li>• no significant service policy implications or clear departure from existing Council policies;</li> <li>• no expenditure in excess of budget;</li> <li>• no growth in net expenditure beyond the current year;</li> <li>• no changes affecting directors or assistant directors;</li> <li>• consultation with the Assistant Director, Transformation.</li> </ul>	Council
<p>3.2 Appoint permanent staff (other than directors, <del>deputy directors</del> and assistant directors) in accordance with the approved structure and to appoint temporary staff as required</p>	Council
<p>3.3 Agree the application of Job Share Schemes to posts</p>	Council
<p>3.4 Agree extensions to sick pay, grant special leave and make maternity and paternity arrangements.</p>	Council
<p>3.5 To discipline, suspend and dismiss employees in accordance with the Council's disciplinary procedure and capability procedures</p>	Council
<p>3.6 Pay gratuities in accordance with Council policy and the Local Government Pension regulations subject to the agreement of the Chief Executive</p>	Council

<b>Description of delegation</b>	<b>Responsibility delegated from</b>
3.7 Authorise payments to staff temporarily undertaking additional duties, as provided for in the conditions of employment	Council
3.8 Refer staff to the Council's occupational health service in appropriate circumstances and to take any consequential action required	Council
3.9 Authorise ex-gratia payments to employees who incur loss or damage to their property whilst engaged in official duties up to a maximum of £250	Council
3.10 Approve the attendance of employees at conferences and courses of training	Council
3.11 Approve financial assistance for post-entry training	Council
3.12 Providing the costs are met from existing budgets, to implement the outcome of job evaluation exercises in conjunction with the Assistant Director, Transformation	Council
3.13 Authorise car allowances and to authorise payments in accordance with the conditions of employment and Council policy	Council
3.14 Approve payments of reasonable out-of-pocket expenses for newly appointed employees	Council
3.15 Authorise payments to recompense employees who are required to work on public holidays, when time off in lieu is not practicable	Council
<b>4. Urgent action</b>	
<p>4.1 Matters reserved to Council:</p> <p>In relation to Council responsibilities, subject to consultation with the Leaders of all the groups which comprise at least 1/10<sup>th</sup> of the membership of the Council (or their nominees), and the provisions for urgent decisions which are contrary to any plan or strategy which has been approved or adopted by the Council or which are contrary to or not wholly in accordance with the budget approved by the Council (set out in Chapter 4, Part 3 of the Constitution), the Chief Executive and directors shall have the power to act on behalf of the Council in cases of urgency only where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council.</p> <p>Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.</p>	Council

Description of delegation	Responsibility delegated from
<p>4.2 Matters reserved to Cabinet:</p> <p>In the event of there being no Leader, Deputy Leader or Cabinet Members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules</p>	Leader/Cabinet
<b>5. Departmental schemes of delegation</b>	
<p>5.1 Directors, Deputy Directors and assistant directors referred to in this scheme may delegate matters for which they are responsible to an appropriate employee. Where the employee is not within the delegating director/assistant director's department such delegation may only occur with the agreement of the proposed employee's director or assistant director.</p>	Council/ Leader/Cabinet
<b>Specific scheme of delegation</b>	
Description of delegation	Responsibility delegated from
<b>6. Chief Executive</b>	
<p>6.1 Corporate delegations:</p> <ul style="list-style-type: none"> <li>• To be responsible for policy development, the overall strategic direction of the Council and the governance of the Council save for matters which should be referred to the Council or the Leader/Cabinet;</li> <li>• To act as the Council's Head of Paid Service under section 4(1) of the Local Government and Housing Act 1989;</li> <li>• To represent the interests of the Council to the community, local interest groups and external agencies;</li> <li>• To resolve disputes between directorates.</li> <li>• To retain contract staff or appoint consultants on matters related to the management of the Council;</li> </ul>	<p>Council/ Leader/Cabinet</p> <p>Council</p> <p>Council/ Leader/Cabinet</p> <p>Council/ Leader/Cabinet</p> <p>Council/ Leader/Cabinet</p>
<p>6.2 Democratic Services:</p> <ul style="list-style-type: none"> <li>• To arrange appointments to outside bodies (other than officer appointments) in consultation with group whips to fill casual vacancies and make new appointments during the year;</li> <li>• To make any in-year changes to the membership of Cabinet advisory groups in consultation with group whips;</li> <li>• To arrange the appointment of officers to outside bodies</li> </ul>	<p>Council</p> <p>Leader/Cabinet</p> <p>Council</p>

Description of delegation	Responsibility delegated from
<ul style="list-style-type: none"> <li>• To add to the list of joint Committees, outside bodies, other bodies and charities in respect of indemnities for members and officers (3684/09/2001);</li> <li>• <del>In liaison with party group whips, to agree the nominations of Councillors to places at conferences;</del></li> <li>• <del>In consultation with party group leaders, to approve future annual increases in travel and subsistence rates, as long as these do not exceed the maximum thresholds stipulated by the Secretary of State and subject to available budget provision;</del></li> <li>• To approve minor changes to Committee and Sub-Committee memberships in line with the wishes expressed by party groups and insofar as there is no change to the overall size of membership and political balance in each case;</li> <li>• To appoint independent people to serve on the Complaints Review Panels dealing with stage 3 adult and children's social care complaints subject to satisfactory completion of an application form by each prospective panel member and no objections from Group Whips to each appointment;</li> <li>• To require a report to Full Council when requested by the Chairman of the 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.</li> <li>• <u>To grant and supervise exemptions from political restrictions, in consultation with the Monitoring Officer.</u></li> <li>• <u>To consider and determine written requests for dispensations when Cabinet Members are making decisions and when individual Cabinet Members are being consulted by officers over a decision being taken by either an officer or another Cabinet, in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information)(England) Regulations 2012.</u></li> </ul>	<p>Council</p> <p><del>Council</del></p> <p><del>Council</del></p> <p>Council</p> <p>Council</p> <p>Council</p> <p><u>Council</u></p> <p><u>Council</u></p>
<p>6.3 Civil protection and civil defence:</p> <ul style="list-style-type: none"> <li>• To approve and implement the Council's Emergency Plan and any amendments to it;</li> <li>• To approve and implement the Council's Civil Defence Plan and any amendments to it.</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p>
<p>6.4 Civic:</p> <ul style="list-style-type: none"> <li>• To accept gifts on behalf of the Council, make arrangements to host and fund visits by royal, foreign, civic, political, twinning and local dignitaries and</li> </ul>	

Description of delegation	Responsibility delegated from
personalities.	
<p>6.5 Electoral registration:</p> <ul style="list-style-type: none"> <li>• To designate an adjoining polling district for a polling place where no suitable polling station is available within the original polling place.</li> <li>•</li> </ul>	Council
<p>6.6 Members' allowances:</p> <ul style="list-style-type: none"> <li>• Dependent carers' allowances - To authorise payment of more than the maximum payable in circumstances where more than 18 hours care is required;</li> <li>• Conference expenses - To agree the nomination of Councillors to attend conferences <u>in consultation with Party Group Whips</u> and also to approve the attendance by Councillors at conferences where these do not appear on the approved list, in liaison with Party Whips. This will only be considered in exceptional circumstances where it is clear the Council would be disadvantaged if there was no attendance.</li> <li>• <u>In consultation with party group leaders, to approve future annual increases in travel and subsistence rates, as long as these do not exceed the maximum thresholds stipulated by the Secretary of State and subject to available budget provision;</u></li> </ul>	<p>Council</p> <p>Council</p> <p><u>Council</u></p>
<p>6.7 Appointment and dismissal of senior officers</p> <ul style="list-style-type: none"> <li>• To be responsible for the executive notification procedure for the appointment and dismissal of senior officers, as outlined in the Employment Rules (Chapter 4, Part 8 of the Constitution).</li> </ul>	Council
<b>Chief Legal Officer</b>	
<p><del>6.10—Access to information</del></p> <ul style="list-style-type: none"> <li>• <del>To determine, in consultation with the Leader, a response to any representations received or about why a Cabinet meeting should be open to the public following publication of a notice of intention to meet in private in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.</del></li> </ul>	<del>Leader/Cabinet</del>
<p>6.11—8 Information Governance</p> <ul style="list-style-type: none"> <li>• To amend the council's Information Governance policies and guidance in compliance with current legislation and good practice.</li> </ul>	Council
<p>6.129 Democratic Services</p> <ul style="list-style-type: none"> <li>• To act as the proper officer for the purposes of the access to information rules, including determination, in</li> </ul>	Council

Description of delegation	Responsibility delegated from
<p>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 <u>in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.</u></p> <ul style="list-style-type: none"> <li>• <u>in consultation with the Chairman, Vice-Chairman and spokespersons of the Health and Adult Social Care Committee and the Deputy Assistant Director, Children and Adults Social Care</u>, to comment, if appropriate, on quality accounts submitted by provider trusts in future years</li> <li>•</li> </ul>	
<p>6.4110 Electoral registration:</p> <ul style="list-style-type: none"> <li>• Manage the electoral registration and elections service in compliance with current legislation and the policies of the Council.</li> </ul>	Council
<p>6.4311 Legal Services:</p> <ul style="list-style-type: none"> <li>• Subject to budgetary cover and regular reports being made to Cabinet to determine liability and authorise payment in respect of claims against the Council as follows: <ul style="list-style-type: none"> <li>(i) In consultation with the relevant director where the claim does not exceed £5,000;</li> <li>(ii) In consultation with the relevant director, the Chief Finance Officer and the relevant portfolio holder where the claim exceeds £5,000 but does not exceed £10,000</li> </ul> </li> <li>• Institute, defend and conduct any legal proceedings and to make any representations affecting the property rights or interests of the Council or which the Council may be entitled to authorise, institute or defend. Proceedings shall only be instituted, defended or conducted with the approval of the relevant director and that regular reports be made on the conduct of proceedings;</li> <li>• Retain counsel, independent solicitors or consultants, where appropriate;</li> <li>• Give notices to quit and other notices or formal demands which are deemed requisite to serve in the interests of the Council.</li> <li>• To convey and lease houses and flats under the Right to Buy Scheme;</li> <li>• Sign discharges on behalf of the Council signifying</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p>





Description of delegation	Responsibility delegated from
<p><u>Direct Investment in Property</u></p> <ul style="list-style-type: none"> <li>In consultation with the Leader, Portfolio Holder for Resources and Chief Finance Officer to acquire, manage, let and dispose of suitable investment properties where funded from provision made for this purpose in the Council's Capital Programme, and that the requirement to seek a Cabinet decision on any transactions exceeding £100,000 is waived only in respect of non-operational investment property transactions covered by this delegation.</li> </ul> <p>Note: A sum of £2m was added to the Capital Programme by the Council for this purpose on 15 October 2015. The threshold of £100,000 which triggers a requirement for a Cabinet decision does not apply for land and property transactions under this delegation.</p>	Leader/Cabinet
<p><u>6.4614</u> Licensing:</p> <ul style="list-style-type: none"> <li>Except where a specific Council side responsibility, to manage all licensing and registration functions of the Council including the licensing and registration of pleasure boats, hackney carriage and private hire, sex establishments, street and house to house collections, motor salvage, scrap metal dealers, street trading consents and such other services as may be authorised.</li> <li>With regard to Licensing Act 2003 matters, to determine: <ul style="list-style-type: none"> <li>(i) An application for a personal licence, if no objection made;</li> <li>(ii) An application for a premises licence/club premises certificate, if no relevant representation made;</li> <li>(iii) An application for a provisional statement, if no relevant representation made;</li> <li>(iv) An application to vary a premises licence/club premises certificate, if no relevant representation made;</li> <li>(v) An application to vary a designated premises supervisor in all cases other than where there is a police objection;</li> <li>(vi) A request to be removed as a designated premises supervisor;</li> <li>(vii) An application for transfer of premises licence in all cases other than where there is a police objection;</li> <li>(viii) Applications for interim authorities in all cases other than where there is a police objection;</li> <li>(ix) A decision on whether a complaint is irrelevant, frivolous, vexatious, etc.</li> </ul> </li> </ul>	<p><u>Council</u> <u>Leader/Cabinet</u></p> <p>Council</p>

Description of delegation	Responsibility delegated from
<p>Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003 (Council 9 December 2004 &amp; 22 November 2007).</p>	
<ul style="list-style-type: none"> <li>• With regard to the Gambling Act 2005, to determine: <ul style="list-style-type: none"> <li>(i) Fee setting (when appropriate);</li> <li>(ii) An application for a premises licence, where no representations received/representations have been withdrawn;</li> <li>(iii) An application for a variation to a licence, where no representations received/representations have been withdrawn;</li> <li>(iv) An application for a transfer of a licence, where no representations received from the Commission;</li> <li>(v) An application for a provisional statement, where no representations received/representations have been withdrawn;</li> <li>(vi) An application for club gaming/club machine permits, where no objections made/objections have been withdrawn;</li> <li>(vii) Applications for other permits;</li> <li>(viii) A cancellation of licensed premises gaming machine permits;</li> <li>(ix) The consideration of a temporary use notice (Council 7 December 2006).</li> </ul> </li> <li>• With regard to the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009; <ul style="list-style-type: none"> <li>(i) To grant any applications for sex establishments and sexual entertainment venues whereby no representations have been received and the Assistant Director is able to agree suitable conditions with the applicant.</li> </ul> </li> <li>• With regard to the Scrap Metal Dealers Act 2013, to determine: <ul style="list-style-type: none"> <li>(i) Fee setting (when appropriate);</li> <li>(ii) Application for or renewal of a Site or Collector's licence, where no representations have been received from the applicant or where their representations have been withdrawn;</li> <li>(iii) Application for a variation to a licence, where no representations have been received from the applicant or where their representations have been</li> </ul> </li> </ul>	<p style="text-align: right;"><u>Leader/Cabinet</u></p>

Description of delegation	Responsibility delegated from
<p>withdrawn;</p> <p>(iv) To issue a closure notice on non-residential premises being used as a scrap metal dealer's site;</p> <p>(v) Application to the Magistrate's Court for a closure order;</p> <p>(vi) Termination of a closure order;</p> <p>(vii) Application to the Magistrate's Court to discharge a closure order;</p> <p>(viii) Revocation of a licence, where no representations have been received from the applicant or where their representations have been withdrawn;</p> <p><u>(ix) Consideration of an imposition of conditions;</u></p> <p><u>(x) to determine applications, in consultation with the Licensing Sub-Committee, from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence and the applicant has given notice to the authority within the prescribed time that they require the opportunity to make representations about the proposal.</u></p> <p><u>(ix) [Note: The functions outlined at (i) and (x) may not be sub-delegated, whilst those listed at (ii) to (ix) will be sub-delegated, in writing, to the appropriate licensing officer]</u></p>	
<p><u>6.4715</u> Contracts:</p> <ul style="list-style-type: none"> <li>Contract Procedure Rules – To carry out executive functions delegated to the Monitoring Officer, as set out in the Contract Procedure Rules.</li> </ul>	Leader/Cabinet
<ul style="list-style-type: none"> <li>Exemptions and Exceptions to Contract Procedure Rules – To carry out functions delegated to the Monitoring Officer, as set out in paragraph 1.8 of the Contract Procedure Rules.</li> <li>The Chief Legal Officer is authorised where appropriate to vary the terms and conditions of contract as specified in the contract rules;</li> </ul>	Council  Leader/Cabinet
<p><b>Chief Finance Officer</b></p>	
<p><u>6.2316</u> Financial:</p> <ul style="list-style-type: none"> <li>To be responsible for all borrowing, investment, and financial decisions, such decisions to be consistent with the Council's <u>treasury policy statement Treasury Management Strategy and Treasury Management Practices</u>;</li> <li>Approve the re-phasing of expenditure between years on approved schemes, provided that the impact does not</li> </ul>	Council <u>Leader/Cabinet</u>  Leader/Cabinet

Description of delegation	Responsibility delegated from
<p>exceed the overall level of the approved programme and the level of resources estimated to be available;</p> <ul style="list-style-type: none"> <li>• Authorise the opening and closing of any such bank accounts as may be considered necessary in accordance with the bank mandate;</li> <li>•</li> <li>• In respect of national non domestic rates, Council tax, and other income and debtors to exercise the powers of the Council including the institution of legal proceedings and all steps necessary to prosecute, enforce judgements and approve the writing off of irrecoverable sums;</li> <li>• Determine relief from non-domestic rates in accordance with the approved guidelines. Any appeal arising from a disputed decision made under these delegated powers or where the guidelines do not cover the circumstances surrounding the claim for relief shall be to the Leader/Cabinet;</li> <li>• Manage the housing benefits scheme in compliance with current legislation and policies of the Council;</li> <li>• Fund insurance management initiatives up to a maximum level of £50,000 in total per annum.</li> <li>• Approve in-year additions to the capital programme and revenue budget in consultation with the Finance Portfolio Holder, subject to: <ul style="list-style-type: none"> <li>(i) funding coming from external sources;</li> <li>(ii) no financial contribution being required from the Council;</li> <li>(iii) funding being ring fenced for specific purposes.</li> </ul> </li> <li>• To set the Council Tax base, in consultation with the Portfolio Holder for Finance</li> <li>•</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Council</p> <p>Council</p>
<p><b>6.2417</b> Audit and Counter Fraud Service:</p> <p>Management and delivery of audit and counter fraud services for Gravesham Borough Council and Medway Council.</p>	<p>Council Leader/Cabinet</p>
<p><b>6.2418</b> Contracts:</p> <ul style="list-style-type: none"> <li>• To enter into contractual arrangements on behalf of the Council for all contracts involving the purchase of utilities (ie gas, water and/or electricity supply) on behalf of both the Council and schools. This delegation shall apply to both individual contracts let between the Council and the utility supplier, and where the Council enters into any Framework Agreement or Consortia Agreement for such</li> </ul>	<p>Leader/Cabinet</p>

Description of delegation	Responsibility delegated from
<p>supplies.</p> <p>NOTE: The Monitoring Officer has the same delegation, as set out in paragraph 1.9.7 of the contract procedure notes.</p>	
<p><b>6.26 Director of Public Health:</b></p>	
<p><b>6.19</b> Manage the public health service (spanning the three domains of health improvement, health protection and health care public health) in compliance with legislation and the policies of the Council. This includes the following specific responsibilities and such other public health functions as specified by the Secretary of State in regulations:</p> <ul style="list-style-type: none"> <li>• the preparation of the Annual Report on the health of the local population</li> <li>• the council's duties to take steps to improve public health</li> <li>• Any of the Secretary of State's public health protection or health improvement functions</li> <li>• functions in planning for, and responding to, emergencies that present a risk to public health</li> <li>• co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders</li> <li>• Responsibility for providing Healthy Start vitamins when the council provides or commissions a maternity or child healthcare clinic</li> <li>• a duty to provide information and advice to the responsible bodies and to other relevant bodies within its area, with a view to promoting the preparation of appropriate local health protection arrangements by those bodies</li> <li>• being responsible for their local authority's public health response as a responsible authority under the Licensing Act 2003, such as making representations about licensing applications.</li> </ul>	Leader/Cabinet
<p>6.2720 For the avoidance of doubt, the Chief Executive shall have all the delegations of a Director in respect of the Business Support Department. <u>The Chief Legal Officer and Chief Finance Officers shall have all the delegations of a Assistant Director in respect of the Business Support Department</u></p>	Council/ Leader/Cabinet
<p><b>7. Director of Children and Adults Services</b></p>	
<p>7.1 Manage the education service in compliance with current legislation and the policies of the Council.</p>	Leader/Cabinet
<p>7.2 Manage the children and families services in compliance with current legislation and the policies of the Council.</p>	Leader/Cabinet
<p>7.3 Services for elderly and disabled:</p> <ul style="list-style-type: none"> <li>• Manage the services for the elderly and disabled people in compliance with the current legislation and policies of the Council;</li> </ul>	Leader/Cabinet

Description of delegation	Responsibility delegated from
<ul style="list-style-type: none"> <li>Exercise the functions of the Council under the Community Care (Direct Payments) Act 1996 in accordance with the provisions of the proposed Medway direct payments scheme.</li> </ul>	Leader/Cabinet
<p>7.4 Mental health:</p> <ul style="list-style-type: none"> <li>Manage the services for adults with mental health problems in compliance with current legislation and policies of the Council;</li> </ul>	Leader/Cabinet
<p>7.5 General:</p> <ul style="list-style-type: none"> <li>To consider and determine urgent matters in relation to individual cases in consultation with the Leader/Cabinet.</li> </ul>	Leader/Cabinet
<p>7.6 Act as the 'authorised officer' for all contracts falling within the children and adults service.</p>	Leader/Cabinet
<p>7.7 Contracts:</p> <ul style="list-style-type: none"> <li>To award without competition a contract where a placement is sought for an individual with a registered care provider of their choice under the National Health Service and Community Care Act 1990.</li> </ul>	Council
<p>7.8 Local Authority School Governors:</p> <ul style="list-style-type: none"> <li>To agree changes to the criteria for the appointment of Local Authority School Governors, in consultation with Group Whips, subject to the ability to refer to Full Council for decision in any instance where the Director of Children and Adults prefers not to exercise the delegated authority.</li> </ul>	Council
<p>7.9 <b>Deputy Director, Children and Adults:</b></p> <ul style="list-style-type: none"> <li>To manage the Independent Reviewing Officer (IRO) service in compliance with current legislation and policies of the Council.</li> </ul>	Leader/Cabinet
<p><b>8. Director of Regeneration, Culture, Environment and Transformation</b></p>	
<p>8.1 Planning:</p> <ul style="list-style-type: none"> <li>To manage the Council's functions in relation to the planning function, listed building consent, building preservation, conservation areas, tree preservation, enforcement and planning contravention, purchase notices, high hedges and hedgerows in compliance with current legislation and Council policy;</li> <li>To determine applications for planning permission except in the following circumstances: <ul style="list-style-type: none"> <li>(i) Where the applicant is the Council and the proposed development is a major proposal or for</li> </ul> </li> </ul>	<p>Council</p> <p>Council</p>

Description of delegation	Responsibility delegated from
<p>non-operational purposes.</p> <p>(ii) Where the applicant is a member of the Council or an officer directly or indirectly involved in the planning process.</p> <p>(iii) Where the Director of Regeneration, Culture, Environment and Transformation refers the application to the Planning Committee (eg where the proposals are a significant departure from the development plan or otherwise are of a strategic nature in the context of the Council's planning and development policies).</p> <p>(iv) Where the proposal has other major implications for the authority.</p> <p>(v) Where a member of the Council has within 21 days of the publication of the weekly list of planning applications requested that an application be determined by Committee. In these cases members should identify the material planning considerations to warrant consideration by Committee.</p> <p>(vi) Where a parish council has within 21 days of the publication of the weekly list of planning applications requested that an application be determined by Committee. In these cases Parish Councils should identify the material planning considerations to warrant consideration by Committee, <u>otherwise the Director of Regeneration, Culture, Environment and Transformation will deal with the application.</u></p>	<p>Council</p> <p>Council</p> <p>Council</p> <p>Council</p> <p>Council</p>
<p>(vii) Where three or more relevant letters of representation are received (<u>which may include letters from an Amenity Society but must also include at least two from separate households in the vicinity of the site</u>) (<del>from separate households</del>) contrary to the proposed <u>officer</u> decision or where one letter of representation is received from a Parish Council or a Residents' <u>Association/Society or Amenity Society</u> contrary to the proposed <u>officer</u> decision (except, in the case of a representation by a Parish Council <u>or a</u>, <del>a</del> Residents' <u>Association/Society or an Amenity Society</u>, where the Director of Regeneration, Culture, Environment and Transformation, in consultation with the Chairman and Spokesmen of the Planning Committee, is of the opinion that the representation contains no reasonable planning grounds supporting the representation).</p>	<p>Council</p>

Description of delegation	Responsibility delegated from
<ul style="list-style-type: none"> <li>• To determine details reserved by conditions, minor amendments to proposals for which consent has been granted, applications for lopping or topping trees, to confirm or reject tree preservation orders where no more than three representations are received from separate households contrary to the proposed decision, applications on the direction of the Secretary of State in respect of a trunk road, applications for Certificates of Lawfulness of existing or proposed use and to determine applications submitted pursuant to s.10 of the Planning (Hazardous Substances) Act 1990;</li> <li>• To contest planning appeals in accordance with Council or Committee policy including the appointment of appropriate legal and professional representatives;</li> <li>• To submit observations upon proposals outside the Medway area upon which the Council has been consulted subject to prior consultation with members representing the wards adjoining the proposed development.</li> </ul>	<p>Council</p> <p>Council</p> <p>Leader/Cabinet</p>
<p>8.2 Building control:</p> <p>To submit comments to the Secretary of the Joint Committee on the first draft of the Building Control Business Plan and on any proposed amendments (during the course of each year), in consultation with the Chief Finance Officer and the Council's representative on the South Thames Gateway Building Control Joint Committee.</p>	<p>Leader/Cabinet</p>
<p>8.3 Highways and traffic regulations:</p> <ul style="list-style-type: none"> <li>• To manage the highways, parking provision, public rights of way, traffic regulation, traffic calming, road safety and watercourse management services in compliance with current legislation and the policies of the Council;</li> <li>• With respect to the determination of requests for the approval of details submitted pursuant to the provisions of Schedule 6 of the Channel Tunnel Rail Link Act 1996: <ul style="list-style-type: none"> <li>(i) to determine plans and specifications submissions made pursuant to paragraph 15;</li> <li>(ii) to determine requests for the approval of details submitted pursuant to conditions attached to Construction Arrangements Approvals granted under paragraphs 16, 17, 23, 24 and 25 and requests for approval to amendments to matters subject to approval issued under the aforementioned paragraphs;</li> <li>(iii) the determination of restoration plans submitted pursuant to the provisions of paragraph 19;</li> </ul> </li> </ul>	<p>Council/ Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p>



<b>Description of delegation</b>	<b>Responsibility delegated from</b>
<p>(iv) the determination of additional details submitted pursuant to conditions imposed under paragraph 22(2);</p> <p>(v) the determination of all applications for the construction and working site vehicular access points.</p>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p>
<p>8.4 Public transport:</p> <ul style="list-style-type: none"> <li>• To manage the public transport regulation, public transport development and transport policies of the Council in compliance with current legislations and the policies of the Council.</li> </ul>	<p>Council/ Leader/Cabinet</p>
<p>8.5 Land:</p> <ul style="list-style-type: none"> <li>• To accept blight notices and to approve the purchase of land which is statutorily blighted by highway proposals, and to approve counter-notices where it is considered there is no such statutory obligation;</li> <li>• To demolish properties (as part of any scheme approved by the Council).</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p>
<p>8.6 Street naming and numbering:</p> <ul style="list-style-type: none"> <li>• To agree street naming and the naming or numbering of buildings.</li> </ul>	<p>Council</p>

<b>Description of delegation</b>	<b>Responsibility delegated from</b>
8.7 Gifts for the benefit of the public: <ul style="list-style-type: none"> <li>• To accept gifts of seats, trees, etc. on behalf of the Council.</li> </ul>	Leader/Cabinet
8.8 Tree donation: <ul style="list-style-type: none"> <li>• To fix the fee for any tree donation scheme.</li> </ul>	Leader/Cabinet
8.9 Buildings at risk: <ul style="list-style-type: none"> <li>• To offer grant monies towards urgent repairs of buildings at risk in cases where they may have recently come into new ownership and would, therefore, not meet the normal criteria and where the director is satisfied that a grant is necessary to secure the repair of the building at risk.</li> </ul>	Leader/Cabinet
8.10 Civil protection and defence: <ul style="list-style-type: none"> <li>• To manage the emergency planning, civil protection and defence functions in compliance with current legislation and the policies of the Council.</li> </ul>	Leader/Cabinet
8.11 Environmental health and trading standards matters: <ul style="list-style-type: none"> <li>• To manage the services of public health, port-health, environmental health, food poisoning and infectious diseases, waste collection and management, street cleansing, health and safety, food safety, shops, markets and street trading, Sunday trading, trading standards, consumer protection, weights and measures (including the appointment of a named member of staff as the chief inspector of weights and measures, and a deputy if required, as required by section 72 of the Weights and Measures Act 1985), the appointment of the Proper Officer under the Public Health (Control of Diseases) Act 1984 and supporting regulations, litter, animal health and welfare, pest and dog control services, contaminated land, public conveniences, shopping trolleys, abandoned vehicles and materials on the highway, private drainage, and water supplies in compliance with current legislation and the policies of the Council.</li> </ul>	Council/ Leader/Cabinet
8.12 Planning and transport fees and charges: <ul style="list-style-type: none"> <li>• To make minor adjustments to fees and charges during the financial year in line with government guidance as it emerges, within 5% of amount levels.</li> </ul>	Leader/Cabinet
8.13 Museums: <ul style="list-style-type: none"> <li>• Manage the museums and archiving services of the Council in compliance with current legislation and the policies of the Council.</li> </ul>	Leader/Cabinet
8.14 Parks and open spaces and professional fun fairs:	

<b>Description of delegation</b>	<b>Responsibility delegated from</b>
<ul style="list-style-type: none"> <li>To manage the parks, open spaces and country parks of the Council in compliance with current legislation and the policies of the Council;</li> <li>To determine applications for professional sideshows and amusements in open spaces or recreation grounds in the borough.</li> </ul>	Leader/Cabinet  Leader/Cabinet
<p>8.15 Allotments:</p> <ul style="list-style-type: none"> <li>To manage the allotment service of the Council in compliance with current legislation and the policies of the Council.</li> </ul>	Leader/Cabinet
<p>8.16 Medway Partners for Growth Scheme:</p> <ul style="list-style-type: none"> <li>Applications to the scheme to be considered and determined by the Assistant Director, Physical and Cultural Regeneration, in consultation with the Portfolio Holder.</li> </ul>	Leader/Cabinet
<p>8.17 Sports and leisure facilities, children's play activities and halls of the Council:</p> <ul style="list-style-type: none"> <li>Manage the sports and leisure facilities, children's play activities and halls of the Council in compliance with current legislation and the policies of the Council.</li> </ul>	Leader/Cabinet
<p>8.18 Arts and entertainment:</p> <ul style="list-style-type: none"> <li>Manage the arts and entertainment services of the Council including the management of theatres in compliance with current legislation and the policies of the Council.</li> </ul>	Leader/Cabinet
<p>8.19 Medway Park Car Park:</p> <ul style="list-style-type: none"> <li>The operation of the parking ticket reimbursement system to the Medway Park users.</li> </ul>	Leader/Cabinet
<p><del>8.20 International Relations Project Funding:</del></p> <ul style="list-style-type: none"> <li><del>To consider and determine recommendations from the International Relations Cabinet Advisory Group on the allocation of up to £12,500 per annum to develop twinning and support proposed activities including applications from the sub-groups previously established for Valenciennes, Yokosuka/Ito and Foshan (the fourth sub-group covering Cadiz is no longer operational).</del></li> </ul>	Leader/Cabinet
<p>8.2120 Libraries</p> <ul style="list-style-type: none"> <li>Manage the library and public information services of the Council in compliance with current legislation and the policies of the Council.</li> </ul>	Leader/Cabinet
<p>8.2221 Housing:</p>	

<b>Description of delegation</b>	<b>Responsibility delegated from</b>
<ul style="list-style-type: none"> <li>• Manage the housing service in compliance with current legislation and the policies of the Council; to include the management of shops, garages, and other ancillary buildings associated with the housing management function;</li> <li>• Review the allocation of two smaller properties in return for the release of a larger property and to allocate accommodation according to the merits of each case.</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p>
<p><u>8.2322</u> Housing grants and loans:</p> <ul style="list-style-type: none"> <li>• Exercise the function of the Council under the Housing (Grants, Construction and Regeneration) Act 1996 and the Regulatory Reform (Housing Assistance) Order 2002 and in accordance with any other relevant legislation and Council Policy;</li> <li>• Authorise the determination of hardship cases where improvement grant applicants have proved to be in receipt of housing benefit and or income support;</li> <li>• Approve the payment of renovation grants, disabled facilities grants and home repair assistance, in accordance with the renovation grant policy and within the allocated resources in the approved capital programme;</li> <li>• Consider applications to waive repayment of renovation grants where an elderly or infirm person is disposing of the grant property to live permanently in a care home or to be cared for at a relative's home and to demand repayment of the full grant.</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p>
<p><u>8.23 HRA site programme</u></p>	
<ul style="list-style-type: none"> <li>• <u>That the Director of Regeneration, Culture, Environment and Transformation in consultation with the Portfolio Holder for Housing and Community Services adds further sites to the HRA site programme as they become available, if they are suitable and fulfil a value for money criteria.</u></li> </ul>	<p><u>Leader/Cabinet</u></p>
<p><u>8.2424</u> Rent officer service:</p> <ul style="list-style-type: none"> <li>• Manage the rent officer service in compliance with current legislation and the policies of the Council.</li> </ul>	<p>Leader/Cabinet</p>
<p><u>8.2525</u> Flood Risk Management:</p> <ul style="list-style-type: none"> <li>• To manage the Council's functions in relation to flooding and drainage in compliance with current legislation and policies of the Council (including without limitation the Land Drainage Act 1991, Flood Risk Regulations 2009 and the Flood and Water Management Act 2010).</li> </ul>	<p>Leader/Cabinet</p>

<b>Description of delegation</b>	<b>Responsibility delegated from</b>
<p><u>8.26</u> <u>Grant and project funding</u></p> <ul style="list-style-type: none"> <li>• <u>To submit applications for funding from Central Government, EU and other funding streams and enter into agreements with the provider of the funding (including for the avoidance of doubt Accountable Body agreements);</u></li> <li>• <u>To approve applications for funding from third parties in the public, private and/or voluntary sectors, make grants to successful applicants and enter into agreements with applicants setting out the terms and conditions on which the funding is provided.</u></li> </ul>	<p><u>Council/</u> <u>Leader/Cabinet</u></p> <p><u>Council/</u> <u>Leader/Cabinet</u></p>
<p><u>8.2827</u> Communications:</p>	
<ul style="list-style-type: none"> <li>• To deal with all matters in connection with the media and public relations including issuing press releases on behalf of the Council within the Council's procedures agreed from time to time.</li> </ul>	<p><u>Council</u> <u>Leader/Cabinet</u></p>
<p><u>8.2928</u> Bereavement and Registration:</p>	
<ul style="list-style-type: none"> <li>• Manage the burials, cremation and cemetery service in compliance with current legislation and the policies of the Council;</li> <li>• Pursuant to Section 2 of the Parish Council's and Burial Authorities (Miscellaneous Provisions) Act 1970, to sign grants of exclusive rights of burial.</li> <li>• Manage the registration of births, marriages and deaths in compliance with current legislation, guidance from the Registrar General and the policies of the Council.</li> </ul>	<p><u>Leader/Cabinet</u></p> <p><u>Leader/Cabinet</u></p> <p>Leader/Cabinet</p>
<p><u>8.2929</u> Personnel:</p>	
<ul style="list-style-type: none"> <li>• Agree every three years, suitably rounded, increases in the monetary value of the 25 year long service awards to non-teaching staff, in line with inflation;</li> <li>• Implement the Council's post-entry training scheme;</li> <li>• Negotiate and reach agreement on behalf of the Council on policies and procedures concerning the workforce;</li> <li>• Obtain the necessary statistical information to enable the Council to monitor the composition of its workforce in connection with the implementation of its equal opportunity and other policies.</li> </ul>	<p>Council</p> <p>Council</p> <p>Council</p> <p>Leader/Cabinet</p>
<p><u>8.3030</u> Information technology:</p>	
<ul style="list-style-type: none"> <li>• To manage the information and communications technology (ICT) services of the Council including the sale of spare computer time in compliance with current legislation and Council policy;</li> <li>• Establish an overall ICT strategy for the Council and to</li> </ul>	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p>

<b>Description of delegation</b>	<b>Responsibility delegated from</b>
enforce the policies of the Council in respect of ICT procurement and implementation; <ul style="list-style-type: none"> <li>• Dispose of surplus ICT equipment for the best price or lowest cost available.</li> </ul>	Leader/Cabinet
8.3031 Complaints:	
<ul style="list-style-type: none"> <li>• To handle complaints made against the Council (including Ombudsman complaints) and to settle complaints locally where the costs of settlement do not exceed £5,000</li> </ul>	Council/ Leader/Cabinet

4.1 So far as this scheme relates to delegations to employees for executive functions it is provisional pending confirmation by the Leader of the Council.

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### Proper Officer List

<b>STATUTE AND FUNCTION/POWER</b>	<b>Proper Officer(s)</b>
<b>NATIONAL ASSISTANCE ACT 1948 AND NATIONAL ASSISTANCE (AMENDMENT) ACT 1951</b>	
Section 47 of the 1948 Act and Section 1 of the 1951 Act - Proper officer to seek an order for removal of persons into care	Director of Children and Adults
<b>REGISTRATION SERVICES ACT 1953 AND REGULATIONS 1968 TO 1994</b>	
Proper officer for Births Deaths and Marriages	Director of Regeneration, Culture, Environment and Transformation
<b>LOCAL GOVERNMENT ACT 1972</b>	
Section 83 (1) – The officer to whom a person elected to the office of Councillor shall deliver a declaration of acceptance of office on a form prescribed by rules made under Section 42 of the Act	Chief Legal Officer
Section 83 (3)(b) – The officer before whom a declaration of acceptance of office of Chair of Council or Deputy Chair of Council may be made	Chief Executive
Section 84 – The officer to whom written notice of resignation of elected office shall be delivered	Chief Executive
Section 86 - To declare any vacancy in any office under the Section	Chief Executive
Section 88 (2) – The officer by whom a meeting of the Council for the election of the vacant office of Chairperson of the Council may be convened	Chief Executive
Section 89 (1)(b) – The officer to whom notice in writing of a casual vacancy occurring in the office of Councillor may be given by two local government electors for the Borough	Chief Executive
Section 99 + Schedule 12 - To give notice and send summonses in respect of any Council meeting	Chief Executive
Section 100 - To give public notice of any meeting to which the public are entitled to attend, provide copies of agenda and facilities for the press	Chief Executive
Section 100B (2) – The officer to exclude from committees, sub committees, Council or Executive meeting agendas any information to be dealt with in a meeting from which the public are likely to be excluded	Chief Legal Officer
Section 100B (7)(c) – The officer to supply to any newspaper copies of documents supplied to Members of committees, sub-committees, Council or Executive meetings in connection with an item for consideration	Chief Legal Officer

Section 100C (2) – The officer to prepare a written summary of proceedings of committees, sub- committees, Council or the Executive from which the public were excluded	Chief Legal Officer
Section 100D (1)(a) – The officer to prepare a list of background papers for reports considered by committees, sub- committees, Council or the Executive	Chief Legal Officer
Section 100D (5) – The Officer to determine which documents constitute background papers and Section 100H - ability to charge for the provision of such documents	Chief Legal Officer
Section 100F (2) – The officer to decide which documents are not, by virtue of containing exempt information, required to be open to inspection	Chief Legal Officer
Section 100G - To maintain a register of the names and addresses of Members and membership of committees, lists of delegations and the like	Chief Legal Officer
Section 115 – The officer to whom money properly due from officers shall be paid	Chief Finance Officer
Section 123 - The officer responsible for certifying or obtaining a certificate of 'Best Consideration' on the disposal of land and property.	Chief Legal Officer
Section 146 – The officer to make statutory declarations and issue any certificate with regard to securities held by local authority companies	Chief Legal Officer
Section 151 (and section 114 of the Local Government Finance Act 1988) – The officer to be responsible for the proper administration of the Authority's financial affairs (and to issue a report to Members if there is or is likely to be unlawful expenditure or an unbalanced budget)	Chief Finance Officer
Section 223 Authorising officers to attend court and appear on behalf of the Council under Local Government Act 1972 and the County Courts Act 1984	Chief Legal Officer
Section 224 – the officer who shall have responsibility for the custody of Council documents	Chief Legal Officer
Section 225 (1) – The officer to receive and retain statutory documents on behalf of the Authority	Chief Legal Officer
Section 228(3) – Making accounts available for Councillors to look at	Chief Finance Officer
Section 229 (5) – The officer to certify photographic copies of documents	Chief Legal Officer
Section 233 – The officer to receive documents required to be served on the Authority	Chief Legal Officer
Section 234 (1) & (2) – The officer to authenticate documents on behalf of the Authority	Chief Legal Officer
Section 238 – The officer to certify printed copies of bylaws	Chief Legal Officer
Section 248 – The officer responsible for the keeping of the roll of freemen.	Chief Legal Officer



Schedule 12 [paragraphs 4(2)(b) & 4(3)] – The officer responsible for the receipt of notices regarding address to which summons to meetings is to be sent	Chief Legal Officer
Schedule 14 [paragraph 25(7)] – The officer responsible for the certification of true copies of resolutions	Chief Legal Officer
<b><u>LAND CHARGES ACT 1975</u></b>	
Section 19 – The officer to act as Local Registrar as defined in Section 3 of the Land Charges Act 1975	Chief Legal Officer
<b><u>LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</u></b>	
Section 41 – The officer to certify copies of any resolution, order, report or minutes of proceedings of the Authority as evidence in any legal proceedings	resolutions of the council - Chief Legal Officer  resolutions of the executive - Chief Legal Officer
Section 16 - Notices requiring details of interest in land.	Chief Legal Officer
<b><u>EUROPEAN PARLIAMENTARY ELECTIONS ACT 2002</u></b>	
Section 6 (5A) - Local Returning Officer for European Parliamentary Elections and all other powers in relation to such elections.	Returning Officer appointed by the council
<b><u>REPRESENTATION OF THE PEOPLE ACT 1983</u></b>	
Section 8 - To appoint a Registration Officer for the purpose of the registration of electors and approve the Deputy Electoral Registration Officer	officer appointed by the council to be registration officer
Section 28 – Acting Returning Officer at a Parliamentary election of a Member of Parliament	registration officer appointed by the council
Sections 82, 88 and 89 – Receipt of election expense declarations returns and the holding of those documents for public inspection	in relation to a parliamentary election, the returning officer;  in relation to an Authority election, the returning officer for that election  in relation to any other local government election, the proper officer of the authority for which the election is held.
<b><u>EUROPEAN UNION REFERENDUM ACT 2015</u></b>	
Schedule 3 Section 3 – the counting officer for the conduct of the referendum	officer appointed by the council to be registration officer

<b><u>PUBLIC HEALTH (CONTROL OF DISEASES) ACT 1984</u></b>	
Requirement to appoint a suitably qualified person as the Council's Medical Advisor on Environmental Health and Proper Officer for notifiable diseases	Deputy Director Health Protection and the Consultants in Communicable Disease Control from Public Health England
<b><u>LOCAL GOVERNMENT FINANCE ACT 1988</u></b>	
Section 116 - Notification to the Council's auditor of any meeting to be held under Section 15 of the 1988 Act (meeting to consider any report of the Chief Finance Officer under Section 114)	Chief Finance Officer
Section 139A - Provision of information to the Secretary of State in relation to the exercise of his powers under this Act as and when required.	Chief Finance Officer
<b><u>LOCAL GOVERNMENT AND HOUSING ACT 1989</u></b>	
Section 2 – The officer to hold on deposit the list of politically restricted posts and Section 2 - provision of certificates as to whether a post is politically restricted	Director of Regeneration, Culture, Environment and Transformation
Section 3A – The officer responsible for the grant and supervision of exemptions from political restrictions	CE (in capacity as Head of Paid Service)
<b><u>CIVIL EVIDENCE ACT 1995</u></b>	
To certify Council records for the purposes of admitting the document in evidence in civil proceedings.	Chief Legal Officer
<b><u>LOCAL GOVERNMENT (CONTRACTS) ACT 1997</u></b>	
Certification of relevant powers to enter into contracts	Local Authorities (Contracts) Regulations 1997  Monitoring officer & auditor
<b><u>DATA PROTECTION ACT 1998</u></b>	
Duty to notify the Information Commission of any changes in accordance with Section 20 of the DPA 1998	Chief Legal Officer
<b><u>CRIME AND DISORDER ACT 1998</u></b>	
Section 12 - to apply for the discharge or variation of a Child Safety Order	"responsible officer", in relation to a child safety order, means one of the following who is specified in the order, namely—  (a) a social worker of a local authority . . .; and  (b) a member of a youth offending team.

Sections 17 and 37 to have regard to effect of the exercise of any function on the need to prevent crime and disorder and offending by children and young persons	Director of Children and Adults
<b><u>LOCAL GOVERNMENT ACT 2000</u></b>	
To establish and maintain the Members Register of Interests (Section 29 Localism Act 2011) and ensure it is available for public inspection	The Monitoring Officer
To ensure that copies of the constitution are available for inspection	Chief Legal Officer
To make payments of relevant allowances in accordance with the Council's Members allowances scheme	Chief Legal Officer
To defray expenses of any Members making official and courtesy visits, receptions and entertainment of distinguished persons visiting the Borough	Chief Legal Officer
Officer for the purposes of verifying the validity of any electoral petition and for the purposes of announcing and holding any referendum	Chief Executive
<b><u>LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) (ENGLAND) REGULATIONS 2012</u></b>	
The officer responsible for ensuring a proper record and access is made of Executive reports, background papers and decisions and that the document comprising the Authority's Forward Plan is published in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012	Chief Legal Officer
<b><u>CRIMINAL JUSTICE AND POLICE ACT 2001</u></b>	
Delegated power to authorise officers to enter premises and seize items where the Council has a power of seizure under this Act and to perform other related duties (return and security of seized items)	Director of Regeneration, Culture, Environment and Transformation
<b><u>LOCAL GOVERNMENT ACT 2003</u></b>	
Section 25 - Requirement to report to Council annually on the robustness of estimates and financial reserves	Chief Finance Officer
<b><u>National Health Service Act 2006</u></b>	
Section 2B – the exercise by the authority of its duty to take steps as it considers appropriate for improving the health of the people in its area	Section 72A(1)(a): Director of Public Health
Section 111 – the exercise by the authority of any functions prescribed by Secretary of State in relation to dental public health	Section 72A(1)(a): Director of Public Health
Section 249 – the exercise by the authority of its duty to cooperate with the prison service with a view to improving the exercise of their respective functions in relation to securing and maintaining the health of prisoners	Section 72A(1)(a): Director of Public Health

Schedule 1 – the exercise by the authority of any of its functions as set out in Schedule 1	Section 72A(1)(a): Director of Public Health
Section 6C(1) – the exercise by the authority of any of the Secretary of State’s public health functions, which it is required to carry out by regulations issued by the Secretary of State	Section 72A(1)(a): Director of Public Health
Section 7A – the exercise by the authority of any of the Secretary of State’s public health functions, which are delegated to it by the Secretary of State	Section 72A(1)(a): Director of Public Health
Section 73A(1)(d) – the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health	Section 72A(1)(a): Director of Public Health
Section 73A(1)(e) – the exercise by the authority of its functions under section 325 Criminal Justice Act 2003 (cooperating with “responsible bodies” in relation to the assessment of risks posed by certain offenders)	Section 72A(1)(a): Director of Public Health
Section 73A(1)(f) – the exercise by the authority of such other functions relating to public health as may be prescribed	Section 72A(1)(a): Director of Public Health

A Proper Officer may at anytime delegate or authorise other officers (in writing) to perform the designated duties on his or her behalf.

## PART 5 - FINANCIAL LIMITS

### 5.1 Land acquisition and disposal

- Limit of authority for the Chief Executive and Directors to act – up to £100,000. Acquisitions and disposals above this value are a matter for the Cabinet unless contrary to the policy framework or contrary to, or not wholly in accordance with, the budget approved by Full Council. This limit does not apply to the acquisition and disposal of non-operational investment properties funded from provision made by the Council for this purpose in the Capital Programme.
- Cabinet land and property transactions over £500,000 to be reported to the next Council meeting for information.

### 5.2 Acceptance of tenders and sealing of contracts

The Contract Procedure Rules (Section 2 Part 7 of Chapter 4 of the Constitution) set out the manner in which procurement and tendering takes place within the Council. This includes details of the financial and risk thresholds, which will vary the procurement process followed, and the sealing of contracts.

RISK	VALUE	QUOTATION/TENDER ACCEPTANCE
<b>CATEGORY A PROCUREMENT</b>		
<b>Inconsequential Risk</b>	£0 – £1,000.00	Director*
	£1,000.00 – £15,000.00	Director*
	£15,000.00 – £100,000.00	Director*
(Refer to Section 2.2 of the Contract Procedure Rules for further guidance on procuring Category A Inconsequential Risk requirements)	Defined values apply to all procurements relating to supplies (goods), works, and services requirements	Inconsequential Risk procurement quotations are accepted and awarded by Director*  This quotation acceptance process for Category A Inconsequential Risk requirements will remain in effect unless the procurement requirement risk rating is otherwise determined to require upscaling by the Monitoring Officer, in consultation with the Strategic Procurement Team and/or Strategic Procurement Board

		<p><del>*In accordance with paragraph 1.4 of the General Scheme of Delegation to the Chief Executive and Directors.</del></p>
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<b>RISK</b>	<b>VALUE</b>	<b>QUOTATION/TENDER ACCEPTANCE</b>
<p><b>CATEGORY B PROCUREMENT</b></p> <p><b>Low-Risk</b></p> <p>(Refer to Section 2.3 of the Contract Procedure Rules for further guidance on procuring Category B Low-Risk requirements)</p>	<p>£100,000.00 – £250,000.00</p> <p>Defined values apply to all procurements relating to supplies (goods), works, and services requirements</p>	<p>Monitoring Officer in consultation with the Strategic Procurement Team</p> <p>Low-Risk procurement tenders are accepted and awarded by the Monitoring Officer, in consultation with the Strategic Procurement Team.</p> <p>This tender acceptance process for Category B Low-Risk requirements will remain in effect unless the procurement requirement risk rating is otherwise determined to require upscaling by the Monitoring Officer, in consultation with the Strategic Procurement Team and/or Strategic Procurement Board.</p>
<p><b>CATEGORY B PROCUREMENT</b></p> <p><b>Medium-Risk</b></p> <p>(Refer to Section 2.3 of the Contract Procedure Rules for further guidance on procuring Category B Medium Risk requirements)</p>	<p>£250,000.00 and above</p> <p>Defined values apply to all procurements relating to supplies (goods), works, and services requirements</p>	<p>Monitoring Officer in consultation with the Strategic Procurement Board.</p> <p>Medium-Risk tenders are accepted and awarded by the Monitoring Officer, in consultation with the Strategic Procurement Board.</p> <p>This tender acceptance process for Category B Medium-Risk requirements will remain in effect unless the procurement requirement risk rating is</p>

RISK	VALUE	QUOTATION/TENDER ACCEPTANCE
		otherwise determined to require upscaling by the Monitoring Officer, in consultation with the Strategic Procurement Team and/or Strategic Procurement Board.
<p><b>CATEGORY B PROCUREMENT</b></p> <p><b>High Risk</b></p> <p>(Refer to Section 2.3 of the Contract Procedure Rules for further guidance on procuring Category B High Risk requirements)</p>	<p>Any Value</p> <p>Defined values apply to all procurements relating to supplies (goods), works, and services requirements</p>	<p>Cabinet</p> <p>High Risk is recommended to the Cabinet for tender acceptance by the Monitoring Officer, in consultation with the Strategic Procurement Board.</p>

### 5.3 Sealing of contracts

All proposed contracts that exceed £250,000 or have a risk classification of 'medium' or 'high' and any other proposed contract that a director considers should be sealed.

#### 5.43 Budget ~~transfer~~ Virement limits

- Limits applicable to the Cabinet:
  - (a) Budget ~~transfers~~ (virements)
    - (i) Revenue item up to £500,000
    - (ii) Capital item up to £1,000,000
- Limits applicable to Chief Executive and directors:
  - (a) Budget ~~transfers~~ (virements)
    - (i) Revenue item up to £250,000
    - (ii) Capital item up to £150,000



**5.54 Writing off irrecoverable debts**

- Director:

Debts relating to the services which are the responsibility of the director - up to £5,000.

- Chief Finance Officer:

Council tax	within the approved provision held within the accounts of the Council.
Business rates	within the approved provisions held within the accounts of the Council.
Other debts of the Council	Up to £25,000 in consultation with the director responsible for services to which the debt relates.

A report will be submitted to Cabinet on an annual basis setting out details of all debt written off.

**5.65 Other financial limits**

~~(a) Merit Award Panel (education and leisure)~~

- ~~• Limit of value of additional discretionary awards – £1000 to be met from the Medway Merit Award Reserve~~

~~(ba) Chief Executive and~~ All directors

- Ex gratia payments to staff - £250 limit

~~(eb) Chief Executive~~

- ~~• Claim against the Council, limit of power to authorise payment not exceeding £5,000~~

- Ex gratia payments to members for loss suffered in the course of their duties - £250 limit (in consultation with group leaders)

~~(ec) Chief Legal Officer~~

- Subject to budgetary cover and regular reports being made to Cabinet to determine liability and authorise payment in respect of claims against the Council as follows:
  - (i) In consultation with the relevant director where the claim does not exceed £5,000;
  - (ii) In consultation with the relevant director, the Chief Finance Officer and the relevant portfolio holder where the claim exceeds £5,000 but does not exceed £10,000
- Variations to the terms of leases or sub leases etc, including surrenders, renewals etc, up to a limit of £10,000 per annum on any single transaction

(ed) Director of Regeneration, Culture, Environment and Transformation

- Limit of authority to authorise dayworks based contracts in case of urgency £5,000
- To settle complaints made against the Council (including Ombudsman complaints), limit of power to authorise payment not exceeding £5,000

(fe) Chief Finance Officer

- In-year additions to the capital programme and revenue budget in line with the criteria set out in paragraph 3.7 (Monitoring of capital schemes) of within the -Ffinancial Rrules (chapter 4, part 6).

## **CHAPTER 4 – RULES**

### **PART 1 - COUNCIL RULES**

#### **Contents**

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19. Assistants for political groups	
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## 1. RULE 1 - ANNUAL MEETING OF THE COUNCIL

### 1.1 Timing and business

In a year when there is an election of all Councillors, the annual meeting will take place within 25 days of the election. In any other year, the annual meeting shall take place in May.

The annual meeting shall:

- elect a person to chair the meeting if the Mayor is not present;
- elect the Mayor;
- elect the Deputy Mayor;
- approve the record of the last annual meeting;
- hear any announcements from the Mayor;
- elect the Leader (in the year of local elections);
- appoint members of the Overview and Scrutiny Committees, a Councillor Conduct Committee and other Council Committees to deal with matters which are neither reserved to the Council nor are executive functions;
- make appointments of Councillors to outside bodies;
- agree any amendments to the scheme of delegation relating to Council functions;
- approve a programme of ordinary meetings for the year ahead;
- consider any other business set out in the agenda, if any.

### 1.2 Selection of Councillors on Committees and outside bodies

At the annual meeting, the Council meeting will:

- decide which Committees to establish for the municipal year;
- decide the size and terms of reference for those Committees;
- decide the allocation of seats to political groups in accordance with the political balance rules;
- appoint to those Committees and outside bodies except where appointment to those bodies has been designated by the Council or is exercisable only by the Cabinet.

## 2. RULE 2 - ORDINARY MEETINGS

Ordinary meetings of the Council will take place in accordance with a programme decided at the Council's annual meeting. The normal order of business at meetings will be to:

- elect a person to chair the meeting if the Mayor and Deputy Mayor are not present;
- apologies for absence;
- receive any declarations of interest from members;
- approve the record of the last meeting;
- ~~apologies for absence;~~
- ~~receive any declarations of interest from members;~~
- hear any announcements from the Mayor or the Leader;
- receive and debate petitions in accordance with the Council's petitions scheme – see appendix A to these rules;
- take and answer questions for up to 30 minutes from local people about Council business or issues of importance to Medway;
- receive and debate for up to 35 minutes, a report from the Leader of the Council;
- receive and debate for up to 25 minutes a report on overview and scrutiny activity;
- take and answer questions on notice from members for up to 20 minutes;
- decide any issues referred to the Council because they are outside the budget or policy framework;
- decide any matter referred to the Council from the Cabinet dealing with the budget and/or the policy framework;
- debate reports from eOverview- and Sscrutiny Committees;
- debate motions about the social, economic or environmental well-being of Medway.

(NOTE – The Council has agreed to exclude petitions, questions from the public, the Leader's report, a report of Overview and Scrutiny activity, questions from elected members and motions from the agenda of the meeting to determine the Council's capital and revenue budgets)

### 3. **RULE 3 - SPECIAL MEETINGS (EXTRAORDINARY MEETINGS)**

#### 3.1 **Calling special meetings**

Those listed below may request a special Council meeting:

- the Mayor;
- the Chief Executive;
- any five members of the Council notifying the Chief Executive

#### 3.2 **Business**

The business of a special Council meeting may be any or all of the items set out in the order of business for ordinary meetings.

### 4. **RULE 4 -- NOTICE AND SUMMONS OF MEETINGSAGENDA**

4.1 The Chief Executive will give notice to the public of the ~~publish the~~ time and place of Council meetings in accordance with the access to information rules, and will send every member of the Council ~~an~~ summons agenda at least five working days before the meeting by post or electronic communication (where the member has presently consented to it being transmitted by this method). The ~~summons agenda~~ will give the date, time and place of the meeting and list the business to be dealt with. Any reports that are ready will be sent at the same time.

4.2 A member may consent to receiving a summons by electronic communication by informing the Head of Democratic Services.

4.3 Members' requests to change their method of receipt must be submitted in writing in a prescribed format to the Head of Democratic Services. A minimum of five clear working days must elapse from the date of receipt of such a request before it becomes effective.

### 5. **RULE 5 - ROLE OF THE CHAIR OF MEETING**

The chair of the meeting will manage the business of the meeting and ensure the time limits are observed. He or she shall try to ensure all points of view are heard, but balance this obligation with the need to ensure business is dealt with in a timely manner. The chair of the meeting may limit the number of speakers in any debate at his/her full discretion. The chair of the meeting's decisions on who is to speak and how the debate is to be conducted are final. Where these rules apply to Committee and sub Committee meetings, references to the Mayor includes the Chairmen of Committees and Sub Committees.

### 6. **RULE 6 - MINIMUM ATTENDANCE**

The minimum number of members who must be present for the meeting to proceed shall be one quarter of the membership, all figures to be rounded

up to the nearest whole number. During any meeting, if the minimum number is not present, the meeting will adjourn immediately. The remaining business will be considered at a time and date fixed by the person chairing the meeting. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

(Note: The Council has agreed a quorum for the Councillor Conduct Committee will be three members.)

## **7. RULE 7 - PETITIONS**

Petitions will be dealt with at Full Council in accordance with the Council's petition scheme at appendix A to these rules. The lead petitioner or their nominated representative and Councillors may present petitions to the meeting. Where a Full Council debate is triggered by a petition with the specified number of signatures or the Council considers a petition or undertakes a review of the response provided to a petition the lead petitioner (or their nominated representative) may address the meeting for up to five minutes and 20 minutes will usually be allowed for the Council to debate the matter.

## **8. RULE 8 - QUESTIONS BY THE PUBLIC**

### **8.1 General**

Members of the public may ask questions of members of the Cabinet, or of chairs of Committees, at ordinary meetings of the Council.

### **8.2 Notice of questions**

A question may be asked if notice has been given in writing, or by electronic mail, to the Chief Executive by midday seven working days before the day of the meeting. Each question must give the name and address of the questioner and must name the member of the Council to whom it is to be put.

### **8.3 Number of questions**

At any one meeting no person or organisation may submit more than one question. Members of the public who have not submitted questions before will be given priority over those who have. Any questions that have not been answered at the meeting within the time limits will be answered in writing after the meeting.

### **8.4 Scope of questions**

The Chief Executive may reject a question if it:

- is not about a matter for which the Council has responsibility or which does not affect the area;

- is frivolous, defamatory, offensive, racist, sexist, homophobic or otherwise improper;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months;
- requires the disclosure of confidential or exempt information.

## **8.5 Record of questions**

The Chief Executive will enter each question in a book open to public inspection and will immediately send a copy of the question to the member to whom it is put. Rejected questions will include reasons for rejection. If the question has been rejected because it is considered frivolous, defamatory, offensive, racist, sexist, homophobic or otherwise improper then only the fact that a question was received and that it was considered so, will be entered.

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

## **8.6 Asking the question at the meeting**

The Mayor will invite the questioner to put the question to the member named. The person to whom the question has been put will normally answer the question verbally after the question has been put. The time allowed for answers to each question at Council meetings shall not exceed three minutes. If a questioner who has submitted a question is unable to be present, the question will be answered in writing after the meeting.

There is no provision for supplementary questions.

# **9. RULE 9 - QUESTIONS BY MEMBERS**

## **9.1 Questions on notice**

A member of the Council may ask a question with notice on matters to do with their Council responsibilities to:

- the Leader;
- a member of the Cabinet;
- the chairman of any Committee or Sub-Committee.

At any one meeting no Member of the Council may submit more than one question. The time allowed for answers to each question at Council meetings shall not exceed three minutes. If a Member who has submitted a question is unable to be present, the question will be answered in writing. There is no provision for supplementary questions.



## **9.2 Notice and scope of questions**

A member may only ask a question under Rule 9.1 if either:

- (a) they have given at least seven working days notice in writing or by electronic mail, of the question to the Chief Executive; or
- (b) the question relates to urgent matters, they have the consent of the person to whom the question is to be put and the content of the question is given to the Chief Executive by noon on the day of the meeting.

The Chief Executive may reject a question if it:

- is not about a matter for which the Council has responsibility or which does not affect the area;
- is frivolous, defamatory, offensive, racist, sexist, homophobic or otherwise improper;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months.

The reason for rejection of any question shall be recorded and notified to the Member concerned.

## **9.3 Response**

An answer may take the form of:

- (a) a direct verbal answer;
- (b) where the desired information is in a publication of the Council or other published source, a reference to that source;
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner, including the reason for the inconvenience.

## **10. RULE 10 - MOTIONS**

10.1 There are two types of motions:

- (a) those relating to the smooth running of the meeting's business (for example to introduce the Leader's report, to amend or withdraw an item, to propose a move to next business, or a variation in the order of agenda), which do not require notice;
- (b) those that involve a debate relating to the Council's responsibilities, or the social, economic and environmental well-being of the area, which do require notice, may be amended without notice at

the meeting, but the Mayor may require all amendments to be provided in writing.

- 10.2 Motions that require notice must be signed by at least one member of the Council and delivered to the Chief Executive seven working days before the date of the meeting. These will be entered in a book open to public inspection and listed on the agenda.

## **11. RULE 11 - RULES OF DEBATE**

The following rules relate to any debate at Council or Committee meetings.

### **11.1 Conduct of debate**

- 11.1.1 Each item must be introduced (moved) by a proposer, and supported by one other person (a seconder) before it is debated further. The person introducing the item may speak for up to five minutes. All other speakers may speak for up to three minutes.
- 11.1.2 The supporter may choose to speak later, and in particular may choose to reply to the debate, but shall nevertheless indicate their support immediately after the proposer has spoken.
- 11.1.3 No speaker except the proposer may speak more than once on an item and once on any amendment to an item.
- 11.1.4 The debate may be interrupted by a member rising to his or her feet:
- Either to seek the Mayor's interpretation of these rules (a point of order) in which case the ruling of the Mayor will be final;
  - To give a short personal explanation of something he/she has already said (a point of personal explanation).
- 11.1.5 All speakers must address the issue under debate.
- 11.1.6 Members must remain quiet while a member is speaking unless they wish to make a point of order or a point of personal explanation.
- 11.1.7 When the Mayor stands during a debate, any member speaking at the time must stop and sit down, and all others present at the meeting must then be silent.
- 11.1.8 The Leader may speak for up to 10 minutes in introducing the Leader's report and will have up to five minutes at the end of the debate in which to reply to the debate.

## **11.2 Disturbance of meetings**

11.2.1 If a member persistently disregards the ruling of the Mayor by behaving improperly, offensively or deliberately obstructing business, the Mayor may propose that the member be silenced for that item. If seconded, this will be voted on without discussion.

11.2.2. Member to leave the meeting

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

11.2.3. General disturbance

If there is a general disturbance involving members of the public and/or members of the Council, making orderly business impossible, the Mayor may adjourn the meeting for as long as he/she thinks necessary.

11.2.4 Removal of a member of the public

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor may order their removal from the meeting room. If there is a general disturbance in any part of the meeting room open to the public, the chair may call for that part to be cleared.

## **11.3 Amendments**

11.3.1 An amendment to a motion must be relevant.

11.3.2 Only one amendment may be moved and discussed at any one time.

11.3.3 If an amendment is carried, the amended motion takes the place of the original motion and further amendments to it may be moved.

11.3.4 If an amendment is not carried, other amendments to the original motion may be moved.

11.3.5 After an amendment has been carried, the Mayor will read out the amended motion before accepting any further amendments, or if there are none, will put it to the vote.

## **11.4 Alteration of motion**

11.4.1 A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

11.4.2 A member may alter or withdraw a motion that he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

## **11.5 Right of reply**

11.5.1 The proposer of a motion has a right to reply at the end of the debate on that motion, immediately before it is put to the vote; or may instead give the right of reply to the seconder, providing the seconder has not already spoken.

11.5.2 The mover of the amendment has the right of reply at the end of the debate on his or her amendment.

11.5.3 If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak.

## **11.6. Closure motions**

A member may move, without comment, the following motions at the end of a speech of another member:

(i) to go to next business (11.6.1 refers);

(ii) that the vote be taken (11.6.2 refers);

(iii) to adjourn a debate (11.6.3 refers);

(iv) to adjourn a meeting (11.6.3 refers).

### **11.6.1 Motion to go to next business**

If a motion to go to next business is seconded and the Mayor thinks the item has been discussed adequately, he or she will give the mover of the current motion or amendment only a right to speak, and then put the procedural motion to the vote. If agreed the meeting will move to the next item of business immediately.

### **11.6.2 Motion that the vote be taken**

If a motion that the question be decided now is seconded and the Mayor thinks the item has been discussed adequately, he/she will put the procedural motion to the vote immediately. If it is passed he/she will give the mover of the current motion and/or the amendment a right to speak before putting his/her motion to the vote.

### **11.6.3 Motion to adjourn the debate or the meeting**

If a motion to adjourn the debate, or to adjourn the meeting, is seconded and the Mayor thinks the item has not been discussed adequately and cannot be reasonably discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

## **12. RULE 12 - VOTING**

### **12.1 Majority**

Unless this constitution provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

### **12.2 Mayor's casting vote**

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote. There will be no restriction on how the Mayor chooses to exercise a casting vote.

### **12.3 Show of hands**

The Mayor will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting unless a recorded vote is called for by at least six members.

### **12.4 Recorded vote**

If six members present at a Council ~~the~~ meeting stand and demand it, the names for and against the motion (or amendment or abstaining from voting) will be taken down in writing and entered into the record of the meeting. For Committee and Sub-Committee meetings a recorded vote will be taken if a quarter of members of the Committee or Sub-Committee stand and demand it.

### **12.5 Recorded voting at the budget decision meeting**

- a) Immediately after any vote is taken at the Council's budget decision meeting on any decision relating to the making of a calculation or the issuing of a precept there will be recorded in the minutes of that meeting the names of those voting for or against the decision or who abstained from voting
- b) For the avoidance of doubt rule 12.5 (a) applies to proposed amendments as well as to a substantive motion.

### **12.6 Right for individual vote to be recorded**

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

## **12.7 Voting on appointments**

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

*(Note: In Council rule 12.5 the Council's budget decision meeting is a meeting of full Council at which it makes a calculation in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ of the Local Government Finance Act 1992 or issues a precept under Chapter 4 of Part 1 of that Act, and includes a meeting where making the calculation or issuing the precept is included as an item of business on the agenda for the meeting).*

## **13. RULE 13 - RECORD OF THE MEETING**

- 13.1 A record of each meeting will be made that summarises the issues discussed, and records accurately all the decisions that were taken. This record will be published in accordance with the access to information rules later in this chapter.
- 13.2 The Mayor will sign the record of the meeting at the next suitable meeting, with the agreement of the members of that meeting. The only issue that can be discussed and potentially amended is the accuracy of the record.
- 13.3 There is no requirement for the record of a meeting to be agreed at the next meeting if it is a special meeting. The record can be held over for agreement to the next ordinary meeting instead.

## **14. RULE 14 - RECORD OF ATTENDANCE**

All members present during the whole or part of a meeting shall sign their names on the attendance record before the end of the meeting.

## **15. RULE 15 - EXCLUSION OF PUBLIC**

Members of the public and press may only be excluded either in accordance with the access to information rules later in this chapter or rule ~~10~~11.2.4. (removal of a member of the public) above.

## **16. RULE 16 - SUSPENSION AND AMENDMENT OF COUNCIL RULES**

### **16.1 Suspension**

All of these Council rules may be suspended by agreement if at least one half of the whole number of members of the meeting are present. Suspension can only be for the duration of the meeting.

## **16.2 Amendment to Council rules**

Any motion to add to, change or withdraw these Council rules will, when proposed and seconded, be taken forward without discussion to the next ordinary meeting of the Council.

## **17. RULE 17 - APPLICATION TO COMMITTEES AND SUB-COMMITTEES**

All of the Council rules apply equally to meetings of Committees, except in the case of rules 1-3 (Council meetings), rules ~~7-8~~ and ~~8-9~~ (public questions and members' questions) which only apply to Council meetings.

## **18. RULE 18 - APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES AND SUB-COMMITTEES**

18.1 All members of the Council except for the Cabinet may serve as substitute members of a Committee or Sub-Committee, in the absence of the appointed member. Members of the ~~cabinet~~Cabinet may serve as substitutes on the regulatory Committees.

18.2 The political parties shall substitute no more than one-half of their members at any Committee or Sub-Committee (all figures to be rounded up to the nearest whole number).

18.3 The substitute member shall:

- (a) be from the same political group as the member who is unable to attend the meeting;
- (b) not substitute for more than one member;
- (c) not be a member of the Committee or Sub-Committee already.

18.4 Subject to any legal limits, a substitute member may attend, speak and vote as a member of the Committee or Sub-Committee at the meeting.

18.5 This shall not apply to any reconvened meetings of quasi- judicial bodies including the following:

- Employment Matters Appeals Panel
- \_\_\_\_\_ Licensing ~~and Safety~~Sub- Committee
- Licensing Hearing Panel
- 1982 Act Hearing Panels

• ~~Housing Benefit Review Board~~

- Appointments Committee

• ~~Council Tax Review Board~~

- Social Services Adoption Panel

- Social Services Complaints Review Panel

- School Transport and Curriculum Appeals Committee

• ~~Special Education Needs Review Panels~~

18.6 If the appointed member attends the meeting when he or she has already been substituted, he or she may not attend as a member of the Committee.

18.7 There shall be no substitution on Cabinet or area Committees.

18.8 Where acting as a substitute for a particular Committee requires training, members will have undergone the necessary training programme or activity.

18.9 Rules 18.2 and, 18.3 ~~and 18.6~~ are waived in respect of Licensing Hearing Panels, the Licensing Sub-Committee and 1982 Act Hearing Panels, provided always that only members of the Licensing and Safety Committee may act as substitutes on Licensing Hearing Panels, the Licensing Sub-Committee and 1982 Act Hearing Panels.

## 19. RULE 19 - ASSISTANTS FOR POLITICAL GROUPS

19.1 No appointment shall be made to a post established by the Council pursuant to Section 9 of the Local Government and Housing Act 1989 (assistants for political groups) (referred to in this Council rule as a “political assistant”) until the Council has allocated a political assistant post to each of the political groups which qualify for one under that section.

19.2 No political assistant post shall be allocated by the Council to a political group which does not qualify for one under section 9 of the Local Government and Housing Act 1989.

19.3 No political group shall be allocated more than one political assistant post.

## 20. RULE 20 – NOMINATION OF MAYOR AND DEPUTY MAYOR

20.1 The Mayor shall be elected by the Council from among the Councillors at the annual meeting and, unless a casual vacancy occurs, the Mayor shall continue in office until a successor is elected.

20.2 The Deputy Mayor shall also be elected by the Council from among the Councillors at the annual meeting.

20.3 Except in the year of Medway Council elections, the Council at its ordinary meeting before the annual meeting shall nominate candidates to be



recommended for election as Mayor and Deputy Mayor at the annual meeting.

### Petitions

The Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. All petitions sent or presented to the council will usually receive an acknowledgement from the Council within five working days of receipt.

We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition and a reasonable person would regard it as such. The Council reserves the right to make this judgement and may decide to determine a matter under another procedure such as the internal complaints procedure. Paper petitions can be sent to:

Head of Democratic Services  
Medway Council  
Gun Wharf  
Dock Road  
CHATHAM  
Kent ME4 4TR  
Telephone 01634 332760  
Email: democratic.services@medway.gov.uk

or, ~~from 15 December 2010~~, be created, signed and submitted online via the Council's website.

You can also present a petition at a meeting of the Full Council or ask a Councillor to present a petition on your behalf at these meetings. Council meetings take place on a six weekly basis. Dates and times can be found on the Council's website ( <http://democracy.medway.gov.uk/ieListMeetings.aspx?CId=122&Year=2010> ). If you would like advice about this option please contact the Head of Democratic Services at least 10 working days before the meeting and she will explain the process. Alternatively contact details for all Medway Councillors can be found on the Council's website ( <http://democracy.medway.gov.uk/mgMemberIndex.aspx?bcr=1> ). If your petition has received 12,675 signatures or more it will automatically be referred to a meeting of the Full Council for debate and if this is the case we will let you know the date of the meeting in good time. (Note: the debate will not take place at the Council meeting where a petition is presented but will normally be the next ordinary meeting).

### What are the guidelines for submitting a petition?

Petitions submitted to the Council must include:

- a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take
- the name, address and signature of any person supporting the petition which the Council may choose to verify. For e –petitions you must provide a valid email address, postal address and postcode.

Petitions should be accompanied by contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the

council's website. If the petition does not identify a petition organiser, we will contact the first signatory to the petition to agree who should act as the petition organiser.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

The Council will not consider a petition which raises substantially the same issues as any other petition submitted in the past twelve months.

### **What will the Council do when it receives my petition?**

An acknowledgement will be sent to the petition organiser usually within five working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again. The subject of the petition will be published on our website.

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council debate, or a senior officer giving evidence, then the acknowledgment will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation, we will tell you the steps we plan to take.

If the petition applies to a planning or licensing application, is a statutory petition (for example, seeking a referendum on whether the area should have an elected Mayor), or on a matter where there is already an existing right of appeal, such as council tax banding and non-domestic rates, other procedures apply. Please contact the Head of Democratic Services for further advice if you are uncertain.

We will not take action on any petition which we consider to be vexatious, abusive or otherwise inappropriate and will explain the reasons for this in our acknowledgement of the petition.

To ensure that people know what we are doing in response to the petitions we receive the details of all the petitions submitted to us will be published on our website, except in cases where this would be inappropriate. We may also publish correspondence relating to the petition (all personal details will be removed). When you sign an e-petition you can elect to receive this information by email. We will not send you anything which is not relevant to the e-petition you have signed, unless you choose to receive other emails from us. You can do this by emailing the Council (<http://www.medway.gov.uk/information/personalisation/signup.aspx> ).

### **How will the Council respond to petitions?**

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a council meeting
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the Council's Overview and Scrutiny Committee\*
- calling a referendum
- writing to the petition organiser setting out our views about the request in the petition.

\*Overview and Scrutiny Committees are committees of Councillors who are responsible for scrutinising the work of the Council and other partners– in other words, the **e**Overview and **S**scrutiny **C**committee has the power to hold decision makers to account.

(<http://democracy.medway.gov.uk/mggeneric.aspx?md=oandsmenu> )

As a general rule in the first instance the lead petitioner will receive a response from the relevant Director usually within ten working days of receipt of the petition by the Council which will explain the action the Council proposes to take on the issues highlighted in a petition.

If your petition is about something over which the Council has no direct control (for example the local railway or hospital) we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information on the services for which the Council is responsible here <http://www.medway.gov.uk/>

If your petition is about something that a different council is responsible for we will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other council, but could involve other steps. In any event we will always notify you of the action we have taken.

### **Full Council debates**

If a petition contains at least the number of signatures equating to 5% of Medway's population (~~currently 12 675 signatures~~) it will be debated by the Full Council unless it is a petition asking for a senior council officer to give evidence at a public meeting. This means that the issue raised in the petition will be discussed at a meeting which all Councillors can attend. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by Councillors usually for a maximum of 20 minutes. The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a

relevant committee. Where the issue is one on which the Cabinet is required to make the final decision, the Council will decide whether to make recommendations to inform that decision. The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

## Officer evidence

Your petition may ask for a senior council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior council officer to explain progress on an issue, or to explain the advice given to Councillors to enable them to make a particular decision.

If your petition contains at least the number of signatures equating to 2% of Medway's population (~~currently 5070 signatures~~), the relevant senior officer will give evidence at a public meeting of the relevant **e**Overview and **S**scrutiny **C**committee. You may ask for the Chief Executive, any Director or Assistant Director to be called to give evidence. The Head of Democratic Services can help you identify the most appropriate officer to call to give evidence in your petition. This must be the Chief Executive, a Director or Assistant Director. You should be aware that the **e**Overview and **s**Scrutiny **e**Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs. The committee may also decide to call the relevant Cabinet Member to attend the meeting. Committee members will ask the questions at this meeting, but you will be able to suggest questions to the chairman of the committee by contacting the Head of Democratic Services up to three working days before the meeting. The Overview and Scrutiny Committee may also allow you to speak at the meeting.

## E-petitions

~~From 15 December 2010~~ the Council ~~will~~ welcomes **e**-petitions which are created and submitted through our website (~~from 15 December 2010~~). E-petitions must follow the same guidelines as paper petitions. The petition organiser will need to provide us with their name, address, a valid postcode and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of 12 months.

When you create an e-petition, it may take five working days before it is published online. This is because we have to check that the content of your petition is suitable before it is made available for signature.

If we feel we cannot publish your petition for some reason, we will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do this within 10 working days, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.

When an e-petition has closed for signature, it will automatically be submitted to the Head of Democratic Services. In the same way as a paper petition, you will receive an acknowledgement usually within five working days. If you would like to present your e-petition to a meeting of the Council or ask a Councillor to do so on your

behalf, please contact the Head of Democratic Services within 10 working days of receipt of the acknowledgement.

A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. A summary of the response will also be published on this website.

### **How do I 'sign' an e-petition?**

You will be able to see all the e-petitions currently available for signature on the Council's website (from 15 December 2010).

When you sign an e-petition you will be asked to provide your name, and a valid postcode, postal address and email address. When you have submitted this information you will be sent an email to the email address you have provided. This email will include a link which you must click on in order to confirm the email address is valid. Once this step is complete your 'signature' will be added to the petition. People visiting the e-petition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

### **What can I do if I feel my petition has not been dealt with properly?**

If you feel that we have not dealt with your petition properly the petition organiser has the right to request that one of the Council's Overview and Scrutiny Committee's review the steps that the Council has taken or is proposing to take in response to your petition. It is helpful to everyone, and can improve the prospects for a review if the petition organiser gives a short explanation of the reasons why the Council's final response is not considered to be adequate. You should notify the Head of Democratic Services within 10 working days of receiving a final response if you wish to request a review with reasons.

The relevant Overview and Scrutiny Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the Cabinet and arranging for the matter to be considered at a meeting of the Full Council.

Once the review has been completed the petition organiser will be informed of the results usually within five working days. The results of the review will also be published on our website.

(Note: Where petitioners call for a review of action taken/proposed following discussion of a petition or an officer being called to give evidence at an Overview and Scrutiny Committee, this will be undertaken by the Business Support Overview and Scrutiny Committee. Where that committee has dealt with the petition in the first instance it may decide to refer the review to Full Council if there is scope for a conflict of interest).

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## **PART 2 - ACCESS TO INFORMATION RULES**

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## 1. **RULE 1 - SCOPE**

These rules apply to meetings of the Council, Overview and Scrutiny Committees, area Committees (if any), the Councillor Conduct Committee and regulatory Committees and public meetings of the Cabinet (together called meetings) and delegated decisions taken by ~~officers~~employees under the Officer-Employee Delegation Scheme (rule 24 applies).

## 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, nor do these rules limit or diminish the Council's duties to protect certain information, including personal information. This includes the rights and duties from the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998.

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

Members of the public may attend all meetings subject only to the exceptions in these rules. Members of the press and public are also entitled to report on meetings of the Council, Committees and Cabinet, except in circumstances where the public have been excluded as permitted by law.

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

The Council will give at least five clear 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 clear 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 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), 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 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 ([via this Constitution](#)) to attend meetings and to inspect and copy documents is kept at the Chatham Community Hub, ~~Gillingham Library~~ and [on the Council's website](#) ~~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 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):

<u>Category</u>	<u>Qualification</u>	<u>Interpretation</u>
1. <u>Information relating to any individual</u>	The exemption applies only 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 (see note on public interest at the end of the table).	
2. <u>Information which is likely to reveal the identity of an individual.</u>	The Public Interest Test Qualification applies, as in 1 above.	
3. <u>Information relating to the financial or business affairs of any particular person (including the authority holding that information).</u>	<p>The Public Interest Test Qualification applies, as in 1 above.</p> <p>"Financial or business affairs" includes contemplated, as well as past or current, activities. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under –</p> <p>(a) <u>the Companies Act 1985;</u></p> <p>(b) <u>the Friendly Societies Act 1974;</u></p> <p>(c) <u>the Friendly Societies Act 1992;</u></p> <p>(d) <u>the Industrial and Provident Societies Acts 1965 to 1978;</u></p> <p>(e) <u>the Building Societies Act 1986 ["registered" in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).];</u> or</p> <p>(f) <u>the Charities Act 1993.</u></p>	Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.

<u>Category</u>	<u>Qualification</u>	<u>Interpretation</u>
<p><u>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</u></p>	<p><u>The Public Interest Test Qualification applies, as in 1 above.</u></p>	<p><u>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</u></p> <p><u>"labour relations matter" means—</u>  <u>(a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</u>  <u>(b) any dispute about a matter falling within paragraph (a) above; and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</u></p> <p><u>"employee" means a</u></p>

		<u>person employed under a contract of service; "office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;</u>
<u>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</u>	<u>The Public Interest Test Qualification applies, as in 1 above.</u>	
<u>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.</u>	<u>The Public Interest Test Qualification applies, as in 1 above.</u>	<u>Any reference to "the authority" is a reference to the Council or, as the case may be, the committee or sub- committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined.</u>
<u>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</u>	<u>The Public Interest Test Qualification applies, as in 1 above.</u>	

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 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 Rules 13 – 25 below apply to the Cabinet and any Cabinet Committees. If the Cabinet or its Committees meet to take a key decision then it must also comply with rules 1 – 11 unless rule 16 (general exception) or rule 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 12 of this constitution.

## **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 14 – PUBLICITY IN CONNECTION WITH KEY DECISIONS**

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

- (a) a notice has been published in the Forward Plan in connection with the matter in question; and
- (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; 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).

## **15. RULE 15 - THE FORWARD PLAN OF KEY DECISIONS**

### **15.1 Contents of forward plan**

The forward plan will contain matters which will be the subject of a key decision to be taken by the Cabinet, a Committee of the Cabinet, individual Members of the Cabinet, area Committees or under joint arrangements in undertaking their responsibilities. It will give the following details:

- (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;
- (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 a list of its Members;
- (d) 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
- (h) the procedure for requesting details of those documents (if any) as they become available.

The forward plan of key decisions must be published on the Council's website and [made available](#) at Chatham Community Hub at least 28 clear days before a decision is made.

Confidential, exempt information or particulars of the advice of a political assistant need not be included in the forward plan.

## **16. RULE 16 - GENERAL EXCEPTION**

Subject to rule 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 where:

- (a) 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 [designated](#) spokespersons of the relevant Overview and Scrutiny Committee 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 Council's website and
- (b) at least five clear days have elapsed since the notice given in paragraph (a) was made available.

## **17. RULE 17 - SPECIAL URGENCY**

- 17.1 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 chairman of the relevant Overview and Scrutiny Committee (or if there is no chairman of the relevant overview and scrutiny committee the Mayor and in the Mayor's absence the Deputy Mayor) that the taking of the decision(s) is urgent and cannot reasonably be deferred.
- 17.2 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.

## **18. RULE 18 - REPORT TO COUNCIL**

### **18.1 When an Overview and Scrutiny Committee can require a report**

Where a relevant 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 of the relevant Overview and Scrutiny Committee.

## 18.2 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 of the request from 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~~opinion.

## 18.3 ~~Quarterly R~~reports on special urgency decisions

In any event the Leader will submit, a ~~quarterly~~ report to the Council on the Cabinet decisions taken in the circumstances set out in rule 17 (special urgency) ~~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.

## 19. RULE 19 - RECORD OF DECISIONS

As soon as reasonably practicable after any meeting of a decision making body at which an executive decision was made, the Chief Executive or the person presiding at the meeting, will produce a record of every decision made at that meeting. The record must include:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (b) 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.

## 20. RULE 20 - CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

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

## **21. RULE 21 - NOTICE OF MEETINGS OF THE CABINET**

Members of the Cabinet or its Committees will be entitled to receive five clear 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- (where the member has presently consented to it being transmitted by this method). A member may consent to receiving these papers by electronic communication by informing the Head of Democratic Services. Members' requests to change their method of receipt must be submitted in writing to the Head of Democratic Services in a prescribed format. A minimum of five clear working days must elapse from the date of receipt of such a request before it becomes effective.

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

## **22. RULE 22 - ATTENDANCE AT MEETINGS OF THE CABINET**

- 22.1 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 Leader's approval in advance. Political assistants may also attend meetings of the Cabinet.
- 22.2 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.

## **23. RULE 23 - DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET**

### **23.1 Reports intended to be taken into account**

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

### **23.2 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.

### 23.3 Record of individual decisions

As soon as reasonably practicable ~~of~~after a Cabinet decision being taken by an individual Member of the Cabinet 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.

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.

- 23.4 Any record prepared in accordance with rule 23.3 and any report considered by the officer and relevant to the decision will be available for public inspection at Chatham Community Hub and on the Council's website.

## 24. RULE 24 - RECORD OF EXECUTIVE AND NON EXECUTIVE DECISIONS TAKEN BY OFFICERS

- 24.1 As soon as reasonably practicable after an officer has made a decision which is an executive decision (ie the responsibility of the Leader and Cabinet) a written statement will be prepared 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 officer when making the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

- 24.2 Any record prepared in accordance with rule 24.1 and any report considered by the officer and relevant to the decision will be available for public inspection at Chatham Community Hub and on the Council's website.

- 24.3 Rules 24.1 to 24.3 do not apply to day to day administrative or operational decisions taken by officers in connection with the discharge of functions which are the responsibility of the Leader and Cabinet.
- 24.4 As soon as reasonably practicable after an officer has made a decision under an express delegation from the Council, its Committees, Sub Committees or any Joint Committee in which Medway is involved or under a general delegation from one of these bodies where the effect of the decision is to grant a permission or licence, affect the rights of an individual or award a contract or incur expenditure, which in either case materially affects the Council's position a written statement will be prepared 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 officer when making the decision;
  - (d) a record of the name of any Member of the Council or local government body who has declared an interest (for decisions taken under an express delegation).
- 24.5 Any record prepared in accordance with rule 24.4 together with any background papers considered by the officer and relevant to the decision will be available for public inspection at Chatham Community Hub and on the Council's website.
- 24.6 Rules 24.4 to 24.5 do not apply to:
- (a) routine administrative and organisational decisions;
  - (b) decisions on operational matters such as day to day variations in services;
  - (c) decisions if the whole or part of the record contains confidential or exempt information; and
  - (d) decisions that are already required to be published by other legislation, provided the record published includes the date the decision was taken and the reasons for the decision.

## **25. RULE 25 – RIGHTS OF ACCESS TO DOCUMENTS FOR MEMBERS OF OVERVIEW AND SCRUTINY COMMITTEES**

### **25.1 Rights to copies**

Subject to rule 25.2 below, a Member of an Overview and Scrutiny Committee will be entitled to a copy 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 25.2 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.

## 25.2 Limit on rights

No Member of an Overview and Scrutiny Committee will be entitled to:

- (a) any report that is in draft form;
- (b) any report or part of a 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.

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.

## 26. RULE 26 - ADDITIONAL RIGHTS OF ACCESS TO DOCUMENTS FOR MEMBERS OF THE COUNCIL

- 26.1 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 committeeCommittee.
- 26.2 Subject to paragraph 26.4 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

26.3 Subject to paragraph 26.4 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.

26.4 Notwithstanding Rules 26.2 and 26.3 the entitlement to access to documents does not extend to a document that contains exempt information unless the exemption solely relates to the financial or business affairs of any particular person (except where the information relates to any terms proposed by or to the authority in the course of negotiations of contract), or where the exemption solely relates to information that reveals that the authority proposes to give under any enactment or notice under or by virtue of which requirements are imposed on a person or to make an order or direction under any enactment.

26.5 Nothing in these Rules requires the disclosure of confidential information that breaches the obligation of confidence.

~~Notwithstanding Rules 26.2 and 26.3 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 the document contains exempt information of a description falling within paragraph 3 of Schedule 12A to the Local Government Act 1972 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.~~

26.56 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.

26.67 These rights of a Member set out in Rule 26 are additional to any other rights he/she may have.

*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*

*Openness of Local Government Bodies Regulations 2014*



## PART 3 - BUDGET AND POLICY FRAMEWORK RULES

### 1. The framework for Cabinet decisions

The Council will be responsible for the adoption of its budget and policy framework as set out in article 4. Once a budget or a policy framework is in place, it will be the responsibility of the Cabinet to implement it.

### 2. Process for developing the budget and policy framework

#### 2.1 The process by which the budget shall be developed is:

- (a) At least three months before the Council's budget meeting, the Cabinet will publish initial proposals for the budget, having first consulted in the appropriate way. Details of the consultation process shall be included in the forward plan. Any representations made to the Cabinet will be taken into account in formulating the initial proposals, and reflected in any report dealing with them;
- (b) If an Overview and Scrutiny Committee has carried out budget formulation work, then the outcome of that work will be reported to the Cabinet and considered in the preparation of initial budget proposals;
- (c) The Cabinet's initial budget proposals will then go to the relevant Overview and Scrutiny Committees for further consideration. The proposals will be sent to the chairmen of the relevant Overview and Scrutiny Committees;
- (d) Where appropriate, the ~~overview-Overview~~ and ~~Scrutiny~~ Committee may canvass the views of local stakeholders. The Overview and Scrutiny Committees will advise the Cabinet of their views of the proposed budget, having six weeks to respond to the initial proposals of the Cabinet;
- (e) In addition the Cabinet may seek informal discussions with the relevant ~~overview-Overview~~ and ~~scrutiny-Scrutiny~~ Committee to debate any areas of difference before the matter goes forward for decision;
- (f) The Cabinet may amend its budget proposals before submitting them to the Council budget setting meeting for consideration, reporting on how it has taken into account the recommendations from the ~~overview-Overview~~ and ~~scrutiny-Scrutiny~~ Committee;
- (g) At the Council budget setting meeting, the Council will consider the Cabinet's budget proposals and any report from the ~~overview-Overview~~ and ~~scrutiny-Scrutiny~~ Committee. If that meeting is before the 8 February and the Council objects to any of the matters in points (i) to (iii) below, the Council must take the action in (h)
  - (i) budgets for gross spending, income and net spending used in the calculation of the Council tax;

- (ii) budgets for any other amounts used within any of those calculations; or
  - (iii) result of such a calculation.
- (h) Before the Council changes any of these calculations, it must inform the Leader of any objections it has to the Cabinet's amounts. It must give the Leader instructions requiring the Cabinet to reconsider the amounts in accordance with the Council's requirements.
- (i) If the Council gives such instructions, it must specify a period of at least ten working days, beginning on the day after the date on which the Leader receives the instructions. Within that period, the Leader may:
- (a) submit revised amounts to the Council, with the Cabinet's reasons for them; or
  - (b) inform the Council why the Cabinet disagrees with any of the Council's objections.
- (j) When the period specified by the Council has expired, the Council must, when making calculations, take into account:
- (a) any amendments to the amounts and the Cabinet's reasons for those amendments;
  - (b) any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for that disagreement, that the Leader submitted to the Council within the period specified.
- (k) Paragraphs (g) to (j) shall not apply where the Secretary of State issues a notice requiring substitute calculations in respect of limitation of Council tax and precepts in accordance with the relevant sections of the Local Government Finance Act 1992.
- (l) In approving the budget, the Council ~~will~~ may also specify the extent of any changes to budget ~~transfer limits~~ (~~virement~~) and degree of in-year changes to the policy framework which may be undertaken by the Cabinet, as set out in ~~in accordance with~~ paragraphs 5 and 6 of these rules (budget transfers and in-year adjustments). Any other changes to the budget and policy framework are reserved to the Council.

## 2.2 The process by which the policy framework shall be developed is:

- a) The Cabinet will publicise, in the forward plan, a timetable in which it will make proposals to the Council for the adoption of any plan or strategy which forms part of the policy framework. Within this timetable, the relevant Overview and Scrutiny Committee will conduct such research, consultation with stakeholders and investigations as are necessary to enable it to develop initial proposals;

- (b) If the matter is one where an Overview and Scrutiny Committee has previously carried out a review, then the outcome of that review will be considered in the preparation of initial proposals;
- (c) The Overview and Scrutiny Committee will present its recommendations for the policy framework document to the Cabinet. The Cabinet will finalise its proposals for the Council to consider, having taken into account the proposals from the Overview and Scrutiny Committee. The Cabinet's report to the Council will show its response to those proposals;
- (d) The Council will consider the Cabinet's proposals and may adopt them, amend them, refer them back to the Cabinet for further consideration, or substitute its own proposals in their place;
- (e) Before the Council:
  - (i) amends the draft plan or strategy;
  - (ii) approves, for the purpose of submission to the Secretary of State any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted; or
  - (iii) adopts (with or without modification) the plan or strategy,it must inform the Leader of any objections that it has to the draft plan or strategy. It must give the Leader instructions requiring the Cabinet to reconsider, in the light of those objections, the draft plan or strategy submitted to it.
- (f) Where the Council gives instructions in accordance with paragraph (h), it must specify a period of at least ten working days beginning on the day after the date on which the Leader receives the instructions. Within that period the Leader may:
  - (i) submit a revised draft plan or strategy and the Cabinet's reasons to the Council; or
  - (ii) inform the Council why the Cabinet disagrees with any of the Council's objections.
- (g) When the period specified by the Council has expired, the Council must, when:
  - (i) amending the draft plan or strategy or, if there is one, the revised draft plan or strategy; or
  - (ii) approving, for the purpose of its submission to the Secretary of State, any plan or strategy (whether or not in the form of a draft or revised draft) of which any part is required to be so submitted; or

(iii) adopting (with or without modification) the plan or strategy,

take into account any amendments made to the draft plan or strategy, any disagreement that the Cabinet has with any of the Council's objections, and the Cabinet's reasons for such amendments or disagreement that the Leader submitted to the Council.

(h) The Council's decision will be publicised in accordance with Article 4 and a copy shall be given to the Leader. The notice of decision shall be dated and shall state either that the decision shall be effective immediately (if the Council accepts the Cabinet's proposals without amendment) or (if the Cabinet's proposals are not accepted without amendment), that the Council's decision will become effective five working days after the publication.

### **3. Decisions outside the budget or policy framework**

3.1 Subject to the provisions of paragraph 5 (budget transfers and virements) the Cabinet, Committees of the Cabinet, individual members of the Cabinet and any employees, ~~area~~ Area Committees or joint arrangements undertaking their responsibilities may only take decisions that are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision that is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full Council, then that decision may only be taken by the Council, subject to paragraph 4 below.

3.2 If the Cabinet, Committees of the Cabinet, individual members of the Cabinet, and any employees, ~~area~~ Area Committees or joint arrangements undertaking their responsibilities want to make such a decision, they shall take advice from the ~~monitoring~~ Monitoring officer ~~Officer~~ and/or the ~~chief~~ Chief finance ~~Finance officer~~ Officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework (with officers giving clear reasons for this advice), then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 shall apply.

### **4. Urgent decisions which are contrary to any plan or strategy which has been approved or adopted by the Council or which are contrary to or not wholly in accordance with the budget approved by the Council**

4.1 The Cabinet, a Committee of the Cabinet, an individual member of the Cabinet or employees, Area Committees or joint arrangements undertaking their responsibilities may take a decision that is contrary to any plan or strategy which has been approved or adopted by the Council or contrary to or not wholly in accordance with the budget approved by Council if the decision is a matter of urgency. However, the decision may only be taken:

(i) if it is not practical to convene a quorate meeting of the full Council; and

- (ii) if the chairman of a relevant Overview and Scrutiny Committee agrees in writing that the decision needs to be made as a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of Full Council and the chairman (or in their absence the Vice-Chairman) of the relevant Overview and Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision.

- 4.2 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

## 5. Budget Transfers and ~~(or virements)~~

### 5.1 For the purposes of the Constitution the following definitions apply:

- Budget Transfer: A movement of budget between two or more cost centres to reflect changes in structures or reallocation of recharges, but where the original purpose of the budget remains unchanged.
- Budget Virement: A movement of budget between two or more cost centres where the budget is being redeployed to fund a different service or activity from that for which it was originally allocated.

- 5.24 The Council has the following budget heads:

Regeneration, ~~Community and Culture,~~ Environment and Transformation  
Children and Adults  
Chief Executive and Business Support

No transfers of budgets of any value are permitted between these three budget heads without the agreement of the Council

- 5.25.3 These three budget heads are further divided into the following Cabinet Member Pportfolios:

- Leader's Portfolio
- Adult Services
- Business Management
- Children's Services
- Corporate Services
- Front Line Services
- Housing and Community Services
- Inward Investment, Strategic Regeneration and Partnerships
- Planning, Economic Growth and Regulation
- Resources

Note: Further details of the themes included within the above Portfolios are set out in Part 3 of Chapter 3 (Responsibility for Cabinet Functions) of the Constitution.

- ~~☐ Education~~
- ~~☐ Children's services (excluding education)~~
- ~~☐ Finance~~
- ~~☐ Community services~~
- ~~☐ Front line services~~
- ~~☐ Customer first and corporate services~~
- ~~☐ Adult services~~
- ~~☐ Strategic development and economic growth~~
- ~~☐ Safer communities and enforcement~~
- ~~☐ Rochester Riverside and Chatham City Centre~~

5.34 Budget transfers or virements (of either expenditure or income) are permitted between these portfolios only with the agreement of the Cabinet collectively and also providing that:

- they do not result in changes to the net revenue budget allocated between the three main budget heads set out above;
- they do not result in a reduction in the standard or quality of the relevant service being provided

5.45 Portfolio budgets are further sub-divided into service budgets. Each service budget is managed by a service manager. Service managers have responsibility for day-to-day running of the service concerned. Service managers may make budget transfers-virements of spending or income within the total of their service budget but may not make transfers-virements affecting the total of their or another service manager's net revenue budgets.

5.56 Directors may make transfers-virements between service managers' budgets providing they fall wholly within one portfolio holder's budget, subject to the following:

- consultation and agreement with the relevant portfolio holder;
- consultation with affected service managers;
- the transfer-virement does not result in a reduction in the standard or quality of the relevant service being provided;
- the budget transfer-virement involved not provoking an overspend in any of the affected budgets or in the portfolio budget overall;
- the financial systems records being amended to reflect the changes.  
~~This will also be highlighted in the budget monitoring reports provided to the Overview and Scrutiny Committees.~~

5.67 All transfers-virements are subject to the 'financial limits' contained in part 5 of chapter 3.

## 6. In-year changes to policy framework

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Cabinet, a Committee of the Cabinet, an individual member of the Cabinet or employees, ~~area~~ Area Committees or joint arrangements must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by those bodies or individuals except those changes:

- (a) which are necessary to implement a budget decision made by the Council;
- (b) which are necessary to ensure compliance with the law, ministerial direction or government guidance;
- (c) which form part of a policy that would be agreed annually by the Council following consultation, but where the existing policy document is silent on the matter.

## 7. Call-in of decisions outside the budget or policy framework

7.1 Where an Overview and Scrutiny Committee considers a decision is, or would be, contrary to the policy framework or not wholly in accordance with the Council's budget, then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer. If the advice of the officer(s) is that the matter is within the policy framework and budget, and this is accepted by the Overview and Scrutiny Committee, then no further action will be taken.

7.2 If the officer advice confirms the view of the Overview and Scrutiny Committee, or if it does not but the Overview and Scrutiny Committee does not accept the advice of the officer(s), the ~~Committee of the~~ relevant Overview and Scrutiny Committee may refer the matter to Council. The officer report and the views of the Overview and Scrutiny Committee shall then be reported to the Cabinet with a copy to every member of the Council. Whether the decision is delegated or not, the Cabinet must then meet to decide what action to take and prepare a report to the Council.

7.3 No further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter.

7.4 The Council may:

- (i) endorse the decision or proposal of the decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all councillors in the normal way; or;
- (ii) amend the Council's budget or policy concerned to encompass the decision or proposal of the body or individual responsible for that matter and agree to the decision with immediate effect. In this case no further

action is required save that the decision of the council be minuted and circulated to all councillors in the normal way; or;

- (iii) accept that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Cabinet to reconsider the matter in accordance with the advice of either the monitoring officer/chief finance officer and take a decision in compliance with the budget and policy framework.

*References:*

*Chapter 2, DETR Guidance*

*The Local Authorities (Functions and Responsibilities) (England) Regulations 2000*



## PART 4 - LEADER AND CABINET RULES

### 1. How the Cabinet operates

1.1 The Cabinet comprises the Leader of the Council and up to nine other members. The Leader may provide for executive functions to be discharged by Cabinet responsibilities to be undertaken and decisions made by:

- (i) him/herself;
- (ii) the Cabinet as a whole;
- (ii) a Committee of the Cabinet;
- (iii) an individual member of the Cabinet;
- (iv) an employee;
- (v) an ~~area~~ Area Committee;
- (vi) joint arrangements;
- (vii) another local authority.

### 1.2 Delegation by the Leader

At the Annual Meeting of the Council, the Leader will present to the Council a written record of delegations made by him/her for inclusion in the Council's scheme of delegation, as chapter 3 to this ~~constitution~~ Constitution. The document presented by the Leader will contain the following information:

- (i) the names, addresses and wards of the people appointed to the Cabinet;
- (ii) the extent of any delegations to Cabinet members individually, including details of any limits to their authority;
- (iii) the terms of reference and ~~constitution~~ Constitution of such Cabinet Committees as the Leader appoints and the names of Cabinet members appointed to them;
- (iv) the nature and extent of any delegations to area Committees, any other authority, or any joint arrangements and the names of those Cabinet members appointed to any joint Committee for the coming year;
- (v) the nature and extent of any delegation to employees with details of any limitation s-on that delegation, and the title of the employee to whom the delegation is made.

### 1.3 Sub-delegation of ~~cabinet~~ Cabinet functions

- (a) If the Leader delegates responsibilities to the Cabinet, unless he/she decides otherwise, then the Cabinet may delegate further to a Cabinet Committee, an area Committee, joint arrangements or an employee;
- (b) If the Leader delegates responsibilities to a Committee of the Cabinet, then unless he/she decides otherwise the Cabinet Committee may delegate further to an employee;
- (c) Even where responsibilities have been delegated, that fact does not prevent the undertaking of those responsibilities by the person or body who delegated.

### 1.4 The Council's scheme of delegation and executive functions

- (a) Subject to the Leader's powers to delegate executive responsibilities set out above, the Council's scheme of delegation for non-executive functions will be subject to adoption by the Council and may only be amended by the Council. It will contain the details set out in chapter 3 of this ~~constitution~~ Constitution;
- (b) The Leader may amend the scheme of delegation relating to executive functions at any time during the year. The Leader must give written notice to the Chief Executive and to the person, body or Committee concerned. The notice must set out the extent of the change to the scheme of delegation, and whether it entails the withdrawal of delegation from another person or body. The Monitoring Officer will send a copy of such changes to all Group Leaders and Whips within 14 days. The Chief Executive will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader;
- (c) Where the Leader seeks to withdraw delegation from a Cabinet Committee or area Committee, he/she should give written notice to the chair of that Committee.

### 1.5 Conflicts of Interest

- (a) Where the Leader has a conflict of interest this should be dealt with as set out in the Council's code of conduct for members in chapter 5;
- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's code of conduct for members in chapter 5 of this ~~constitution~~ Constitution;
- (c) If a conflict of interest arises and a responsibility has been delegated to a Cabinet Committee, an individual Cabinet member or an employee, then the responsibility should be exercised by the full Cabinet instead unless this is inconsistent with the Council's code of conduct for members.

## 1.6 Cabinet meetings

The Cabinet will meet at least 11 times per year at times to be agreed by the Leader. The ~~cabinet~~Cabinet shall meet at the Council's main offices or another location reasonably accessible to the public.

## 1.7 Public meetings of the ~~cabinet~~Cabinet

All meetings of the Cabinet will be held in public unless confidential or exempt matters are to be discussed, when the meeting ~~will~~may be closed to the public for those items.

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 ([Chapter 4 Part 1 of the Constitution](#)).

## 1.8 Minimum attendance

The minimum attendance for a meeting of the Cabinet, or a Cabinet Committee, shall be three members of the Cabinet.

## 1.9 Decisions to be taken by Cabinet

- (a) ~~Executive decisions made by the cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Chapter 4 of this Constitution. Decisions that have been delegated to the Cabinet as a whole will be taken at a meeting convened in accordance with the access to information rules;~~
- (b) Where decisions have been delegated to a Cabinet Committee, the rules applying to decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

## 2. Conduct of Cabinet meetings

2.1 If the Leader is present he/she will chair the Cabinet meeting. In his/her absence, the Deputy Leader will chair the meeting. If neither are present a person appointed to do so by those present shall chair the meeting.

2.2 At each meeting of the Cabinet the following business will be conducted:

- (i) agreement to the record of the last meeting;
- (ii) declarations of interest, if any;
- (iii) matters for decision;
- (iv) matters referred to the Cabinet for reconsideration, whether by an Overview and Scrutiny Committee or by the Council;

- (v) consideration of reports from Overview and Scrutiny Committees.

### 2.3 Consultation

All reports to the Cabinet from any member of the Cabinet or an employee on proposals relating to the budget and policy framework, must contain details of the nature and extent of consultation with stakeholders and relevant ~~overview~~ Overview and ~~S~~scrutiny Committees, and the outcome of that consultation. Reports about other matters will set out the details and outcome of consultation as appropriate. The level of the consultation required will be appropriate to the nature of the matter under consideration.

### 2.4 Setting the Agenda

- (a) The Chief Executive will prepare the agendas for Cabinet meetings and will ensure all key decisions are brought forward for consideration by the Cabinet at the appropriate time;
- (b) The Leader will decide upon the schedule for the meetings of the Cabinet. He/she may put on the agenda of any Cabinet meeting any matter which he/she wishes, whether or not authority has been delegated to the Cabinet, a committee of it or any member or employee;
- (c) The Chief Executive will make sure that an item is placed on the agenda of the next Cabinet meeting where an ~~overview~~ Overview and ~~S~~scrutiny Committee in respect of that matter or the Full Council has resolved that an item be considered by the Cabinet;
- (d) Any ~~member~~ Member of the Council may ask the Leader to put an item on the agenda of a Cabinet meeting for consideration, and if the Leader agrees the item will be considered at the next available meeting of the Cabinet, taking into account the Access to Information Rules. The notice of the meeting will give the name of the Councillor who asked for the item to be considered. This individual will be invited to attend the meeting, whether or not it is a public meeting;
- (e) The Chief Executive, Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting and may, after agreement with the Leader, arrange to call a Cabinet meeting to discuss the matter if no suitable meeting is available.

## PART 5 - OVERVIEW AND SCRUTINY RULES

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

- 1.1 The Council will have four Overview and Scrutiny Committees and one ~~J~~joint ~~NHS-Health~~ Scrutiny Committee with Kent County Council as set out in Article 6 and will appoint to them as it considers appropriate from time to time. Such Committees may appoint Sub-Committees. Overview and Scrutiny ~~Committees~~ Task Groups may also be appointed for a fixed period to undertake in-depth reviews, on completion ~~the expiry~~ of which they shall cease to exist.

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

All Councillors except members of the Cabinet may be members of an Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision with which he/she has been directly involved. (Note: A member of the Health and Wellbeing Board may not be appointed to any Overview and Scrutiny Committee with responsibility for scrutiny of health services).

### 3. Co-optees

Each Overview and Scrutiny Committee or Sub-Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees as set out in the terms of reference for Overview and Scrutiny Committees at the end of this procedure rule.

### 4. Education representatives

- 4.1 Each relevant Overview and Scrutiny Committee/Sub-Committee dealing with education matters shall include in its membership the following voting representatives:

- (a) 1 Church of England diocesan representative;
- (b) 1 Roman Catholic diocesan representative;
- (c) 2 parent governor representatives.

- 4.2 A relevant Overview and Scrutiny Committee/Sub-Committee in this paragraph is ~~one which has responsibility for scrutiny of an Overview and Scrutiny Committee or Sub-Committee of a local education authority, where the Committee or Sub-Committee's functions relate wholly or in part to any education functions within the remit of the Leader and Cabinet, which are the responsibility of the authority's executive.~~ If the Overview and Scrutiny Committee/Sub-Committee deals with other matters, these representatives shall not vote on those other matters, though they may stay in the meeting and speak.

## 5. Meetings of the Overview and Scrutiny Committees

There shall be at least six meetings scheduled for each Overview and Scrutiny Committee in each year which can be cancelled by the chair in consultation with the Chief Executive. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the chair of the relevant Overview and Scrutiny Committee, by a third of the ~~members~~ Members of the Committee or by the proper officer if he/she considers it necessary or appropriate.

## 6. Quorum

The quorum for an Overview and Scrutiny Committee shall be as set out for Committees in the Council procedure rules in part 1 of this chapter of the Constitution.

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

Overview and Scrutiny Committees/Sub-Committees will be chaired by a Councillor who is a member of that Committee/Sub-Committee.

## 8. Work programme

The Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own work programme ~~and submitting it on an annual basis to the Council~~. In doing so they shall take into account the wishes of all ~~members~~ mMembers on that Committee.

## 9. Agenda items

9.1 Any ~~member~~ mMember of an Overview and Scrutiny Committee or Sub-Committee shall be entitled to give notice to the proper officer that he/she wishes an item relevant to the functions of the Committee or Sub-Committee to be included on the agenda for the next available meeting of the Committee or Sub-Committee, having regard to the Access to Information Rules. On receipt of such a request the proper officer will ensure that it is included on the next available agenda.

9.2 Any member of the Council who is not a member of an Overview and Scrutiny Committee may give written notice to the proper officer that he/she wishes to refer to that Committee any matter relevant to the Committees functions which is not an excluded matter. If the proper officer receives such a notification, then he/she will include the item on the first available agenda of the relevant Overview and Scrutiny Committee for consideration by the Committee. The ~~member~~ mMember concerned shall be entitled to address the Committee.

9.3 The definition of an excluded matter in paragraph 9.2 of these rules is as follows:

- (a) a local crime and disorder matter which may be referred to the relevant Overview and Scrutiny Committee under the provision of paragraph 9.5 of these rules;
- (b) any matter relating to a planning or licensing decision;
- (c) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment;
- (d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussion at a meeting of an Overview and Scrutiny Committee or Sub Committee.

A matter will not be defined as an excluded matter under paragraphs a) to c) above if it consists of an allegation that a function for which the Council is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis.

- 9.4 The Overview and Scrutiny Committees shall also respond, as soon as their work programme permits but within the set timescales, to requests from the Council and if appropriate the Cabinet, to review particular areas of Council activity. Where they do so, the Overview and Scrutiny Committees shall report their findings and any recommendations back to the Leader/Cabinet (as appropriate) and/or Council. The Council and/or the Leader/Cabinet (as appropriate) shall consider the report of the Overview and Scrutiny Committee within one month of receiving it or as soon as practicable thereafter.
- 9.5 Any member of the Council who is not a member of the relevant Overview and Scrutiny Committee has the right to refer a crime and disorder matter affecting his or her ward to the relevant Overview and Scrutiny Committee. The power to do this is known as raising a Councillor Call for Action (CCfA) but must be exercised in accordance with the guidance and procedures set out in section 223 of the Overview and Scrutiny rules. Any Councillor who is already a member of the relevant Overview and Scrutiny Committee and who wishes to refer a crime and disorder matter to the Committee may do so under 9.1 but must have regard to the guidance in section 223 of these rules if the matter being raised is a CCfA.
- 9.6 If the relevant Overview and Scrutiny Committee decides not to review or scrutinise a matter or not to make a report or recommendations to the Council or Cabinet (as appropriate) following the referral of a mMember's Item of a crime and disorder matter to the Committee, in accordance with paragraph 9.5 of these Rules the Committee must notify the Councillor who made the referral of its decision and the reasons for its decision. The Committee must provide the mMember with a copy of any report or recommendations it makes to the Council or Cabinet in relation to the matter.

## 10. Policy review and development

- 10.1 The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the budget and policy framework procedure rules in part 3 of this chapter.
- 10.2. In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Overview and Scrutiny Committees or Sub-Committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- 10.3 Overview and Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so, in so far as budget provision has been made by the Council for these purposes.

## 11. Reports and recommendations from Overview and Scrutiny Committees

- 11.1 Once it has formed proposals or recommendations on any matter proposals for policy development, the Overview and Scrutiny Committee will formally report these prepare a formal report and submit it to the proper officer for consideration by the Leader/Cabinet (as appropriate) (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- 11.2 If an Overview and Scrutiny Committee cannot agree on one single final set of proposals or recommendations report to the Council or Leader/Cabinet (as appropriate), then a minority view report which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the Council or Leader/Cabinet (as appropriate) with the proposals and recommendations supported by the majority of the Committee. report. The names of those who dissent may, at a member's request, be recorded on the main submission. report.
- 11.3 Where the Overview and Scrutiny Committee makes a report or recommendations to the Council or Leader/Cabinet (as appropriate) the Committee may publish its report or recommendations and must by notice in writing require the Council or Leader/Cabinet (as appropriate) to consider the report or recommendations, and to notify the Overview and Scrutiny Committee what (if any) action it proposes to take. This must be done within two months of the Council or Leader/Cabinet (as appropriate) receiving the report or recommendations or (if later) the notice. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter.



The Overview and Scrutiny Committee must provide the Councillor who made the referral of the local government or crime and disorder matter in accordance with paragraph 9.46 of these Rules a copy of any report or recommendations made to the Council or Leader/Cabinet (as appropriate) after consideration of that referral by the Overview and Scrutiny Committee. If the Overview and Scrutiny Committee has published its report then Leader/Cabinet will publish its response.

11.4 When a report or recommendations are referred to full Council by the Overview and Scrutiny Committee because the contents would have implications for the Council's budget and policy framework, the proper officer will also serve a copy on the Leader/Cabinet and the chair of the relevant Overview and Scrutiny Committee with notice that the matter is to be referred to Council. The Leader/Cabinet will have one month in which to respond to the Overview and Scrutiny report, and the Council shall not consider it within that period. When the Council does meet to consider any referral from an Overview and Scrutiny Committee on a matter which would impact on the budget and policy framework, it shall also consider the response of the Leader/Cabinet to the Overview and Scrutiny proposals and shall respond to the Overview and Scrutiny Committee within two months of receiving the report or recommendations.

11.5 Where an Overview ~~and~~ Scrutiny Committee or Sub Committee prepares a report for consideration by the Cabinet in relation to a matter where the Leader or Council has delegated decision making power to another individual member of the Cabinet, then the Overview and Scrutiny Committee will submit a copy of their report to that individual for consideration. At the time of doing so, the Overview and Scrutiny Committee shall serve a copy on the Proper Officer and Leader. If the member with delegated decision making power does not accept the recommendations of the Overview and Scrutiny Committee then he/she must then refer the matter to the next available meeting of the Cabinet for debate before exercising his/her decision making power and responding to the report in writing to the Overview and Scrutiny Committee. The Cabinet member to whom the decision making power has been delegated will respond to the Overview and Scrutiny Committee within four weeks of receiving it. A copy of his/her written response to it shall be sent to the proper officer and he/she will attend a future meeting to respond.

11.6. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter. The Overview and Scrutiny Committee must provide the Councillor who made the referral of the local government or crime and disorder matter in accordance with paragraph 9.54 of these Rules a copy of any report or recommendations made to the Council or Leader/Cabinet (as appropriate) after consideration of that referral by the Overview and Scrutiny Committee. If the Overview and Scrutiny Committee has published its report then the Leader/Cabinet will publish its response.

11.7 The Overview and Scrutiny Committee responsible for the review and scrutiny of the exercise of flood and coastal erosion risk management functions may require information and a response to any report it makes to the Leader/Cabinet or full Council as Medway Council is a lead local flood authority.

11.8 The Council and its Overview and Scrutiny Committees may make reports and recommendations to a relevant NHS body or relevant health service provider on any matter it has reviewed or scrutinised relating to the planning, provision and operation of the health service in its area. Where the relevant NHS body or relevant health provider is requested to respond it must do so within 28 days.

11.9 Overview and Scrutiny Committees will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an Overview and Scrutiny Committee following consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

## **~~12.— Making sure that overview and scrutiny reports are considered by the Leader/Cabinet (as appropriate)~~**

~~12.1— Once an Overview and Scrutiny Committee has completed its deliberations on any matter, the Committee, advised by the proper officer, will forward a copy of its final report to either or both the Cabinet and the Council for consideration, according to whether the contents of the report would have implications for the Council's budget and policy framework. When the matter is referred to Council, the proper officer will also serve a copy on the Leader and the chair of the relevant Overview and Scrutiny Committee with notice that the matter is to be referred to Council. The Leader/Cabinet (as appropriate) will have one month in which to respond to the overview and scrutiny report, and the Council shall not consider it within that period. When the Council does meet to consider any referral from an Overview and Scrutiny Committee on a matter which would impact on the budget and policy framework, it shall also consider the response of the cabinet Cabinet to the overview and scrutiny proposals and shall respond to the Overview and Scrutiny Committee within two months of receiving the report or recommendations. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter.~~

~~12.2— Where an Overview and Scrutiny Committee or Sub-Committee prepares a report for consideration by the Cabinet in relation to a matter where the Leader or Council has delegated decision-making power to another individual member of the Cabinet, then the Overview and Scrutiny Committee will submit a copy of their report to that individual for consideration. At the time of doing so, the Overview and Scrutiny Committee shall serve a copy on the proper officer and the Leader. If the member with delegated decision-making power does not accept the~~

~~recommendations of the Overview and Scrutiny Committee then he/she must then refer the matter to the next available meeting of the Cabinet for debate before exercising his/her decision-making power and responding to the report in writing to the Overview and Scrutiny Committee. The Cabinet member to whom the decision-making power has been delegated will respond to the Overview and Scrutiny Committee within four weeks of receiving it. A copy of his/her written response to it shall be sent to the proper officer and he/she will attend a future meeting to respond.~~

~~12.3 Overview and Scrutiny Committees will in any event have access to the Cabinet's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an Overview and Scrutiny Committee following a consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.~~

### **132. Rights of Overview and Scrutiny Committee members to documents**

132.1 In addition to their rights as Councillors, members of Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the access to information rules in part 2 of this chapter of the ~~constitution~~Constitution.

123.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

### **13. Members and employees giving account**

13.1 Any Overview and Scrutiny Committee or Sub-Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet, the Chief Executive and/or any director, deputy director, assistant director and service manager to attend before it to explain in relation to matters within their remit:

- (i) any particular decision or series of decisions;
- (ii) the extent to which the actions taken implement Council policy;
- (iii) their performance;

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

13.2 Where any member or employee is required to attend an Overview and Scrutiny Committee under this provision, the chair of that Committee will inform the proper officer. The proper officer shall inform the member or employee in writing giving at least five working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the member or employee concerned will be given sufficient notice to allow for preparation of that documentation.

13.3 Where, in exceptional circumstances, the member or employee is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the member or employee arrange an alternative date for attendance to take place. ~~normally within a maximum of 15 working days from the date of the original request.~~

### **14. Attendance by others**

14.1 An Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 13.4 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and employees in other parts of the public sector and shall invite such people to attend.

14.2 The Overview and Scrutiny Committee designated as a Crime and Disorder Committee under Section 19 of the Police and Justice Act 2006 may require the attendance before it of an officer or employee of a responsible authority or of a co-operating person or body in order to answer questions. (-These are the authorities responsible for the crime and disorder strategy in relation to the local authority area as set out in Section 5 of the Crime and Disorder Act 1998).

14.3 As set out in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013} the Council and- Overview and Scrutiny Committees with delegated authority to review and scrutinise the health service may require any member or employee of a relevant NHS body or relevant health service provider to attend before the authority to answer such questions as appear to the authority to be necessary for discharging its relevant health scrutiny functions.

#### **15. Call-in**

15.1 When a decision is made by the Leader, Cabinet, an individual member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an employee with delegated authority from the Leader/Cabinet, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. All Councillors will be sent copies of the records of all such decisions within the timescale, by the person responsible for publishing the decision.

15.2 That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless the call-in procedure is triggered.

15.3 During that period, the proper officer shall call-in a decision for scrutiny by the relevant Overview and Scrutiny Committee if so requested in writing and signed by one third of the whole number of members of an Overview and Scrutiny Committee or any six members of the Council. The proper officer shall then notify the decision-taker of the call-in. (Note: Any one parent governor or diocesan representative on the Overview and Scrutiny Committee(s) dealing with education matters may also provide written notice of a request for call-in on education matters).

15.4 Once a decision has been called in it will be considered by the next available meeting of the relevant Overview and Scrutiny Committee. A decision can only be called in once.

15.5 If, in the view of the Chief Executive, the matter falls within the remit of more than one Overview and Scrutiny Committee the proper officer shall refer the request to the most relevant Overview and Scrutiny Committee following consultation with the relevant Committee chairs.

**15.6** If, having considered the decision, the relevant Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. If referred to the decision-maker they shall then reconsider the decision at the next available meeting ~~within a further six working days~~, amending the decision or not, before adopting a final decision. The relevant Overview and Scrutiny Committee may make representations to the decision-maker during reconsideration of the matter.

**15.7** If following receipt of a request for a matter to be called-in the Overview and Scrutiny Committee does not meet as scheduled, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the scheduled date of the Overview and Scrutiny meeting.

**15.8** To avoid the possibility of very many emergency Council meetings Overview and Scrutiny Committees should normally only use the power to refer a matter to the full Council for consideration with a request for referral back to the decision-maker if it considers either:

- (i) that the decision is contrary to the policy framework or contrary or not wholly in accordance with the budget;
- (ii) where a request for call-in is signed by six or more members representing at least two political groups.

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

**15.10** If the Council meets but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting.

**15.11** Call-in and urgency

The call-in procedure set out above shall not apply where the decision being taken by the Leader/Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the ~~decision,~~decision and

notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The chair (or in their absence the vice-chair) of the relevant Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the relevant Overview and Scrutiny chair, the vice-chair's consent shall be required. The chair or vice-chair of more than one Overview and Scrutiny Committee shall be consulted if the proper officer considers that an urgent decision falls within the remit of more than one Overview and Scrutiny Committee. In the absence of these consultees the head-Head of Paid Service or his/her nominee's consent shall be required. All members of a relevant Overview and Scrutiny Committee will be notified in writing (including electronic communication) as soon as it is practicably possible to do so when agreement to waive call-ins is given under this rule.

Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

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

#### **47.16. The party whip**

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

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

**48.17.1** Overview and Scrutiny Committees and Sub-Committees shall consider the following business:

- (i) ~~(i)~~ Apologies for absence;
- (ii) minutes of the last meeting;
- (iii) declarations of interest (including whipping declarations);
- ~~(iii)~~ (iv) consideration of any matter referred to the Committee for a decision in relation to call-in of a decision;
- (iv) responses of the Leader/Cabinet (as appropriate) to reports of the Overview and Scrutiny Committee;
- (vi) the business otherwise set out on the agenda for the meeting.

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

- (i) that the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- (ii) that those assisting the Committee by giving evidence be treated with respect and courtesy;
- (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

**17.3** Following any investigation or review, the Committee/Sub-Committee shall prepare a report, for submission to the Leader/Cabinet (as appropriate) and/or Council as appropriate and shall make its report and findings public.

#### **1918. Procedure for handling petitions at Overview and Scrutiny Committees**

**18.1** Overview and Scrutiny Committees have an important role in relation to petitions submitted to the Council. Petitions must be handled in accordance with the Council's petition scheme which is attached as appendix A to the Council Rules in part 1 of chapter 4 of the ~~constitution~~ [Constitution](#).

#### **20-19. Matters within the remit of more than one Overview and Scrutiny Committee**

**19.1** Where a matter for consideration by an Overview and Scrutiny Committee or Sub-Committee also falls within the remit of one or more other Overview and Scrutiny Committee or Sub-Committee the decision as to which Overview and Scrutiny Committee will consider it will be resolved by the proper officer in consultation with the relevant Committee chairs.

**19.2** Alternatively the relevant Overview and Scrutiny Committee may establish a time-limited, politically balanced **I**task **G**roup comprising members from each of the relevant Overview and Scrutiny Committee to deal with the matter.

**19.3** Before submitting its findings to the Leader/Cabinet (as appropriate) and/or Council for consideration, the report of the reviewing Overview and Scrutiny Committee shall be considered by the other relevant Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration within the set timescales.

#### **21-20. Joint arrangements**

**20.1** [Regulation 30 of the Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013 states that where a relevant NHS body or a relevant health service provider consults more than one local](#)



authority on any proposal which they have under consideration for a substantial development of, or variation in, the provision of a health service in the local authorities' areas, those local authorities must appoint a Joint Overview and Scrutiny Committee (JHOSC) for the purposes of the review.

20.2 There will be ~~a one~~ Kent and Medway NHS Joint Overview and NHS Scrutiny Committee ~~with Kent County Council~~ comprising of members appointed by Medway Council and members appointed by Kent County Council. The rules set out below apply to the joint Committee and any Sub-Committee established by it.

20.23 The Committee will appoint a chairman at its first meeting in each municipal year, and that chairman will normally be drawn in rotation from Kent County Council members and Medway Council members. Where a review is unfinished at the end of a ~~municipal~~ Municipal yearYear, members may agree that the previous year's chairman (if still a member of the Committee) may continue to preside over consideration of matters relating to that review.

20.34 ~~The formal response of the Committee will be decided by a majority vote.~~ If the joint Committee cannot agree a single response to a proposal under consideration for a substantial development of, or variation in, the provision of a health service by a NHS body or relevant health service provider ~~an NHS consultation~~ then a minority response which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the NHS body or relevant health service provider with the majority response. The names of those who dissent may, at a member's request, be recorded on the main response.

~~21.4~~ ~~The response of the joint Committee to a consultation will normally be submitted to the chair and spokespersons of the relevant Overview and Scrutiny Committees of Kent and Medway prior to its submission to the NHS body and at least ten working days before the closing date of the consultation.~~

~~21.5~~ ~~Following receipt of the joint Committee response by the chair and spokespersons of the relevant Overview and Scrutiny Committee, either of those Committees (or an appropriately empowered Sub-Committee thereof) may meet and resolve to inform their proper officer of views or comments they wish to have incorporated in the joint Committee's response. If such a request is received by a proper officer before the closing date of the consultation, those views or comments will be appended to the joint Committee's response and that appendix will form part of the joint Committee's response.~~

20.45 These rules will take precedence over the rules in the constituent authorities' ~~constitutions~~ Constitutions, which will otherwise apply to the ~~j~~ Joint Committee. Where the rules of the constituent authorities' constitutions are in conflict, the ~~e~~ CChairman's ruling will determine which applies.

20.56 Kent and Medway NHS Joint Overview and Scrutiny Committee terms of reference

- To receive evidence in relation to proposals for a substantial development of, or variation to, the health service which affect both Kent and Medway

under consideration by a relevant NHS body or relevant health service provider where both the relevant Overview and Scrutiny Committees of Medway and Kent have determined proposals to be a substantial development of, or variation in, the health service. consultations initiated by local NHS bodies regarding proposals for substantial development or variation of the health service which effect both Medway and a substantial part of Kent.

- To exercise the right to make comments under Regulations 23(4) and 30(5) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 on behalf of the relevant Overview and Scrutiny Committees of Medway and Kent on any such proposals under consideration by the relevant NHS body or relevant health service provider, on behalf of the relevant Overview and Scrutiny Committees of Medway and Kent on any such proposals to the NHS body undertaking the consultation.
  - To consider whether any proposal for a substantial development of, or variation in, the health service affecting the areas covered by Kent and Medway should be referred to the Secretary of State under Regulation 23(9) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and to recommend this course of action, if deemed appropriate, to the relevant Overview and Scrutiny Committees of both Kent and Medway in line with their respective Constitutions. (Note: the exercise of the power to make a referral to the Secretary of State has not been delegated to JHOSC).
- ☐
- To undertake other scrutiny reviews of health services if requested to do so by the relevant Overview and Scrutiny Committees of both Medway and Kent.
  - To report on such other scrutiny reviews to the relevant Overview and Scrutiny Committees of Medway and Kent.

## **22-21. Terms of reference of Overview and Scrutiny Committees**

### **21.1 General terms of reference**

Each Overview and Scrutiny Committee shall have the following general terms of reference in relation to their specific areas of responsibility:

- i) To make reports or recommendations to the Council or the Cabinet on any matter affecting the area or its inhabitants;
- ii) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Leader and Cabinet (executive functions);
- iii) To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the Leader and Cabinet (Council -side functions);
- iv) To make reports or recommendations to the Council or the Leader and Cabinet with respect to the discharge of executive and Council-side functions;

- v) To be able to call-in executive decisions which have been made but not implemented for review and scrutiny as set out in paragraph 156 of the Overview and Scrutiny rules;
- vi) To hold the Leader and Cabinet to account, usually by the appearance of relevant portfolio holders at meetings of each Overview and Scrutiny Committee on an annual basis;:-
- vii) To undertake pre-decision scrutiny of decisions listed in the Forward Plan of decisions to be taken by the Leader and Cabinet;
- viii) To review and scrutinise policy framework documents and the Cabinet's draft budget proposals as provided for in Part 3 of Chapter 4 of the Constitution (Budget and Policy Framework Rules) and to contribute to the development of Council policies more generally;
- ix) To monitor performance and identify areas for further review and scrutiny;
- x) To deal with mMember's items as they arise;
- xi) To scrutinise and review partnership working including the performance of partners;
- xii) To scrutinise and review the operation and effectiveness of alternative models of service delivery;
- xiii) To scrutinise and review the operation of risk management in the Council;
- xiv) To deal with petitions referred to the Committee in accordance with the Council's Petition Scheme;
- xv) To develop a work programme having regard to the Council's overall strategic priorities, key projects and measures of success;
- xvi) To report on the activity of the Committee to each meeting of the Council, with the exception of Annual Council and the Budget Council meeting;
- xvii) To identify topics for in-depth review by Overview and Scrutiny Task Groups and make recommendations to the Business Support Overview and Scrutiny Committee in relation to the overall programme of reviews agreed from time to time;
- xviii) To appoint time limited Task Groups to undertake in-depth reviews within the overall programme of reviews agreed each year by the Business Support Overview and Scrutiny Committee and to make recommendations to the Council and Leader and Cabinet as appropriate.

## 21.2 Specific Terms of Reference

- a) Business Support, ~~Transformation and Housing Overview and Scrutiny~~ Committee:

To provide guidance and leadership on the development and co-ordination of the scrutiny function for all Overview and Scrutiny Committees, including guidance on priorities for scrutiny activity

To determine the priority of topics in the programme for in-depth reviews across all four Committees taking into account the recommendations put forward by each Committee under a criteria based selection system

To fulfil all the functions of an Overview and Scrutiny Committee in relation to the following:-

- i) Development of the Council's revenue and capital budgets together with regular monitoring of budgets and the capital programme
- ii) Development of the Council Plan overall and regular monitoring of implementation insofar as it relates to the functions within the Terms of Reference of this Committee
- iii) Functions within the responsibility of the Chief Legal Officer including Democratic Services and governance, Elections and Members Services, Legal Services, Licensing, Local Land Charges, Property and Asset strategy, acquisitions and disposal, and Category Management
- iv) Medway Norse
- v) Functions within the responsibility of the Chief Finance Officer including Finance Strategy, Treasury Management Policy, Finance Operations, the Revenue and Benefits Service and Internal Audit and Counter Fraud Services
- vi) Functions within the responsibility of the Assistant Director Transformation, including Transformation, Adult Learning, Customer Contact, Community Hubs and Libraries, HR and Organisational Change, ICT, Communications, Performance and Business Administration including complaints
- vii) Strategic Housing, Housing Management and Travellers
- viii) Equalities in the community and the workplace

b) Children and Young People Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to the following:-

- i) Development of the Council's revenue and capital budgets insofar as they relate to the functions within the terms of reference of this Committee
- ii) Regular monitoring of implementation of the Council Plan insofar as it relates to the functions within the terms of reference of this Committee
- iii) Children's Social Care including: the children's advice and duty service, Children in Need, Child Protection, Child Adolescent Support, Looked after Children and proceedings, Adoption, Fostering, the Integrated Family Support Service, Children with learning and physical disability and Quality Assurance and Safeguarding
- iv) Children and Adolescent Mental Health Services
- v) Children's safeguarding and the effectiveness of the Medway Children Safeguarding Board (MCSB) and the Independent Reviewing Officer Service
- vi) School Effectiveness and Inclusion, including school challenge and improvement, Early Years including the family information service, SEN and Inclusion, the behavioural support service, the integrated youth support service including Youth Justice/ Youth Offending

- Team, the Learning Support Service and Youth and Employment Services
- vii) Opportunities for education, training and learning outside the school environment
- viii) School Organisation and the School's Capital Programme
- ix) School Admissions
- x) Home to School Transport
- xi) Integration of Health, Social Care and Public Health Services including partnership commissioning and the Better Care Fund Plan insofar as these relate to children including Early Help (Children)
- xii) The effectiveness of the Health and Wellbeing Board in relation to identification of children's needs in the Joint Strategic Needs Assessment and delivery of priorities relating to children in the Joint Health and Wellbeing Strategy
- xiii) Public Health Services for children and young people aged 0-18, including school nursing

To review and scrutinise any matters relating to the planning, provision and operation of health services for children and young people in Medway in accordance with the provisions of the Health and Social Care Act 2012, insofar as they relates to the health of children and young people (0-18); in particular:

- (i) the review and scrutiny of services commissioned and provided by relevant NHS Bodies and relevant health services providers;
- (ii) supporting the improvement of health services and the reduction of health inequalities for the children of Medway;
- (iii) considering and responding directly to consultations from relevant NHS bodies and relevant health service providers on any proposal for a substantial development or substantial variation in the provision of health services for children in Medway.:-
- (iv) Referral of contested health service reconfigurations affecting children to the Secretary of State as permitted under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

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NOTES:

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The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by relevant NHS bodies or relevant health service providers bridge services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

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The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health.

- c) Health and Adult Social Care Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to the following:-

- i) Development of the Council's revenue and capital budgets insofar as they relate to the functions within the terms of reference of this Committee
- ii) Regular monitoring of implementation of the Council Plan insofar as it relates to the functions within the terms of reference of this Committee
- iii) Adult Social Care and Social Work including Disability Services, Mental Health Social Work, Safeguarding Adults , Home Care, Hospital Social Work, residential, intermediate and day care, domiciliary and respite care
- iv) Integration of Health, Social Care and Public Health Services including partnership commissioning and the Better Care Fund Plan insofar as these relate to adults including Early Help (Adults)
- v) The effectiveness of the Health and Wellbeing Board in relation to identification of adult's needs in the Joint Strategic Needs Assessment and delivery of priorities relating to children in the Joint Health and Wellbeing Strategy
- vi) Public Health Services

To review and scrutinise any matters relating to the planning, provision and operation of health services in Medway in accordance with the provisions of the Health and Social Care Act 2012, (with the exception of matters relating to children's health which shall be within the remit of the Children and Young People Overview and Scrutiny Committee) in particular:

- i) the review and scrutiny of services commissioned and provided by relevant NHS bodies and relevant health service providers.
- ii) supporting the improvements of health services and the reduction of health inequalities for the people of Medway.
- iii) considering and responding directly to consultations from the relevant NHS bodies and relevant health service providers on any proposal for a substantial development or substantial variation in the provision of health services in Medway.
- iv) referral of contested health service reconfigurations (excluding changes affecting children) to the Secretary of State as permitted under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

NOTE:

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by relevant NHS bodies and relevant health service providers bridge services for children and adults, with

participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health. The Regeneration, **Culture and Environment** Overview and Scrutiny Committee will retain public health aspects of promotion of community safety, the local authority's role in dealing with health protection incidents, outbreaks and emergencies (emergency planning) and social inclusion.

The Children and Young People Overview and Scrutiny Committee will have responsibility for public health and health scrutiny in relation to children (defined for this purpose as young people aged 0-18 years).

d) Regeneration, Culture and Environment Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to scrutiny and review of the following:-

- i) Development of the Council's revenue and capital budgets insofar as they relate to the functions within the terms of reference of this Committee
- ii) Regular monitoring of implementations of the Council Plan insofar as it relates to the functions within the terms of reference of this Committee
- iii) Frontline Services including highways maintenance and parking, waste and other contracted services, safer communities, emergency planning, green spaces, integrated transport, CCTV, Bereavement and Registration, environmental health and trading services
- iv) Physical and Cultural Regeneration including festivals, arts, theatres, and events, sport, leisure, tourism and heritage, planning policy and the Local Plan, development management, regeneration delivery, economic development and building control
- v) Social Inclusion, Community Development and neighbourhood renewal
- vi) Local Growth Fund projects
- vii) European Matters
- viii) Flood and coastal erosion risk management functions under the Flood and Water Management Act 2010

To be the designated Crime and Disorder Committee for the purpose of scrutiny, at least once a year, of the decisions and actions of the Community Safety Partnership and the partners who comprise it, insofar as their activities relate to the Partnership itself and to consider crime and disorder CCfAs (in accordance with the guidance and procedures on the CCfA as set out in section 223 of the Overview and Scrutiny rules.

NOTE:

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health. The Regeneration, **Culture and**

Environmentcommunity and Culture Overview and Scrutiny Committee will retain public health aspects of promotion of community safety, the local authority's role in dealing with health protection incidents, outbreaks and emergencies (emergency planning) and social inclusion.

- i) ~~To consider any matter affecting the area or its inhabitants;~~
- ii) ~~To exercise the right to call in, for consideration, decisions made but not yet implemented by the executive and other statutory functions including, but not limited to, pre-decision scrutiny and holding the executive to account;~~
- iii) ~~To exercise overall responsibility for the finances made available to them;~~
- iv) ~~To report to each annually to the Full Council meeting with e except of Annual Council and the Budget Council meeting on their workings;~~
- v) ~~To exercise overall responsibility for the work programme of the employees employed to support their work;~~
- vi) ~~To submit a work programme on an annual basis, including recommendations on amended working methods and taking account of the concerns of the church and parent governor representatives where applicable;~~
- vii) ~~To consider any petitions within their remit received by Full Council which do not relate to a matter falling within the remit of an executive Committee, and report as appropriate;~~
- viii) ~~To put in place and maintain a system to ensure that referrals from overview and scrutiny to the Cabinet either by way of report or for reconsideration are managed efficiently;~~
- ix) ~~In agreement with other relevant overview and scrutiny to appoint time limited overview and scrutiny panels Task Groups to consider specific matters which across the terms of reference of two or more Overview and Scrutiny Committees and to determine their terms of reference;~~
- x) ~~At the request of the Cabinet, to make decisions about the priority of referrals made by that Overview and Scrutiny Committee to the Cabinet if the volume of such reports creates difficulty for the management of Cabinet business or jeopardises the efficient running of Council business;~~
- xi) ~~To conduct service reviews;~~
- xii) ~~To scrutinise and review partnership working including the performance of partners;~~
- xiii) ~~To scrutinise and review the operation of risk management in the Council.~~
- xiv) ~~To deal with petitions referred to the Committee under and in accordance with the Council's petition scheme.~~

## **22.2 Specific terms of reference**



**(a) ~~Business Support Overview and Scrutiny Committee~~**

~~To fulfil all the functions of an Overview and Scrutiny Committee in relation to support services, and in particular (but not limited to):~~

- ~~(i) matters concerning the employment of staff, terms and conditions of employment and staff development;~~
- ~~(ii) equalities in the community and the workplace;~~
- ~~(iii) monitoring and assessing access to Council services including being the scrutiny Scrutiny Committee with responsibility for the Customer First initiative Contact;~~
- ~~(iv) the management of all matters in connection with the media, public relations and communications and the consultation process;~~
- ~~(v) the management and provision of legal contract/strategic procurement and property services (including licensing, strategic enforcement and local land charges);~~
- ~~(vi) the management and provision of building maintenance and the strategic property and energy design and surveying services;~~
- ~~(vii) corporate sponsorship and bidding;~~
- ~~(viii) the provision of ICT;~~
- ~~(ix) the planning and co-ordination of service delivery;~~
- ~~(x) the function and duties of the Council in relation to the conduct of elections;~~
- ~~(xi) the provision of members' Members' support;~~
- ~~(xii) to fulfil the overview and scrutiny role in relation to the Council's Council Plan and Sustainable Community Plan;~~
- ~~(xiii) all matters pertaining to the governance of the Council including the review of the constitution Constitution, executive arrangements, Council rules and members' allowances;~~
- ~~(xiv) to consider the effectiveness of partnership working, including the Local Strategic Partnership;~~
- ~~(xiv)~~
- ~~(xiv)~~
- ~~(xv) to assist the Cabinet in the development of the Council's annual budget and to review and scrutinise the Council's performance in relation to budgetary management;~~

- ~~(xvi) to assist the Council in the development of a three-year budget strategy;~~
- ~~(xvii) to review the management of resources made available to the Council and to scrutinise its financial management, property and asset acquisition and disposal and capital programme;~~
- ~~(xviii) to assist the Cabinet in the development of a Council-wide property and asset strategy;~~
- ~~(xix) to promote procedures which ensure proper custodianship of Council finances, making recommendations to the Cabinet for best financial practice across the Council;~~
- ~~(xx) to review the operation of the Council's financial regulations making proposals to the Cabinet and/or Council for their development;~~
- ~~(xxi) to receive reports from the Council's internal and external auditors and the Council's internal auditor making suggestions for improvement in practice to the Council and/or Cabinet as required, as a result of those reports;~~
- ~~in particular to fulfil the overview and scrutiny role in relation to the development of the Council's budget, capital strategy, corporate (strategic) plan and, corporate asset management plan;~~
- ~~— e-government strategy and equal opportunities statement;~~
- ~~(xxiii) to provide guidance and leadership on the development and co-ordination of the scrutiny function for all Overview and Scrutiny Committees, including guidance on priorities for scrutiny activity;~~
- ~~(xxiv) Registrars and Bereavement Services;~~
- ~~(xxv) scrutiny of work areas within the remit of the Chief Executive;~~
- ~~(xxvi) adult learning;~~
- ~~(xxvii) the operational management of the Council's housing stock;~~
- ~~(xxviii) the development of partnerships with external organisations to meet housing need and regenerate unsatisfactory housing;~~
- ~~(xxix) the improvement of private sector housing;~~
- ~~(xxx) grants and loans to owner occupiers, tenants, landlords and/or developers;~~
- ~~(xxxi) homelessness and rehousing;~~

~~(xxxii) special needs housing;~~  
~~(xxxii)~~  
~~(xxxii)~~

~~(xxxiii) housing strategy.~~

~~(b) **Children and Young People Overview and Scrutiny Committee**~~

~~To fulfil all the functions of an Overview and Scrutiny Committee in relation to children and in particular (but not limited to):~~

~~(i) School services and all of the functions of the Council as an education authority under the Education Acts, School Standards Framework Act 1998 and all other relevant legislation in force from time to time;~~

~~(ii) the provision of opportunities for education, training and learning outside the school environment including pre-school, community and youth justice issues;~~

~~(ii)~~

~~(ii)~~

~~(ii)~~

~~(ii)~~

~~(iii) to fulfil the overview and scrutiny role in relation to the development of the Council's asset management plan for schools, behaviour support plan, early years development and childcare plan, education development plan, lifelong learning and development plan, policy framework for admission to schools, school organisation plan, special educational needs action plan and youth justice plan strategies and policies relating to Children Services;~~

~~(iv) fostering and adoption and family placements;~~

~~(v) children and family services including all functions and duties of the Council under all relevant legislation in force from time to time relating to children's social work and social services;~~

~~(v)~~

~~(v)~~

~~(vi) in particular to fulfil the overview and scrutiny role in relation to the children and young people's strategic plan; CHECK~~

~~(vii) youth health promotion;~~

~~(viii) youth strategy;~~

~~(viii)~~

~~(viii)~~

~~(ix) mental and physical disabilities in young people;~~

~~(x) quality protects;~~

~~(xi) inclusion;~~

~~(xii) collaborative working with health and voluntary agencies;~~

~~(xiii) scrutiny of work areas within the remit of the Director of Children and Adults Services, excluding adult social care.~~

~~The review and scrutiny of any matters relating to the planning, provision and operation of health services in Medway in accordance with the provisions of the Health and Social Care Act 2012, insofar as it relates to children's health; in particular~~

~~(i) the review and scrutiny of services commissioned and provided by relevant NHS Bodies and relevant health services providers;~~

~~(ii) supporting the improvement of health services and the reduction of health inequalities for the children of Medway;~~

~~(iii) considering and responding directly to consultations from relevant NHS bodies and relevant health service providers on any proposal for a substantial development or substantial variation in the provision of health services for children in Medway.~~

~~(iv) Referral of contested health service reconfigurations affecting children to the Secretary of State as permitted under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.~~

~~NOTE:~~

~~The Children and Young People Overview and Scrutiny Committee will have responsibility for public health and health scrutiny in relation to children (defined for this purpose as young people aged 0-18 years).~~

~~The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by relevant NHS bodies or relevant health service providers bridge services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.~~

~~The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health.~~

~~(c) **Health and Adult Social Care Overview and Scrutiny Committee**  
To be responsible for:~~

~~(i) the review and scrutiny of any matter relating to the planning, provision and operation of health services in Medway, in~~

~~accordance with the provisions of the Health and Social Care Act 2012 (with the exception of matters relating to children's health which shall be within the remit of the Children and Young People Overview and Scrutiny Committee) as follows:~~

- ~~□ the review and scrutiny of services commissioned and provided by relevant NHS bodies and relevant health service providers.~~
- ~~□ supporting the improvements of health services and the reduction of health inequalities for the people of Medway.~~
- ~~□ considering and responding directly to consultations from the relevant NHS bodies and relevant health service providers on any proposal for a substantial development or substantial variation in the provision of health services in Medway.~~
- ~~□ referral of contested health service reconfigurations (excluding changes affecting children) to the Secretary of State as permitted under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.~~

~~(ii) public health (health improvement, health protection and healthcare public health);~~

~~(iii) all the functions and duties of the Council under relevant legislation in force from time to time and relating to residential and day care, domiciliary care and respite care and social work for elderly people, adults with physical disabilities, people with mental health problems and learning difficulties, home care service, staffing and emergency response for elderly persons in sheltered housing and hospital social workers;~~

~~(iv) social care procurement;~~

~~(v) collaborative working with health and voluntary sector agencies in the area~~

~~(v)~~

~~(v)~~

**NOTE:**

~~The Children and Young People Overview and Scrutiny Committee will have responsibility for public health and health scrutiny in relation to children (defined for this purpose as young people aged 0-18 years).~~

~~The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by relevant NHS bodies and relevant health service providers bridge services for children and adults, with~~

participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health. The Regeneration, Community and Culture Overview and Scrutiny Committee will retain public health aspects of promotion of community safety, the local authority's role in dealing with health protection incidents, outbreaks and emergencies (emergency planning) and social inclusion.

#### **(d) Regeneration, Community and Culture Overview and Scrutiny Committee**

To fulfil all the functions of an Overview and Scrutiny Committee in relation to regeneration, community and culture, and in particular (but not limited to):

- (i) all of the functions and duties of the Council insofar as they relate to environmental health, including street cleansing, recycling and refuse collection and air quality management and pollution control;
- (ii) strategic planning;
  - (ii)
- (ii)
- (iii) community safety;
- (iv) the wardens' service;
- (v) travellers;
- (vi) CCTV and enforcement;
- (vii) emergency planning;
- (viii) landscape, urban design and conservation;
- (ix) all of the functions and duties of the Council in relation to development and building control;
- (x) the preparation, implementation and maintenance of traffic management and highway schemes and initiatives;
  - (x)
- (x)
- (xi) matters in relation to LA-21;
- (xii) in particular to fulfil the overview and scrutiny role in relation to the development of the Council's air quality action plan, development plan, food law enforcement service plan, local transport plan and waste strategy;

- ~~(xiii) the development of the Council's rural strategy;~~
  - ~~(xiv) the regeneration of communities in the area and the physical regeneration of the area including being the scrutiny Committee for matters within the remit of the Medway Renaissance Partnership;~~
  - ~~(xv) the provision and management of community services and participation;~~
  - ~~(xvi) regeneration and economic development economic development and social regeneration including to fulfil the overview and scrutiny role in relation to the development of the Council's economic development strategy;~~
  - ~~(xvii) the management of events and heritage attractions;~~
  - ~~(xviii) the development and promotion of tourism;~~
  - ~~(xix) the development of the Council's cultural strategy;~~
  - ~~(xx) the provision and management of castles, museums, art galleries, theatre, archives and local history activities, leisure centres, swimming pools and other like facilities;~~
  - ~~(xxi) leisure, arts, sport and recreational activities to enhance the quality of life for local people;~~
  - ~~(xxii) the provision and management of trees, parks, grounds and other like facilities;~~
  - ~~(xxiii) all of the functions of the Council in relation to European matters;~~
  - ~~(xxiv) social inclusion, community development and neighbourhood renewal and the Council's specific initiatives to promote them;~~
  - ~~(xxv) scrutiny of work areas within the remit of the Director of Regeneration, Community and Culture;~~
  - ~~(xxvi) scrutiny of the work of the Community Safety Partnership and the partners who comprise it, insofar as their activities relate to the partnership itself and to consider crime and disorder CCfAs (in accordance with the guidance and procedures on the CCfA as set out in section 23 of the Overview and Scrutiny rules);~~
  - ~~(xxvii) the review and scrutiny of flood and coastal erosion risk management functions under the Flood and Water Management Act 2010;~~
  - ~~(xxviii) the provision and management of libraries.~~
- ~~(xxviii)~~

(xxviii)

~~Note: The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of public health. The Regeneration, Community and Culture Overview and Scrutiny Committee will retain public health aspects of promotion of community safety, the local authority's role in dealing with health protection incidents, outbreaks and emergencies (emergency planning) and social inclusion.~~

## **2322. Guidance and procedures for Councillor Call for Action on crime and disorder matters**

### **22.1 What is a Councillor Call for Action?**

Councillor Call for Action (CCfA) is a process for a Councillor to act on behalf of residents to resolve a local crime and disorder issue, acting **as a last resort** for people who cannot get issues resolved through any other means. Ward Councillors should be looking to identify crime and disorder CCfAs in their community, but CCfAs can also be raised by local people directly with their ward Councillors. It will still be up to Councillors to recognise whether an issue is a CCfA and whether it is appropriate to champion that issue.

Crime and Disorder CCfA is a legal requirement under the Police and Justice Act and Councillors are under a **duty** to consider requests from members of the public on crime and disorder issues. If a Councillor declines to refer a local crime and disorder matter to the relevant Overview and Scrutiny Committee the person who asked him/her to consider it may refer the matter to the Cabinet

The definition of a local crime and disorder issue for the purposes of CCfA is as follows:

A matter concerning

- (a) crime and disorder (including in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) or
- (b) the misuse of drugs, alcohol and other substances which affects all or part of the ward for which the member is elected or any person who lives or works in that area.

### **22.2 What's different new about the CCfA?**

What distinguishes the CCfA from items and topics already raised by Councillors for consideration by Overview and S-scrutiny is:

- **Any** member can raise a crime and disorder CCfA issue for scrutiny to consider



- The focus of the CCfA is on **neighbourhood** or **locality crime and disorder** issues and specifically the **quality** of public service provision at a locality level.
- The CCfA represents a genuine local **community** concern (based on local Councillors' judgements) and
- It is a **persistent** problem which the local Councillor has been **unable to resolve** through local action and discussion with relevant services and agencies.

Scrutiny reviews resulting from CCfA will be undertaken by Overview and Scrutiny Committees with an invitation to Councillors from the affected locality to contribute to the discussion. There is an expectation that any scrutiny reviews resulting from crime and disorder CCfA will be 'short and sharp', focused reviews - it is important that the public see this as a responsive and un-bureaucratic process which delivers tangible outcomes.

### 22.3 What is expected of a local Councillor?

~~Essentially the crime and disorder Councillor Call for Action (CCfA) is a recognition of the work undertaken by ward Councillors in taking up local issues on behalf of their communities.~~ Councillors are expected to identify crime and disorder issues of local concern and act with and on behalf of their community to resolve those issues. It is up to Councillors using this guidance to decide:

- ~~w~~hich issues to take forward as CCfAs and champion;
- ~~w~~hen an issue should be referred to the relevant Overview and Scrutiny Committee and
- ~~w~~hen to reject an issue.

It is a matter of judgement for a Councillor to decide which local crime and disorder matters to champion and each local Councillor will be accountable to the local community for these judgements. Championing a request will mean taking the issue up on behalf of the resident(s) concerned and trying to resolve the problem by liaising with ~~C~~ouncil officers, and/or outside agencies.

Councillors deal with issues of concern on behalf of their constituents as an everyday part of their constituency case work. The CCfA is not intended to add additional bureaucracy to these ward Councillor requests, which will continue to be dealt with in the same way as they are now. If a Councillor or a member of the public is uncertain about whether a request might be appropriate, the Head of Democratic Services and Head of Elections and Members Services can provide advice and assistance.

### 22.4 Checklist for Councillors using a CCfA

#### Initial consideration and actions:

- Discussion with other ward Councillors (to check their actions and intentions and whether they can help).

- Take steps to resolve the issue through existing mechanisms such as contacting Council Officers (including the Overview and Scrutiny Team), liaising with other organisations, use of the Council's complaints procedure or petitions procedure, or checking whether it can be fed into an existing Task Group.
- If the issue is resolved, inform the resident of the outcome and the steps taken, including any difficulties or learning points.
- If the issues remain unresolved, consult the Democratic Services Team and if appropriate formally request that the item be considered by the relevant Overview and Scrutiny Committee.
- A Councillor must take in to account government guidance on CCfA in determining whether to refer a matter to the relevant Overview and Scrutiny Committee

[A flow chart of the CCfA process is attached to this guidance and takes you through each step of the process].

**Reject if it is any of the following:**

- An individual complaint (unless it is a series of individual complaints demonstrating “systematic failure” in a particular area)
- Vexatious, discriminatory or not reasonable (see notes at end).
- It is being used as a “second bite of the cherry” e.g. where a previous call-in has failed, or a petition has already been considered.

**Accept if it is:**

- A crime and disorder issue of genuine local concern; and
- All other avenues for resolution have been followed, and
- this now seems to be the most appropriate way to deal with it.

**22.5 How does CCfA fit with the Overview and Scrutiny Committee Work Programmes?**

Any member of an Overview and Scrutiny Committee can put an item on the relevant Committee agenda using the arrangements set out in the Councils Overview and Scrutiny rules. There is also provision for a Councillor to refer a matter to an Overview and Scrutiny Committee of which he/she is not a member subject to some excluded matters.

The aim of Scrutiny is to be as strategic as possible, championing issues on behalf of the community so it is possible that a crime and disorder CCfA topic may already be included in an Overview and Scrutiny Committee work programme.

It is valuable for crime and disorder CCfA issues to feed into **O**verview and **S**crutiny work programmes, and vice versa. The purpose of CCfA is to give members more of a voice, and scrutiny itself is a member-led process. CCfA can sit comfortably alongside existing methods for placing items on the

scrutiny work programme. CCfA should make the work programme more relevant and timely.

Currently the Regeneration C~~ulture and Environment~~community and Culture Overview and Scrutiny Committee has the remit to deal with crime and disorder CCfAs. The Committee will be asked to identify if a CCfA is appropriate for scrutiny ensuring that the issues scrutinised and reviewed are of genuine community concern.

The Committee will receive an initial report and relevant ward Councillors will be invited to take part in the meeting if they are not members of the Committee. The Committee will then take a view on next steps which may include a Task Group to review the issues in some detail. In deciding whether to take any further action the Committee will take in-to account any representations made by the Councillor as to why further investigation or review is appropriate.

## **22.6 Consideration of a Crime and Disorder CCfA by an Overview and Scrutiny Committee**

Ward Councillors and where possible representatives of the community concerned will be notified of the date of the meeting and invited to attend along with any other relevant bodies. The Chair~~man~~ will provide a short introduction and the Councillor bringing the CCfA will be invited to outline their objectives and to answer questions from other members. The discussion will be structured to focus on the issue raised.

### **Overview and Scrutiny Checklist for determining a CCfA**

The Committee will review the actions taken to date to resolve the issue and all of the criteria set out in paragraph 22.4 above. It may determine that no action should be taken, for example because:

- The applicant is a vexatious complainant and the issue is being or has been dealt with under the Council's ~~c~~Complaints procedure.
- The issue is currently going through the complaints procedure, and it is appropriate for this to be concluded.
- Ward Councillors have not explored the issue fully and exhausted all avenues.

Alternatively, it may conclude that the public interest is best served by setting up a Task Group to consider the matter in more detail. The Committee should endeavour where possible to identify an appropriate "resolution" of the issue.

Where a Committee decides not to take any further action in respect of a Crime and Disorder CCfA (such as to carry out a review of the matter) it will inform the ~~M~~member who referred the matter, in writing, of its decision and its reasons for that decision.

## Definition of a Complaint

For the purpose of the Council's procedure the Council accepts the Local Government Ombudsman's definition.

*"An expression of dissatisfaction by one or more members of the public about the Council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the Council itself or a person or body acting on behalf of the Council."*

Statutory Regulations state that *any matter which "is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee is to be excluded"*.

The relevant Guidance states as follows in regard to these terms:

"Vexatious" and "persistent" – it is probably best to refer to the guidance to the Freedom of Information Act which states that:

*Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easier to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.*

Issues around persistency are implied by this definition. However, a persistent request may well be entirely valid – it may relate to a systematic problem that has not been effectively resolved. A request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

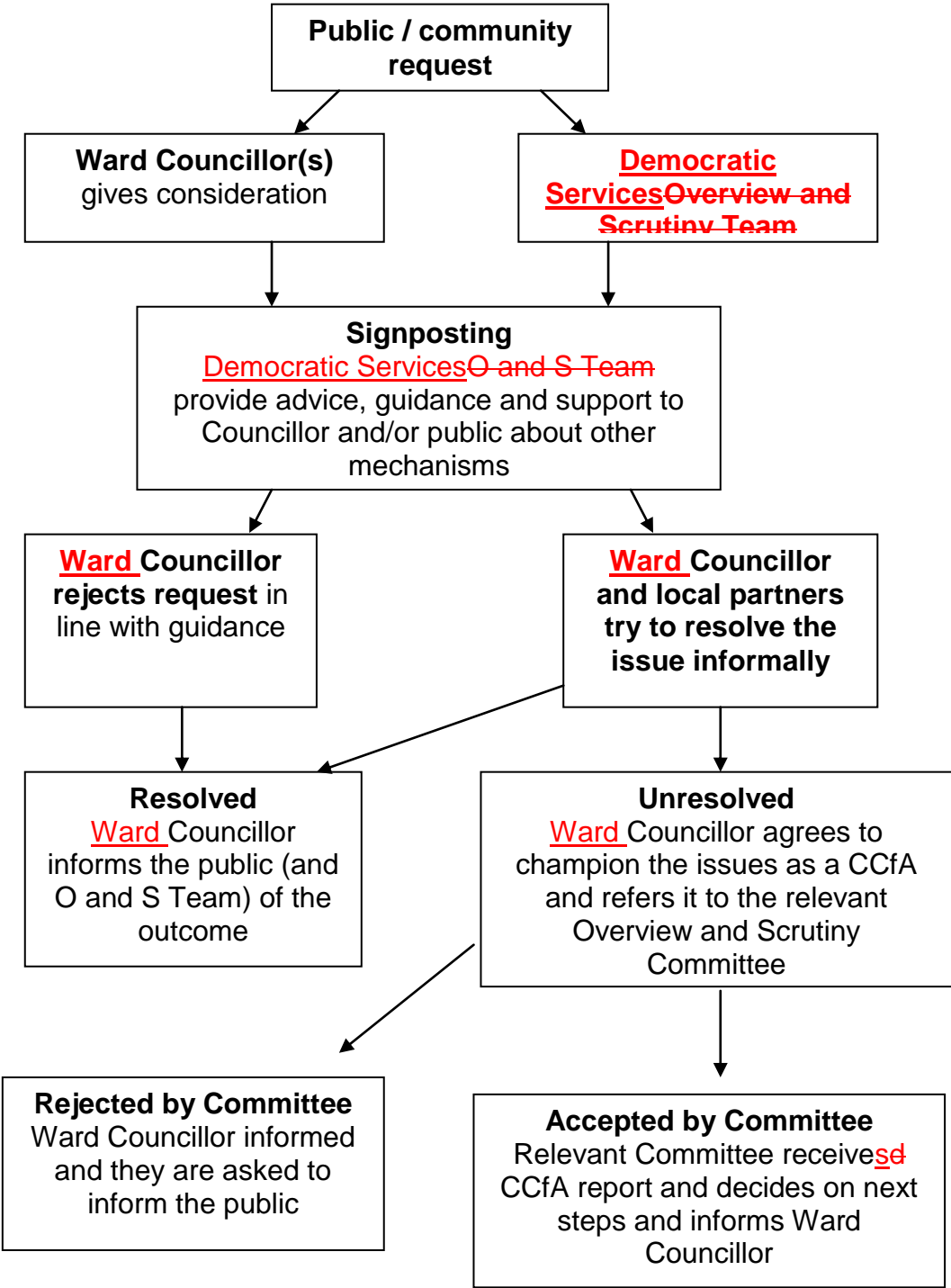
Councils should not see politically motivated CCfAs, and CCfAs on subjects of high-profile political controversy, as a threat. They should be used as an opportunity for Members to defuse political rows and, jointly, to develop solutions that are satisfactory to all.

"Discriminatory" – a modern interpretation of the word "discrimination" is provided at section 45 of the Equality Act 2006, in relation to religion and belief, as follows:

*A person ("A") discriminates against another ("B") for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).*

"Not reasonable" – it is suggested that, in the interests of transparency, authorities do not interpret "not reasonable" as being the same as the legal word "unreasonable". It is best to consider it as a qualifier to the word "vexatious", as a vexatious request is likely not to be reasonable, and a request that is not reasonable is likely to be vexatious.

**Crime and Disorder Councillor Call for Action Flow Chart**





## **PART 6 - FINANCIAL RULES**

### **1. Financial administration**

#### **1.1 Overall financial rules**

- (a) These financial rules have been compiled to ensure that the Council's financial affairs are conducted in a manner that is consistent with recognised accounting standards and proper financial practice. They apply to both members and employees.
- (b) References in these rules to headteachers are designed to be complementary to the Schools Standards and Framework Act 1998 (Scheme for Financing Schools).
- (c) More detailed guidance on the application of financial rules and the day to day financial management of services is provided in the financial handbook.
- (d) The Council will be responsible for approving the policy framework and budget, and for advising generally on financial and economic policies. Additionally the Council has the responsibility for allocating resources (both revenue and capital) to services. Within approved budgets, the executive will be responsible for maintaining financial control and for exercising many of the powers contained in these rules.
- (e) The officer appointed by the Council for the purposes of Section 151 of the Local Government Act 1972 (referred to below as the chief finance officer) shall be responsible for the proper administration of the Council's financial affairs in accord with proper practice. This shall include ensuring the completion and publication of audited final accounts.
- (f) Each directorate and service shall observe these financial rules in all aspects of its work.
- (g) The Chief Executive and directors, (including headteacher/governors) shall be responsible for the observance of these financial rules and for the accountability and control of staff. This responsibility shall also extend to the security, custody and control of all assets and resources relating to their service.
- (h) The Chief Executive and directors, together with the Chief Finance Officer shall formulate budgets in accordance with the rules set out in the budget and policy framework rules, set out in part 3 of this chapter.

## 1.2 Responsibilities

- (a) In formulating budgets, the Council shall receive reports from the Chief Finance Officer regarding the resources available to the Council. These will be in the form of a mid year review of the financial strategy and as soon as is practicable an update on the resource position following the local government settlement.
- (b) The Chief Finance Officer shall ensure that the accounting policies adopted reflect the requirements of any code of practice issued by the CIPFA or the Accounting Standards Board on Local Authority Accounting.
- (c) The Chief Finance Officer shall be responsible for ensuring the compilation of the main accounting records, and shall continue to be responsible for the supervision of accounting records and systems, particularly with a view to obtaining uniformity of accounting records and treatment.
- (d) The Chief Finance Officer shall be responsible for ensuring the availability of financial management information, the production of which shall be prompt, reliable and complete.
- (e) The following principles shall be observed in connection with the accounting systems:
  - (i) the duty of providing information, calculating, checking and recording the sums due to or from the Council should be separated as completely as practicable from the duty of collecting or disbursing those funds;
  - (ii) employees charged with the duty of examining and checking the accounts of cash transactions should not themselves be engaged in any of these transactions.
- (f) It shall be the responsibility of the Chief Executive and directors to ensure all their staff are made aware of the requirements of these financial rules.
- (g) Where consultants are engaged to act on behalf of the Council then it shall be the responsibility of the supervising director to make the consultant aware of the requirements of these financial rules.

## 1.3 Retention of records

It is the responsibility of the Chief Finance Officer to determine the policy for the retention of financial records having regard to the need to retain principal accounting records for six years and minor records for two years. The Chief Executive and directors shall ensure that their staff comply with the approved policy.



- 1.4 The Chief Executive and directors shall ensure all their staff co-operate with the Council's internal and external auditors and provide information and working papers required for the proper conduct of audit.

## 2. **Financial planning**

- 2.1 The Chief Finance Officer shall determine the timetable for the preparation of draft revenue budgets and capital programme.

### 2.2 Capital planning

The Council shall approve the report of the Chief Finance Officer on the rolling capital programme together with the available resources to finance capital expenditure. This capital budget shall be compiled in accordance with the budget and policy framework rules, set out in part 3 of this chapter.

### 2.3 Revenue planning

The Council shall consider and approve a report from the Chief Finance Officer on the revenue budget forecast for succeeding years. The Council shall set the overall policies governing the allocation of funds and the overall spending on services.

### 2.4 Budget reports

Within the approved budgets, the budget reports to be considered by the Cabinet are to be prepared and presented jointly by the respective director and the Chief Finance Officer in compliance with these financial rules. Directors are to prepare their estimates in accordance with the timetable and format either required by statute or laid down by the Chief Finance Officer and providing all appropriate supporting details.

## 3. **Budgetary control - capital**

### 3.1 Authority to incur capital expenditure

Once approved by the Council, the Cabinet shall authorise expenditure within approved budgets operating in accordance with the scheme of delegation and these rules. It is the responsibility of the Cabinet to ensure that expenditure for each capital scheme remains within the approved budgets, and that expenditure remains within the service areas approved by Council. This shall be subject to variation as outlined in the budget transfer rules below.

### 3.2 Budget ~~transfers-virements~~ between capital projects

Where considered appropriate the Cabinet and the Chief Executive and directors may exercise delegated powers to ~~transfer-vire~~ capital funding between projects ~~(virement)~~. Any ~~virementtransfer~~ shall not exceed the

amount set out in the “Statement of Approved Financial Limits” and shall be consistent with the budget and policy framework rules, set out in part 3 of this chapter. Thus the proposal must not result in:

- a change in policy;
- the financing of revenue expenditure;
- the appointment of permanent staffing in addition to that planned;
- diminution in the level of service;
- significant implications on net revenue costs for current or future years.

3.3 Contract negotiations in accordance with section 3.16 of the Contract Procedure Rules).

Prior to any negotiations being undertaken, employees must ensure they comply with all regulatory or statutory requirements. Any negotiations with prospective contractors on the terms of any tender or contract shall be conducted by not less than two employees and shall be confirmed in writing so that a sufficient record of the details exists to indicate how the negotiations were carried out and any negotiated terms arrived at. All tenderers must receive the same level of treatment when any negotiations are being undertaken.

3.4 Acceptance of tenders in accordance with section 2 of the Contract Procedure Rules).

- (a) Subject to the limits approved by Council and excluding emergency arrangements under the scheme of delegation, tenders shall be accepted at the most economically advantageous price. Quality considerations will also be taken into account.
- (b) If the scheme requires any alteration to bring it within the approved estimate or if other than the most economically advantageous tender is to be approved or the approved estimate is exceeded, the matters shall then be reported to Council for consideration and approval.

3.5 Variations to capital schemes

Any contingency element in an approved capital scheme shall be controlled on the basis that the director concerned has full authority to commit payments from this contingency sum as a variation to the scheme.

3.6 Capital scheme overspending

Any overspending on a capital project exceeding the approved budget shall be reported to the appropriate Cabinet member and depending on the rules of virement may then require the approval of Council. Changes shall be

reported at the earliest possible moment together with full details of the circumstances giving rise to the overspending.

### 3.7 Monitoring of capital schemes

Reports shall be submitted to Cabinet at regular intervals to show the progress for all capital schemes. Proposals for new schemes not included in the approved programme or overspending against an existing scheme not provided for by a virement shall be reported to Council for consideration. The Chief Finance Officer may, in consultation with the Finance Portfolio Holder, approve in-year additions to the capital programme subject to the following criteria:

- | (i) funding coming from external sources;
- | (ii) no financial contribution being required from the Council;
- | (iii) funding being ring fenced for specific purposes.

### 3.8 Appointment of consultants (and in accordance with section 3.3 of the Contract Procedure Rules)

- (a) The appointment of consultants for work on schemes in the capital programme shall be subject to the same scrutiny that applies to the general capital spending requirements.
- (b) Any person who is not an employee but who is engaged to provide a specialist service or to supervise a contract must comply with both these and the contract rules (set out in part 7 of this chapter) and produce on request for audit purposes all records maintained in relation to the engagement. This requirement to comply shall be a condition of the appointment.

## 4. **Budgetary control - revenue**

4.1 Approval by the Council of the overall revenue budget authorises the Cabinet and Chief Executive and directors to incur the expenditure in accordance with the scheme of delegation, the budget and policy framework rules and these rules.

| 4.2 Directors must ensure there are appropriate financial monitoring and budgetary control systems in place and operated by their directorates which accord with the requirements of the Chief Finance Officer.

| 4.3 Specific responsibility for the management of a budget may be delegated by the Chief Executive or director to a service manager who shall be accountable to the director for that budget and the level of service to be provided.

4.4 The Chief Finance Officer shall be responsible for monitoring the Council's overall expenditure and income and for reporting to the Cabinet and Council significant variations between the approved estimates and actual expenditure.

4.5 Budget transfers-virements between revenue budget heads

(a) Once the revenue budget for any financial year has been approved by the Council, the Cabinet (and Chief Executive or directors in the case of delegated authority) shall have freedom to transfer resources subject to these and the budget and policy framework rules, namely:

(i) where the virement in any one financial year will have significant implications for future years then saving identified in year 1 must be continued (or an alternative found) in subsequent years;

(ii) if any proposal involves a significant restructuring of permanent staffing, then the approval of the Cabinet shall be sought;

(iii) other than where urgent or emergency action is required, all virements must be approved before expenditure is incurred. In such exceptional circumstances the necessary approval must be obtained as soon as possible;

(iv) the proposed virement not exceeding the amount set out in the "Statement of Approved Financial Limits", nor involving change in policy.

(b) Any virement so approved shall be entered promptly into the accounting system.

(c) A continuous record of revenue budget virements will be maintained in accordance with the requirements of the Chief Finance Officer and reported regularly to the Cabinet.

4.6 Revenue supplementary estimates

There may be occasion in exceptional circumstances where additional expenditure is essential and therefore unavoidable. Requests for supplementary revenue estimates must be referred to Council for approval. Such referrals would only occur where proposals are incapable of being financed from within approved budgets and where it is not possible to defer the expenditure to a later year.

4.7 The Chief Finance Officer may, in consultation with the Finance Portfolio Holder, approve in-year additions to the revenue budget subject to the following criteria:

- (i) funding coming from external sources;
- (ii) no financial contribution being required from the Council;
- (iii) funding being ring fenced for specific purposes.

## 5. Internal audit

### 5.1 Principles of internal audit

The Chief Finance Officer shall be responsible for ensuring that there are continuous arrangements to measure, evaluate and report upon the effectiveness of control and efficient use of resources, by the establishment of an adequate internal audit function.

### 5.2 Role of internal audit in relation to the financial rules

- (a) The role of internal audit shall be based upon the principles contained within the Accounts and Audit Regulations 1996 and recommended by the CIPFA and the Auditing Practices Committee of the Consultative Committee of Accounting Bodies, which states: -

"Internal audit is an independent appraisal function established by the management of an organisation for the review of the internal control system as a service to the organisation. It objectively examines, evaluates and reports upon the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources."

It will also have regard to any auditing standard pronouncements issued by the CIPFA.

- (b) Internal audit staff shall have right of access to any Council owned premises, plant, equipment, books, accounts, receipts, vouchers, computer records or other materials to enable them to carry out their duties and may demand explanations for matters under investigation.
- (c) Internal audit shall be sufficiently independent to enable the auditors to perform their duties in a manner, which will allow their professional judgements and recommendations to be effective and impartial.
- (d) It is a management responsibility to apply sound internal controls in the Council's systems and to maintain those controls. This includes responsibility for the prevention and detection of fraud and other illegal acts. Internal audit should be consulted about any significant proposed changes to existing systems and implementation of new systems, and make recommendations on the standard of control to be applied.

- (e) Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Council, the Chief Executive or director concerned shall forthwith notify the Chief Finance Officer who shall also be informed of the steps that the Chief Executive or director has taken/intends to take by way of investigation or other action.
- (f) If an irregularity is found then the matter must be reported to the Chief Executive.

## 6. **Banking and cheques**

### 6.1 Arrangements

The Chief Finance Officer shall be responsible for ensuring the establishment of proper financial procedures and delegations covering:

- (i) the operation and supervision of the Council's bank and giro accounts, including the ordering, the safe custody and issue of all cheques;
- (ii) overdraft facilities.

## 7. **Investments**

### 7.1 Arrangements

- (a) Investments and utilisation of monies in hand shall be undertaken by the Chief Finance Officer within the approved treasury limits.
- (b) The selection of external fund managers shall be subject to the prior approval of the Cabinet.
- (c) All investments are to be made in the name of the Council.
- (d) The Chief Finance Officer shall be responsible for the safe custody of securities and shall institute procedures for establishing the credit worthiness of organisations in which Council monies are invested.
- (e) The Chief Finance Officer shall report to the Audit Committee, Cabinet and Council before the start of the new financial year on borrowing and investment strategies for the ensuing year and to Cabinet and Audit Committee not later than September on treasury management activities in the previous year.

### 7.2 Treasury policy statement

- (a) The treasury policy statement for the Council must be complied with in all aspects as regards the investment of monies. This statement shall be updated as necessary by a report of the Chief Finance Officer.

- (b) The Council adopts the key recommendations of CIPFA's Code of Practice on Treasury Management in Local Authorities (the code) Revised as described in Section 4 of that code.
- (c) Accordingly, the Council will create and maintain, as the cornerstones for effective treasury management:
  - A Treasury Management Policy Statement (TMPS) stating the policies and objectives of its treasury management and the approach to risk management of its treasury management activities.
  - Suitable Treasury Management Practices (TMPs) setting out the manner in which the organisation will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- (d) Council will receive reports on its treasury management policies, practices and activities including as a minimum, an annual strategy and plan in advance of the year, a mid-year review and Audit Committee shall receive an annual report after its close, in the form of prescribed in its TMPs.
- (e) Council delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to Cabinet, and for the execution and administration of treasury management decisions to the Chief Finance Officer who will act in accordance with the Council's policy statement and TMPs and if a CIPFA member, CIPFA's Standard of Professional Practice Treasury Management.
- (f) Council nominates Audit Committee to be responsible for ensuring effective scrutiny of the treasury management strategy policies.

## 8. **Borrowing**

### 8.1 Arrangements

- (a) All loans to the Council must be within the approved limits, and in accordance with the approved treasury policy statement and CIPFA's code for treasury management in local authorities.
- (b) All loans to the Council shall be dealt with in accordance with the requirements of the Chief Finance Officer and whenever possible shall be paid direct by the lender or their agent to the Council's bank account through the head office of the Council's bankers.

- (c) All interim loan receipts, temporary loan receipts and bond certificates shall, prior to use, be in the custody of the Chief Finance Officer and issued only when required for completion.
- (d) The Chief Finance Officer or nominated officer shall be the only authorised signatories to any formal loan instrument other than documents issued under seal.
- (e) Repayment of loans shall, whenever possible, be made through the head office of the Council's bankers in exchange for the original loan receipt.

## 8.2 Policy

The operation of the borrowing policy shall be laid down in the treasury policy statement and must be followed for all instances of borrowing.

## 8.3 Leasing arrangements

Any proposed leasing arrangement shall be subject to the approval of the Chief Finance Officer prior to committing the Council to any such arrangement.

## 9. **Orders and payment of goods and services**

9.1 The Chief Executive and directors shall not order goods or services or incur any other expenditure without ensuring that provision exists for such expenditure within an approved budget.

9.2 The Council's official order form must always be used for ordering goods or services. Urgent orders, which have to be made by telephone, must be confirmed by official order.

## 10. **Contracts and agreements**

### 10.1 General requirements

- (a) The financial provisions of any agreements entered into by the Council shall be as approved by the Chief Finance Officer.
- (b) All contracts entered into shall comply with the contract rules within part 7 of this chapter.

### 10.2 Register of contract payments

The Chief Executive or director responsible for certifying the account as correct for payment shall maintain a register of payments due and made under formal contract to the satisfaction of the Chief Finance Officer.

## 11. **Payment of accounts**



## 11.1 General requirements

- (a) The Chief Finance Officer shall ensure that the Council pays promptly all accounts properly due and payable by the Council.
- (b) Invoices shall not be made out by employees of the Council except in any case or category of cases agreed by the Chief Finance Officer nor shall an employee alter an invoice rendered by a supplier of goods, services or works.
- (c) The Chief Executive or director shall arrange to examine and certify the invoices or contract certificates for payment. A list of the authorised officers together with their specimen signatures shall be forwarded by the Chief Executive and directors to the Chief Finance Officer. Any changes in the officers so authorised shall be notified immediately to the Chief Finance Officer. The certified invoices or contract certificates shall be paid in accordance with procedures approved by the Chief Finance Officer.
- (d) Payment for goods, services, etc shall be by cheque or automated bank transfer. The use of cash shall be restricted to minor petty cash items within the limits agreed by the Chief Finance Officer. Any other use of cash or alternative payment method shall only occur with the prior approval of the Chief Finance Officer which must be sought before entering into any contractual commitments.

## 11.2 Certification for payment

The certification of an account for payment shall mean that:

- (i) the goods have been received, examined and approved as to the quality and quantity, or that services rendered or work done have either been performed satisfactorily; or their value has been certified as payable in accordance with contractual conditions;
- (ii) the prices are in accordance with quotation, contract or current market rates, or are otherwise reasonable;
- (iii) all trade and cash discounts, other proper allowances and other credits due have been deducted;
- (iv) the account has not previously been paid and is a proper liability of the Council;
- (v) the account is arithmetically correct, has been properly allocated to an appropriate expenditure code, and budget provision exists to meet the cost;
- (vi) that VAT is properly treated and accounted for.

## 12. **Petty cash and imprest accounts**

### 12.1 Operation of the accounts

- (a) The Chief Finance Officer shall permit the use of petty cash and imprest accounts in any directorate of the Council if satisfied that it would be in the interests of efficient administration.
- (a) The operation of such permitted accounts shall be in accordance with the requirements of the Chief Finance Officer.
- (b) The employee responsible for holding the account shall provide the Chief Finance Officer with a certificate regarding the state of the account when requested.

## 13. **Salaries and wages**

### 13.1 Arrangements

- (a) The Chief Finance Officer shall make suitable arrangements for the payment of salaries and wages and accounting for pension, national insurance, tax and other deductions relating to the Council's employees.
- (b) It shall be the responsibility of the Chief Executive and directors to ensure that all requests to make or vary salaries and wages payments to employees are contained on approved forms. The forms are to be certified by authorised supervisors and each directorate shall provide a list of those duly authorised. Any changes in the employees authorised to certify these forms shall be notified immediately to the Chief Finance Officer.
- (c) The authorisation of salaries and wages forms shall mean that:
  - (i) the forms have been completed by the employees themselves or been summarised from records which are maintained by the employees themselves (e.g. daily work/time sheets);
  - (ii) the information is correct and reflects the hours and work performed by the individual employees;
  - (iii) where appropriate, expenditure allocations are correctly stated.

## 14. **Employees and members' allowances**

### 14.1 Employee claims

- (a) All staff claims for payment of car allowances, subsistence allowances, travelling expenses and college expenses shall be made at regular intervals in a form approved by the Chief Finance Officer.

- (b) The certifying employee shall be satisfied that the journeys were authorised and undertaken, and that the expenses were properly and necessarily incurred whilst carrying out the official duties.

#### 14.2 Member claims

Payments to Councillors for allowances for their approved duties shall be made by the Chief Finance Officer upon the receipt of the prescribed claim form duly completed.

### 15. **Income**

#### 15.1 Arrangements

The Chief Finance Officer, in conjunction with the Chief Executive and directors concerned, shall make and maintain adequate arrangements for:

- (i) the financial administration and accounting to ensure the proper recording of all sums due to the Council;
- (ii) the prompt and proper accounting of all monies including its collection, custody, controls and deposit;
- (iii) the requirement for adding and accounting for VAT to the various fees and charges due to the Council.

#### 15.2 Issue of and form of receipts

All official receipt forms, etc and procedures for the receipt of income shall be in a form approved by the Chief Finance Officer.

#### 15.3 Receipt of and banking of monies

- (a) All monies received on behalf of the Council in any directorate shall be deposited with the Chief Finance Officer, except that by arrangement such monies may be deposited with the Council's bankers. All cheques, money orders and postal orders received in any directorate of the Council must be in the name of the Council or school account and must be crossed "account payee".
- (b) All other methods for the receipt of income (eg credit cards, debit cards, traveller's cheques, bank transfers, etc) shall be with the prior approval of the Chief Finance Officer.
- (c) All monies received on behalf of the Council shall be paid into the Council's bank as soon as possible.

### 16. **Security**

#### 16.1 Arrangements

- (a) The Chief Executive and directors shall be responsible for maintaining proper security at all times for all the assets under his/her control.
- (b) Maximum limits for cash holdings shall be agreed with the Chief Finance Officer and shall not be exceeded without his/her specific approval.
- (c) The Chief Executive and directors shall be responsible for maintaining the security, integrity and privacy of information within their directorate, and must conform with the requirements of the Data Protection Act 1984.
- (d) Employees shall only use or disclose information relating to Council affairs, to persons, companies, or other organisations conducting business with the Council, in the proper discharge of the Council's functions and not for their own personal purposes or gain, or in contravention of any statutory requirements.

## 17. **Stores and equipment**

### 17.1 Arrangements

- (a) The Chief Executive and directors shall be responsible for the care and custody of all stores and equipment in their directorate. Wherever practicable all equipment shall be marked effectively as the property of the Council.
- (b) The documentation and accounting arrangements for the control and recording of stores shall be approved by the Chief Finance Officer.

## 18. **Inventories**

- 18.1 The Chief Executive and directors shall be responsible for the preparation, certification and maintenance of an inventory of all furniture and equipment allocated to their directorate to a level of detail and in any format specified by the Chief Finance Officer.

## 19. **Insurance**

### 19.1 Arrangements

The Chief Finance Officer shall arrange all insurance cover and shall maintain a register of all such insurance. The Chief Finance Officer shall operate the insurance fund and shall have the discretion whether to insure any risk externally or in.

### 19.2 Notification of risks

The Chief Executive and directors shall promptly notify the Chief Finance Officer of the extent and nature of all new risks to be insured and of any alterations affecting existing insurable risks.

19.3 Public liability insurance

Where public liability insurance is required in a contract then the appropriate Chief Executive and directors shall obtain the necessary details of the cover held by the contractor and pass this to the Chief Finance Officer for approval.

19.4 Insurance claims

- (a) Any occurrence, which may give rise to an insurance claim, shall be notified promptly in writing to the Chief Finance Officer.
- (b) The Chief Finance Officer shall ensure that all claims are made on the Council's insurers or from the in-house insurance fund as appropriate.
- (c) No admission of any liability shall be made by any employee without the prior agreement of the Council's insurers or the Chief Finance Officer.



## **PART 7 – CONTRACT PROCEDURE RULES**

### **SECTION 1 INTRODUCTION AND PURPOSE**

#### **1.1 Introduction**

- 1.1.1 These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972. They include provision for competition, and regulate the manner in which procurement and tendering take place within the Council.
- 1.1.2 These Contract Procedure Rules set out the regulations that must be followed by all Officers on each and every occasion that goods, services or works are procured on behalf of the Council.
- 1.1.3 These Contract Procedure Rules also protect the legal position of the Council in respect of compliance with EU and UK law (general law and in relation to the Procurement Regulations) and in its contractual dealings with external third party Suppliers and Contractors.

#### **1.2 Primary objectives**

- 1.2.1 These Contract Procedure rules have 5 primary objectives:
  - (1) To ensure that the Council obtains Value for Money and fulfils its duty of achieving *Best Value* as defined in Section 3 of the Local Government Act 1999. It is of primary importance that Officers, on behalf of the Council, engage in procurement activity with the intention of delivering Best Value services to the citizens of Medway, both at the point of contracting and through effective contract management, throughout the contract term.
  - (2) To ensure that the Council complies with English and European law in force in England that governs the procurement of goods, services and works.
  - (3) To establish procurement procedures which, when followed, should protect Members and Officers of the Council from any allegation of acting unfairly or unlawfully which may be made in connection with any procurement by the Council relating to goods, services or works.
  - (4) To ensure that any risks associated with commencing procurement processes and subsequently entering into contracts are assessed as part of the procurement process and the Council's Procurement Gateway Process.
  - (5) To ensure that fairness and transparency remains at the forefront of all procurement activity undertaken by Officers and approved by Members on behalf of the Council.

### 1.3 **Scope and application**

- 1.3.1 These Contract Procedure Rules apply to all procurement activity undertaken by the Council (inclusive of Partnering and Income Generation Contracts) unless any such procurement is expressly prescribed under these Rules, or subject to an *Exemption* (as specified in **Section 1.8**).
- 1.3.2 These Contract Procedure Rules shall apply irrespective of how the procurement is funded. Where any ambiguity exists in respect of such funding the decision of the Monitoring Officer and/or Chief Finance Officer shall be sought and that decision shall be final.
- 1.3.3 All contracts entered into by the Council are subject to these Contract Procedure Rules, the provisions contained within the Council's Financial Procedure Rules and in accordance with guidance from Category Management and Legal Services respectively.
- 1.3.4 These Contract Procedure Rules apply to all Officers involved in the issuing of Orders or the letting of Contracts for Supplies, (Goods), Services and Works necessary for the delivery of the Council's functions.
- 1.3.5 Any third party (e.g. a consultant) who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these Contract Procedure Rules as if they (the consultant/third party) were Officers of the Council.

### 1.4 **Review and amendment**

- 1.4.1 These Contract Procedure Rules shall be reviewed on a regular basis, not less than annually, by the Monitoring Officer who shall consult with the Procurement Board. The Monitoring Officer shall make minor changes to the Contract Procedures in accordance with Section 14.3 of Article 14 of the Council's Constitution. Any other amendments will be subject of approval by Council.

### 1.5 **Interpretation**

- 1.5.1 The interpretation of these Contract Procedure Rules is solely a matter for the Council's Monitoring Officer and are not open to interpretation by any other Officer of the Council.
- 1.5.2 Where an Officer of the Council is unsure of the meaning and implications of these Contract Procedure Rules, guidance must be sought from Category Management, in consultation with and on behalf of the Council's Monitoring Officer and such guidance and direction shall prevail.
- 1.5.3 Where there is a conflict between these Contract Procedure Rules and the Council's Financial Procedure Rules, the former shall prevail, subject to guidance and clarification from the Council's Monitoring Officer in consultation with the Council's Chief Finance Officer.



1.5.4 Any failure to comply with these Contract Procedure Rules may result in disciplinary action being taken against an Officer and may be seen as gross misconduct.

## 1.6 Procurement governance structure

1.6.1 The governance structure of procurement within the Council is as follows:

- The Cabinet – for decision making in respect of executive functions
- The Council – for all other decision-making
- The Procurement Board - The Procurement Board acts as a Cabinet Advisory Group to the Monitoring Officer and the Chief Finance Officer, in order to assist them in the procurement and contract decision-making process.

The Procurement Board consists of:

- The Portfolio Holder for Resources (or such other portfolio holder as the Leader of the Council may substitute at his/her discretion).
  - The Portfolio Holder for Adult Services (or such other portfolio holder as the Leader of the Council may substitute at his/her discretion) (Note: the Cabinet appoints Cabinet Members to the Procurement Board).
  - The Monitoring Officer (Chief Legal Officer with over-arching responsibility for Category Management and Legal Services).
  - The Chief Finance Officer.
  - Head(s) of Category Management.
  - Other key representatives from each of the Council's respective Directorates:
- Category Management Team – Strategic team led by the Heads of Categories responsible for providing strategic support and quality assurance to the Council's Directorates as well as representing and acting on behalf of the Council's Monitoring Officer in all procurement and contract related activities, matters and issues.
  - Directorate Management Team – Led by each respective Director, with operational procurement and contract management responsibility delegated to Assistant Directors and / or Heads of Service in accordance with these Contract Procedure Rules.

## 1.7 General principles

### 1.7.1 Call Off from existing contracts

1.7.1.1 Where the Council's procurement requirement can be satisfied from an existing approved Contract then any order will be considered an Exception to these rules as long as the call-off arrangements defined within the individual contract are followed or where the original Contract can be varied to meet the requirement. Category Management must be consulted before invocation of any such variation.

1.7.1.2 In all instances goods, services or works should be obtained via appropriate, existing, approved arrangements. These include:

- (a) In-house services (for example printing and design, facilities management, etc)
- (b) Established corporate contracts
- (c) An approved list of suppliers maintained by the Council or a formally approved organisation
- (d) Consortia of which the Council is a member
- (e) Approved nationally negotiated contracts (for example those arranged by the Government Procurement Service).

1.7.1.3 Before any contract is made, there must be:

- (a) The proper authority of the Council in accordance with the processes set out in the Constitution, the Procurement Gateway Process (as specified in **Section 2** of these Contract Procedure Rules) and / or Directorate scheme of delegation, as specified and approved by the appropriate Director of each respective Directorate.
- (b) Adequate budgetary provision for the procurement within existing budgets. All such expenditure must be committed in accordance with procedures set out and prescribed by the Chief Finance Officer.
- (c) Where ambiguity exists in respects to the availability of budgets, the decision of the Chief Finance Officer must first be obtained and that decision shall prevail in all instances and the procurement direction will be dictated accordingly.

### 1.7.2 Collaborative/Joint procurement (Public Contracts Regulations 2015, Regulation 38 "PCR 2015")

1.7.2.1 Category Management, on behalf of the Council's Monitoring Officer shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council as part of the Procurement Gateway Process for Category A Procurements.

1.7.2.2 The Monitoring Officer, in consultation with the Procurement Board shall approve any joint procurement arrangements with other local authorities or

public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council as part of the Procurement Gateway Process for Category B Procurements.

- 1.7.2.3 All joint procurement arrangements shall be compliant with the legislation relating to public sector procurement and shall be open to participation by the Council.
- 1.7.2.4 Where procurements are being carried out jointly there is responsibility to ensure compliance with PCR 2015 even if the other party are conducting the tender process on behalf of Medway Council. Clarity of each contracting authority's responsibilities is therefore needed at the outset to ensure compliance for all elements of the tender both individually and jointly.
- 1.7.2.5 Where the Council is entering into a contract as an agent for another public body or government department, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the body concerned.
- 1.7.3 **Engagement of consultants**
- 1.7.3.1 Officers may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Officers requiring them do not have the resources or capability to meet the needs of the service.
- 1.7.3.2 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services, and lodge all such documents and records with the appropriate Officer at the end of the contract.
- 1.7.3.3 Officers shall ensure that any consultant working for the Council has appropriate indemnity insurance and shall liaise with the Insurance Team to verify the level required.
- 1.7.3.4 Appointment of consultants for projects, where not part of an existing Framework, shall follow the procurement process for services
- 1.7.4 **Frameworks (Public Contracts Regulations 2015, Regulation 33 "PCR 2015")**
- 1.7.4.1 A framework agreement in the context of these Contract Procedure Rules is:
- Where the overall terms and conditions and pricing are agreed but the cost of each call-off will vary dependent upon the requirement via a mini-competition

OR

- Where the costs and terms have been expressed whereby the most economic provider is chosen.
- 1.7.4.2 Officers cannot automatically make use of a framework agreement; any proposed use must be appraised in accordance with the applicable Procurement Process.
- 1.7.4.3 Where Officers are proposing to use a framework agreement in relation to a Category A Procurement, guidance must be sought from Category Management before use. This is a mandatory requirement to ensure that the framework agreement is available to the Council, provides the best value procurement route and to ensure that Officers understand and adhere to the protocols set by the creator (Central Purchasing Body) of the framework agreement.
- 1.7.4.4 Where Officers are proposing to use a framework agreement in relation to Category B Procurements, the framework agreement must be appraised against other available procurement options as prescribed within the Procurement Gateway 1 Report.
- 1.7.4.5 When procuring from (calling-off) a Framework Agreement, Officers must adhere to the protocol set out under the existing Framework Agreement terms and must seek advice from Category Management if in any doubt.
- 1.7.4.6 The Council is not required to advertise any proposed call off (in excess of the EU Threshold for Supplies (Goods), Services or Works where the Framework being used was subject to an original OJEU advert.
- 1.7.4.7 The Invitation to Quote procedure set out at **Section 2.3** shall be used in preference to a formal Invitation to Tender where no other formal process is specified within the terms of that Framework.
- 1.7.4.8 Where Officers propose to create a Medway Framework arrangement for works, goods and/or services, transparency is required as to how the “Call off” mechanism will work. Where the call off process includes a part direct award, part mini competition, the procurement documents will detail how the choice will be made (on objective ~~criteria~~criteria) between a direct award and a mini competition and specify which terms may be subject to reopening of competition. This approach could be lot specific, ie it does not have to apply across all lots within a framework.
- 1.7.5 Central Purchasing Bodies (Public Contracts Regulations 2015, Regulation 37 “PCR 2015”)**
- 1.7.5.1 Medway Council, in accordance with the guidance above, may acquire supplies or services, or both, from a central Purchasing body in respect of activities conducted on a permanent basis.

## 1.7.6 Concession Contracts

1.7.6.1 Service concessions are no longer exempt once the UK implements the Concessions Directive 2014/23/EU.

## 1.7.7 Light Touch Regime (Public Contracts Regulations 2015, Regulations 74-76 “PCR 2015”)

1.7.7.1 Under PCR 2006, service contracts were divided into Part A (which were subject to the detailed regulatory regime) and Part B (which were only subject to limited obligations under that legislation). EU Treaty principles, including sufficient advertising and fair and transparent process, also applied to Part B services where there was cross-border interest.

1.7.7.2 Under PCR 2015, Part B services have been replaced by a specific list of social and other services which are subject to the “light touch” provisions. These services are more limited than Part B services and there is no “open ended” service category 27.

1.7.7.3 The service contracts which are limited to a “light touch” regime for procurements over 750,000 Euros (£625,050) are listed in Schedule 3 of the Public Contracts Regulations 2015. “Light touch” means that a contract notice or PIN used as a call for competition must be published in the Official Journal in the usual way and a contract award notice published once a contract has been awarded. The procedure can be determined by the contracting authority but must comply with principles of equal treatment and transparency and provide reasonable and proportionate timescales. PCR 2015 specifically says that a contracting authority may use or adapt procedures available for fully regulated procurements.

## 1.8 Exceptions and exemptions

### 1.8.1 Exceptions to Contract Procedure Rules

1.8.1.1 No exception to Contract Procedure Rules can be undertaken where the provision is above the EU tender threshold and subject to European or UK Legislation.

1.8.1.2 The requirements of the Council’s Contract Procedure Rules **shall not apply** in the following exceptional circumstances:

- Where for technical or artistic reasons or reasons connected with the protection of exclusive rights the contract can only be awarded to one economic entity.
- Procurements where the procedure to be followed by the Council is the subject of express legislation.
- Where the Council has agreed a delegation to the Chief Executive and Directors giving them power to act on behalf of the Council in cases of urgency but only where the urgent matter is of such a nature that it may

be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council (Constitution reference Chapter 3, Part 4 Employee Delegation Scheme). In addition to any reporting related to this delegation, any such expenditure in excess of **£10,000** must be reported to Category Management within 1 week of the date of the contract award using the *Exemption Request Form*. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.

- Contracts for the acquisition and disposal of land or property that are covered within the remit of the Chief Legal Officer and within the Financial Limits as prescribed within part 5 of chapter 3 of the Constitution.
  - Contracts for employment for staff, except where an agency is used to supply the staff.
  - Works orders with utility infrastructure providers, e.g. Gas Mains.
  - Where supplies are acquired from a closing down sale in circumstances permitted by the Regulations.
  - Where the provision of services is reserved to the winner of a design contest as specified in the Regulations.
  - The disposal of Council Assets that are covered by the Property Procedure Rules and Financial Procedure Rules.
  - Where the contract is for replacement goods or installations and contracting with an alternative supplier to the supplier of the initial goods or installation would either result in incompatibility with existing goods or installations or lead to disproportionate costs or technical difficulties in the operation and maintenance of existing goods or installations.
- 1.8.1.3 The Director of Children and Adults shall have authority to award without competition a contract where a placement is sought for an individual with a registered care provider of their choice under the National Health Service and Community Care Act 1990.
- 1.8.1.4 A Director shall have authority to award without competition a contract where the particular needs of an individual (either an adult or a child) require a particular social care package, or where an individual has special educational needs which are only available from a particular provider in the opinion as appropriate of the Director of Children and Adults.
- 1.8.1.5 In relation to **Sections 1.8.1.3** and **1.8.1.4**, The Director of Children and Adults will through the appropriate scheme of delegation, keep a record of the reasons for the choice of provider, which will be maintained on the individual's case notes. In addition, a record of the annual cumulative

expenditure with each provider will be maintained by the Director of Children and Adults and made available for audit purposes upon request.

- 1.8.1.6 The Monitoring Officer may engage a barrister or solicitor without competition. The appointment will be made on the basis of which barrister or solicitor is in the opinion of the Council's Monitoring Officer, best able to provide the necessary expertise and value for money. The Council's Monitoring Officer will maintain a departmental record of the amounts of expenditure with external barristers and will ensure that this information is made available for audit purposes upon request.
- 1.8.1.7 The Monitoring Officer may procure without competition, emergency accommodation for the homeless for individual service users that are not covered by a Council Framework Agreement or Contract.
- 1.8.2 **Exemptions to Contract Procedure Rules**
  - 1.8.2.1 Any Officer requesting an exemption must complete an *Exemption Request Form*. This form must be approved and signed by the appropriate Director before submission to Category Management for the Monitoring Officer to consider.
  - 1.8.2.2 The Council's Monitoring Officer will review the exemption request and will make a decision in consultation with the Procurement Board as to whether to accept or reject. This decision by the Monitoring Officer will be minuted and communicated for informational purposes to the appropriate Director as part of the *Procurement Board Process*.
  - 1.8.2.3 All approved exemption requests will be submitted to the Full Council for information purposes.
  - 1.8.2.4 Circumstances where time is lost through inadequate forward planning or a lack of internal resources existing to manage procurement processes will not automatically constitute the basis for an exemption under these Contract Procedure Rules.
  - 1.8.2.5 The Monitoring Officer will have ultimate discretion to consider resources and time constraints in the overall context of risk of non-delivery when deciding upon whether to accept or reject an exemption request.
  - 1.8.2.6 In the event that a valid reason for urgency exists, the Monitoring Officer will have ultimate discretion to consider an exemption outside of this formal decision-making mechanism. Any such occurrence shall be reported retrospectively to the Procurement Board by the appropriate Officer as per **Sections 1.8.2.1 – 1.8.2.2**.
  - 1.8.2.7 No Exemption to Contract Procedure Rules can be undertaken where the provision is above the EU tender threshold and subject to European or UK legislation.

### 1.8.2.8 Teckal Exemption (Medway Norse)

- The Teckal exemption allows the award of contracts between contracting authorities and controlled entities provided the following conditions are met:
- the contracting authority exercises control over the entity similar to that which it exercises over its own departments;
- more than 80% of activities of the entity relate to the performance of tasks entrusted to it by the authority; and
- there is no direct private capital participation in the entity (with the exception of non-controlling and non-blocking forms of private capital participation required by national law in conformity with the EU Treaties). Contracts can be exempt where contracting authorities jointly control an entity based on similar tests to the above and for “Reverse Teckal” where the controlled entity (if a contracting authority itself) can award a contract to its controlling contracting authority.

## 1.9 Delegate authority and officer responsibilities

1.9.1 Any procurement carried out on behalf of the Council may only be undertaken by Officers with the appropriate delegated authority to carry out such tasks. This delegation must be included in the current scheme of delegation as prescribed within the Council’s *Constitution* or as advised by the appropriate Director.

1.9.2 Each Director is responsible for all procurement activity within their respective Directorate and has the overall responsibility for ensuring Directorate compliance with these Contract Procedure Rules, Procurement Gateway Process, the Council’s Procurement Strategy, Financial Regulations, and all UK and European Legislation.

Through the appropriate scheme of delegation, this authority may be passed down to Assistant Directors, Heads of Service and other appropriate Officers within each Directorate and Department. However, ultimate responsibility and accountability will remain with the appropriate Director in respects to Officer conformance with these Contract Procedure Rules unless the Constitution sets out otherwise.

1.9.3 Officers must ensure that agents, including consultants, acting on their behalf also comply with these Contract Procedure Rules as prescribed with **Section 1.7.3** of these Contract Procedure Rules,

1.9.4 The Officer responsible for managing any contract or procurement process must comply with the Employee Code of Conduct and Anti-Fraud and Corruption policies, and must not invite or accept any gift or reward in respect of the award or performance of any contract.



- 1.9.5 The Officer responsible for managing any contract or procurement process **must** establish if an existing Contract or Framework Agreement exists before seeking to let another Contract (See **Section 1.7**). This Contract or Framework Agreement **must** be considered accordingly as part of a robust options appraisal in line with the Procurement Gateway Process for Category A and Category B Procurements as prescribed in **Section 2.3** and **Section 2.4** of these Contract Procedure Rules. In appraising Framework Agreements and existing Contracts, the Officer **must** provide tangible and ~~demonstratable~~demonstrable evidence within the *Procurement Gateway 1 Report*, whether or not these arrangements provide Value for Money and whether or not the goods, services or works therein are “fit for purpose” for the particular requirement.
- 1.9.6 The Officer responsible for managing any contract or procurement Process **must** ensure that when any employee or contractor arrangement may be affected by any transfer arrangement, such as the Transfer of Undertaking Protection of Employment (TUPE), that advice is obtained from HR and/or Legal Services before proceeding with inviting tenders. Officers must consult Pensions and Payroll concerning all TUPE and pension issues before the advert for the contract opportunity is placed, as this will affect the financial value of the contract. Where guidance and confirmation as to the applicability of TUPE is not sought from HR and/or Legal Services, the procurement process will not be permitted to commence nor can be subjected to the Procurement Gateway Process in respects to Category A or Category B Procurements, as prescribed within **Section 2** of these Contract Procedure Rules.
- 1.9.7 The Monitoring Officer and the Chief Finance Officer, in consultation with the Portfolio Holder for Finance Resources, shall both have the delegated authority to enter into contractual arrangements on behalf of the Council for all contracts involving the purchase of utilities (i.e. gas, water and/or electricity supply) on behalf of both the Council and schools. This delegation shall apply to both individual contracts let between the Council and the utility supplier, and where the Council enters into any Framework Agreement or Consortia Agreement.
- 1.9.8 Any such award agreed directly by the Council’s Monitoring Officer and the Council’s Chief Finance Officer or through delegation to Category Management, will be reported to the Procurement Board for informational and audit purposes. The Procurement Board will have the discretion to decide whether or not to report any such award(s) to the Cabinet for informational purposes.

## SECTION 2 PROCUREMENT PROCESS

### 2.1 Thresholds and risks

2.1.1 The complexity of the procurement process (Category & Level) to be followed will vary in accordance with the value and risk of the requirement as set out below.

<b>CATEGORY A PROCUREMENTS</b>		
Level	Value	Risk
1	0 - £5K	Low
2	£5K - £100K	
<b>CATEGORY B PROCUREMENTS</b> (Subject to the Procurement Gateway Process)		
3	£100K+	Medium
4	Any project deemed 'High Risk' by Procurement Board	High

### 2.2 Calculating contract value

2.2.1 In order to identify the appropriate Category and Level of procurement the Total Value should be calculated over the life of the contract.

2.2.2. The Total Value will be calculated as follows:

- (a) Where the contract is a capital or one-off purchase or for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) Where the purchase involves recurrent transactions for the same type of items, by aggregating the value of those transactions over the contract period, including any anticipated extension periods;
- (c) Where the total contract value over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48 or annual payment by 4;
- (d) For Framework Agreements with no guaranteed commitment the contract value will be the estimated value of orders placed/commissions let under the Framework Agreement over the full duration of the contract term;
- (e) Where an in house service provider is involved, by taking into Account TUPE workforce matters, redundancy and similar/associated costs as guided by Legal Services, Human Resources, Pensions and Payroll and Category Management Teams;

- (f) Where a partnering arrangement is to be put in place, the total value of the likely partnership;
- (g) For income generation contracts the Total Value will be the estimated revenue stream payable to the Council over the period of the contract. Where the total revenue stream over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48 or annual payment by 4;

2.2.3 The Total Value must be calculated in pounds sterling exclusive of Value Added Tax.

2.2.4 Contracts must not be artificially under estimated or disaggregated to avoid the application of these Contract Procedure Rules or EU/UK Procurement Legislation.

## 2.3 Category A procurement process

### 2.3.1 Level 1 procurement (Low Risk) 0 - £5K

- The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity.
- A **minimum** of one written quotation must be obtained (Officers are encouraged however to seek further competitive quotations where possible).
- The quotation may take the form of a Suppliers email, letter or reference to a current/valid catalogue or by using the *Low Value Quotation Form*.
- Officers must keep such quotations on record for audit purposes and make reference to them on the corresponding Financial Purchase Order.

### 2.3.2 Level 2 procurement (Low Risk) £5K - £100K

- The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity.
- Officers from the Service must work in partnership with Category Management to ensure a corporate approach and delivery of the procurement on behalf of the Council
- Officers must ensure that they liaise with their Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan before commencing a Level 2 Procurement.
- A **minimum** of three written quotations must be obtained by Category Management using the *Invitation to Quote* document.

- Category Management must keep such quotations on record for audit purposes and Officers must make reference to them on the corresponding Financial Purchase Order.

## 2.4 Category B procurement process

2.4.1 Category B Procurements are considered either a medium or high risk rating and are subject to management through the Council's Procurement Gateway Process by Category Management, the Procurement Board and the Cabinet (where applicable).

2.4.2 The Procurement Gateway Process is a five-stage process as outlined below:

**Gateway 1** – Project commencement/options appraisal – Category Management must (in partnership with Service Departments) complete and submit a *Gateway 1 Report* for review and approval to the Procurement Board dependant upon the risk parameters outlined in **Section 2.1.1** and in accordance with **Sections 2.4.4, 2.4.5** and **2.5**.

**Gateway 2** – Tender process (including document creation, advertisement, evaluation) – Category Management must (in partnership with Service Departments) complete all necessary procurement documentation and tendering formalities in accordance with **Section 3** of these Contract Procedure Rules.

**Gateway 3** – Tender process review and contract award - Category Management must (in partnership with Service Departments) complete and submit a *Gateway 3 Report* for review and approval to the Procurement Board dependant upon the risk parameters outlined in **Section 2.1.1** and in accordance with **Sections 2.4.4, 2.4.5** and **2.5**.

**Gateway 4** – Procurement post project completion review - Category Management must (in partnership with Service Departments) complete and submit a *Gateway 4 Report* for review and approval to the Procurement Board dependant upon the risk parameters outlined in **Section 2.1.1** and in accordance with **Sections 2.4.4, 2.4.5** and **2.5**.

**Gateway 5** – Procurement contract management report (prescribed by the Procurement Board and not automatically mandatory) – Category Management must (in partnership with Service Departments) complete and submit a *Gateway 5 Report* for review and approval to the Monitoring Officer, in consultation with the Procurement Board as and when prescribed.

(Note: In determining the level at which procurement decisions are taken regard will be had to requirements relating to key decisions as set out in Article 12 and the Leader and Cabinet rules in Chapter 4 of the Council's Constitution).

2.4.3 In addition to the above Category B Procurements are also subject to the requirement of the EU Procurement Regulations where over the relevant threshold for Supplies, (Goods), Services and Works.

#### 2.4.4 Level 3 procurement (Medium Risk) £100K+

- Officers must ensure that they liaise with their Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan before commencing a Level 3 Procurement.
- Category Management (in partnership with Service Departments) must complete and submit a *Gateway 1 Report* to the respective DMT for review.
- Relevant Director (DMT) must then either approve the report as Level 3 (Medium Risk) or recommend the report to be up-scaled to Level 4 (High Risk) for submission to the Procurement Board for a Gateway 1 review.
- The Authorised Officer will be required to attend the Procurement Board to present the Gateway 1 Report.
- The Monitoring Officer in consultation with the Procurement Board will review the Gateway 1 Report and either approve the risk rating or upscale the procurement risk and instruct the presenting Authorised Officer to submit the Gateway 1 report for a further review by the Cabinet.
- If the Monitoring Officer, in consultation with the Procurement Board approves the Level 3 (Medium Risk) decision, then the procurement process will be permitted to continue to Gateway 2.
- The Monitoring Officer, in consultation with the Procurement Board will also set the risk and reporting stages for the remainder of the procurement process for Gateway 2, 3, 4 & 5 (if so required) as per the parameters prescribed in **Section 2.4.1** of these Contract Procedure Rules.
- If the Monitoring Officer, in consultation with the Procurement Board upscales the risk rating, then the Gateway 1 decision making process will be decided upon by the Cabinet. The Cabinet will also set the risk and reporting stages for the remainder of the procurement process for Gateway 2, 3, 4 & 5 (if so required) as per the parameters prescribed in **Section 2.4.1** of these Contract Procedure Rules.
- Once the initial Gateway 1 and subsequent Gateway stages have been approved by the Monitoring Officer, in consultation with the Procurement Board and/or the Cabinet, the Authorised Officer must liaise with the Procurement Board Directorate Representative and update the procurement project on their respective Directorate Forward Procurement Plan.

**2.4.5 Level 4 procurement (any project deemed High Risk by the Procurement Board)**

2.4.6 Level 4 (High Risk) Procurement Process are prescribed by the Monitoring Officer, in consultation with the Procurement Board with recommendations for the decision-making associated with the initial Gateway 1 Report and subsequent Gateway 3, 4 & 5 Reports being made to the Cabinet.

**2.5 Upscaling Category A to Category B procurements**

2.5.1 Where deemed necessary for the achievement of best value, management of internal/external risk and adherence to EU/UK Procurement Legislation, the Council's Category Management Team, on behalf of the Council's Monitoring Officer can at any time upscale a Category A Procurement to a Category B Procurement.

2.5.2 Any such decision by the Council's Category Management Team to upgrade a procurement project will require Officers to comply with the Council's Procurement Gateway Process for Category B Procurements.

2.5.3 Any such decision to upgrade a procurement from a Category A to a Category B by Category Management on behalf of the Council's Monitoring Officer will be final and must be adhered to by Officers of the Council.

2.5.4 Officers through the Procurement Gateway Process for Category B Procurements will have the opportunity to present a case to the Procurement Board. This will provide Officers with an opportunity to review the decision to upgrade a procurement from Category A to Category B.

2.5.5 Any such review against the decision of the Council's Category Management Team by an Officer of the Council will be decided upon by the Monitoring Officer in consultation with the Procurement Board (except in the case of urgency when the Monitoring Officer will make the decision in consultation with the Chief Finance Officer).

2.5.6 The decision of the Council's Monitoring Officer to either uphold the decision made by the Council's Category Management Team or support any such review will be final and binding.

2.5.7 Any such decision will be project and situation specific and cannot be automatically relied upon or assumed by any Officer to apply across the board for reviewing future decisions made by Category Management.

## SECTION 3

### GENERAL TENDER PRINCIPLES

- 3.1 **Pre-tender market research and consultation (Public Contracts Regulations 2015, Regulation 40 & 41 “PCR 2015”)**
- 3.1.1 Officers may review the market for a proposed procurement through discussions with suppliers and other research but may not:
- (a) Base any specification on one Contractor’s offering such as to distort competition. Bidders may be excluded from the procurement in circumstances where their prior involvement would distort competition (and there are no other means of ensuring equal treatment which can be applied);
  - (b) Make any indication or commitment to Contractors that their offer may be preferred by the Council;
  - (c) Suggest any procurement route, which is not consistent with these Rules;
  - (d) Enter into negotiations about price where a competitive procurement process has yet to take place.
- 3.1.2 Any pre-market research undertaken, including discussions with Contractors and others must be fully documented on file. Where organisations have been involved at pre-procurement stage (whether in soft market testing or otherwise, eg incumbents), a contracting authority must ensure that there is a level playing field when the tender process starts such as providing information which has been made available at pre-procurement stage.
- 3.1.3 Any market research must then be proceeded by a compliant procurement process where there is a business case to proceed.
- 3.2 **Third party pre-qualification services**
- 3.2.1 Pre-Qualification Services describes the assessment, by a third party organisation of potential suppliers’ generic suitability to contract with a Contracting Authority across a range of requirements (effectively an outsourced pre-qualification process although not specific to any one contract requirement).
- 3.2.2 Pre-qualification results in the formal accreditation of those potential suppliers, which successfully complete the process.
- 3.2.3 Pre-qualification services can be commissioned for vetting of potential suppliers where internal resources are unable to undertake such assessments to assist in the expression of interest process subject to approval by Category Management.

- 3.2.4 Pre-qualification involves suppliers submitting information specified by the Contracting Authority to facilitate its assessment of suppliers' suitability to tender, below EU thresholds, for tenders relating to works capital projects.
- 3.2.5 These select lists are generally only available for services, works and/or supplies where its estimated value is below the relevant EU threshold value requiring compliance with the procurement Regulations.
- 3.3 **Advertising Tender Requirements (Public Contracts Regulations 2015, Regulations 106, 108, 110-113 "PCR 2015")**
- 3.3.1 All requirements above £100K must be advertised on the Council's Website, the Kent Business Portal and in the OJEU (where above the EU tender thresholds for goods, services or works).
- 3.3.2 In addition to the above, Officers (in consultation with Category Management) may consider where appropriate additional advertisement in one of the following to increase awareness and competition:
- A dedicated contracts publication;
  - The local press;
  - A relevant trade journal;
  - Voluntary and Community Sector circulation list or website.
- 3.3.3 From 1 April 2015 advertising requirements include:
- All contract notices to the Official Journal (OJEU), must also be published on Contracts Finder within 24 hours. The same applies in respect of contract award notices although this is not required within 24 hours;
  - The PCR 2015 state that sub-central authority contracts over £25,000, include a requirement to publish contract opportunities and award notices on Contracts Finder. For all opportunities that are published to the open market, this is a mandatory requirement.
  - All Public contracts will include a requirement for 30 day payment terms (for undisputed invoices) and these are to be passed down the supply chain. There is also a requirement to report on late payment of invoices. Where express provisions are not included, PCR 2015 imply specific terms into contracts.
- 3.3.4 **Prior Information Notices (Public Contracts Regulations 2015, Regulation 48 "PCR 2015")**
- PINs are no longer a mandatory requirement.
  - PINs may be used by officers as a call for competition for the restricted or competitive procedure with negotiation. Additional information must be included in the PIN if used for this purpose.



- A contracting authority cannot rely on a PIN until 35 days after sent for publication.
- Maximum validity is 12 months (except for social and other specific services) (ie those covered by the “light touch” regime)

### **3.3.5 Reserved contracts for certain services (Public Contracts Regulations 2015, Regulation 77 “PCR 2015”)**

- PCR 2015 allows contracting authorities to reserve the award of contracts for certain specific health, social and cultural services to certain types of organisations as part of its call for competition.
- The organisations entitled to bid must meet the following conditions:
  - the organisation’s objective is the pursuit of a public service mission linked to the delivery of the services;
  - profits are reinvested with a view to achieving the organisation’s objectives;
  - the structure of management/ownership of the organisation performing the contract are based on employee ownership or participatory principles; and
  - the organisation has not been awarded a contract for those services in the past 3 years.
- If a contracting authority decides to reserve these contracts to such organisations, the maximum duration of a contract which can be awarded is 3 years.

### **3.3.6 Lots (Public Contracts Regulations 2015, Regulation 46 “PCR 2015”)**

- Officers may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.
- Officers may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or (if a PIN is used as a call for competition) in the invitation to confirm interest. Officers must set out how this will work in practice including the objective criteria which will determine which lots will be awarded where the application of the award criteria results in one tenderer being awarded more than one lot.
- Although not compulsory, if officers decide not to divide an opportunity into separate lots, reasons for this must be included in the Regulation 84 report (Award Report/Gateway 3).

### **3.3.7 Electronic communication and access to documents (Public Contracts Regulations 2015, Regulations 22 & 53 “PCR 2015”)**

- Subject to certain limited exceptions, all communication and information exchange must be carried out by electronic means. These exceptions include where the specialised nature of the procurement means that specific tools or file formats are needed which are not open to all and generally available or require a licence or where physical or scale models are required which cannot be transmitted by electronic means. There may also be circumstances in which information of a particularly sensitive nature requires a high level of protection which cannot be ensured by using electronic tools or devices.
- The reasons why electronic communications are not being used must be set out in the Regulation 84 report.
- Contracting authorities must offer unrestricted and direct access (free of charge) to all procurement documents from the date of publication of the contract notice in OJEU and that the contract notice must include a reference to the internet address where the documents can be accessed. The definition of “procurement documents” is widely drafted meaning any document produced or referred to by a contracting authority which describes elements of the procurement or procedure including the contract notice, technical specification, proposed conditions of contract and formats for the presentation of documents by candidates or tenderers (eg pre-qualification questionnaires and invitations to tender). The requirement to make available all procurement documents at the outset applies to every procurement process unless one or more of the listed exceptions for the use of electronic communications apply.
- Oral communication can be used provided that its content is documented to a “sufficient degree”. However, oral communication cannot be used in relation to essential elements (defined as including the procurement documents, the request to participate, etc) of the procurement procedure.
- Oral communications with tenderers which could have a substantial impact on the content and assessment of tenders is also required to be documented by appropriate means which may include audio records.

### **3.4 Pre-Qualification Questionnaire PQQ (Public Contracts Regulations 2015, Regulations 56-64 “PCR 2015”)**

- 3.4.1 A PQQ stage is prohibited to be used for tenders below the EU Threshold level for goods and services. Tenders that fall below the EU threshold values for goods and services will follow an Open Tender Procedure approach ie one stage which will encompass selection and award criteria.
- 3.4.2 All tenders, except where prescribed timelines are in place, must specify a time limit of not less than 10 working days to enable interested parties the opportunity to Tender. All exercises shall be completed electronically via the Council’s Quotation/Tendering System.

- 3.4.3 Officers undertaking a PQQ will verify that bids submitted comply with the rules and requirements applicable to the tender as well as checking whether grounds for exclusion apply and selection criteria is satisfied.
- 3.4.4 Officers will check that a tenderer remains “eligible to tender” throughout the process ie there are no exclusion grounds or changes in circumstances which would mean an operator fails to meet the selection criteria.
- 3.4.5 Officers will consider the mandatory and discretionary grounds for exclusion including additional discretionary grounds where conflicts cannot be remedied or where persistent poor performance has led to contract termination or similar sanctions. Bidders are allowed to provide evidence to demonstrate reliability despite the existence of grounds for exclusion. The duration for the exclusion is:
- 3 years from the date of conviction for mandatory grounds and
  - 5 years from the date of the event for discretionary grounds.
- 3.4.6 As part of the evaluation of the Pre-Qualification Questionnaire credit checking must be completed on all those Suppliers expressing an interest. Further financial analysis should be conducted in conjunction with Corporate Finance, dependent on the nature, value or risk of the contract to fully test the financial ability of the bidder. Full details of the nature of the financial analysis to be undertaken must be included in the Pre-Qualification’s Questionnaire’s evaluation criteria. These will include:
- minimum annual turnover:
    - no more than 2 x estimated contract value, unless justified;
    - applies per lot but can be combined if awarded more than one lot (note there are specific rules for frameworks and DPS).
- 3.4.7 A supplier’s technical ability to undertake the contract requirements is evaluated at this stage. This cannot be re-tested at the Invitation to Tender stage. This will include:
- education and qualifications if not to be used as award criteria.
  - a requirement to accept the European Single Procurement Document (ESPD) which is a self-declaration, as preliminary evidence that there are no grounds for exclusion and that the selection criteria is satisfied. Supporting documents referred to in the ESPD can be requested at any time. The winner must provide up to date information to confirm this.
  - Ability to have recourse to e-Certis.
  - relying on other entities – Officers may require joint liability (if an economic operator is relying on other entities for educational/ professional purposes, that entity must be performing the relevant parts, must be checked for eligibility and there may be requirement to replace them in certain circumstances).

- 3.5 The invitation to tender (Public Contracts Regulations 2015, Regulations 22 & 53 “PCR 2015”)**
- 3.5.1 The Council’s standard *Invitation to Tender* documentation must be used for all tender exercises involving the procurement of Supplies, (Goods), Services and Works in excess of £100K.
- 3.5.2 For those procurement exercises involving the procurement of Works and Works related requirements, the appropriate industry standard Invitation to Tender documentation can be used as an alternative to the Council’s *Invitation To Tender* document. Any amendments to the industry standard terms must be included in the tender pack and drawn to the attention of all bidders. Legal Services must be consulted on the correct form of contract. used (e.g. JCT, ICE, NEC3)
- 3.5.3 The Chief Finance Officer (or such other officer as he shall designate) must be consulted on the financial and commercial aspects of the tender documents, including the evaluation process.
- 3.5.4 Post advertisement at least 3 Contractors must be invited to Tender, unless there is overriding business or legal justification that this is not required and in these circumstances an Exemption must be sought.
- 3.5.5 The specification and evaluation criteria must take into account Social and Economic, Equality, Sustainability, Health and Safety and Value for Money considerations.
- 3.5.6 The risks associated with the contract must be assessed and documented. Appropriate actions should be taken to ensure that the Council’s potential and actual exposure to risk and challenge is minimised.
- 3.5.7 A timetable setting out the key stages of the procurement should be set out in the appropriate section of the Council’s standard Invitation to Tender documentation.
- 3.5.8 The Invitation to Tender documentation should include a copy of the relevant *Terms and Conditions of Contract*.
- 3.5.9 The Legal Services Team must be instructed on the form of contract and any amendments. It is important for Officers to consider the form of contract to be used to ensure that it is fit for purpose and affords the Council the appropriate level of protection.
- 3.5.10 Where Officers considers that it is not fit for purpose they must liaise with the Legal Services Team with regards to any amendments required to make it fit for purpose.
- 3.5.11 The Invitation to Tender must explain how information provided in the Tender will be treated with regard to statutory requirements.

- 3.5.12 For below EU Threshold procurement projects, Tenderers must be given adequate time to respond, consistent with the level of complexity of the requirement and, except where the industry norm is otherwise, this should be a minimum of 15 working days.
- 3.5.13 Tenderers must be required to hold their Tenders open for acceptance for a minimum of 90 calendar days from the date of opening.
- 3.5.14 Invitations to Tender must include a statement that the Council does not bind itself to accept the lowest Tender or any other Tender.
- 3.5.15 Every invitation to tender shall be completed electronically via the Council's Quotation/Tendering System.
- 3.5.16 Dynamic Purchasing System (Public Contracts Regulations 2015, Regulation 34 "PCR 2015")**
- 3.5.16.1 These systems are essentially open frameworks and provide for an electronic process for commonly used supplies, services or works. Contracting authorities must allow all economic operators the ability to participate during the validity of the DPS.
- 3.5.16.2 To set up a DPS, the restricted procedure must be used. A contract notice or PIN must be used, which confirms that it is a call for competition.
- 3.5.16.3 The minimum time period for receipts of request to participate is 30 days.
- 3.5.16.4 The minimum time period for the receipt of tenders is 10 days from the date on which the invitation to tender is sent.
- 3.5.16.5 The maximum duration must be indicated in the call for competition.
- 3.5.17 Electronic auctions/catalogues (Public Contracts Regulations 2015, Regulations 35 & 36 "PCR 2015")**
- To ensure transparency the following provisions must be followed:
- 3.5.17.1 The use of electronic catalogues must be identified in the call for competition/ ITT.
- 3.5.17.2 If electronic catalogues are required as part of framework mini-competitions.
- 3.5.17.3 Tenderers can adapt to requirements and resubmit catalogues; or
- 3.5.17.4 Contracting authorities can collect information and adapt these to the requirements of the contract in question and then request confirmation from tenderers (tenderers may object to collection).

### 3.6 **Receipt and tender opening**

- 3.6.1 Tenders shall be kept secure electronically and unopened until the time and date specified for their opening.
- 3.6.2 All tenders received by the time and date specified shall be opened within 5 working days of the closing date in the presence of the Officer from the Service or their nominee and a designated Officer from Category Management.
- 3.6.3 No tender received after the time and date specified shall be considered unless agreed by the Councils Monitoring Officer either directly or via delegation to the Chief Finance Officer or Category Management.
- 3.6.4 The formal contract which will include the accepted Tender can be sealed or signed by Authorised Officers within Legal Services. The Authorised Officer must initial every page of a Bill of Quantities or each page of any Schedule to the Form of Tender prepared by the Tenderer.
- 3.6.5 A record of all tenders signed or sealed will be made and kept by the Legal Services.

### 3.7 **Errors in tenders**

- 3.7.1 Officers are entitled to clarify errors, missing or incomplete bids but any clarification is made in full compliance with the principles of equal treatment and transparency.
- 3.7.2 Where there is an obvious error or omission Category Management may permit a Tenderer to either correct or withdraw their submission. Any such corrections will be completed via the Council's electronic Quotation/Tendering System.
- 3.7.3 For Works contracts, errors are to be corrected in accordance with the relevant industry standard or best practice.

### 3.8 **Tender Evaluation (Public Contracts Regulations 2015, Regulations 67 & 68 "PCR 2015")**

- 3.8.1 All Tenders must be assessed in accordance with the pre-determined evaluation criteria and weightings as advertised in the Tender Notice, Pre Qualification Questionnaire and Invitation to Tender documentation as appropriate.
- 3.8.2 The Tender Evaluation Panel must include relevant representation as appropriate. Where the contract potentially could involve TUPE then HR must be advised at the earliest opportunity and included as part of the Evaluation Process. If a consultant leads on the team then a Head of Service or Assistant Director must sign off their findings.

3.8.3 The Chief Finance Officer or his representative must be consulted on the commercial evaluation of all Category B procurements.

3.8.4 The results of the Tender evaluation must be retained by Category Management.

**3.8.5 Abnormally Low Tenders (Public Contracts Regulations 2015, Regulation 69 “PCR 2015”)**

3.8.5.1 Officers are obliged to seek reasons from bidders to explain prices and costs which appear to be abnormally low in relation to the works, supplies or services.

3.8.5.2 Officers may only reject a tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

**3.9 Negotiation**

3.9.1 Officers may only carry out negotiations if:

- (a) An Exemption of these rules has been granted;
- (b) A single Tender;
- (c) The Tender is above the EU Thresholds and is in accordance with the EU requirements for an EU Competitive Procedure with Negotiation or a Competitive Dialogue (and a Waiver of these Rules has been granted);
- (d) They are post tender negotiations in accordance with the rules set out below.

3.9.2 Where a competitive tender exercise cannot be carried out in accordance with the Council’s Contract Procedure Rules, a single or multiple negotiated tender exercise may only be sought if a Waiver of Contract Procedure Rules has been granted first. This only applies to a requirement below the OJEU threshold. This Negotiated Procedure must only be used in exceptional circumstances and must be approved in advance by the Council’s Monitoring Officer prior to use as part of the Gateway 1 Process for Category B Procurements.

3.9.3 Where the procurement is conducted through either the *Open* or *Restricted Procedures* within the EU Regulations, no negotiations are permitted (including post tender negotiations), which may have the effect of distorting competition (for example fundamental changes to aspects of the contract, including prices changes and variations to the Council’s requirements).

3.9.4 Where dialogue with tenderers is permitted under the EU ~~Competitive~~Competitive Procedure with Negotiation or Competitive Dialogue procedures, negotiations shall be conducted by a team of at least two Officers, at least one of who shall be from Category Management.

3.9.5 Written records must be made and retained by Category Management of all negotiations. If an Officer is in doubt on any negotiations, they should contact Category Management and Legal Services for guidance.

**3.9.6 Variants (Public Contracts Regulations 2015, Regulation 45 “PCR 2015”)**

3.9.6.1 Officers may now require as well as permit bidders to submit variants (and must set out the minimum requirements they must meet).

3.9.6.2 Officers may specify that a variant can only be submitted if a standard bid is submitted or can allow just variants but this must be clear in the procurement documents.

3.9.6.3 Officers must ensure that the award criteria can be applied to both non-variant and variant tenders.

**3.9.7 Sub-contracting (Public Contracts Regulations 2015, Regulation 71 “PCR 2015”)**

3.9.7.1 In the procurement documents, Officers may ask the tenderer to indicate in its tender any share of the contract that it intends to sub-contract to third parties and any proposed subcontractors.

3.9.7.2 Main contractors must notify Officers of the name, contact details and legal representatives of its sub-contractors in so far as known at the time. This relates to works contracts and in respect of services to be provided at a facility under the direct oversight of Medway Council and must take place after the award of the contract but at the latest when the performance of the contract commences. Officers may extend this approach to supply and other services contracts and to lower tiers of sub-contractors.

3.9.7.3 Officers may verify whether there are grounds for exclusion of sub-contractors under Regulation 57 and must require the main contractor to replace a sub-contractor if there are mandatory grounds for exclusion and may require replacement where there are discretionary grounds.

**3.10 Award of contracts**

3.10.1 A contract may only be awarded by an Authorised Officer with the requisite delegated authority to award contracts in accordance with **Section 2** of these Contract Procedure Rules.

3.10.2 For contracts subject to the full scope of the EU Regulations, Category Management must inform as soon as possible any tenderer the intended award of contract.

3.10.3 The Council must allow a minimum standstill of 10 calendar days between communicating the decision and contract conclusion.



- 3.10.4 The “Standstill” period must not commence until all internal approvals have been finalised in accordance with the Council’s Constitution.
- 3.10.5 Whilst the mandatory standstill period does not generally apply to procurements below the EU thresholds or procurements otherwise outside the full scope of the EU Directives, the above process shall be applied for all Category B Procurements except where the Monitoring Officer agrees otherwise.
- 3.10.6 Where a contract exceeding the EU Threshold has been awarded, Category Management must publish a Contract Award Notice in OJEU no later than 48 days after the date of award of the contract.
- 3.10.7 Award of contracts will be based on the most economically advantageous tender assessed from the point of view of the authority. This may be on the basis of price or cost and may include the “best price quality ratio”.
- 3.10.8 Life-cycle costing is also permitted and rules are set out on how to work out life-cycle costing etc in Regulation 68. The approach must be disclosed to bidders.
- 3.10.9 Award criteria must still be linked to the subject matter of the contract but may also include “organisation, qualification and experience of staff assigned to performing the contract” where the quality of the staff assigned can have a significant impact on the level of performance of the contract. Care must be taken not to duplicate any “staff” related assessment undertaken at pre-qualification stage.
- 3.10.10 Individual Reports (Public Contracts Regulations 2015, Regulation 84 “PCR 2015”)**
- Contracting authorities are required to create and keep a written report on each contract, framework agreement and dynamic purchasing system entered into under PCR 2015. (Gateway 3)
  - The information recorded must include information relating to the following (amongst other):
    - the qualification and selection of tenderers and the award;
    - where applicable, why electronic procurement is not used;
    - the use of the negotiated procedure without a call for competition;
    - how conflicts of interest have been managed; and
    - the non-application of the regulations in certain circumstances.
  - In addition to the above, there is a general obligation on contracting authorities to document the progress of all procurement procedures

including ensuring sufficient information is kept to justify decisions such as communications with economic operators and internal deliberations, preparation of procurement documents, any dialogue and negotiation, selection and award. Documentation must be kept for three years from the award of the contract.

**3.11 Debriefing/ Bidder Feedback (Public Contracts Regulations 2015, Regulation 55 “PCR 2015”)**

3.11.1 Officers are required to inform each candidate and tenderer (as soon as possible) of decisions reached concerning the conclusion of a framework agreement, the award of a contract or admittance to a dynamic purchasing system.

3.11.2 Economic operators have a right to request information (and a response must be provided no later than 15 days of a request) and the majority of this information should be provided in the standstill letter. There is also a right to request details of the conduct and progress of negotiations and dialogue with bidders which is in addition to information made available in the standstill letter.

3.11.3 Providing unsuccessful tenderers with the information above should in most instances remove the requirement for a further debrief meeting, as there is no further evaluation information to be provided. Where a further request is received in writing from an unsuccessful tenderer (and considered beneficial) a face-to-face debrief meeting may be held with appropriate representation from the Evaluation Panel.

**3.12 Contract extensions Modification of contracts (Public Contracts Regulations 2015, Regulation 72 “PCR 2015”)**

3.12.1 Any contract, which provides for (an) extension(s), may be extended in accordance with its terms subject to a Gateway 5 review at the Procurement Board. Where any contract is extended, Category Management will update the Contract Register accordingly.

3.12.2 Where the terms of the contract do not expressly provide for an extension, an exemption is required and is subject to any necessary authorisation within the scheme of delegation. These should only be extended in exceptional circumstances and advice must be sought from Category Management and Legal Services.

3.12.3 Should there be any contract variations within the first 12 months of the life of the contract which increases the spend on any element within the contract, approval must be given by the relevant Portfolio holder and/or Procurement Board prior to the variation being agreed.

3.12.4 Modifications to existing contracts are permitted without commencing a new procurement in the following circumstances:

- Where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options.
- For additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of contractor:
  - cannot be made for economic or technical reasons; or
  - would cause significant inconvenience or substantial duplication of costs for the contracting authority; However, any increase in price cannot exceed 50% of the value of the original contract.
- Where all of the following conditions are fulfilled:
  - the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;
  - the modification does not alter the overall nature of the contract; and
  - any increase in price is not higher than 50% of the value of the original contract or framework agreement.

(\*Note: the contracting authority must publish a notice in the OJEU when a contract has been modified under these headings.)

- Where a new contractor replaces the one which had initially been awarded the contract as a consequence of either:
  - an unequivocal review clause or option which is clear, precise and unequivocal (referred to above); or
  - universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of PCR 2015.
- Where the modifications, irrespective of their value, are not substantial. A modification is considered to be substantial where one or more of the following conditions is met:
  - the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
  - the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would

have attracted additional participants in the procurement procedure;

- the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- the modification extends the scope of the contract or framework agreement considerably;
- where a new contractor replaces the one to which the contracting authority had initially awarded the contract in other cases than those envisaged above.
- Where the value of the modification (on a cumulative basis) is below both of the following values:
  - the relevant EU procurement thresholds; and
  - 10% of the initial contract value for service and supply contracts and below 15% of the initial contract value for works contracts. Where a modification falls outside of the above circumstances, a new procurement process is required. To proceed in those circumstances without a new procurement will therefore amount to an unlawful direct award.

### 3.13 **Termination of Contract (Public Contracts Regulations 2015, Regulation 73 “PCR 2015”)**

3.13.1 Contracting authorities shall ensure that every public contract which they award contains provisions enabling the contracting authority to terminate the contract where:

- the contract has been subject to a substantial modification which would have required a new procurement procedure;
- the contractor has, at the time of contract award, been in one of the situations referred to in certain of the mandatory grounds for exclusion; or
- the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive (that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU).

3.13.2 To the extent that a public contract does not contain provisions enabling the contracting authority to terminate the contract on any of the grounds mentioned above, such a termination term shall be implied into the contract.

- 3.13.3 Early termination of any contract may be carried out by the Authorised Officer in accordance with the terms of that contract. Advice must be sought from Category Management and Legal Services, in the first instance, prior to termination. Before a contract can be terminated, a Gateway 5 report must be submitted to the Procurement Board to make an informed decision
- 3.14 **Procurement by non-council officers**
- 3.14.1 Where the Council uses non-Council Officers to act on its behalf in relation to any procurement, then the Officer responsible for the procurement shall ensure that the third parties carry out any procurement in accordance with these Contract Procedure Rules.
- 3.14.2 All non-Council Officers must sign an agreement not to use information gained during employment with the Council, to gain any commercial or pecuniary advantage in relationship to concurrent or future employment/engagement.
- 3.14.3 No non-Council Officer shall make any decision on whether to award a contract or whom a contract should be awarded to unless specifically empowered to do so in writing by an Officer or body authorised to confer that power.
- 3.14.4 The responsible Officer shall ensure that the non-Council Officer's performance is monitored.
- 3.14.5 Non-Council officers includes, but is not limited to:
- Consultants
  - Main Contractors
  - Sub-Contractors
  - External Advisors.

## **SECTION 4 CONTRACT AND OTHER FORMALITIES**

- 4.1 **Contract documents**
- 4.1.1 All Contracts must be in writing using the *Council's Standard Documents*.
- 4.1.2 Where the procurement is for a Total Value of up to £100K the use of a Purchase Order is an acceptable form of contract, which must make reference to the successful quotation and the Council's Terms & Conditions of Purchase.
- 4.1.3 Where the procurement is for a Total Value over £100K, a Formal Contract is to be drawn up by Legal Services. The Contract will incorporate the Conditions of Contract included in the Invitation To Tender

documentation and any subsequent variations to these made and agreed during the Invitation to Tender procurement process.

- 4.1.4 Two copies of the contract will be sent to the successful tenderer to duly sign. After signing and returning both copies to the Council, they will both be signed on behalf of the Council. One copy will be retained by Legal Services and one copy will be returned to the successful tenderer for its retention.
- 4.1.5 Contract documents must be retained in accordance with the Corporate Retention Schedule or for a minimum period of six years from the contract end date and, if under seal, for a period of twelve years from the contract end date. Please refer to **Section 4.5** of these Contract Procedure Rules.
- 4.1.6 Category Management will record and retain all decisions, correspondence and documentation for audit purposes.

## 4.2 Contract formalities

- 4.2.1 Contracts must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £100K	Signature Purchase Order/ITQ Document	Officer with appropriate authority to enter into a contract
£100K+	Signature on Standard Contract & sealed (where appropriate)	Legal Services

- 4.2.2 All contracts for the Supplies (Goods), Services and Works must be concluded in writing using the appropriate Standard Contract before the contract commences.
- ## 4.3 Letters of intent
- 4.3.1 Letters of intent can only be issued by an Officer of the Council with prior approval of the Monitoring Officer or Head of Legal Services.
- 4.3.2 The letter must set out the key contract terms - price, duration, etc, and authorises the Contractor to carry out work up to a specified value before the formal agreement is signed.
- 4.3.3 In the case of Works contracts, a letter of intent in a form approved by The Monitoring Officer is acceptable in order to allow work to commence, although the issue of a formal contract must follow without delay.
- 4.3.4 Letters of intent are only binding on the Council and the contracting Party where the letter expressly states that their Tender has been accepted and the Council agrees to pay them the tender sum. The letter of intent should

normally seek to incorporate the terms and conditions of the relevant Council standard contract or relevant industry standard contract (e.g. JCT, ICE, NEC) indicating the Council's intention to enter into a formal, written contract with the contracting party, to carry out the Works/Services and receive Supplies (Goods) described in the letter, such Works/Services and receipt of Supplies (Goods) to commence on a date specified or at any rate before the parties execute the formal, written contract, until then the contracting parties obligations to the Council shall be governed by the Invitation to Tender documentation.

- 4.3.5 The wording of the letter of intent should be reviewed by Legal Services prior to issue, to ensure the letter is fit for its intended purpose.
- 4.3.6 A letter of intent is not a substitute for a formal agreement but can be used as an interim measure until the formal agreement has been signed. The tendering procedure set out in **Section 2** of these Contract Procedure Rules shall apply.

#### 4.4 **Signature**

- 4.4.1 The only person(s) authorised to formally sign a contract is the Monitoring Officer, Head of Legal Services or their representative within Legal Services and they must ensure that the person signing for the other contracting party has authority to bind it.
- 4.4.2 In the case of contracts for commissioning of care services, including educational placements and emergency accommodation for the homeless where the Total Value of the contract is not known, the Solicitor responsible for signing must have been granted authority to enter into commissioning contracts by the Monitoring Officer.

#### 4.5 **Sealing of contracts**

- 4.5.1 A contract must be sealed where:
- (a) the Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
  - (b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
  - (c) a Performance Bond is established on behalf of the Contractor(s) or their guarantors; or
  - (d) it is required by parties to the contract; or
  - (e) the total value of the Supplies (Goods), Services and Works exceeds £250K.
- 4.5.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of Legal Services. Legal Services are responsible for the process of sealing contracts on behalf of the Council's Monitoring Officer.

#### 4.6 **Bonds, parent company guarantees and insurance**

4.6.1 For all Supplies (Goods), Services and Works contracts, over £250K a Parent Company Guarantee or Performance Bond shall be required unless agreed otherwise by the Council's Monitoring Officer in conjunction with the Council's Chief Finance Officer and as part of the Procurement Gateway Process for Category B Procurements. In all other cases consideration should be given to the need for security (a Parent Company Guarantee or a Bond) to be given for the proper performance of the contract by the contractor.

4.6.2 The Council must never give a bond.

4.6.3 For all Works and Services contracts, the appropriate Director or appointed Authorised Officer, must notify in writing the Council's insurance officer giving full details of the nature, duration and value of the Works and Services being undertaken on any particular project.

#### 4.7 **Prevention of corruption**

4.7.1 The Officer responsible for the contract must comply with the Council Employee Code of Conduct and the Council's Anti Fraud and Corruption Policy and must not invite or accept any gift or reward in respect of the award or performance of any contract. A breach of this requirement by Council officers is likely to result in disciplinary action and may be gross misconduct.

Officers must not enter into discussions with any tenderer or other interested third party during a procurement process, unless specifically permitted by the procurement process, Category Management or Legal Services.

4.7.2 All clarification received from bidders during a procurement process must be submitted electronically via the Council's electronic Quotation/Tendering System. The question and the response must then be sent to all bidders via the Council's electronic Quotation/Tendering System.

4.7.3 All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the Prevention of Corruption Acts.

4.7.4 The Council participates in anti-fraud and corruption exercises with other public bodies. In order to do this data is exchanged with such organisations. The data exchange is likely to contain information on our contractors.

4.7.5 If an Officer becomes aware that any bidder is lobbying a Member or Officer of the Council then they must report this immediately to the Monitoring Officer.



**4.8 Declaration of interests/ Conflicts of interest (Public Contracts Regulations 2015, Regulation 24 “PCR 2015”)**

4.8.1 If it comes to the knowledge of a Member or an Officer of the Council that a contract in which he or she has a financial, economic or other personal interest which might be perceived to compromise their impartiality or independence, he or she shall immediately give written notice to the Council’s Monitoring Officer and record it on the register of interests.

4.8.2 Conflicts may also arise with incumbent suppliers. Officers are obliged to take appropriate measures to effectively prevent, identify and remedy conflicts of interest. In circumstances where measures cannot be taken to remedy conflicts, a contracting authority may have discretion to exclude the relevant bidder.

**SECTION 5  
PERFORMANCE AND CONTRACT MANAGEMENT**

5.1 All Category A and Category B Procurements must include a set of performance standards (where appropriate) that must be met throughout the contract. Any performance standards must be inserted into the terms and conditions of contract. Key performance indicators or similar benchmarks of quality should be used where available and appropriate.

5.2 All Category B Procurements (and Category A where of a complex nature) must have a designated Contract Manager whose name should be notified to the Contractor. Likewise, the Contractor must have a designated Contract Manager whose name is notified to the Council. These resources must be identified and agreed before the contract is awarded.

5.3 Regular contract monitoring meetings should be held with the Contractor and minutes of agreed actions taken. The frequency of the meetings to be dictated by the nature, value and associated risks of the contract.

5.4 Performance against contract standards must be monitored and recorded on a regular basis, proportionate to the nature, value and associated risks of the contract.

5.5 Where service improvements are enshrined in the contract these must be evidenced for the annual audit inspection and for any Gateway 5 review as prescribed by the Council’s Procurement Board.

**SECTION 6  
RISK MANAGEMENT**

6.1 A full risk assessment should be undertaken on all procurement options available to the Council. These should be documented and owners assigned once an option is selected.

- 6.2 A risk log should be created at the start of the procurement project and managed by the responsible Officer, in the case of High Value/Risk procurements. Risks should be reviewed regularly and appropriate actions taken to manage them. The Director should be kept aware of all risks and provided with a regular report on their status.
- 6.3 The Risk Management section should be consulted on all high value/risk procurement projects at the commencement of the project.

## **SECTION 7 ENVIRONMENT/SUSTAINABILITY**

- 7.1 The Council is committed to making Medway Council a greener and more environmentally friendly place to live and work.
- 7.2 The Council is committed to working towards a 'greener' future, by:
- Taking practical action to reduce, as far as possible, the effect the Council's activities have on the environment.
  - Improving the quality of the local environment; and
  - Encouraging the people of Medway to live and work in ways that reduce the borough's effect on worldwide environmental problems, to improve the environment now and protect the future.
- 7.3 The Council's green procurement rules are based on the following principles:
- (a) Banning products that damage the environment when an alternative is available.
  - (b) Promoting products that damage the environment the least.
  - (c) Understanding that buying environmentally friendly goods and services is part of a process of continuous improvement.
  - (d) Considering costs such as energy and maintenance when we consider tenders.
  - (e) Engaging with suppliers who can actively contribute to the reduction in energy use as part of their Contract with the Council.
  - (f) That all Contractors and Suppliers can demonstrate commitment to carbon reduction in their operations (insofar as they relate to the particular commission)
  - (g) That all Contractors and Suppliers undertake to supply relevant data to the Council to enable the carbon impact to be monitored.

## **SECTION 8 EQUALITIES**

- 8.1 Before starting any procurement, Council Officers must make sure that they consider equality issues by liaising with Corporate Performance & Intelligence and completing a Diversity Impact Assessment. This is essential if the procurement outcome will be a service or product that affects the staff or residents of Medway Council. The Equalities Impact Assessment will inform the detail of the contract specification.

- 8.2 Contractors must adhere to current equalities legislation at all times whilst performing a contract on behalf of the Council.

## **SECTION 9 SOCIAL AND ECONOMIC VALUE**

- 9.1 The current EU Procurement Directives, and UK legislation, allows the Council to take social and economic considerations into account when procuring Supplies (Goods), Services or Works.
- 9.2 The Council is required under the Public Services (Social Value) Act 2012 to consider how the services it procures and commissions might improve the economic, social and environmental well-being of Medway.
- 9.3 For those tender opportunities/contracts where the Council intends to include such social requirements it will ensure that they are drafted in the Invitation to Tender documents, as part of the evaluation criteria and ultimately defined in ways that do not discriminate against any bidders across the UK/EU.

## **SECTION 10 WHISTLE BLOWING**

- 10.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it encourages employees and others with serious concerns about any aspect of the Councils' work to come forward and voice those concerns.
- 10.2 The Councils *whistle blowing policy* encourages our employees to raise concerns in respect of any conduct of officers of the council that:
- may be unlawful;
  - may be contrary to the council's policies;
  - falls below established standards or practice or that may amount to improper conduct;
  - Councils *whistle blowing policy* is intended to encourage and enable staff to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside. The policy recognises that certain cases will have to proceed on a confidential basis and makes it clear that our staff can raise issues without fear of reprisals.
- 10.3 The council is anxious to ensure that the employees of its contractors are similarly encouraged and enabled to raise concerns in respect of any misconduct of officers of the council.
- 10.4 Contractors are also encouraged to introduce similar provisions to apply in the case of any similar misconduct of the Contractors staff when involved in work for the Council.

- 10.5 Any Member or Officer who believes there has been a breach of these Contract Procedure Rules should report the matter to the Monitoring Officer or use the Council's Whistle blowing Policy.

## **SECTION 11**

### **CRIMINAL RECORDS BUREAU CHECKS (Disclosure Barring Service DBS)**

- 11.1 The Council requires all people who, through the delivery of services to The Council, come into contact with the elderly, disabled and children, to have up to date satisfactory Disclosure Barring Service (DBS) report prior to award of any contract. The Council should also require such Contractors' personnel to be registered with the Disclosure and Barring Service (DBS) if and when such registration becomes necessary.

## APPENDIX A - GLOSSARY OF TERMS

Contract	A contract that has been created in accordance with the Contract Procedure Rules for call off or use by the Council. If in doubt whether a contract is approved or not contact the Category Management Team (see also Framework Agreement)
Approved Standard Terms	Includes industry standard terms and terms included within the Council's Standard Contracts
Officer/ Authorised Officer	A person with appropriate delegated authority to act on the Council's behalf within their respective Directorate.
Best Value	Under Best Value, each local authority has a duty to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness' as set out in the Local Government Act 1999. This takes into consideration the 4Cs of Challenge, Compare, Consult and Compete.
Code of Conduct	The code regulating conduct of Officers contained within the Council's Constitution
EU Competitive Dialogue Procedure	A procedure leading to the award of a contract whereby the Council produces a shortlist through a dialogue with those tenderers who are considered to have appropriate capacity. Based on the solutions discussed, final tenders are sought from the short listed contractors This procedure is most appropriate for complex procurements where significant input is required from the market to inform the drafting of the specification.
Contract Register	A register held by Category Management containing details of all contracts entered into by the Council.
PCR 2015	Public Contract Regulations 2015. These replace the PCR 2006 (As amended)
Procurement Board	A Cabinet Advisory Group chaired by the Deputy Leader of the Council or Member as appointed by the Leader of the Council, with representation from across the Council charged with the duty of

developing and reviewing procurement and contractual issues. For the avoidance of doubt, the Procurement Board is a Cabinet Advisory Group and has no formal decision making powers.

Contractor	Any person or body of persons providing, or seeking to provide, Supplies (Goods), Services or Works to the Council.
Council's Procurement Strategy	Defines the overall approach to procurement related activity for the Council.
EU Competitive Procedure with Negotiation	A procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. The procedure is a complex set of rules, and it is extremely difficult for contracting authorities to meet the requirements to allow the use of this procedure.
EU Notice	Notice posted in the Supplement to the Official Journal of the European Union (OJEU). Includes a Prior Indicative Notice (PIN), a Tender Notice or an Award Notice.
EU Open Procedure	A procedure leading to the award of a contract whereby all interested persons may tender for the contract, duly advertised by notice, i.e. there is no limit on the number of tenders received nor may the Council consider the suitability of interested tenderers prior to submission of Tenders.
EU Regulations	The EU public procurement directives implemented into UK legislation by virtue of the Public Contracts Regulations 2015.
EU Restricted Procedure	This is a 2 stage process which uses a Pre-Qualification (PQQ) and an Invitation to Tender (ITT) Stage.
EU Threshold	<p>The financial threshold at which EU public procurement directives must be applied if expected to be exceeded by the Total Value. Current EU thresholds are:</p> <ul style="list-style-type: none"><li>• Goods/Services £164,176</li><li>• Light touch regime £589,148</li></ul>

- Works £4,104,394

Please contact the Category Management Team for advice when considering projects in the following areas Works, Services, Supplies (Goods) and “Light touch” Services.

Exemption	A formal request in writing made by a Director to exempt the proposed requirement from the Contract Procedure Rules in exceptional circumstances.
Financial Reference	A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required. This service is available through a credit reference agency such as Dunn and Bradstreet
Chief Finance Officer	The Chief Finance Officer or a senior officer representing the Chief Finance Officer designated by him to provide financial advice to the Council's Authorised Officers.
Financial Regulations/Finance Procedure Rules	The Financial Regulations contained within the Constitution.
Framework Agreement	An agreement with suppliers whose purpose is to establish the terms governing contracts to be awarded during a given period, in particular with regard price and quality. It allows the Council to make specific purchases (call-offs) in accordance with the terms of that agreement.
Invitation To Quote	A formal written invitation to a minimum number of suppliers to provide written quotations for goods, services or works on the Council's standard terms for requirements between £10K and £100K
Invitation to Tender	A formal written invitation to a minimum number of suppliers to provide sealed bid offers for goods, services or works on the Council's standard terms for requirements over £100K
Officer	Council employee as defined in the Constitution
OJEU	Official Journal of the European Union
Parent Company Guarantee	A contract, which binds the parent of a subsidiary company as follows: If the subsidiary company

fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead or for the parent of the subsidiary company to pay the Council's reasonable costs/losses (including damages) for the Council having to procure a third party to meet the promises under the Contract with the Council.

Performance Bond

An insurance guarantee policy: If the Contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the supplier's failure.

Pre-qualification Questionnaire (PQQ)

A document that covers economic standing, past experience and technical suitability to determine a shortlist of potential suppliers to invite to ITT. The does not cover delivery questions that will be asked at the ITT stage. The use of pre-qualification questionnaires for below EU threshold contracts is prohibited. For the purpose of clarity, the thresholds are those used for goods and services rather than works or light touch contract.

Official Purchase Order

An order placed through the Integra Finance System (Web Req)

Category Management

means the business improvement process that brings together people from different parts of a business. The aim is to analyse and review discrete parts of the overall spend (called "Categories"), with suppliers, and identify the most appropriate and effective approach to sourcing for each Category. The intention should always be to increase the value provided by the supply chain. A Category can be defined as a discrete area of spend with boundaries determined by the market facing nature of the function or attributes of the Goods, Services or execution of Works being purchased.

The Council

Medway Council.

Tenderers

Suppliers/contractors who have been invited to submit a tender to the Council.



Total Value	<p>The whole of the value or estimated value (in money or equivalent value) over the contract term for a group of similar commodities or services, in accordance with Best Value:</p> <ul style="list-style-type: none"><li>• whether or not it comprises several lots or stages across the Council as a whole</li><li>• whether or not it is to be paid or received by the Council as a whole or separate departments within the Council</li></ul>
Value for Money	<p>The optimum combination of through life cycle cost and quality (or fitness for purpose) to meet the user's requirement.</p>
Written Quotation	<p>Quotation provided by a supplier/contractor to the Council containing pricing information and delivery details for requirements</p>



## **APPENDIX B – PROCEDURES UNDER PUBLIC CONTRACTS REGULATIONS 2015, REGULATIONS 26-32 “PCR 2015”**

Officers can choose the Open and Restricted Procedures. The Competitive Procedure with Negotiation and Competitive Dialogue Procedure are available only in specific circumstances. These two processes are available where:

- needs cannot be met without adaptation of readily available solutions;
- contract cannot be awarded without negotiations due to nature, complexity, legal/financial make-up or risks;
- technical specifications cannot be established with sufficient precision;
- they involve design or innovative solutions; or
- irregular (eg late submissions, abnormally low tenders) or unacceptable (eg not required qualifications/ price exceeds published budget) tenders have been received in response to open/ restricted processes.
- The ability to award contracts by way of the negotiated procedure without an advert remains in place provided the specific (considered to be exceptional) circumstances for its use are applicable

There is also the new Innovation Partnership Procedure as set out below.

### **Open Procedure**

Any interested party may submit a tender in response to the call for competition which will be an OJEU notice. The new minimum timescales are set out below. It should be noted that the issue of a prior information notice (PIN) can shorten the timescales under the open procedure but cannot itself be used as the call for competition.

New provisions within PCR 2015 entitle a contracting authority to examine tenders before verifying whether exclusion grounds are absent and selection requirements are satisfied provided a contracting authority does so in an impartial and transparent manner and the contracting authority ensures a contract is not awarded to a supplier which should have been excluded or has failed to meet the selection requirements.

### **Restricted Procedure**

Any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection requested by the contracting authority. The new minimum timescales are set out below. A call for competition can be made by means of a contract notice or, for certain types of contracting authorities, by way of a PIN.

### **Competitive Procedure with Negotiation**

Following qualitative selection, all selected economic operators are invited to negotiate but this procedure can be carried out in successive stages provided this is indicated to bidders upfront (like the competitive dialogue procedure). The procedure has been clarified to confirm that contracting authorities may negotiate initial and all subsequent tenders but not the final tender. Contracting authorities may reserve the right to award following receipt of initial tenders without negotiation but this must be

made clear at the start. The new minimum timescales are set out below. A call for competition can be made by means of a contract notice or, for certain types of contracting authorities, by way of a PIN.

### **Competitive Dialogue Procedure**

The competitive dialogue procedure largely remains the same as that under PCR 2006 except towards the end of the process. Following close of dialogue and receipt of final tenders, tenders may be “clarified, specified and optimised” but this must not involve changes to the essential aspects of the tender or procurement. Post evaluation, the contracting authority may “negotiate” with the winning tenderer to “confirm financial commitments or other terms by finalising the terms of the contract” provided this does not materially modify the essential aspects of the tender or the procurement.

Care must be taken as a contracting authority must ensure that changes do not risk competition being distorted or risk causing discrimination. Minimum timescales are set out below.

Note that a PIN cannot be used as a call for competition so a contract notice must be published.

### **Innovation Partnership**

This is a new for public procurement which is aimed at increasing innovation. The economic operators taking part are known as partners. The basic features of the innovation partnership procedure include:

- seek offers for one or more partners to assist in the development of an innovative product, service or works not yet on the market, and the subsequent purchase of the innovative solution without the need for a separate procurement procedure for the purchase, provided the final purchase corresponds to pre-agreed levels of performance and maximum costs;
- the procurement can be run with one or several partners carrying out separate R&D activities;
- the partnership procurement shall be structured to follow R&D activities and the duration/value of each phase should reflect the degree of innovation and sequence of the activities;
- the partnership procurement shall set intermediate targets to be attained by the partners taking part and provide for payment in appropriate instalments;
- termination after each phase (in full or per partner) can be reserved upfront;
- the procurement can be carried out in successive stages provided this is indicated upfront;
- the initial and each subsequent tender is to be negotiated but the final tender must not be negotiated; and
- the minimum requirements and the award criteria must not be negotiated. Minimum timescales are set out below. Note that a PIN cannot be used as a call for competition so a contracting authority using this procedure will need to commence its tender process by publishing a contract notice in the usual way.

## **APPENDIX C – TIME LIMITS UNDER PCR 2015**

Without prejudice to these minimum timescales, Officers must have regard to the complexity of the contract and the time required for drawing up tenders when setting the time limits. If the tender documents are not available electronically at the call for competition for one of the grounds set out in Regulation 22 then 5 days must be added on to the tender period, except in cases of substantiated urgency in relation to the open, restricted and competitive procedure with negotiation.

### **Open Procedure**

Minimum time period for tender deadline:

- reduced from 52 to 35 days.
- may be reduced from 35 to 15 days where a PIN is published not being a call for competition (previously 22 days although could be further reduced).
- may be reduced from 35 to 30 days where electronic tender submission (minimum before was 40 days).
- may be reduced where state of urgency (duly substantiated by the contracting authority) from 35 to 15 days.

### **Restricted Procedure**

Minimum time period for requests to participate:

- reduced from 37 to 30 days.
- runs from contract notice or invitation to confirm interest if a PIN is used for call for competition.
- may be reduced where state of urgency (duly substantiated by the contracting authority) from 30 to 15 days.

Time period for tender submissions:

- reduced from 40 days to 30 days.
- may be reduced further from 30 days to 10 days where PIN is published (not used as call for competition).
- may be reduced where state of urgency (duly substantiated by the contracting authority) from 30 to 10 days.
- may be reduced from 30 to 25 days where electronic tender submission is permitted.
- sub-central authorities may agree a deadline with all selected bidders. In absence of agreement, period must be at least 10 days.

### **Competitive Procedure with negotiation**

- Minimum time period requests to participate as per restricted procedure.
- Option for sub-central contracting authorities to agree timescales as per restricted procedure.

### **Competitive dialogue**

- Minimum time period for requests to participate reduced from 37 to 30 days.
- PIN cannot be used as a call for competition.

### **Innovation Partnership**

- Minimum time period for requests to participate is 30 days.
- PIN cannot be used as a call for competition.

### **Negotiated procedure without a call for competition**

- No minimum timescales.

## **PART 8 - EMPLOYMENT RULES**

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

#### **1.1 Declarations**

- (a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.
- (b) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

#### **1.2 Seeking support for appointment**

- (a) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (b) No Councillor will seek support for any person for any appointment with the Council.

### **2. Recruitment, appointment and dismissal of Director of Public Health**

- 2.1 Where the Council proposes to recruit, appoint or dismiss the Director of Public Health the process will comply with the Council's employment rules, together with the requirements of the National Health Service Act 2006 and relevant statutory guidance.

### **3. Recruitment of Head of Paid Service and Chief Officers**

- 3.1 Where the Council proposes to appoint a Chief Officer (within the meaning of the Local Authority (Standing Orders) Regulations 1993) and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
  - (a) draw up a statement specifying:
    - (i) the duties of the officer concerned; and
    - (ii) any qualifications or qualities to be sought in the person to be appointed;
  - (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified for it; and

- (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
- 3.2 Where a post has been advertised as provided in Rule 3.1(b), the authority shall:
- (a) interview all qualified applicants for the post, or
  - (b) select a short list of such qualified applicants and interview those included on the short list.
- 3.3 Where no qualified person has applied, the authority shall make further arrangements for advertisement in accordance with Rule 3.1(b).
- 3.4 The steps to be taken under paragraphs 3.1 – 3.3 may be taken by a committee, sub-committee or chief officer (within the meaning of the Local Authorities (Standing Orders) Regulations 1993) of the Council.
- 3.5 Every appointment of a person to a paid office or employment should be on merit, asset out in Section 7 of the Local Government and Housing Act 1989.

#### **4. Appointment and dismissal of, and disciplinary action against, staff**

- 4.1 Subject to paragraphs 4.2 and 4.14, appointment and dismissal of, and disciplinary action against, a member of staff must be done by the Head of Paid Service or by an officer nominated by the Head of Paid Service.
- 4.2 Paragraph 4.1 shall not apply to appointment or dismissal of, or disciplinary action against:
- (a) the officer designated as the Head of the authority's Paid Service;
  - (b) a statutory chief officer within the meaning of section 2 (6) of the Local Government and Housing Act 1989;
  - (c) a non-statutory chief officer within the meaning of section 2(7) of the Local Government and Housing Act 1989;
  - (d) a deputy chief officer within the meaning of section 2(8) of the Local Government and Housing Act 1989; or
  - (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

A person whose duties are solely secretarial or clerical or are otherwise in the nature of support services shall not be regarded as a non-statutory chief officer or a deputy chief officer.

#### Appointment of Head of Paid Service

- 4.3 Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the Head of Paid Service, the Full Council must approve that appointment before



an offer of appointment is made to that person. That committee or sub-committee must include at least one Member of the Cabinet.

- 4.4 The Full Council may only make or approve the appointment of the Head of Paid Service where no material or well-founded objection has been made by any member of the Cabinet in accordance with the provisions of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001.

#### Other Appointments

- 4.5 Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment of any officer referred to in 4.2 (a), (b), (c) or (d), at least one member of the Cabinet must be a member of that committee or sub-committee.
- 4.6 An offer of employment to any officer referred to in sub paragraphs (b) (c) or (d) of paragraph 4.2 shall only be made where no material or well-founded objection from any member of the Cabinet has been received in accordance with the provisions of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001.
- 4.7 Appointment of an assistant to a political group pursuant to Section 9 of the Local Government and Housing Act 1989 shall be made in accordance with the wishes of that political group.

#### Disciplinary Action and Dismissal

- 4.8 The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.
- 4.9 Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the Head of Paid Service, as the authority's Chief Finance Officer, or as the authority's Monitoring Officer, the Full Council must approve that dismissal before notice is given to that person.
- 4.10 The Head of Paid Service, Monitoring Officer and Chief Finance Officer may not be dismissed by the Council unless in accordance with the requirements of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015:
- (a) At least 20 days before the relevant Council meeting a Panel has been established for the purpose of advising on matters relating to the dismissal and independent persons appointed under Section 28 (7) of the Localism Act 2011 have been invited to be appointed to the Panel and
  - (b) any advice, views or recommendations of the Panel, the conclusions of any investigation into the proposed dismissal and any representations

from the relevant officer have been taken into account before the taking of the vote on whether or not to approve such a dismissal.

- 4.11 Subject to paragraph 4.9, where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of dismissal of any officer referred to in paragraph 4.2 (a), (b), (c) or (d), at least one member of the Cabinet must be a member of that committee or sub-committee.
- 4.12 A notice of dismissal to any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 4.2 shall only be made where no material or well-founded objection from any member of the Cabinet has been received in accordance with the provisions of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001.
- 4.13 Councillors will not be involved in the disciplinary action (as defined by the Local Authorities (Standing Orders) (England) Regulations 2001) against any employee below Head of Paid Service, Monitoring Officer and Chief Finance Officer, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, although the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of dismissals.
- 4.14 Nothing in paragraph 4.1 shall prevent a person from serving as a member of any Committee or Sub-Committee established by the Council to consider an appeal by:
- (a) another person against any decision relating to the appointment of that other person as a member of staff of the Council; or
  - (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.
- 4.15 All employees (with the exception of the Head of Paid Service, Monitoring Officer and Chief Finance Officer) have a right of appeal to the Sub-Committee of the Employment Matters Committee against dismissal or summary dismissal.

Reference:

Local Authorities (Standing Orders)(England) Regulations 1993  
Local Authorities (Standing Orders)(England) Regulations 2001  
Local Authorities (Standing Orders)(England) Regulations 2015  
Local Government and Housing Act 1989  
National Health Service Act 2006

## **CHAPTER 5 - CODES AND PROTOCOLS**

### **PART 1 - MEMBERS' CODE OF CONDUCT**

You are a member or co-opted member of Medway Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member –

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties. You should comply with the notification requirements for gifts and hospitality set out below.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts, or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any Disclosable Pecuniary Interests as required by law. You must also take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring Disclosable Pecuniary Interests in a manner conforming with the procedures set out below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not use improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

#### **Disclosable Pecuniary Interests**

“DPI” means those disclosable pecuniary interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Schedule One to this Code and where either it is:

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

## **1. Registering and declaring Disclosable Pecuniary Interests**

You must

- (a) within 28 days of taking office as a member or co-opted member, notify Medway Council's Monitoring Officer of any DPI
- (b) where a DPI has not been entered onto Medway Council's register, disclose the DPI to any meeting of Medway Council or its committees or sub-committees joint committees or joint sub-committee (including a meeting of the executive or a committee of the executive) at which you are present where you have a DPI in any matter being considered and where the DPI is not a 'sensitive interest'.<sup>1</sup>
- (c) following any disclosure of a DPI which is not on Medway Council's register nor the subject of pending notification, notify the Monitoring Officer of the DPI within 28 days beginning with the date of disclosure.
- (d) where you are discharging a function of Medway Council (acting alone) and a DPI has not been entered onto Medway Council's register and is not the subject of a pending notification, notify the Monitoring Officer of the DPI within 28 days of becoming aware that you have a DPI in any matter to be dealt with, or being dealt with, in discharging that function.

## **2. Participation in Meetings or Decision Making**

- (a) Unless dispensation has been granted, you may not participate in any discussion of or vote onto any matter in which you have a DPI.
- (b) Where you are discharging a function of the authority (acting alone) and you have a DPI in any matter to be dealt with or being dealt with by you in the course of discharging that function you must not take any steps or further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with by someone else).

Failure, without reasonable excuse, to comply with the above provisions as to notification and disclosure of DPIs and participation in a matter in which you have a DPI is a criminal offence in accordance with section 34 of the Localism Act 2011.

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

### **3. Further notification and participation requirements**

In addition, Medway Council requires the following notification and participation procedures to be followed by Members. Failure to comply with these procedures will not be a criminal offence but will be a breach of this Code:

- (a) You shall within 28 days of adoption of this Code notify Medway Council's Monitoring Officer of any DPI
- (b) Unless dispensation has been granted, you must leave the room during any discussion of or vote on any matter in which you have a DPI.

#### **Gifts and Hospitality**

- (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year). You must also register the source of the gift, benefit or hospitality.
- (2) The Monitoring Officer will keep a Register of Gifts and Hospitality, which shall be available for inspection on request by members of the public.

**MEDWAY COUNCIL'S CODE OF CONDUCT**  
**SCHEDULE ONE**

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

## **PART 2 - MEDWAY COUNCIL PLANNING CODE OF GOOD PRACTICE (incorporating the Site Visit Protocol)**

### **1. Introduction**

- 1.1 This code of good practice (the Planning Code) gives advice to Councillors who:
- are members of a Planning Committee (the Committee);
  - sit in on a meeting of the Committee as a substitute member;
  - attend the Committee (whether or not they take part in a debate in the Committee on a planning application or other development management matter);
  - are involved outside the Committee on a planning application or other development management matter – including informal occasions such as meetings with officers or public and consultative meetings;
  - attend planning application site visits.
- 1.2 A key aim of the Planning Code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Councillors must make planning decisions openly, impartially with sound judgment and for justifiable reasons.
- 1.3 This is particularly important, as planning matters will be subject to close scrutiny both because large sums of money will be at stake for applicants for planning permission and because the quality of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.
- 1.4 The Human Rights Act 1998 has implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.
- 1.5 The Planning Code is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance without good reason could be taken into account in investigations into a breach of the Members' Code, possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

### **2. Relationship with the members' code of conduct**

- 2.1 The members' code of conduct (“the Members' Code”) must always be complied with and the rules in that code must be applied before considering the Planning Code.

- 2.2 The Planning Code is not intended to form a part of the adopted Members' Code but is a separate document, which is both supportive of the Members' Code and the source of expanded guidance in the particular area of planning.
- 2.3 To distinguish it from the Members' Code, this document is referred to as the Planning Code.

### 3. Disclosable Pecuniary Interests

- 3.1 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in the list attached to the Members' Code.
- 3.2 The requirement to notify the Monitoring Officer of a DPI applies not only to a Councillor's own interests but also to those of the Councillor's husband/wife/civil partner or a person with whom the Councillor is living as husband/wife or as if they were civil partners, if the Councillor is aware that that person has the interest. In this Planning Code such a person is referred to as a "relevant person".
- 3.3 Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and Councillors should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 3.4 A Councillor may have a DPI in relation to a planning application in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to:
- An application for development of a property owned or leased by the Councillor or a relevant person;
  - An application for development of land owned by the Councillor's employer or a relevant person's employer;
  - An application for development of a property which the Councillor or a relevant person occupy by way of licence.
- 3.5 Unless a Councillor has received a dispensation from Medway Council, he or she must not participate in a discussion or vote on any application in which he or she or a relevant person has a DPI.
- 3.6 The Localism Act 2011 does not *require* the disclosure at a meeting of a DPI if the interest already appears on the register. Councillors need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, in cases of doubt the Councillor should disclose at the meeting. In



any event, Councillors may voluntarily declare an ~~an DPI or other~~ interest at a meeting, even where there is no legal obligation to do so.

- 3.7 The Members' Code requires Councillors to withdraw from the room at a meeting during a discussion ~~and vote upon~~ about an issue in which they have a DPI. Failure to comply with this requirement will not be a criminal offence but will be a breach of the Members' Code and could potentially taint a planning decision and leave it susceptible to a challenge by way of judicial review.
- 3.8 There are no longer any exemptions allowing Councillors who have a DPI to speak where a member of the public would be allowed to speak. Therefore where a Councillor has a DPI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on a planning application and must withdraw from the room. This applies whether or not the Councillor is wishing to speak as a member of the committee, as a ward councillor or as a private individual.
- 3.9 Therefore if a Councillor has a DPI in a matter being considered at a Committee (either his or her own interest or through an interest of a relevant person) he or she **must**

- Declare the interest verbally at the meeting as soon as he or she becomes aware of it, if it is not already registered on the Register of Member Interests
- If it is declared at the meeting under the requirement above, ensure that the Monitoring Officer is notified of the interest within 28 days of the meeting, for purposes of registration on the Register of Member Interests
- Withdraw from the room and not participate in or give the appearance of participating in the debate or the vote
- Not be present in the room to represent ward or objectors/supporters views

and a Councillor **may**

- Declare the interest verbally at the meeting even if it already appears on the Register of Member Interest

~~Subsequent sections of this Planning Code give advice about more indirect interests in a planning application.~~

#### 4. Predetermination and Bias

- 4.1 Councillors must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although s25 of the Localism Act 2011 is also relevant. Even if a Councillor does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination and bias are likely to be more strictly applied where the Council is making "quasi-judicial" decisions, such as the

determination of a planning application, than in the case of other decisions to be made by the Council.

- 4.2 The basic legal position is that a Councillor should not take part in making a decision on a planning matter if he or she is **biased** or has **predetermined** the matter. Councillors should bring an unbiased, properly directed mind to the consideration of any matters before them at Committee. This does not mean that Councillors are not entitled to have and to express opinions about general planning matters, or planning cases. However, they must approach, and must be seen to approach, matters before them with an open mind.
- 4.2 In this respect a distinction is to be drawn between those Councillors who are making the decision (i.e. speaking and voting as part of the committee) and those Councillors seeking merely to influence the decision (i.e. making representations as a Ward Councillor). The prohibition in respect of predetermination or bias only affects those actually making the decision. A Councillor who has predetermined or who is biased may still speak as a Ward Councillor (provided that he or she does not also have a DPI).

### **Predetermination**

- 4.3 The law also makes a distinction between *predetermination*, which rules out participation in decision-making and *predisposition*, which does not.
- 4.4 A Councillor is entitled to have and to express views on local matters, both general planning matters and more specific applications. These views may indicate that a Councillor has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a Councillor with a predisposition may take part in decision-making.
- 4.5 A predisposition will move on to becoming predetermination if, in relation to any matter before the Committee, a Councillor has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing that he or she hears at Committee will alter his or her position.
- 4.6 Section 25 of the Localism Act 2011 expressly provides that a Councillor shall not be taken to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view the he or she took, or would or might take, in relation to a matter. Therefore a Councillor will not have predetermined merely because he or she has made statements about a planning application in the past. However, this does not mean that a Councillor is free to say or do *anything* and still participate in the debate and vote. If by his or her actions and words the Councillor makes it clear that he or she will be voting a certain way no matter what information is presented at the Committee, then he or she will have predetermined and should not take part in the decision making.
- 4.7 There is acceptance that a Councillor may legitimately consider matters in several capacities as different factors may apply to different decisions. Where premises require both planning permission and a licence, Councillors may be asked to sit on both the Planning Committee and a Licensing Hearing Panel.

While the statutory regimes in such cases are different, often the factors to be taken in to account can be similar. In these circumstances, Councillors should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a pre-determination of the second decision. If that is the case, the Councillor should not take part in the decision making at the second committee.

## **Bias**

- 4.8 A Councillor should not be party to decisions in which he is actually biased or gives the appearance of being biased, to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a possibility that the decision maker was biased.
- 4.9 Bias may arise by virtue of a Councillor being closely connected with a person who has a vested interest in the application – either the applicant or an objector. This may result from a personal connection, such as an applicant being a relative or friend, or result from the Councillor espousing a particular viewpoint (e.g. by being part of a lobby group). The role of the Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a Councillor is closely connected with a particular party.
- 4.10 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that Councillors must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates. Where this might occur, Councillors should not take part in the decision-making

## **Specific areas of guidance**

### **4.11 Membership of a Parish Council**

A Councillor who is also a member of a Parish Council which has been consulted on a planning application is not automatically debarred from participating in a planning decision at Medway even where he or she may have sat on the relevant parish planning committee. However, the following key principles should be observed if a Councillor is to participate in the decision-making at Medway:

- Careful consideration must be given as to whether a reasonable and informed member of the public would believe that the Councillor was coming to the decision at Medway without a fixed view. Strong opposition or support to an application at the parish meeting would indicate that a Councillor had predetermined and therefore debar that Councillor from voting at the Committee in Medway

- If speaking at the Parish Meeting the Councillor should make it clear that what he or she is saying is based on the limited information available at that stage and that the Councillor will review the matter at the Medway meeting.

If a planning application significantly affects the Parish Council (e.g. the Parish Council is the applicant or the application affects land owned by the Parish Council), it is likely that a fair minded and informed observer might consider the Councillor to be biased as a result of his membership of the Parish Council and therefore in those circumstances a Parish Councillor should not take part in the debate or vote on such an application.

#### **4.12 Lobbying by Councillors**

- 4.12.1 Councillors can, of course, lobby and campaign on particular developments, but they should recognise that this may remove them from the decision making process.
- 4.12.2 If a Councillor leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose a particular development, he or she will be considered to have predetermined an application relating to that development.
- 4.12.3 The position in 4.12.2 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, e.g. the RSPB, English Heritage or the Ramblers Association. If that organisation has made representations on an application, but the Councillor has not been involved in preparing those representations, he or she will not have predetermined merely due to that membership.
- 4.12.4 Councillors should not excessively lobby other Councillors regarding their views on planning applications, nor should they, outside of the Committee, try to persuade other Councillors how to vote.
- 4.12.5 Councillors should not decide or discuss how to vote on planning applications at political group meetings or lobby other Councillors to do so. Political group meetings should never dictate how Councillors vote on planning applications.

#### **4.13 Representations from Councillors at the consultation stage**

Councillors who wish to take part in the debate and vote at a Committee should refrain from making representations as part of the consultation process, as this may imply predetermination. Councillors may, however, exercise their rights to refer an application to the Committee and then take part in the debate and vote at the Committee. In making such a referral Councillors must inform the [Head of Planning/Development Manager in writing](#) of the [planning](#) reasons for referral to committee [\(note just because they have been asked to refer to committee by a particular individual or group is not a valid planning reason for referral\)](#), and should carefully consider how they express those reasons.

#### **4.14 Lobbying of Councillors**

4.14.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Committee. However lobbying can, where a Councillor is a member of the Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a planning decision.

4.14.2 A Councillor who wishes to participate in the determination of a planning application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have predetermined

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by acting as a vehicle for the expression of views as a ward Councillor providing he or she has not committed to vote in accordance with those views or that he or she is not acting as an advocate for a particular viewpoint.

4.14.3 When a Councillor participates in a making a planning decision, his or her overriding duty is to the community as a whole and not just people in his or her ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality. To do so is likely to be a breach of the Members' Code.

4.14.4 In addition to the requirement set out in the Members' Code to declare any gift or hospitality with an estimated value of at least £100, Councillors should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application.

4.14.5 It is good practice for Councillors to

- forward copies of lobbying correspondence to the Development Manager;
- advise the Development Manager of any offers of planning gain or constraint on development made to them;

#### **4.15 Contact with applicants, developers and objectors**

4.15.1 Councillors should refer those who approach for assistance on planning, procedural or technical matters to relevant officers.

4.15.2 As community leaders and local representatives Councillors will want to be involved in relevant public meetings, pre-application discussion and policy production. However, this may create some risks for councillors who are members of the Committee, and for the integrity of the decision making process. Councillors will be able to be involved provided that they adopt the following precautions.

- Councillors wishing to take part in the debate and vote at Committee should avoid agreeing to formal or informal meetings with or presentations by applicants, developers or groups of objectors, unless these are organised by officers.
- At any such organised meetings or presentations [councillors can ask questions to seek clarification and make comments/raise concerns but should not go so far as to indicate how they would vote were the proposal to come to Committee](#)~~questions should be limited to those necessary to clarify a Councillor's understanding of proposals.~~
- It must be remembered that the presentation is not a part of the formal planning process. . All parties will be advised the meeting is not a decision-making meeting.
- A presentation is a form of lobbying and Councillors who will be determining the application should not express views on how they will vote, although is perfectly acceptable to ask questions and give general and preliminary feedback.
- If a Councillor is genuinely unable to avoid contact from an applicant or objector outside of a meeting or presentation organised by officers he or she should inform the applicant/objector that he or she will not be able to give a view before consideration at the Committee and should keep a record of what was discussed.

#### **4.16 Policy formulation by the Council**

4.16.1 The role of the Planning Committee is to determine applications, in line with the relevant statutory requirements (e.g. s38 of the Planning & Compulsory Purchase Act 2004 in relation to planning applications). It is the role of Cabinet and full Council to develop planning policy. While the Planning Committee does not have a consultation role in terms of emerging policy within its terms of reference, members of the Committee may sit on other committees (such as the Regeneration, Culture and Environment Overview & Scrutiny Committee or the ~~Local Development Framework~~[Development Plans](#) Cabinet Advisory Group)) which do have such a consultative role. In addition, there are all member briefings on planning policies, where Councillors can express views.

4.16.2 Councillors may take part in both policy formulation and determining planning applications. However, when attending meetings on policy formation Councillors should follow the guidance on pre-determination if they wish to take part in subsequent decisions on planning applications. This will be particularly relevant where the policy being formulated is site specific where the policy may address the desirability of certain types of development on a particular site.

## 4.17 Site Visits

4.17.1 Site visits can be a valuable part of the planning process. However they should normally only be requested where there are definite benefits, for example:

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection.
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

4.17.2 No hospitality should be accepted at site visits.

4.17.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.

4.17.4 Councillors who wish to take part in the decision-making at Committee should not express views on the application to anyone present.

4.17.5 It is acceptable to ask officers at the site visit questions or to seek clarification on matters relevant to the site inspection.

4.17.6 The site visit should be properly recorded [in terms of which councillors attended and a summary of the visit](#) and reported back to the Committee.

4.17.7 Councillors who wish to determine an application should not enter a site subject to a planning proposal other than as part of an official site visit even in response to an invitation.

4.17.8 A site visit is not a formal meeting of the Committee and therefore a Councillor with a Disclosable Pecuniary Interest is not debarred from attending. However, such a Councillor must take care to ensure that (i) nothing he or she does at the site visit breaches the Members' Code and (ii) he or she does not imply that he or she will be part of the decision making process at Committee.

4.17.9 All Councillors should remember the purpose of the site visit and should refrain from making comments not relevant to the application to be considered by the Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Councillors should not treat it as such.

4.17.10 The Chairman of the site visit may ask a Councillor to leave the site visit if he or she is not complying with this Planning Code or the Site Visit Protocol.

4.17.11 The procedure for site visits is set out in the protocol for site visits attached as an appendix to this Planning Code and all Councillors shall comply with that protocol.

#### **4.18 Contact with Officers**

- 4.18.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.
- 4.18.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.
- 4.18.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result planning officers views will be presented on the basis of their overriding professional obligation of professional independence which may on occasion be at odds with the views, opinions or decisions of the Committee or its members.

#### **4.19 Planning applications by Councillors and officers; and Council development**

- 4.19.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety, if not handled transparently. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or planning policy proposals.
- 4.19.2 Councillors (and officers involved in the planning process) who submit proposals should notify the [Head of Planning in writing](#) Development Manager of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect with members of the Committee concerning the application. Failure by a Councillor to comply with these principles could be a breach of the Members' Code.
- 4.19.3 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Councillors should carefully consider using agents to submit and take forward their own applications.
- 4.19.4 Serving Councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do should play no part in the decision making process for that proposal.
- 4.19.5 All proposals submitted by Councillors or by officers involved in the Development Management process are required to be decided by the Committee and not dealt with by officers under delegated powers. Councillors considering an application must of course consider whether the nature of any relationship with the Councillor submitting the planning application could lead to an accusation of bias. Mere membership of the same political group is unlikely to lead to an appearance of bias, but a close friendship could.



4.20 Development proposed by the council or a council owned company

4.20.1 Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. Council owned companies also submit proposals that are decided by the council.

4.20.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by a private developer.

4.20.3 Members of the pPlanning eCommittee who sit on the board of a Council owned company which has submitted a planning proposal shall declare a non-registerable interest and take no part in the discussion and determination of that proposal.

4.20.4 Officers who are directly involved in the preparation of development proposals shall not determine planning applications in respect of such proposals.

## 5. Decision making

### 5.1 Councillors making planning decisions must

- come to meetings with an open mind and demonstrate they are open minded;
- comply with section s38 Planning & Compulsory Purchase Act 2004 and make decisions in accordance with the development plan unless material considerations indicate otherwise;
- not vote or take part in the discussions at Committee on a proposal unless present to hear the entire debate including any officer introduction/presentation;
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
- request further information if it is felt there is insufficient information before the Committee to reach a decision;
- where proposing, seconding or supporting a decision contrary to officer recommendation, identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of an appeal or other challenge (and in the event of a proposal to grant planning permission contrary to officer recommendation propose relevant conditions and reasons for conditions to be attached to the planning permission). If Councillors are unable to do this immediately, they should request an adjournment or a deferral in order to seek advice and/or formulate the reasons/conditions.

5.2 The [Planning](#) Committee has agreed that where the statutory consultation period for a planning application has expired prior to the date of the Committee at which the application is to be considered, no representations shall be accepted for consideration by the Committee unless they are received within the [Planning Service Development Management department](#) before 12 noon on the day before the date of the Committee at which the application is to be considered.

## 6. Training

Councillors should not participate in decision-making meetings dealing with planning matters unless they have attended any training prescribed by the Monitoring Officer.

<b><u>PROTOCOL FOR MEMBER SITE VISITS</u></b>		<b>OP800</b>	<b>Issue no 003</b>
		<b>Date :</b>	
<b>1.</b>	<p><b><u>Purpose</u></b></p> <p>To ensure consistent and appropriate procedures are followed in the conduct of Member site visits arising as part of the consideration of a planning application, or other development by the Planning Committee.</p>		
<b>2.</b>	<p><b><u>Scope</u></b></p> <p>The conduct of any site visit to be undertaken by members of the Planning Committee as part of the consideration leading to the determination made under the Planning Acts including the determination of any application for planning permission, Listed Building Consent, confirmation of a Tree Preservation Order etc. and the expediency of taking enforcement action.</p>		
<b>3.</b>	<p><b><u>Responsibilities</u></b></p> <p>Overall responsibility lies with the Development Manager (DM). Specific duties are carried out by Principal Planners (PP), Senior Planners (SP), Planners (PO), Case Officers (CO), Democratic Services Officers (DSO) and the Democratic Services Support Officers (DSSO) in Democratic Services.</p>		
<b>4.</b>	<p><b><u>Procedure</u></b></p>	<b>Action</b>	<b>Dec</b>
<b>4.1</b>	<p>The Planning Committee may resolve to defer a decision on a planning application or other planning matter in order that a site visit (SV) can take place to assist the consideration. It should be noted that site visits should normally only be agreed where:</p> <ul style="list-style-type: none"> <li>• Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection and/or</li> <li>• There are significant policy or precedent implications and specific site factors need to be carefully addressed</li> </ul> <p>Members should note that the site visits are for fact-finding reasons to assist Member deliberations and are not for discussing the merits of the proposal which should only be done at Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Members should not treat it as such. Members should concentrate on the aspects of the application in question which required the Site Visit</p> <p>The DM or officer attending the Committee and DSO should note the reasons for the deferral for the minutes.</p>		PC minutes
		DM/ DSO	

<b><u>–PROTOCOL FOR MEMBER SITE VISITS</u></b>		<b>OP800</b>	<b>Issue no-003</b>
		<b>Date-:</b>	
	<b><u>Procedure</u></b>	<b>Action</b>	<b>Doc</b>
4.2	As soon as possible following the meeting, and at least within one working day, the DM should inform the case officer that the item has been deferred.	DM	
4.3	<p>The CO should immediately</p> <ul style="list-style-type: none"> <li>■ retrieve the file and ensure that a copy of the report to the Committee is added to it marked as “Deferred for a site visit” and the date of the meeting.</li> <li>■ advise the DSSO of the names and addresses of persons to be notified of the date and arrangements for the site visit.</li> <li>■ carefully check both the computer (20/20) record and the application file. Persons to be notified are: <ul style="list-style-type: none"> <li>● The applicant and/or agent</li> <li>● Any person who has made representations including local residents, any Parish Council, any Amenity or Residents Society or representative group, and any consultee who has responded</li> <li>● Any other officers of the Council from other sections/departments needed to advise Members on specialist aspects</li> </ul> </li> </ul> <p>Special provisions may need to be made such as pegging out a building, an area of the site to be cleared, or Members attending need to wear boots or other particular clothing. The CO should advise DSSO of such factors to pass on to those attending.</p>	CO  CO/ DSSO	
4.4	DSSO to liaise with the Chairman and Planning Spokesperson to agree a date and time for the site visit (SV); then contact the agent/applicant by telephone to check that this is possible in terms of obtaining access to the site. The DSSO should ensure that the agent/applicant (if not the landowner) has the landowner’s permission for the SV.	DSSO	
4.5	The DSSO should then write to all Councillors and the persons to be notified and the DM, PP and CO advising of the date and time of the SV. The letter should include advice that the purpose of the SV is for Members to understand the physical factors at the site although they will hear representations from interested parties. The visit is not a decision taking mechanism and there will be no vote or resolution at the SV.	DSSO	

<b><del>PROTOCOL FOR MEMBER SITE VISITS</del></b>	<b>OP800</b>	Issue no 003
	Date :	

	<u>Procedure</u>	Action	Doc
4.6	The DSSO will supply CO with an attendance sheet which the CO should ensure is signed by Members at the site visit	DSSO/ CO	
4.7	The SV will be attended by the CO, PP or DM who should ensure that he/she takes the file, a scale rule, mobile phone and any necessary equipment needed to explain the proposal and is appropriately dressed.  The CO/PP/DM should ensure that he/she arrives at the site in good time. If it is the first SV of the day he/she should arrive 10 minutes before the official start time to be able to deal with any concerns from members of the public or non-Council attendees.	CO/ PP/ DM	
4.8	The site visit will be conducted by the Chairman of the Planning Committee or their nominated deputy but the CO/PP/DM will be there to advise on procedures and protocol. The visit will follow the following format: <ul style="list-style-type: none"> <li>● The Chairman will call the session to order and explain the reason for the visit and the procedure to be followed making it clear that no decision will be taken and the date of the meeting where the application will be re-considered.</li> <li>● The CO/PP/DM will explain the application proposal or the development under consideration; summarise the representations received; identify the planning issues and how the officer recommendation has been reached.</li> <li>● The Chairman will ask the applicant/agent if they wish to add any points; ask if any members of the public/other attendees wish to comment or ask questions, ask Committee Members if they wish to ask questions or seek points of clarification, then questions will be fielded either by the Chairman, the CO/PP/DM or the applicant/agent – to be decided by the Chairman</li> <li>● The Chairman will close that part of the visit, confirming that no decision will be taken and the date of the meeting when the application will be next considered but that no further comments will be heard at that time.</li> </ul> <p>Members of the Committee will look at the site visiting those parts deemed necessary including any vantage points from neighbouring property.</p>	CO/ PP/ DM	

<b>–PROTOCOL FOR MEMBER SITE VISITS</b>	<b>OP800</b>	Issue no 003
	Date :	

	<b>Procedure</b>	<b>Action</b>	<b>Dec</b>
	<p>When the Chairman considers that the time is appropriate he/she will announce that the site visit is formally closed.</p> <p><b>Note:</b></p> <p><b>A.</b> <del>During the SV Members must stay together as a group to ensure that there is no opportunity for individual lobbying and all are able to consider the development on the basis of the same information. If there are any further questions they should be addressed to the Chairman so that they can be answered in a proper manner so that all can hear.</del></p> <p><b>B.</b> <del>Members must be aware that they have no powers of entry and can only enter land or a building at the agreement of the owner/occupier. Members of the public have no rights to accompany the Councillors visiting the site and likewise may only enter land or a building with the permission of the owner/occupant.</del></p> <p><b>C.</b> <del>The Chairman of the SV may request a Councillor to leave the SV if he or she does not comply with this protocol and/or the Planning Code.</del></p> <p><b>D.</b> <del>The Chairman may call a halt to any SV if there is unruly or abusive behaviour on the part of anyone present.</del></p>		
4.9	The CO/PP/DM will make a note of the persons attending the SV. This note will be added to the supplementary agenda advice sheet for the next Committee meeting together with a brief summary of the issues raised at the SV.	CO/ PP/ DM	Supp. Agenda
4.10	The CO/PP/DM will send, email or fax the attendance sheet to Members Services.	CO/ PP/ DM	

<b><u>PROTOCOL FOR MEMBER SITE VISITS</u></b>	<b><u>OP800</u></b>	<b><u>Issue no 009</u></b>
	<b><u>Date :</u></b>	<b><u>05/02/15</u></b>

**1. Purpose**

To ensure consistent and appropriate procedures are followed in the conduct of Member site visits arising as part of the consideration of a planning application, or other development by the Planning Committee.

**2. Scope**

The conduct of any site visit to be undertaken by Members of the Planning Committee as part of the consideration leading to the determination made under the Planning Acts including the determination of any application for planning permission, Listed Building Consent, confirmation of a Tree Preservation Order etc. and the expediency of taking enforcement action.

**3. Responsibilities**

Overall responsibility lies with the Head of Planning (HoP). Specific duties are carried out by Planning Managers (PM), Senior Planners (SP), Case Officers (CO), Democratic Services Officers (DSO) and the Democratic Services Support Officers (DSSO) in Democratic Services.

**4. Procedure**

	<b><u>Action</u></b>	<b><u>Doc</u></b>
<b><u>4.1</u></b>	<u>The Planning Committee may resolve to defer a decision on a planning application or other planning matter in order that a site visit (SV) can take place to assist the consideration. It should be noted that site visits should normally only be agreed where:</u>	<u>PC</u> <u>minutes</u>

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection and/or
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

Members should note that the site visits are for fact-finding reasons to assist Member deliberations and are not for discussing the merits of the proposal, which should only be done at Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Members should not treat it as such. Members should concentrate on the aspects of the application in question which required the site visit.

The HoP or officer attending the Committee and DSO should note the reasons for the deferral for the minutes.

	<u>HoP/</u> <u>DSO</u>
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<u>PROTOCOL FOR MEMBER SITE VISITS</u>		<u>OP800</u>	<u>Issue no 009</u>
		<u>Date :</u>	<u>05/02/15</u>
<u>Procedure</u>	<u>Action</u>	<u>Doc</u>	
<u>4.2 As soon as possible following the meeting, and at least within one working day, the HoP should inform the case officer that the item has been deferred.</u>	<u>HoP</u>		
<u>4.3 The CO should immediately</u>	<u>CO</u>		
<ul style="list-style-type: none"> <li>▪ <u>retrieve the file and ensure that a copy of the report to the Committee is added to it marked as 'Deferred for a site visit' and the date of the meeting.</u></li> <li>▪ <u>advise the DSSO of the names and addresses of persons to be notified of the date and arrangements for the site visit.</u></li> <li>▪ <u>carefully check both the computer (ldox) record and the application file. Persons to be notified are:</u> <ul style="list-style-type: none"> <li>○ <u>The applicant and/or agent</u></li> <li>○ <u>Any person who has made representations including local residents, any Parish Council, any Amenity or Residents Society or representative group, and any consultee who has responded</u></li> <li>○ <u>Any other officers of the Council from other sections/departments needed to advise Members on specialist aspects</u></li> </ul> </li> </ul>			
<u>Special provisions may need to be made such as need to use a megaphone, pegging out a building, an area of the site to be cleared, or Members attending need to wear boots or other particular protective clothing. The CO should advise DSSO of such factors to pass on to those attending.</u>	<u>CO/</u> <u>DSSO</u>		
<u>4.4 DSSO to liaise with the Chairman and Planning Spokesperson to agree a date and time for the site visit (SV); then contact the agent/applicant by telephone to check that this is possible in terms of obtaining access to the site. The DSSO should ensure that the agent/applicant (if not the landowner) has the landowner's permission for the SV.</u>	<u>DSSO</u>		
<u>4.5 The DSSO should then write to all Councillors and the persons to be notified and the HoP, PM and CO advising of the date and time of the SV. The letter should include advice that the purpose of the SV is for Members to understand the physical factors at the site although they will hear representations from interested parties. The visit is not a decision taking mechanism and there will be no vote or resolution at the SV.</u>	<u>DSSO</u>		
<u>4.6 The DSSO will supply CO with an attendance sheet which the CO should ensure is signed by Members at the site visit</u>	<u>DSSO/</u> <u>CO</u>		



<b><u>PROTOCOL FOR MEMBER SITE VISITS</u></b>	<b><u>OP800</u></b>	<b><u>Issue no 009</u></b>
	<b><u>Date :</u></b>	<b><u>05/02/15</u></b>

<b><u>Procedure</u></b>	<b><u>Action</u></b>	<b><u>Doc</u></b>
<p><b><u>4.7</u></b> <u>The SV will be attended by the CO, PM or HoP who should ensure that he/she takes the file, a scale rule, tape measure, mobile phone, megaphone and any necessary equipment needed to explain the proposal and is appropriately dressed.</u></p> <p><u>The CO/PM/HoP should ensure that he/she arrives at the site in good time. If it is the first SV of the day he/she should arrive 10 minutes before the official start time to be able to deal with any concerns from members of the public or non-Council attendees.</u></p>		<u>CO/ PM/ HoP</u>
<p><b><u>4.8</u></b> <u>The site visit will be conducted by the Chairman of the Planning Committee or their nominated deputy but the CO/PM/HoP will be there to advise on procedures and protocol. The visit will follow the following format:</u></p> <ul style="list-style-type: none"> <li><u>• The Chairman will call the session to order and explain the reason for the visit and the procedure to be followed making it clear that no decision will be taken and the date of the meeting where the application will be re-considered.</u></li> <li><u>• The CO/PM/HoP will explain the application proposal or the development under consideration; summarise the representations received; identify the planning issues and how the officer recommendation has been reached.</u></li> <li><u>• The Chairman will ask the applicant/agent if they wish to add any points; ask if any members of the public/other attendees wish to comment or ask questions, ask Committee Members if they wish to ask questions or seek points of clarification, then questions will be fielded either by the Chairman, the CO/PM/HoP or the applicant/agent – to be decided by the Chairman</u></li> <li><u>• The Chairman will close that part of the visit, confirming that no decision will be taken and the date of the meeting when the application will be next considered but that no further comments will be heard at that time.</u></li> </ul>		<u>CO/ PM/ HoP</u>

Members of the Committee will look at the site visiting those parts deemed necessary including any vantage points from neighbouring property.

When the Chairman considers that the time is appropriate he/she will announce that the Site Visit is formally closed.

<u>PROTOCOL FOR MEMBER SITE VISITS</u>		<u>OP800</u>	<u>Issue no 009</u>
		<u>Date :</u>	<u>05/02/15</u>
<u>Procedure</u>	<u>Action</u>	<u>Doc</u>	
<p><u>4.9</u> <u>A site visit is not a formal meeting of the Committee and therefore a Councillor with a Disclosable Pecuniary Interest is not debarred from attending. However, such a Councillor must take care to ensure that (i) nothing he or she does at the site visit breaches the Members' Code and (ii) he or she does not imply that he or she will be part of the decision making process at Committee.</u></p> <p><u>See Point 3 of the Members Code of Practice via the following link :</u>  <a href="http://www.medway.gov.uk/pdf/5.02%20-%20Members%20planning%20code%20of%20good%20practice21%20August%202013.pdf">http://www.medway.gov.uk/pdf/5.02%20-%20Members%20planning%20code%20of%20good%20practice21%20August%202013.pdf</a></p> <p><u>During the SV Members must stay together as a group to ensure that there is no opportunity for individual lobbying and all are able to consider the development on the basis of the same information. If there are any further questions they should be addressed to the Chairman so that they can be answered in a proper manner so that all can hear.</u></p> <p><u>Members must be aware that they have no powers of entry and can only enter land or a building at the agreement of the owner/occupier. Members of the public have no rights to accompany the Councillors visiting the site and likewise may only enter land or a building with the permission of the owner/occupant.</u></p> <p><u>The Chairman of the SV may request a Councillor to leave the SV if he or she does not comply with this protocol and/or the Planning Code.</u></p> <p><u>The Chairman may call a halt to any SV if there is unruly or abusive behaviour on the part of anyone present.</u></p>	<u>CO</u>		
<p><u>4.10</u> <u>The CO/PM/HoP will make a note of the persons attending the SV. This note will be added to the Supplementary Agenda advice sheet for the next Committee meeting together with a brief summary of the issues raised at the SV.</u></p>	<u>CO/PM/HoP</u>	<u>Supp. Agenda</u>	
<p><u>4.11</u> <u>The CO/PM/HoP will send or email the attendance sheet to DSSO.</u></p>	<u>CO/PM/HoP</u>		

## **PART 3 – EMPLOYEE CODE OF CONDUCT**

### **1. Introduction**

- 1.1 Medway Council appreciates the hard work and commitment to the provision of public services of all its employees and will continue to promote a positive working environment in which employees are both supported and developed.
- 1.2 Essential to creating a positive and constructive working environment is a mutual understanding of the standards of behaviour that are acceptable to each other and the public for whom we provide services.
- 1.3 The Council will be as open as possible about decision-making. This is why you will be asked to declare any interests outside the Council where these may be seen to influence or affect decisions made by yourself or colleagues. In this way your integrity and that of the Council cannot be called into question.
- 1.4 In the vast majority of cases common sense will direct what is and is not acceptable behaviour. These guidelines are not intended to be overly directive or to be a comprehensive list of dos or don'ts. It is hoped that in following this guidance you can be confident that you, and those you work with, will be working for the benefit of the local community and that your actions will not bring yourself or the Council into disrepute. These guidelines will help promote the image of a Council working for, and on behalf of, the local community's best interests. All of which will ultimately assist you in the work you do.
- 1.5 The guidelines apply to all staff in their capacity as employees of the Council. However, where staff are acting as an accredited representative, on behalf of a trade union recognised by the Council, they will be covered by the conduct guidelines of that union and should refer to them for further guidance.

### **2. Scope of the guidelines**

- 2.1 The guidelines have been designed to provide an outline of the way in which the Council would expect all its employees, to act. It is not meant to be an exhaustive list of all aspects of working for the Council and some of the areas mentioned may also appear in other Council policies and procedures, for example the Council's Health & Safety Policy. Where that is the case we may refer you to those documents rather than repeating them within this guidance.
- 2.2 Copies of all the Council policies and procedures are available from your line manager and are on the Connections intranet site, they are also included as links at the end of this policy. If there are any sections of the guidelines you think may affect you and you are unsure about the guidance given you should seek the advice of your line manager or HR Advice (phone 334499 [hradvice@medway.gov.uk](mailto:hradvice@medway.gov.uk))

### 3. Breaches of the guidelines

- 3.1 Whilst the aim of the guidelines are to promote professional, ethical and considerate working practices there may be occasions where the actions or behaviour of an individual or individuals is not acceptable, either because it is explicitly against the guidance given or is contrary to it's spirit. Any such actions may, potentially, bring the individual(s) or the Council into disrepute. If that is the case, and dependent on the nature of the act, the individual(s) may be subject to disciplinary action, including dismissal.

### 4. Whistleblowing

- 4.1 Part of working towards an effective and successful working environment means asking for your help in encouraging others to also follow the guidance given. If you become aware of any conduct that is, or potentially may be, a breach of the guidelines or that could bring the Council into disrepute, you must report it rather than ignore it or allow it to be overlooked. This may not be an easy decision to take so to support you in raising a concern the Council has produced a *Whistleblowing Policy*.

### 5. General conduct guidelines

- 5.1 As local government employees, our behaviour continuously reflects on the public's perception of us as individuals, our colleagues and the Council as a whole. By acting in a helpful and courteous manner when dealing with service users, the public, Councillors and colleagues, we promote a positive view of ourselves and the Council. But we can do as much to promote the image of the Council by ensuring that we do not act in any way that brings us into disrepute, and thus damage the public's confidence in ourselves, our colleagues and/or the Council, hence this guide.

- 5.2 It is impossible to provide a definitive list of what is or is not acceptable conduct or behaviour but below are a few examples of what is unacceptable:

- (i) Discriminating against others in relation to the services we provide i.e. treating others differently (especially less favourably) on the grounds of their gender, race, colour, ethnic or national origin, disability, marital status, family commitments, sexual orientation, age, HIV status, religious or political beliefs, social class, trade union activity or any other basis that is not related to the service required.
- (ii) Employees are to treat their colleagues and others with dignity and respect at all times. Employees should respect managerial authority and undertake reasonable instructions.
- (iii) Acts of fraud or corruption or the use of Council resources for personal gain or the gain of others.
- (iv) Disclosing information of a personal nature about another person without their permission.

- (v) Any behaviour that may demean, distress or offend others, behaviour of a sexist or racist nature, or the use of sexual or suggestive remarks.
- (vi) Any conduct or behaviour which is unethical and/or brings the Council or its employees into disrepute.
- (vii) All employees are expected, through agreed procedures, to bring to the attention of the appropriate level of management, any deficiency in the provision of the service which will include any impropriety, breach of procedure or standing orders.

5.3 The rest of the Guidelines for Staff provides specific guidance on a wide range of issues but is not intended to cover all aspects of work in the Council. It will provide a clear indication of what standards of behaviour the public can expect from you as a Council employee and you can expect of your colleagues. If you are in any doubt about what is or is not acceptable behaviour or conduct then the “golden rule” is to be as open as possible and to seek the advice of your line manager or HR Advice (phone 334499 [hradvice@medway.gov.uk](mailto:hradvice@medway.gov.uk)).

## 6. Applications for posts and other employment matters

6.1 It is in the best interest of everyone that decisions relating to new appointments or promotion, or any decision that affects someone’s employment status (for example pay adjustments, access to training, matters relating to discipline or capability), should be made on merit and not on the basis of any other consideration.

6.2 Having a close personal or professional relationship with an applicant (internal or external) or with someone whose employment status is being reviewed could lead to accusations of bias, especially if you could be involved in any discussions relating to their application or review.

6.3 If you find yourself in such a situation you should make the relationship known. In this way we can be seen to be as open as possible in our decision making process and free from any bias or unwarranted outside influence.

6.4 **Declarations** - Similarly ~~because theif~~ a decision is to be made on its merits alone we need to be confident that any information provided is correct and honestly given. When applying for a new post you may be asked to provide specific information about your prior work, personal health and/or criminal convictions and you will be asked to make a declaration that the information is complete, truthful and accurate.

6.5 **Criminal records** - Having an existing criminal conviction need not affect you successfully applying for a post within the Council or your promotion prospects. When initially applying for a post you must declare any convictions you have which are not “spent” as defined by the Rehabilitation of Offenders Act. Some posts are exempt from the Act in which case all

convictions must be declared and this will be made clear when you apply for the post.

- | 6.6 Similarly, being arrested or convicted in relation to a criminal offence whilst employed by the Council need not affect your employment status. However if for any reason you received any conviction, caution, reprimand or final warning resulting from police action or you are arrested or convicted in relation to a criminal offence, be it in or outside work, you must inform your line manager immediately.
- | 6.7 It will then be possible to discuss the nature and circumstances of the arrest/conviction and whether or not it could affect your work or working relationship in accordance with the *Council's Treatment of Ex Offenders Policy*.
- | 6.8 **Attendance** - Hours of work will vary depending on your job and are designed to ensure we meet our service requirements. If someone fails to attend work, or leaves early, without informing their line manager then additional workloads fall on colleagues and the Council may not be able to meet it's service obligations. You should therefore attend and leave work within the times agreed, although they may be varied in agreement with your line manager
- | 6.9 **Absence from work** - There may be occasions when it may not be possible to attend work on time, for example, when you or a dependant are sick. In these circumstances the Council has established procedures for you to follow, for example the Council's *Managing Absence Procedure* or flexible working policies. These ensure that the people who need to know are informed as soon as possible.
- | 6.10 **Appointments during work hours** - Occasionally you may need to arrange an appointment with a doctor or dentist and wherever possible you should arrange for appointments to take place outside of normal working hours or failing that at the beginning or end of the day. Where this is not possible, you should arrange appointments so you're your time away from work is kept to a minimum. Managers need to ensure that this is not abused. Absence for half or more than half of the your normal working day should be recorded as sickness absence.
- | 6.11 **Dress code** - The way in which you present yourself can have an impact on how people view you and the Council. Some Council jobs have a formal uniform, but where no uniform is required you should dress in a manner that is appropriate to your working environment and maintains a professional image.
- | 6.12 **Identification** - Whilst on Council business, those you come into contact with have the right to know that you are working for the Council. Employees are issued with identification badges and dependent on your work, these should be worn at all times or be available to anyone who requests confirmation of who you are.

- | 6.13 **Political neutrality** - Whilst most employees are entitled to undertake whatever political activities they wish outside working hours, the public, your colleagues and Councillors will expect you to undertake your work without political bias and treat every decision on its merits and not on any other basis. This is not intended to restrict your political freedom but to ensure that we can all be seen to be working for the benefit of the local community.
- | 6.14 **Politically restricted posts** - Some posts within the Council are termed “politically restricted” under national legislation and the post holder is legally prohibited from undertaking any direct political activity whilst employed in that post. These are where it is essential that the post holder is, and is seen to be, politically neutral and will normally be posts where there is a high requirement to provide advice to Councillors. Holders of these posts will be informed of their politically restrictive nature prior to application. [Further information about the restrictions and limitations associated with this are contained in para 4 of the Communications Protocol in Part 5 of this chapter.](#)
- | 6.15 Political Assistants may provide assistance to Councillors in the discharging of their functions as Members of the Council (but not in any additional political or other activity). Political Assistants may provide such support to any Members of the political group to which their post has been allocated.
- | 7. **Confidentiality**
- | 7.1 Information held by the Council, such as names and addresses, business information etc, whether on paper or electronic systems, is covered by the Data Protection Acts. As a Council we have a duty to ensure that all personal information we use is lawfully and fairly obtained and relevant for the specific purposes for which it is held. The release of information to an unauthorised person or the use of information for an unauthorised purpose can constitute a criminal offence under Data Protection legislation.
- | 7.2 **Protecting confidentiality** - As part of your day-to-day work you may have access to confidential information of either a personal or business nature. When accessing or using this information you should take care not to release it to anyone who is not properly authorised to see or use it. Often this will mean ensuring that unauthorised people cannot gain access to confidential information, for example, by not giving away passwords to computer systems, leaving keys to confidential drawers, cupboards, offices unattended etc. However it also means that you should not use passwords or keys etc. that come into your possession to access information you are not authorised to view.
- | 7.3 Most importantly you should not use information, which comes to you through the course of your work for personal gain or benefit, or pass it on to others for the express purpose of gaining benefits as this could be interpreted as fraud (see Fraud and Corruption).

| 8. **Health and safety**

| 8.1 One aspect of promoting a positive working environment is to ensure that it is also a safe working environment. Employers and employees have a statutory duty to maintain a safe working environment and to take reasonable care to ensure the personal health and safety of themselves and any others who may be affected by their work activities. Because the consequences of poor health and safety can potentially be very serious there is a duty on all employees to not knowingly fail to abide by Health and Safety regulations, for example, failing to follow instructions on warning signs, or interference with essential safety equipment such as fire alarms and fire extinguishers.

| 8.2 More information about a wide range of Health and Safety issues can be found in the Council's Health and Safety policies or obtained from your local Health and Safety representative.

| 9. **Personal/business activities – conflicts of interest**

| 9.1 The Council respects the choice of employees to undertake whatever interests or activities (paid or unpaid) they wish outside their conditioned hours of work. In the vast majority of cases these will have nothing to do with your work for the Council. However on occasions there may be a more direct link, for example, if you own or work for a business, which contracts with the Council. If you have any direct or indirect financial interest in a contract (or potential contract) you must make your interest known to your line manager in writing.

| 9.2 If there is a potential conflict of interest it is in everyone's interest to ensure it is fully declared thus helping to protect individuals and the Council from accusations of bias or possible accusations of fraud/corruption. If you are in any doubt about whether an interest exists it is best to be as open as possible in declaring (in confidence) a personal or business interest to your line manager.

| 9.3 **Membership of professional/voluntary bodies and conflicts of interest -** You should declare Membership of any professional body or organisation where your Membership may appear to represent a conflict of interest or attract accusations of bias. This includes any private organisations whose Membership is not totally open to the public. Any such Memberships must be recorded in the directorate's declaration reporting book.

| 9.4 **Secondary employment -** Some employees will have other jobs outside the Council and although the Council will not unreasonably prevent you from taking up additional paid employment there are a number of guidelines that must be followed. This is not only to ensure that any potential conflicts of interest are known but also so that we can advise staff about Health and Safety issues relating to the number of hours they work etc. If you want to take up secondary employment (or are already employed in a second job you should ensure that:



- (i) There is no conflict of interest which could lead to accusations of bias
- (ii) The work will not adversely affect your performance in your duties for the Council
- (iii) That your line manager has confirmed in writing that the secondary employment does not fall into category 1 and /or 2 above and the Council would therefore have no objection to it.

9.5 Where a member of staff is contracted by the Council to deliver a service this arrangement should also be in compliance with the Contract Rules (Part 4, Chapter 7 of the Constitution) including paragraph 3.3.1:

“Officers may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if officers requiring them do not have the resources or capability to meet the needs of the service.”

9.6 It should be noted that Directors, Deputy -and Assistant Directors, because of the seniority of their posts, are contractually precluded from taking up secondary employment.

## 10. Relationships with others

### Relationship with protocol

10.1 The nature of personal relationships with others and the circumstances of some people’s work can affect perceptions about an individual’s integrity and that of the Council The Council has agreed a *Relationship Protocol* which defines expectations and boundaries to ensure as far as possible probity and transparency and avoid allegations of favouritism where a relationship exists.

10.2 Generally such relationships do not give rise to any concern, however there may be occasions where the relationship could create a conflict of interest or may give rise to awkwardness and embarrassment within the workgroup. Where there is a possibility that such a relationship could interfere with an individual’s work, objectivity when making decisions or behaviour at work, the matter becomes the rightful concern of the organisation. Employees are required to declare such a relationship where it is felt that there could be a conflict of interest.

## 11. Relationships with Members

11.1 Paragraphs 15.5 and 15.6 of the Protocol on Member/Employee Relations (set out in chapter 5 of the Council’s constitution) deals with Member and Employee relationships.

11.2 If employees are unhappy or have concerns with the conduct of a Member they should take this up in first instance with their line manager or the Monitoring Officer.

## 12. Employee concerns and Members

12.1 It is not appropriate for Council employees to lobby Members on matters of individual concern about their employment and Members should discourage employees from making such approaches. A Member of staff who is unhappy about a matter affecting them personally should be encouraged to take this up with their manager. If they are not happy with the response the next step is to talk to their trade union or staff representative. The Council's grievance procedure is available if informal methods have not resolved the issue.

12.2 Relationships With Contractors - The award of work or contracts on behalf of the Council should be made on merit alone and should be free from any implications of favour or external influence. You must therefore declare to your line manager any relationship, be it business or personal with a current or possible future outside contractor/supplier. This is especially true if you are involved in any way with a tendering process. If you discover a conflict of interest, declared or otherwise, you should not take part in that process and declare your reasons to your manager.

## 13. Corruption and fraud

13.1 Because we are funded from the "public purse" we are continually under scrutiny from a number of sources about how we spend the money allocated to us. The Council has developed comprehensive financial practices and procedures to help ensure that acts of fraud or corruption are not committed against the Council. Included within these procedures is the *Anti-fraud and Corruption Policy*. If you have responsibility for managing or dealing with Council finance you should familiarize yourself with the content of the policy as you should be aware that decisions you make will always be open to scrutiny especially where they could be seen to benefit yourself or others (e.g. family or friends).

13.2 Anyone committing an act of fraud or corruption will damage the integrity of the Council and of those they work with. If you suspect or see actions, which may lead to an accusation of fraud or corruption it is in everyone's best interests for you to tell your line manager immediately. If for any reason you feel unable to talk to your line manager you may wish to use the Council's *Whistleblowing Policy*.

13.3 **Corruption** - Corruption is the receipt or giving of any gift, loan, fee, reward or advantage for doing or not doing anything that shows favour or disfavour to another person whilst working in an official capacity, and could be a serious criminal offence. Anyone offered an inducement (in whatever form) to undertake an action or make a decision in favour of another person, regardless of whether the same decision would have been made without the inducement, could be deemed as committing a corrupt act. If an allegation of corruption is made against an employee it will be up to the individual to demonstrate that any rewards or favours received have not been received corruptly. **ReMemberRemember**, the best course of action is always to be as open as possible and to seek advice if you are unsure.

13.4 **Fraud** - is the obtaining of some benefit (monetary or otherwise) through false representation, and is also a criminal offence. Examples of fraud could be:

- (i) Receiving funds from the Council for a specific purpose e.g. a car loan, and using the money for other purposes.
- (ii) Being party, directly or indirectly, to claims for benefits to which you or another party is not entitled.
- (iii) Falsely obtaining expenses, allowances or sick pay to which you are not entitled.

13.5 **Bribery** – is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. Examples could be:

- Giving, promising to give or offering payment, gift or hospitality in the hope of gaining a business advantage;
- Accepting a payment from a third party when you know or suspect that it is offered with the expectation of business advantage.
- Procurement, recruitment, key decision making and contract management are particularly vulnerable areas.

13.6 **Debts to the Council** - One way in which fraud or corruption can be inferred is if you or a close relation (spouse, partner, relative or a close personal friend), have substantial outstanding debts to the Council (unless authorised i.e. car or relocation loans). In order to ensure that you are protected from potential accusations you should declare to your manager any such debts, especially if you have access to information or the opportunity to exploit procedures which relate to those debts.

13.7 Acts of alleged corruption or fraud by employees will be subject to an audit investigation, which may involve police involvement. This will also involve a disciplinary investigation which may lead to disciplinary action and in some cases, dismissal.

#### 14. **Hospitality, and gifts and sponsorship**

14.1 The integrity of the Council can be seriously affected if there is any suspicion that decisions are being improperly influenced by the offer of a gift or hospitality. Clearly some positions in the Council may potentially be more open to accusations of improper influence than others, for example awarding of a contract or granting of a permit, but we all have a duty to make sure that decisions made by the Council are made on merit and are not affected by the offer of a gift or hospitality.

- 14.2 As a general rule you should never accept a gift or hospitality in return for work done in the normal course of your duties no matter how well intended. If you have been offered a gift or hospitality that cannot be accepted then you should refuse or return it with a polite and courteous explanation. Should you witness a colleague accepting a gift or hospitality and knowingly does not declare this in accordance with these guidelines you should advise your line manager or if this is not appropriate use *the Whistleblowing Policy*.
- 14.3 **Recording offers of gifts or hospitality** - To protect the Council and individuals from any accusation of bias, and regardless of whether or not a gift or hospitality is accepted, all offers must be recorded in the directorates hospitality/gift reporting book.
- 14.4 **Gifts** - Some modest gifts of a promotional nature e.g. calendars, diaries and other similar articles may be accepted but only if they can reasonably be assumed to be of a nominal value and are not directly related to work done in the normal course of your duties. It should be noted that legacies and trade discounts should also be treated as gifts. If you are unsure about whether a gift should be accepted or not ask your line manager for advice.
- 14.5 **Hospitality** - Hospitality should only be accepted where it is clearly corporate rather than personal. When deciding whether or not to accept, or provide, hospitality it should be considered how this may affect the relationship between the parties and how it may be viewed by others, including the public and media.
- 14.6 When deciding whether or not to accept hospitality the following should be considered:
- Is the donor, or event, significant?
  - Are you expected to attend because of your position in the council?
  - Will the event be attended by others of a similar standing in the community or in other communities?
  - What do you think is the motivation behind the invitation?
  - Would acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?
  - Could you justify the decision to the Council, press and public?
  - Is the extent of the hospitality or the nature of the gift reasonable and appropriate?
  - Are you likely to be expected to reciprocate any hospitality, and if so, how?
  - Are you comfortable about the decision?
- 
- (i) ~~Whether the other party is likely to benefit from the goodwill of the Council directly or indirectly.~~
- (ii) ~~Whether the party is a contractor seeking work to be awarded.~~
- (iii) ~~The scale and location of the hospitality.~~

~~(iv) The frequency of the hospitality if it is directed at an individual or the Council as a whole.~~

14.7 **Social events** - Offers of hospitality for social or sporting functions should only be accepted when these are part of life in the local community and where the Council would normally expect to be represented.

14.8 **Training courses\seminars\conferences** - Where it is clear that the hospitality is linked with the event and applies to a wide range of participants it will normally be appropriate to accept the hospitality. However, the hospitality should still be declined if, for example, the Council is considering contracting in the near future with the organisation offering the hospitality.

#### 14.9 Sponsorship – giving and receiving

Where an outside organisation wishes to sponsor or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors. Where the Council wishes to sponsor an event or service, neither an employee nor any partner/civil partner, spouse nor relative must benefit from such sponsorship in a direct way without there being full disclosure to their Chief Executive or Director of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

#### 15. **Use of Council resources**

15.1 The Council has a responsibility to ensure that all its resources are used in the service of the public and the local community and not the personal use of employees or Councillors. We all have a duty to ensure that care is taken in using Council resources and that public funds are spent efficiently.

15.2 The occasional use of a Council Resource for a private purpose, for example a short local telephone call is acceptable. In some areas there are arrangements in place for any private use of Council resources to be paid for and these must be used where applicable. However Council resources must not be used for private work or for personal gain. If you use any Council resource for an agreed private purpose it should be done outside your paid hours of work.

15.3 The permanent or temporary loan of some forms of equipment, in particular laptop computers, could be deemed as a taxable personal "benefit" under Inland Revenue regulations. All Council equipment on loan to an employee must be used solely for business purposes. The private use of this equipment may mean you incurring a personal tax liability for the "benefit" gained.

15.4 **Internet** - The Internet is available to provide individuals or departments with significant advantages in both gaining and providing information

relevant to the work or services provided by the Council. Internet access is not provided for personal entertainment. The use of the Internet to conduct personal business and in particular the viewing or downloading of material which is obscene or could offend others, regardless of whether it is seen by others, is not acceptable. Access to gaming, gambling, internet chatrooms is also considered unacceptable. The Council will not accept any responsibility for monies lost through internet transactions. Please refer to the ICT Security Policy, and the Internet, Intranet and Extranet guidelines on the ICT intranet pages.

- | 15.5 **E-Mail** - E-mail systems can greatly speed up communication inside and outside the Council, however communications by e-mail can be legally binding and it should be used in a responsible and professional manner. You should not use the system to send messages, which are defamatory or divulge confidential information. Messages that could be seen as offensive or obscene could be deemed as harassment or discrimination. As part of Government Connect, (see below), auto-forwarding of emails is not permitted. The Council has produced a set of guidelines for use of e-mail. Please refer to the Email guidelines on the ICT intranet pages.
  
- | 16. **Internet personal webspace (blogs/social networking sites)**
  - | 16.1 Employees should be clear that the use of the internet to comment on Medway Council or its officers or Members may result in disciplinary action and potentially legal action on a collective or individual basis.
  - | 16.2 For more information about responsible use of Information Systems please refer to the Council ICT Security manual and the Internet, Intranet and Extranet guidelines on the ICT intranet pages.
  
- | 17. **Government Connect**
  - | 17.1 From 1 April 2009, Medway Council is required to implement commitments made to Government Connect. Government Connect is a secure network for all local authorities in England and Wales, designed to ensure sensitive data are transferred securely between central government bodies and local authorities. This network is used by Medway Council and the Department for Work and Pensions initially, to transfer housing benefit data. For the network to be connected, Medway Council must comply with the Code of Connection, which is defined by Government accreditors and is not negotiable, but it does contain recognized good practice. Employees should be clear of the requirements on the use of removable media, and other requirements within the Code of Connection, which can be found on the ICT intranet pages.
  - | 17.2 **Use of personal credit cards** - On occasions you may be required to purchase goods or services for the Council or clients in its care, such as travel expenses or clients' shopping. In order to protect individuals from accusations of fraud in collecting of benefits such as air miles or "points", payment for such goods and services should be made by the Council through invoicing or obtaining a travel warrant etc. The Council recognises that this may not always be possible. However you should use caution when

using a personal payment card to buy goods or services for the Council or its clients.

| 17.3 **Use of “loyalty” cards** - Where you can reasonably be expected to pay for goods or services on behalf of the Council or its clients you should not use “loyalty” cards to gain benefits in cash or kind from those purchases as this may be treated as defrauding the Council or client of that benefit.

| 18. **Violence and abuse (including bullying)**

| 18.1 Unfortunately it is possible that, whilst carrying out your work, you may be subject to an act of either verbal or physical violence. “Violence” is the use of physical force or verbal intimidation, which causes an individual(s) to fear for their personal safety. “Abuse” is the use of foul, demeaning or insulting language towards another or group of others or the misuse of personal or professional authority which causes them distress.

| 18.2 The Council is committed to taking steps, wherever possible, to prevent such acts and to take action against those who show violence in any form to Council employees in the course of their duties. If you are subject to violence or abuse of any sort then you should report it to your line manager and ensure that it is recorded in an accident or incident log so that further action may be taken. However the Council is equally committed to take action against any employee who shows violence in any form to another person be they a colleague, Member of the public or client, including what is sometimes referred to as work place bullying.

| 18.3 You, as an employee, can take an active part in addressing violence where and when it occurs. If you witness or believe that violence or abuse has, is or may be taking place you should report it to your line manager. If for any reason you do not feel able to talk to your line manager you can use the *Whistleblowing Policy*.

|

19. **Harassment and discrimination**

19.1 The Council's Equal Opportunities Policy clearly sets out our commitment to "Combating discrimination in all its forms and working actively to ensure equal access to jobs, services and active citizenship". Acts of harassment or discrimination are not only potentially a criminal offence but are also divisive and can bring individuals, their work colleagues and the Council as a whole into disrepute and will not be tolerated.

19.2 **Discrimination** - Discrimination happens when a person, or a group of people treat others less favourably in any area of employment or service delivery on grounds of gender, race, colour, ethnic or national origin, disability, marital status, family commitments, sexual orientation, age, HIV status, religious or political beliefs, social class, trade union activity or any other grounds. You should always take care to ensure that any decision you make is made on the relevant facts alone and not allow any personal feelings or stereotypical thoughts to affect your judgement.

19.3 **Harassment** - Acts of harassment are often, but not always, discriminatory. Harassment is any action (verbal or non-verbal), which adversely affects a persons' privacy, dignity or self-respect in the workplace and includes acts of bullying.

19.4 Examples of harassment and/or discrimination. These examples are not exhaustive but give a clear indication of the types of behaviours that are not acceptable.

- (i) The use of threatening or intimidating behaviour.
- (ii) Excessive and unfounded personal or work criticism.
- (iii) Humiliating, patronising or sexually explicit comments.
- (iv) Unnecessary and unwanted bodily contact.
- (v) Comment, malicious or otherwise, that causes personal embarrassment.
- (vi) Sending of offensive or obscene images through e-mail or via the Internet.
- (vii) Victimisation or discrimination of a person who has exercised a right under a statutory duty.

19.4 Further information of how to deal with an allegation of bullying or harassment is available within the Council's *Dignity at Work Policy*, a copy of which is available from your line manager or on the Connections intranet site, a link to the document can also be found at the end of this document.



20. **Contact with the media**

- | 20.1 Dealing with the media requires specific skills and an in-depth knowledge of the workings of the Council and the press. It is not always possible to know exactly how the press will represent individuals and so to protect you from potential embarrassment or misrepresentation, and the Council from potentially bad press coverage only authorised staff can speak, write or give an interview or information to the media.
- | 20.2 If you receive a request for information or comment from any form of media, from local papers to national television, it must be referred to the Media and Communications department. They will then authorise and brief nominated individuals to provide a response. Only authorised persons should have contact with the media in relation to the business of the Council. As a local authority we are sometimes required to make hard decisions that are unpopular with sections of the local community and may even conflict with what you personally believe to be right. Such decisions are taken after lengthy consideration and in light of all the available facts. Whatever your personal feelings about the decisions made by the Council you must not leak information to the media either directly or by careless comment. Any such leaks to the media will be considered a disciplinary offence. If employees have any cause for concern over a Council matter they should use the *Whistleblowing Policy* so that the concern can be dealt with appropriately and the employee “blowing the whistle” remains protected under the Public Interest Disclosure Act 1998.
- | 20.3 The Council’s Constitution includes the Communications Protocol (Part 5, Chapter 5).
- | 20.4 Link to Council’s policies and procedures:  
<http://connections.medway.gov.uk/index/yourcouncil/businesssupport/personnel/28996.htm>



## **PART 4 - PROTOCOL ON MEMBER/EMPLOYEE RELATIONS**

1. This protocol has been designed to ensure effective working relationships between members and employees. It is intended to encourage good working practice, to give members guidance on what they can expect from employees and what rights to information they have, and to consider what to do if problems arise.

### **2. Principles**

#### **2.1 Good relationships**

Members and employees will at all times treat each other with courtesy and respect, accepting that everyone is acting in good faith and with integrity. Members and employees should respect each other's positions and employees should put the interests of Medway Council above other considerations. Employees will always treat members of the different party groups equally and show no favour to any particular party.

#### **2.2 Provision of information and policy formulation**

Employees will provide information, offer advice and give assistance impartially to all political groups. In relation to the formulation of policy and strategy proposals neither members nor employees should assume the participants in any such discussion are supportive of the proposals merely because they have participated or assisted in their formulation.

### **3. Role of members**

3.1 Subject to the rules governing the Council approving the policy framework and the Cabinet acting within the policy framework all members shall engage in the Council's decision making process.

3.2 In addition, all Councillors shall:

- collectively be the Council's policy makers and carry out a number of strategic and corporate leadership functions;
- represent their communities and bring their views into the Council's decision making process and be the advocate of their communities;
- deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances;
- balance different interests identified within the ward and/or the Council's area as a whole and represent them accordingly;
- be involved in review of the Council's decisions and services and in the services provided by others in Medway;

3.3 Where members are involved in Cabinet and scrutiny roles they will be expected to fulfil the responsibilities associated with those roles.

#### 4. **Role of employees**

4.1 Employees shall:

- manage the day-to-day business of the Council in accordance with current legislation and Council policies;
- provide appropriate and impartial advice and guidance to members and support the formulation of Council policy and strategy;
- implement decisions taken by members in accordance with article 13 of the constitution.
- [seek to ensure that the Council always acts in a lawful manner](#)

4.2 ~~Three political assistant posts have been established.~~ A political assistant is an employee of the Council, but unlike other employees a political assistant:

- may be appointed on the basis of party political allegiance;
- may not have any powers of the Council delegated to him or her.

The role of political assistants is to support the political group to which they are appointed. A political assistant has the same rights to information that members of the Council do.

#### 5. **Relationship between Mayor and employees**

The ~~mayer~~ [Mayor](#) plays an important ambassadorial role for the Council and support to the Mayor for his/her duties will be provided by employees in the Mayor's Office. In all other respects the Mayor will be provided with the same support as other members of the Council.

#### 6. **Relationships between the Leader and members of the Cabinet and employees**

Support for the Leader and Cabinet will be provided by Democratic Services. Democratic Services will have responsibility for Cabinet agendas, including the forward plan, responsibility for recording and publishing decisions made by the Cabinet and ensuring follow through. Senior employees will provide the Leader and portfolio holders with briefings on matters that are the responsibility of the Cabinet.

**7. Relationships between chairs and members of overview and scrutiny and employees**

Support will be provided to members of overview and scrutiny by Democratic Services as well as to all members generally. Democratic Services will support the planning of agendas and forward programme of the Overview and Scrutiny Committees and commission the necessary research and hearings. They also have responsibility for the administration of the call-in process. Senior employees will provide the chairs of the Overview and Scrutiny Committees with briefings on matters which are the responsibility of these Committees.

**8. Relationships between chairs, members of other Committees, party groups and employees**

Democratic Services will service Full Council and all residual Committees. Senior employees will provide support and advice equally and impartially to all members on matters which are the responsibility of these Committees. Senior employees shall ensure members are informed of significant ward issues, wherever practicable.

**9. What members can expect from employees**

**9.1 Advice**

- (a) Factual advice – members have a right to factual advice on any item reported to Council and its Committees (including Cabinet and overview and scrutiny). However, where the item is designated as exempt the relevance of the member's interest in most instances may need to be established before information is disclosed or advice given. Factual advice given to a chair or portfolio holder will be made available to other members of the Council.
- (b) Tactical advice – members should only seek tactical advice from directors or the Chief Executive and such advice will be provided in complete confidence. Employees should not disclose one group's tactical plans to members of another group unless authorised to do so by members of the relevant group.
- (c) Policy advice – employees who wish to bring forward new policy initiatives should first discuss their proposal with the Leader, portfolio holder and/or the chair of the Overview and Scrutiny Committee as appropriate.

Any advice given by employees will be:

- carefully researched;
- based on the relevant professional knowledge, while at the same time considering the Council's wider interests;

- discussed and agreed with relevant colleagues;
- agreed by the relevant director or assistant director;
- politically impartial.

9.2 Members have a right to receive reports that contain all the relevant issues, do not contain irrelevant matters and that set out all the options it is reasonable for the Council to consider.

## 10. Information and enquiries

Enquiries by members should be made to the relevant director, assistant director or service/senior manager who will respond within a reasonable timescale. Where it is not possible to give a prompt response members will be informed of the reason why. If the matter is of more general concern or the Councillor is not happy with an operational manager's response the matter should be taken up with the relevant assistant director or director. Members should not approach more junior members of staff, except on:

- matters of day-to-day service issues, eg residents' refuse not being collected;
- discussions with member services and Democratic Services;
- meetings with staff specifically assigned to a task, panel or forum to support members in their role.

## 11. Access to documents

11.1 Members have a right to see and be given a copy of all documents as are necessary to enable them to carry out their duties as Councillors. This includes all documents available to the public as background documents. Members are also entitled to documents containing further information about any item discussed by the Council, Committees or the Cabinet, subject to certain restrictions in the case of most exempt items.

11.2 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 [all members of the Council, subject to paragraph 26 of the Access to Information Rules in Part 2 of Chapter 4 of this Constitution](#), ~~the chair and group spokespersons of the relevant Overview and Scrutiny Committee and to the Leaders of all party groups not represented on the Cabinet.~~ All members may, however, be entitled to further information about exempt items if they can demonstrate a "need to know" in order to properly perform their duties.

- 11.3 Members are not entitled to see the advice provided to the Cabinet by a political assistant. Where documents are bulky copies may be made available electronically or within the members' room for reference, in these cases members will be informed that the information is available.
- 11.4 A definition of exempt and confidential can be found in the access to information rules, set out in part 2 of chapter 4.

## 12. Communications including media

12.1 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.

12.2 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 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

12.3 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>

~~12.4 12.1—All local government and publicity material must comply with the national code of recommended practice on local authority publicity. This code requires that all publicity material produced by local authorities:~~

- ~~is relevant and necessary, accurate and factual, fair and balanced;~~
- ~~does not unnecessarily duplicate material published by bodies such as central government and other public sector agencies;~~
- ~~is politically impartial and does not promote one particular view to the exclusion of others.~~

~~12.2—These rules apply to all material published by the Council and also by organisations such as charities and voluntary bodies supported by the Council. In addition all publicity material issued by the Council must also comply with existing legislation including that relating to copywrite, defamation, contempt of court,~~

~~decency, human rights, freedom of information, equal access and discrimination issues.~~

~~12.3—The Council currently has a Communications Protocol set out in Chapter 5 Part 5 of this Constitution, within which the role of councillors in communications is set out in section 3.~~

~~for publicity including dealing with the media, its key strands are:~~

- ~~all media approaches are channelled through the Media Team in the Communications and Enterprise Division of the Business Support Department;~~
- ~~where a matter has been decided by Council or Committee, the appropriate chair acts as Council spokesperson and the media are given the contact details for the appropriate opposition spokespersons.~~
- ~~when the media approach the Council for comment on undecided or controversial issues, contact details are given for spokespersons from all parties;~~
- ~~employees are put forward as spokespersons on matters of fact and operational matters;~~
- ~~employees will not comment on any issue to be decided by Council or Committee and no advance publicity material will be issued on matters to be decided before Council and Committee meetings.~~

~~12.4—Principles for communication under the new structure:~~

- ~~the forward plan, decisions of Cabinet and issues called in for scrutiny will be publicised electronically, via the media and, where appropriate, in print format;~~
- ~~all material issued for publicity purposes will be in plain English, to encourage public understanding of the issues and decision-making system;~~
- ~~elected spokespersons will be identified for the Council, Cabinet and scrutiny Committees.~~

~~12.5—A new protocol will be developed identifying how, when and by whom publicity material is published, whether through the media, in print form or electronically.~~

### **13. Support Services and Correspondence Use of Resources and Ward Work**

~~13.1 13.1—The only basis on which the Council can lawfully provide support services (e.g. stationery, word processing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council~~



business. They should never be used in connection with party political or campaigning activity or for private purposes.

**13.2** The Members Services section will provide Councillors with support on day-to-day correspondence. This correspondence will be on Medway Council headed paper, and Councillors should not ask employees to do anything which could be regarded as politically biased, including:

- sending letters on party headed paper;
- photocopying material with a party logo;
- stating political affiliation on Council headed paper.

**13.23** Employees can often be the first point of contact for constituents. In these circumstances the employee will either advise the constituent of their ward Councillor or act as a liaison point. Members should not reply to constituents on behalf on the Council.

**13.4** The Councillor Conduct Committee has issued guidance for Members on the use of resources and ward work and this is available on the Council's website: <http://www.medway.gov.uk/thecouncilanddemocracy/councillorsanddecisions/councillorscodeofconduct.aspx>

## **14. Breaches of the guidelines**

**14.1** These guidelines are based on good practice for dealings between employees and members, however, serious breaches of these guidelines by employees will be dealt with under the Council's disciplinary procedures.

**14.2** Breaches of the guidelines by members may be referred to the relevant group leader for consideration as appropriate. Members should recognise that some serious matters of misconduct such as failure to declare a financial interest may be reported to the Full Council by the Chief Executive and/or the Monitoring Officer.

## **15. General matters**

### **15.1 Breach of trust**

Where there is a suspected breach of trust between a member and an employee the matter first be taken up with the individual concerned. If the matter cannot be resolved in this way, it can then be raised with the relevant director or, as a last resort, the Chief Executive. The relevant member should be notified such action is taken.

### **15.2 Maladministration**

Members should refer any complaints or concerns they may have in their capacity as a Councillor with regard to possible illegality, maladministration or injustice caused by the Council, to the Monitoring Officer.

### 15.3 Unresolved issues

Situations could arise where there is doubt about the best way forward. In such situations employees and members should take advice. Both members and employees can seek advice from the Chief Executive at any time. The Chief Finance Officer, can give advice on the proper financial administration of the Council's affairs. Advice can be sought from the Chief Legal Officer, who is the Monitoring Officer, where there is concern about the legality of an issue. Any member with concerns about a proposed or actual transaction, or about proper conduct, can seek the advice of the Council's external auditor.

### 15.4 Declaring interests

(a) The rules of registering and declaring interests by Councillors are set out in the Councillor's Code of Conduct. If an officer has a pecuniary or other interest in a matter before the Council, the Cabinet or other Committee of the Council they will declare that interest. If it is substantial they will leave the room while the matter is under discussion.

(b) The guiding principle for both members and employees is that their conduct should be seen by the public to be beyond reproach.

~~(c) — A voluntary register of declarations of wider interests is kept for directors and assistant directors, who must enter present personal membership of any organisation, whether public, voluntary or charitable.~~

### 15.5 Inappropriate personal relationships

Members and employees should not allow close personal friendships to develop between them. In particular, it is important to recognise that the development of an emotional or sexual relationship involving a member and employee may be incompatible with their continued membership of or employment by Medway Council.

### 15.6 Employee concerns

It is not appropriate for Council employees to lobby members on matters of individual concern to them and members should discourage employees from making such approaches. A member of staff who is unhappy about a matter affecting them personally should be encouraged to take this up with their manager. If they are not happy with the response the next step is to talk to their trade union or staff representative. The Council's grievance procedure is available if informal methods have not resolved the issue.

## **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 communications are clear:

- the council 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 council will achieve a co-ordinated approach to communications and will ensure that all communications 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.

#### **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 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 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.

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 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>

## **3. Medway Council's local communications and marketing protocol**

3.1 The following sections describe the local protocols for communication and 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~~ other Committees (~~Appointments~~, Audit, Employment Matters, Health and Wellbeing Board and Licensing and Safety) 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

The Council's website 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 the media relations team in 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.

### | 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 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.

### 3.6 Reporting the decisions of Full Council

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

Where issued 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 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 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 Councillor
- 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, public relations and marketing for the council

The media team is responsible for media relations for and on behalf of the council. 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. 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 roadworks
- 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 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 communications and marketing team 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

The media relations team will 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.

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 The Council works 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 communications and marketing team provide high quality, cost-effective services in comparison to external providers. 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 A framework of external print providers has been procured by the Communications and Marketing team. They have negotiated competitive rates for the Council as part of a wider consortium. If external 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 **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. Monitoring compliance with this protocol and penalties for non compliance

- 9.1 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.

- 9.2 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

## **PART 6 - CODE OF GOVERNANCE**

### **1. What we mean by governance**

- 1.1 Governance is about how the Council ensures that they are doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner.
- 1.2 It comprises the systems and processes and cultures and values, by which the Council is directed and controlled and through which they account to, engage with and, where appropriate, lead their communities.
- 1.3 This local Code of Governance has been developed in accordance with and is consistent with the Delivering Local Governance in Local Government Framework.

### **2. Core principles of good governance**

- 2.1 The core governance principles of the Council are:
  - (a) Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the local area;
  - (b) Members and Officers working together to achieve a common purpose with clearly defined functions and roles;
  - (c) promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour;
  - (d) taking informed decisions which are subject to effective scrutiny and managing risk;
  - (e) developing the capacity and capability of members and officers to be effective; and
  - (f) engaging with local people and other stakeholders to ensure robust public accountability

### **3. Applying the core principles of good governance**

- 3.1 The six core principles each have a number of supporting principles, which in turn have a range of specific requirements that apply across the Council's business:

**Code of governance**

<b>1. Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the local area</b>	
<b>Supporting principles</b>	<b>Specific requirements to:</b>
Exercising strategic leadership by developing and clearly communicating the Council's purpose and vision and its intended outcomes for citizens and service users.	<p>Develop and promote the Council's purpose and vision</p> <p>Review on a regular basis the Council's vision for the local area and its implications for the Council's governance arrangements.</p> <p>Ensure that partnerships are underpinned by a common vision of their work that is understood and agreed by all partners.</p> <p>Publish an annual report on a timely basis to communicate the Council's activities and achievements, its financial position and performance.</p>
Ensuring that users receive a high quality of service whether directly, or in partnership, or by commissioning.	<p>Decide how the quality of service for users is to be measured and make sure that the information needed to review service quality effectively and regularly is available.</p> <p>Put in place effective arrangements to identify and deal with failure in service delivery.</p>
Ensuring that the Council makes best use of resources and that tax payers and service users receive excellent value for money	<p>Decide how value for money is to be measured and make sure that the authority or partnership has the information needed to review value for money and performance effectively.</p> <p>Measure the environmental impact of policies, plans and decisions.</p>



<p><b>2. Members and officers working together to achieve a common purpose with clearly defined functions and roles</b></p>	
<p><b>Supporting principles</b></p>	<p><b>Specific requirements to:</b></p>
<p>Ensuring effective leadership throughout the Council and being clear about executive and non executive functions and the roles and responsibilities of the scrutiny function.</p>	<p>Set out clear statements of the respective roles and responsibilities of the executive and the executive’s members individually and the Council’s approach towards putting this into practice.</p> <p>Set out a clear statement of the respective roles and responsibilities of other Council Members, members generally and of senior officers.</p>
<p>Ensuring that a constructive working relationship exists between Council Members and Officers and that the responsibilities of Members and Officers are carried out to a high standard.</p>	<p>Determine a scheme of delegation and reserve powers within the Constitution, including a formal schedule of those matters specifically reserved for collective decision of the Council, taking account of relevant legislation, and ensure that it is monitored and updated when required.</p> <p>Make a Chief Executive or equivalent responsible and accountable to the Council for all aspects of operational management.</p> <p>Develop protocols to ensure that the Leader and Chief Executive (or equivalents) negotiate their respective roles early in the relationship and that shared understanding of roles and objectives is maintained.</p> <p>Make a senior Officer (Section 151 Officer) responsible to the authority for ensuring that appropriate advice is given on all financial matters, for keeping proper financial records and accounts, and for maintaining an effective system of internal financial control.</p> <p>Make a senior Officer (Monitoring Officer) responsible to the Council for ensuring that agreed procedures are followed and that all applicable Statutes and Regulations are complied with.</p>

<p>Ensuring relationships between the Council, its partners and the public are clear so that each knows what to expect of the other.</p>	<p>Develop protocols to ensure effective communication between Members and Officers in their respective roles.</p> <p>Set out the terms and conditions for remuneration of Members and Officers and an effective structure for managing the process, including an effective Remuneration Panel (if applicable)</p> <p>Ensure that effective mechanisms exist to monitor service delivery.</p> <p>Ensure that the organisations vision, strategic plans, priorities and targets are developed through robust mechanisms, and in consultation with the local community and other key stakeholders, and that they are clearly articulated and disseminated</p> <p>When working in partnership, ensure that members are clear about their roles and responsibilities both individually and collectively in relation to the partnership and to the authority.</p> <p>When working in partnership:</p> <ul style="list-style-type: none"><li>• Ensure that there is clarity about the legal status of the partnership</li><li>• Ensure that representatives of organisations both understand and make clear to all other partners the extent of their authority to bind their organisation to partner decisions.</li></ul>
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<p><b>3. Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour</b></p>	
<p><b>Supporting principles</b></p>	<p><b>Specific requirements to:</b></p>
<p>Ensuring Council Members and Officers exercise leadership by behaving in ways that exemplify high standards of conduct and effective governance.</p>	<p>Ensure that the Council’s leadership sets a tone for the organisation by creating a climate of openness, support and respect.</p> <p>Ensure that standards of conduct and personal behaviour expected of members and staff, of work between Members and staff and between the authority, its partners and the community are defined and communicated through Codes of Conduct and Protocols.</p> <p>Put in place arrangements to ensure that members and employees of the Council are not influenced by prejudice, bias or conflicts of interest in dealing with different stakeholders and put in place appropriate processes to ensure that they continue to operate in practice.</p>
<p>Ensuring that organisational values are put into practice and are effective</p>	<p>Develop and maintain values including leadership values for both the organisation and staff reflecting public expectations, and communicate these with Members, staff, the community and partners.</p> <p>Put into place arrangements to ensure that systems and processes are designed in conformity with appropriate ethical standards and monitor their continuing effectiveness in practice.</p> <p>Develop and maintain an effective Councillor Conduct Committee.</p> <p>Use the organisation’s shared values to act as a guide for decision making and as a basis for developing positive and trusting relationships within the Council.</p> <p>In pursuing the vision of a partnership, agree a set of values against which</p>

	<p>decision making and actions can be judged. Such values must be demonstrated by partners' behaviour both individually and collectively.</p>
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<p><b>4. Taking informed and transparent decisions which are subject to effective scrutiny and management risk</b></p>	
<p><b>Supporting principles</b></p>	<p><b>Specific requirements to:</b></p>
<p>Being rigorous and transparent about how decisions are taken and listening and acting on the outcome of constructive scrutiny</p>	<p>Develop and maintain an effective scrutiny function which encourages constructive challenge and enhances the Council's performance overall and that of any organisation for which it is responsible.</p> <p>Develop and maintain open and effective mechanisms for documenting evidence for decisions and recording the criteria, rationale and considerations on which decisions are based.</p> <p>Put in place arrangements to safeguard Members and employees against conflicts of interest and put in place appropriate processes to ensure that they continue to operate in practice.</p> <p>Develop and maintain an effective Audit Committee which is independent of the executive and scrutiny functions or make other appropriate arrangements for the discharge of the functions of such a Committee.</p> <p>Ensure effective, transparent and accessible arrangements are in place for dealing with complaints.</p>

<p>Have good quality information, advice and support to ensure that services are delivered effectively and are what the community wants/needs.</p>	<p>Ensure those making decisions whether the Council for the Council or the Partnership are provided with information that is fit for purpose – relevant, timely and gives clear explanations of technical issues and their implications.</p> <p>Ensure that proper professional advice on matters that have legal or financial implications is available and recorded well in advance of decision making and used appropriately.</p>
<p>Ensuring that an effective risk management system is in place.</p>	<p>Ensure that risk management is embedded into the culture of the Council, with Members and managers at all levels recognising that risk management is part of their jobs.</p> <p>Ensure that effective arrangements for whistleblowing are in place to which Officers, staff and all those contracting with or appointed by the Council have access.</p>
<p>Using their legal powers to the full benefit of the citizens and communities in their area.</p>	<p>Actively recognise the limits of lawful activity placed on them by, for example, the ultra vires doctrine, but also strive to utilise their powers to the full benefit of their communities.</p> <p>Recognise the limits of lawful action and observe both the specific requirements of legislation and the general responsibilities placed on Councils by public law.</p> <p>Observe all specific legislative requirements placed upon them, as well as the requirements of general law, and in particular to integrate the key principles of good administrative law – rationally, legality and natural justice – into their procedures and decision making processes.</p>

<b>5. Developing the capacity and capability of members and officers to be effective</b>	
<b>Supporting principles</b>	<b>Specific requirements to:</b>
Making sure that Members and officers have the skills, knowledge, experience and resources they need to perform well in their roles.	<p>Provide induction programmes tailored to individual needs and opportunities for Members and Officers to update their knowledge on a regular basis.</p> <p>Ensure that the statutory officers have the skills, resources and support necessary to perform effectively in their roles and that these roles are properly understood throughout the Council.</p>
Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group.	<p>Assess the skills required by Members and Officers and make commitments to develop those skills to enable roles to be carried out effectively.</p> <p>Develop skills on a continuing basis to improve performance, including the ability to scrutinize and challenge and to recognise when outside expert advice is needed.</p> <p>Ensure that effective arrangements are in place for reviewing the performance of the Executives as a whole and of individual Members and agreeing an action plan, which might, for example, aim to address any training or development needs.</p>
Encouraging new talent for membership of the Council so that best use can be made of individuals' skills and resources in balancing continuity and renewal.	<p>Ensure that effective arrangements are in place designed to encourage individuals from all sections of the community to engage with, contribute to and participate in the work of the Council.</p> <p>Ensure that structures are in place for Members and Officers to encourage participation and development.</p>

<b>6. Engaging with local people and other stakeholders to ensure robust public accountability</b>	
<b>Supporting principles</b>	<b>Specific requirements to:</b>
Exercising leadership through a robust scrutiny function which effectively engages local people and all local institutional stakeholders, including partnerships, and develops constructive accountability relationships	<p>Make clear to themselves, all staff and the community to whom they are accountable and for what.</p> <p>Consider those institutional stakeholders to whom the Council is accountable and assess the effectiveness of the relationship and any changes required.</p> <p>Produce an annual report on the activity of scrutiny function.</p>
Taking an active and planned approach to dialogue with and accountability to the public to ensure effective and appropriate service delivery by the Council, in partnership or by commissioning.	<p>Ensure clear channels of communication are in place with all sections of the community and other stakeholders, and put in place monitoring arrangements and ensure that they operate effectively.</p> <p>Hold meetings in public unless there are good reasons for confidentiality.</p> <p>Ensure that arrangements are in place to enable the Council to engage with all sections of the community effectively. These arrangements should recognise that different sections of the community have different priorities and establish explicit processes for dealing with these competing demands.</p> <p>Establish a clear policy on the types of issues they will meaningfully consult on or engage with the public and service users about including feedback mechanisms for those consultees to demonstrate what has changed as a result.</p> <p>On an annual basis, publish a council plan giving information on the Council's vision, strategic priorities and financial statements. This will align with the development of the resources strategy and ultimately the budget. In addition,</p>

	<p>publish an annual report which will give information about its outcomes, achievements and the satisfaction of service users in the previous period.</p> <p>Ensure that the Council as a whole is open and accessible to the community, service users and its staff and ensure that it has made a commitment to openness and transparency in all its dealings, including partnerships, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so.</p>
<p>Making best use of human resources by taking an active and planned approach to meet responsibility to staff.</p>	<p>Develop and maintain a clear policy on how staff and their representatives are consulted and involved in decision making.</p>

#### 4. Annual Review and Reporting

- 4.1 Each year the Council will carry out a review of their Governance arrangements to ensure compliance with this Code, the delivery of Good Governance within the local Government Framework and current good practice. The purpose of the review will be to provide assurance that governance arrangements are adequate and operating effectively or to identify action which is planned to ensure effective governance in the future.
- 4.2 The outcome of the review will take the form of an Annual Governance Statement prepared on behalf of the Leader of the Council and Chief Executive. It will be submitted to the Audit Committee for consideration and review.
- 4.3 The preparation and publication of the Governance Statement will meet the statutory requirements of the Accounts and Audit Regulations which requires authorities to ‘conduct a review at least once a year of the effectiveness of its system of internal control’ and to prepare a statement on internal control ‘in accordance with proper practices’. As such the Governance Statement will be prepared in accordance with the timetable in participation of financial statements in accordance with the Audit and Financial Regulations.



## **PART 7 - MEMBERS LICENSING CODE OF GOOD PRACTICE**

### **1. Introduction**

1.1 This code of good practice (the Licensing Code) gives advice to Councillors who:

- are members of the Licensing and Safety Committee and who sit on hearing panels or sub committees
- wish to attend or address the Committee, a sub committee or a hearing panel on any licensing issue.
- are involved outside the Committee on licensing applications or other licensing matters – including informal occasions such as meetings with officers or public and consultative meetings.
- are involved in applications for licences under the Licensing Act 2003, the Gambling Act 2005 or any other licensing legislation.

1.2 A key aim of the Licensing Code is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or is not well founded in any way. Councillors must make these decisions openly, impartially with sound judgement and for justifiable reasons.

1.3 This is particularly important, as licensing applications will be subject to close scrutiny both because applicants may be seeking to maximise the business potential of their premises and because the quality of the environment in which local residents and the wider community live and work may be detrimentally affected through the grant of inappropriate licences.

1.4 The Human Rights Act 1998 has implications for the licensing system and has created enhanced requirements for procedural fairness, transparency and accountability in decision making.

1.5 This Licensing Code is intended to minimise the prospect of legal or other challenge to decisions. Non-compliance without good reason could be taken into account in investigations into a breach of the Members' Code or possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

1.6 Most licensing applications heard by Councillors will be determined by a hearing panel or by a sub-committee of the main Licensing and Safety Committee. It should be borne in mind that, given the small numbers of Councillors on such hearing panels or sub-committee, the scrutiny of any interests held by Councillors making those decisions will be greater.

## **2. Relationship with the Members' code of conduct**

- 2.1 The Members' code of conduct (“the Members’ Code”) must always be complied with and the rules in that code must be applied before considering the Licensing Code.
- 2.2 The Licensing Code is not intended to form a part of the adopted Members' Code but is a separate document, which is both supportive of the Members' Code and the source of expanded guidance in the particular area of licensing.
- 2.3 To distinguish it from the Members' Code, this document is referred to as the Licensing Code.

## **3. Disclosable Pecuniary Interests**

- 3.1 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in the list attached to the Members’ Code.
- 3.2 The requirement to notify the Monitoring Officer of a DPI applies not only to a Councillor’s own interests but also to those of the Councillor’s husband/wife/civil partner or a person with whom the Councillor is living as husband/wife or as if they were civil partners, if the Councillor is aware that that person has the interest. In this Licensing Code such a person is referred to as a “relevant person”.
- 3.3 Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and Councillors should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 3.4 A Councillor may have a DPI in relation to a licensing matter in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to;
  - An application for a premises licence for premises owned or leased by the Councillor or a relevant person;
  - An application for a premises licence for a premises close to property owned by the Councillor or a relevant person, in particular where the grant of a licence could affect the Councillor’s pecuniary interest in that property (e.g. by affecting the value of the property);
  - An application for a review of a premises licence made by the Councillor’s or a relevant person’s employer.

- 3.5 Unless a Councillor has received a dispensation from Medway Council, he or she must not participate in a discussion or vote on any application in which he or she or a relevant person has a DPI.
- 3.6 The Localism Act 2011 does not *require* the disclosure at a meeting of a DPI if the interest already appears on the register. Councillors need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, in cases of doubt the Councillor should disclose at the meeting. In any event, Councillors may voluntarily declare a DPI or other interest at a meeting, even where there is no legal obligation to do so.
- 3.7 The Members' Code requires Councillors to withdraw from the room at a meeting during a discussion and vote upon an issue in which they have a DPI. Failure to comply with this requirement will not be a criminal offence but will be a breach of the Members' Code.
- 3.8 Where a Councillor who is due to sit on a hearing panel or sub-committee has a DPI in a matter to be determined at that hearing panel or sub-committee, he or she should notify the Democratic Services team as soon as he or she receives the committee papers so that a substitute member can be organised. This is particularly important as such sub-committees and hearing panels have a small membership.
- 3.9 There are no longer any exemptions allowing Councillors who have a DPI to speak where a member of the public would be allowed to speak. Therefore where a Councillor has a DPI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on a licensing matter and must withdraw from the room. This applies whether or not the Councillor is wishing to speak as a member of the committee, as a ward councillor or as a private individual (there are additional restrictions on speaking in a Licensing Hearing Panel which are set out in paragraphs 5.4 and 5.5 below). Where a Councillor has a DPI in an application to be considered at a hearing panel or a sub-committee he or she may appoint a representative to attend on his behalf. If a Councillor with a DPI wishes to attend personally in order to make representations, he or she must obtain a dispensation prior to the meeting.
- 3.10 Therefore if a Councillor has a DPI in a matter being considered at a Committee, Sub-Committee or Hearing Panel (either his or her own interest or through an interest of a relevant person) he or she **must**
- Declare the interest verbally at the meeting as soon as he or she becomes aware of it, if it is not already registered on the Register of Member Interests
  - If it is declared at the meeting under the requirement above, ensure that the Monitoring Officer is notified of the interest within 28 days of the meeting, for purposes of registration on the Register of Member Interests
  - Withdraw from the room and not participate in or give the appearance of participating in the debate or the vote

- Not be present in the room to represent ward/ objectors/ supporters/ personal views

and a Councillor **may**

- Declare the interest verbally at the meeting even if it already appears on the Register of Member Interest

#### 4. Predetermination and Bias

4.1 Councillors must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although s25 of the Localism Act 2011 is also relevant. Even if a Councillor does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination and bias are likely to be more strictly applied where the Council is making "quasi-judicial" decisions, such as the determination of a licensing application, than in the case of other decisions to be made by the Council.

4.2 The basic legal position is that a Councillor should not take part in making a decision on a licensing matter if he or she is **biased** or has **predetermined** the matter. Councillors should bring an unbiased, properly directed mind to the consideration of any matters before them at Committee. This does not mean that Councillors are not entitled to have and to express opinions about general licensing matters, or licensing cases. However, they must approach, and must be seen to approach, matters before them with an open mind.

4.2 In this respect a distinction is to be drawn between those Councillors who are making the decision (i.e. speaking and voting as part of the hearing panel or sub-committee) and those Councillors seeking merely to influence the decision (e.g. making representations on behalf of an objector). The prohibition in respect of predetermination or bias only affects those actually making the decision. A Councillor who has predetermined or who is biased may still make representations at a hearing panel or sub-committee (provided that he or she does not also have a DPI).

#### Predetermination

4.3 The law also makes a distinction between *predetermination*, which rules out participation in decision-making and *predisposition*, which does not.

4.4 A Councillor is entitled to have and to express views on local matters, both general licensing matters and more specific applications. These views may indicate that a Councillor has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a Councillor with a predisposition may take part in decision-making.

- 4.5 A predisposition will move on to becoming predetermination if, in relation to any matter before the Committee, a Councillor has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing that he or she hears at Committee will alter his or her position.
- 4.6 Section 25 of the Localism Act 2011 expressly provides that a Councillor shall not be taken to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view he or she took, or would or might take, in relation to a matter. Therefore a Councillor will not have predetermined merely because he or she has made statements about a licensing matter in the past. However, this does not mean that a Councillor is free to say or do *anything* and still participate in the debate and vote. If by his or her actions and words the Councillor makes it clear that he or she will be voting a certain way no matter what information is presented at the Hearing Panel or Sub-Committee, then he or she will have predetermined and should not take part in the decision making.
- 4.7 There is acceptance that a Councillor may legitimately consider matters in several capacities as different factors may apply to different decisions. Where premises require both a licence and planning permission Councillors may be asked to sit on both the Planning Committee and a Hearing Panel. Premises which are sexual entertainment venues are likely to need both a licence under the Licensing Act 2003 and a licence under the Local Government (Miscellaneous Provisions) Act 1982 and again Councillors may be asked to sit on both Hearing Panels. While the statutory regimes in such cases are different, often the factors to be taken in to account can be similar. In these circumstances, Councillors should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a pre-determination of the second decision. If that is the case, the Councillor should not take part in the decision making at the second committee, sub-committee or Hearing Panel.

### **Bias/Conflict of Interest**

- 4.8 A Councillor should not be party to decisions in which he is actually biased or gives the appearance of being biased, to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a possibility that the decision maker was biased. This can also be described as having a conflict of interest.
- 4.9 Bias may arise by virtue of a Councillor being closely connected with a person who has a vested interest in the application – either the applicant or an objector. This may result from a personal connection, such as an applicant being a relative or friend, or result from the Councillor promoting a particular viewpoint (e.g. by being part of a lobby group). The role of the Hearing Panels and Sub-Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a Councillor is closely connected with a particular party.

- 4.10 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that Councillors must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates. Where this might occur, Councillors should not take part in the decision-making.

### **Particular Committees**

#### **5. Making representations to Licensing Hearing Panels**

- 5.1 This Licensing Code deals with all licensing matters, but there are particular rules as to who can be heard at a Licensing Hearing Panel (which determines applications under the Licensing Act 2003 and the Gambling Act 2005).
- 5.2 In accordance with s18 of the Licensing Act 2003 (as amended) *any person* can now make representations in relation to an application to Medway Council for the grant of a premises licence and such representations will (if they meet the other requirements of s18 of the 2003 Act) be treated as relevant representations for the purposes of the Act. In accordance with section 51 *any person* may now (in accordance with the conditions set out in Regulations) apply for a review of a premises licence under the Licensing Act 2003 where Medway Council is the licensing authority.
- 5.3 The provisions of the Gambling Act 2005 are more prescriptive. Only Responsible Authorities and Interested Parties (as defined in the Gambling Act 2005) are able to make representations.
- 5.4 Only "parties" – i.e. the applicant and any persons who have made relevant representations (under the Licensing Act 2003 or the Gambling Act 2005 as applicable) are permitted to speak at a Licensing Hearing Panel, although any party may be assisted or represented by another person.
- 5.5 A Councillor may only therefore speak at a Licensing Hearing Panel in two circumstances:
- (i) where the Councillor has himself or herself submitted a relevant representation and is therefore a party;
  - (ii) where the Councillor has specifically been asked by a party (i.e. the applicant or a person who has made a relevant representation) to represent him or her.

It is helpful for Councillors when making representations to identify to officers which of the above categories they fall into. However, in considering whether to attend a Licensing Hearing Panel in either of the above capacities, Councillors should remember that they will not be able to appear (either on

their own behalf or as a representative) if they have a DPI and do not have a dispensation.

- | 5.6 Where a Councillor has made a representation on an application or has called for a review of a licence it is very likely that he or she will have pre-determined the application or would be seen to be biased and so should not sit on the Licensing Hearing Panel dealing with that application or review. To avoid any accusations of bias and/or having to cancel or postpone meetings because of Councillor interests, Councillors should not sit on Licensing Hearing Panels to determine applications in their own wards.

## **6. Making representations to 1982 Act Hearing Panels**

- | 6.1 The requirements of the Local Government (Miscellaneous Provisions) Act 1982 with regard to the making of representations on applications for sex establishment licences are less detailed than those of the Licensing Act 2003 or the Gambling Act 2005. The 1982 Act does not make specific provision for objectors to be heard at a Hearing Panel, but it is the Council's policy to permit objectors to be heard. Therefore as above, a Councillor may address the Hearing Panel either having made an objection himself or herself, or as a representative of an objector if requested to do so by the objector. The guidance in paragraphs 5.4 and 5.5 above therefore apply equally to 1982 Act Hearing Panels.

## **7. Making representations at Licensing Sub-Committee**

- 7.1 The Licensing Sub-Committee hears appeals on taxi matters and other licensing matters not covered by the Licensing Hearing Panel or the 1982 Act Hearing Panel. In most of the matters dealt with by the Licensing Sub-Committee members of the public do not have rights to make representations and the Sub-Committee will be making a decision after having heard the Licensing officers and the applicant. If a Councillor wishes to make representations to the Licensing Sub-Committee he or she should contact the Licensing team for advice on whether this is possible having regard to the type of application upon which the Councillor wishes to make a representation.

### **Specific Areas of Guidance**

## **8. Membership of Parish Council**

- | 8.1 Where a Parish Council makes representations on a licensing application, then a Councillor who is also a member of that Parish Council should not sit on a hearing panel or licensing sub-committee determining that application. It goes without saying that a Councillor should not become involved at a Medway level in applications for licences made by the Parish Council on which they serve.
- | 8.2 Even where a Parish Councillor who is also a Medway Councillor is not able to sit on the hearing panel/sub-committee he or she will have the same right

as any other Councillor to address the Panel/Committee (as set out above) provided they do not have a DPI.

## **9. Lobbying by Councillors**

9.1 Councillors can, of course, lobby and campaign on particular developments, but they should recognise that this may remove them from the decision making process.

9.2 If a Councillor leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose the grant of a particular licence, he or she will be considered to have predetermined an application for that licence.

9.3 The position in 9.2 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, e.g. the Licensed Victuallers Association, CAMRA, associations supporting live music. If that organisation has made representations on an application, but the Councillor has not been involved in preparing those representations, he or she will not have predetermined merely due to that membership.

9.4 Councillors should not excessively lobby other Councillors regarding their views on licensing applications, nor should they, outside of the Hearing Panel or Sub-Committee, try to persuade other Councillors how to vote.

9.5 Councillors should not decide or discuss how to vote on licensing applications at political group meetings or lobby other Councillors to do so. Political group meetings should never dictate how Councillors vote on licensing applications.

## **10. Representations from Councillors at the consultation stage**

10.1 Councillors who wish to take part in the debate and vote at a Hearing Panel or Sub-Committee should refrain from making representations as part of the consultation process, as this may imply predetermination.

## **11. Lobbying of Councillors**

11.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a licensing decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Hearing Panel/Sub-Committee. However lobbying can, where a Councillor is a member of the Hearing Panel or Sub-Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a licensing decision.

11.2 A Councillor who wishes to participate in the determination of a licensing application should explain to persons lobbying or attempting to lobby that it would prejudice their impartiality and ability to participate in the decision if they discuss how he or she intends to vote or expresses sympathies with a point of



view in advance of the meeting. For the avoidance of doubt a Councillor will not have predetermined

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by asking questions at the Hearing Panel/Sub-Committee which reflect the issues raised.

11.3 When a Councillor participates in making a licensing decision, his or her overriding duty is to the community as a whole and not just people in his or her ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality. To do so is likely to be a breach of the Members' Code.

11.4 In addition to the requirement set out in the Members' Code to declare any gift or hospitality with an estimated value of at least £100, Councillors should not accept gifts or hospitality from any person involved in or affected by a licensing application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a licensing application. If you have personally received written representations on a licensing application you should forward copies of these to the Licensing and Local Land Charges Manager as soon as possible, as there are strict time limits for the receipt of representations in most licensing matters.

## **12. Contact with applicants, developers and objectors**

12.1 Councillors should refer those who approach for assistance on procedural or technical licensing matters to relevant officers in the Licensing team.

12.2 Councillors who wish to consider a licensing application should not agree to formal or informal meetings with applicants, or groups of objectors. Unlike in the case of planning applications it is considered that Councillors who will be considering an application should not attend presentations on e.g. a major new licensing proposal even if it is part of a wider presentation organised by officers.

## **13. Policy formulation by the Council**

13.1 Individual licensing applications are generally dealt with by the Hearing Panels and the Licensing Sub-Committee. The Licensing & Safety Committee has the role of considering and formulating policy and recommending the adoption of the same to Council.

13.2 Councillors may take part in both policy formulation and determining licensing applications. However, when attending meetings on policy formation Councillors should follow the guidance on pre-determination if they wish to take part in subsequent decisions on licensing applications. This will be particularly relevant where the policy being formulated is site specific.

## 14. Site/Vehicle inspections

- | 14.1 In exceptional cases Councillors may not be able to appreciate points being put to them at a hearing without a site inspection (for example on an application for a sexual entertainment venue licence where representations have been made about the nature of the vicinity and Councillors are not familiar with the particular vicinity and it cannot be explained adequately at the hearing). Where, prior to committee, officers identify that photographs of the site and/or vicinity would be helpful they will include these in committee papers. Where, on receipt of the agenda, a Councillor identifies that a view of the site/vicinity would be helpful and no photographs have been included he or she should contact the Licensing team in sufficient time prior to the committee to arrange for photographs to be available at the committee (these will need to be provided to the parties *prior* to committee). In the majority of cases this may avoid any unnecessary delay which would be caused by a site inspection. Site inspections may only be held with the agreement of the landowner.
- | 14.2 In matter relating to taxis, Councillors may need to undertake a vehicle inspection.
- | 14.3 It is important to remember that a site/vehicle inspection is a formal part of the licensing hearing process. The visit may be made either prior to the hearing or at the conclusion of the evidence. All members of the Hearing Panel/Sub-Committee must all attend and will be accompanied by an officer. Inspections made prior to the hearing will primarily be intended to appraise Councillors of conditions in the vicinity of the premises (and will usually be conducted in the absence of the applicant and objector(s)). Inspections following the conclusion of the evidence will primarily be used to clarify matters raised at the hearing and the applicant and objector(s) will be invited to attend, but not to make any further representations to the members of the Panel/Sub-Committee. Vehicle inspections will normally be made during the hearing process and are intended to appraise Councillors of the condition of a vehicle, where appropriate to the application/appeal. The applicant and the Licensing Officer(s) will be asked to attend, and may point out matters relevant to the condition of the vehicle but not make any further representations.
- | 14.4 Where a site inspection is held the following conditions must be complied with:
  - | 14.4.1 No hospitality should be accepted at site inspections.
  - | 14.4.2 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.
  - | 14.4.3 Councillors taking part in the licensing decision must not express views to anyone present. If this happens it will usually lead to a cessation of the process and a rehearing by a new panel/sub-committee.

- | 14.4.4 It is acceptable to ask officers at the site inspection questions to seek clarification on matters relevant to the site inspection.
  - | 14.4.5 The site inspection should be properly recorded as part of the hearing panel/sub-committee's proceedings.
  - | 14.4.6 All Councillors should remember the purpose of the site inspection and should refrain from making comments not relevant to the application to be considered by the Hearing Panel/ Sub-Committee. A site inspection is not a general public meeting and Councillors should not treat it as such.
  - | 14.4.7 Councillors who wish to determine an application should not enter a site subject to a licensing proposal other than as part of an official inspection even in response to an invitation.
- 14.5 Councillors should comply with paragraphs 14.4.1-14.4.6 when undertaking a vehicle inspection.

## **15. Contact with Officers**

- | 15.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.
- | 15.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.
- | 15.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Institute of Licensing's rules for professional conduct. As a result licensing officers may on occasion take a view which could be at odds with the views, opinions or decisions of the Committee or its members.

## **16. Licensing applications by Councillors and officers and Council applications**

- | 16.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety, if not handled transparently. So indeed can applications made on behalf of the Council.
- | 16.2 Councillors (and officers involved in the licensing process) who submit applications in a personal capacity should notify the Chief Legal Officer and play no part in its processing or determination and should avoid contact, whether direct or indirect with members of the relevant Hearing Panel or Sub-Committee concerning the application. Failure by a Councillor to comply with these principles could be a breach of the Members' Code.
- | 16.3 It is perfectly legitimate for such applications to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for

accusations of favouritism. Councillors should carefully consider using agents to submit and take forward their own applications. Without a dispensation Councillors will not be able to attend a Hearing Panel or Sub-Committee dealing with their own application, as they will have a DPI in that matter. If they wish to make representations at the Hearing Panel or Sub-Committee they should apply for a dispensation or appoint a representative to make representations on their behalf.

16.4 Serving Councillors and officers should avoid acting as agents for people pursuing a licensing applications and where they do so should play no part in the decision making process for that proposal.

16.5 Councillors considering an application must of course consider whether the nature of any relationship with the Councillor submitting the licensing application could lead to an accusation of bias. Mere membership of the same political group is unlikely to lead to an appearance of bias, but a close friendship could.

## 17. Decision making

17.1 Councillors making licensing decisions must

- come to meetings with an open mind and demonstrate they are open minded
- not vote or take part in the meeting's discussions on a proposal unless present to hear the entire case (including being present at any site inspection)
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision
- make the licensing decision in accordance with the requirements of the relevant licensing legislation, having regard to relevant guidance and policy
- request further information if it is felt there is insufficient information before the Committee to reach a decision.

## 18. Training

18.1 Councillors should not participate in decision making meetings dealing with licensing matters unless they have attended any training prescribed by the Monitoring Officer.

## PART 8 – ANTI FRAUD AND CORRUPTION POLICY

### 1. Introduction

- 1.1 As Medway Council ('The Council') is funded by the "public purse", it is constantly under scrutiny from a number of sources about how it spends the money allocated to it. The Council has developed comprehensive financial practices and procedures to help ensure that acts of fraud or corruption are not committed against it, as anyone committing such an act will damage the integrity of the Council and those with whom they work.
- 1.2 In order to protect public funds against fraud and corruption the Council is committed to an effective Anti Fraud and Corruption Policy to ensure that the opportunity for fraud and corruption is reduced to the lowest possible risk.
- 1.3 The Council's expectation on propriety and accountability is that members and staff at all levels ensure adherence to statutory and internal rules and regulations, procedures and recommended practices.
- 1.4 Definitions relevant to this policy are as follows:

**Fraud** – is any intentional act or omission designed to deceive others, resulting in, or intended to result in the victim suffering a loss and/or the perpetrator achieving a gain (as defined in The Fraud Act 2006). Offences may also include:

- **Theft** – The Theft Act 1968 defines theft as the dishonest taking of property belonging to another person with the intention of depriving the owner permanently of its possession.
- **Money Laundering** - The Money Laundering Regulations put in place 2007 set out the requirement for organisations to put in place anti-money laundering controls.

**Corruption** - is the abuse of one's position for direct or indirect personal gain. It covers the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person. Corruption may include:

- **Bribery** - The Bribery Act 2010 creates offences of making or receiving bribes, and also creates a new offence of failure of an organisation to prevent bribery by persons associated with it, including third party service providers.

### 2 Policy statement

- 2.1 All staff and elected members must act honestly and with integrity at all times and safeguard the resources for which they are responsible. Fraud must be a concern to all members of staff and elected members. 2.2 Medway Council is committed to
  - The creation of an anti-fraud culture;
  - Prevention of fraud wherever possible;
  - Prompt detection of fraud;
  - Professional investigation of detected fraud;

- The use of sanctions, including legal action against people committing fraud;
  - Steps to ensure recovery of funds defrauded.
- 2.3 Members and staff at all levels must ensure adherence to statutory requirements and internal rules and regulations, procedures and recommended practices. The Council has developed comprehensive practices and procedures to help ensure that acts of fraud or corruption are not committed against it.
- 2.4 It is often the alertness to the possibility of fraud and corruption, of all those involved in a business activity with the Council, that enables detection to occur. Under the Council's Employee Code of Conduct, employees have a duty to report any suspected cases of fraud or corruption to their immediate line manager (unless the said manager is implicated). The manager is also required to inform the Chief Finance Officer (CFO). Reporting cases in this way is essential to the Anti Fraud and Corruption Policy.
- 2.5 Frauds are often discovered as a result of whistleblowing and the Council has arrangements in place to enable such information to be properly dealt with, and the whistleblower protected. All whistleblowing cases related to fraud and financial irregularity will be subject to initial enquiries by the Head of Audit & Counter Fraud ~~Audit Services Manager~~ to confirm or repudiate suspicions raised, and if the concerns are substantiated a full investigation will be undertaken.
- 2.6 There are mechanisms in place within the Council to act in cases of fraud and corruption. These include the following:
- 2.7 The Council's Employee Disciplinary Procedures identify "fraud, theft or other criminal acts" as examples of gross misconduct. This and other fraudulent or corrupt conduct will normally lead to dismissal.
- 2.8 The Council will seek full redress through the legal processes available to counter any internal or external fraudulent activities perpetrated against it. This redress will be achieved through criminal and/or civil courts as considered appropriate.

### **3 Responsibilities**

#### **Section 151 Officer**

- 3.1 The Chief Finance Officer is responsible for:
- Proper administration of the Council's financial affairs, reporting to Members and the External Auditors if the Council, or one of its representatives makes, or is about to make, a decision which is unlawful, or involves illegal expenditure or potential financial loss (Local Government Finance Act [1998-1988](#) s.114).

#### **Managers**

- 3.2 All managers are responsible for:

- Maintaining internal control systems and ensuring that the Council's resources and activities are properly applied in the manner intended;
- Identifying the risks to which systems and procedures are exposed;
- Developing and maintaining effective controls to prevent and detect fraud;
- Ensuring that controls are being complied with.

3.3 Key mechanisms for fraud prevention are the checks included in working procedures relating to financial, contract and procurement procedures, and the recruitment procedures for ensuring employees are appointed on merit, and appropriate pre-appointment checks are completed to eliminate the appointment of unsuitable persons.

### **Employees**

3.4 Each member of staff is responsible for:

- His or her own conduct and for contributing towards the safeguarding of corporate standards (including declarations of interest, gifts and hospitality offered and received, private working, Whistleblowing, etc);
- Acting with propriety in the use of official resources and in the handling and use of corporate funds, whether they are involved with cash or payments systems, receipts or dealing with contractors or suppliers;
- Reporting details immediately to their line manager or the Chief Finance Officer, if they suspect that a fraud has been committed or see any suspicious acts or events.

### **Contractors and suppliers**

3.5 Those organisations employed to work on behalf of the Council are expected to maintain strong anti-fraud principles. The Council's contract partners will be expected to have adequate recruitment procedures and controls when they are administering finance on behalf of the Council.

The Council expects its partners to have adequate controls in place to minimise fraud and to provide access to their financial records as they relate to the Council's finances, and their staff will be required to assist fully in any investigation.

The Council will seek the strongest available sanctions against contractors that commit fraud against the Council or who commit fraud against public funds. The Council will request that the organisation takes necessary action against the individual and the Council will require them to be removed from its account.

### **Internal Audit**

3.56 Audit & Counter Fraud ~~Audit Services~~, which includes Internal Audit and the Corporate Anti-Fraud Team is responsible for:

- Acting as the Council's consultant on issues of fraud and corruption;
- Completing annual assessments of the Council's fraud risk;
- Undertaking proactive work to support management in strengthening fraud resilience;
- Undertaking proactive work to identify fraud committed against the Council
- The independent appraisal of control systems for managing fraud risk;
- The investigation of allegations and suspicions of internal fraud or corruption and then advising and leading the Council, in conjunction with Human Resources (HR) and Legal Services, with regard to prosecution, disciplinary, or alternative sanctions;
- The investigation into allegations of Housing and Council Tax Benefit fraud.

3.6-7 In undertaking investigations Audit & Counter Fraud ~~Audit Services~~

- Ensures the consistent treatment of information regarding fraud and corruption;
- Facilitates proper investigation of suspected cases;
- Ensures that the individual's and the Council's interests are protected.

### **External Audit**

3.78 The External Auditors have specific responsibilities for:

- Reviewing the stewardship of public money;
- Considering whether the Council has adequate arrangements in place to prevent fraud and corruption;
- The External Auditor also has powers to independently investigate fraud and corruption.

### **Members**

3.89 Each elected member of the Council is responsible for:

- His/her own conduct and for contributing towards the safeguarding of corporate standards (including declarations of interest, gifts and hospitality offered and received, Whistleblowing, etc);
- Contributing towards the safeguarding of corporate standards by compliance with the Members Code of Conduct.

3.910 The Council is accountable to all the people of Medway and is responsible for conducting its business in an open, honest, equal and fair manner. In doing so, it will take positive action against any identified fraudulent or corrupt activities.



3.4011 The Council's employees and elected Members are important elements in its stance on fraud and corruption and they are positively encouraged to raise any concerns, which they may have on issues associated with the Council's activities. They can do this in the knowledge that such concerns will be treated in confidence, properly investigated and fairly dealt with.

3.44-12 In recent years there has been a rapid increase of fraud perpetrated against local authorities in general. The nature and scope of much of this fraud is varied and cross-jurisdiction. Accordingly it has become necessary to liaise with and undertake joint working with certain agencies, including (but not limited to):

- Other local authorities;
- The Department for Work and Pensions (DWP);
- Police;
- UK Border Agency.

3.4213 The Council is committed to working and co-operating with other organisations to prevent organised fraud and corruption. Wherever possible, the Council will assist and exchange information with other appropriate bodies to assist in the investigation of and to combat fraud.

#### **National Fraud Initiative (NFI)**

3.4314 The Council is legally required under s.6 of the Audit Commission Act 1998 to provide relevant data and to participate in NFI.

3.4415 The Council provides information obtained from its databases, which is matched with that of other authorities and agencies, to identify possible fraud and corruption.

3.4516 Details of matches are returned to the Council's Audit & Counter Fraud Internal Audit Service, where the data is shared with the relevant managers to identify potential cases of fraud. Where further internal investigations are required the matter is referred to Audit & Counter Fraud Internal Audit to pursue cases of fraud and irregularity perpetrated by employees.

3.4617 Cases identified that relate to members of the public abusing the benefits system, are also referred to the Corporate Anti-Fraud Team for investigation.

#### **4. The ~~ten~~-seven general principles of public life**

4.1 The Council has adopted a ~~new~~ Member Code of Conduct in accordance with the Localism Act 2011. This Code must (in line with the Localism Act 2012) be consistent with the following principles

- Selflessness
- Integrity

- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

## **5. Constitution**

5.1 The Council has agreed a constitution, which sets out how the Council operates, how decisions are made, and the procedures to follow to ensure that these are efficient, transparent and accountable to local people. While some of these processes are required by law, others are a matter for the Council to choose. The constitution also has a number of codified rules and regulations to make sure that financial, working and organisational procedures are properly controlled. These are an important part of the internal control processes, and it is important that all members and staff know about them.

5.2 The most notable ones are:

- Financial rules (Chapter 4, part 6)
- Contracts rules (Chapter 4, part 7)
- Employment rules (Chapter 4, part 8)
- Whistleblowing Policy (Chapter 4, part 9)
- Members code of conduct (Chapter 5, part 1)
- Employee code of conduct (Chapter 5, part 3)
- Code of corporate governance (Chapter 5, part 6)

5.3 Chief Officers must ensure that relevant rules and regulations are up to date, that all staff have access to the relevant rules and regulations, and that staff receive suitable training.

5.4 Members and employees must ensure that they read and understand the rules and regulations that apply to them and act in accordance with them.

## **5.5 Whistleblowing**

5.5.1 The Council's Whistleblowing Policy is intended to encourage all individuals to raise serious concerns. Those reporting concerns this way are afforded certain rights and protection through legislation enacted under the Public Interest Disclosure Act 1998. Everything possible will be dealt with in a confidential manner and protect them from reprisals.

5.5.2 Management are responsible for reporting all allegations and suspicions of fraud and/or corruption from whistleblowing sources to the Audit Services Manager, as Head of the relevant Specialist Team, who will determine any

initial investigation required and inform the Chief Finance Officer.. Annual Reports will be provided to Audit Committee on the number, nature and status of all whistleblowing events, and reports will be provided to the Audit Committee on the findings of full investigations relating to fraud and/or corruption.

- 5.6 Outcomes of irregularity reports are reported to the Audit Committee; breaches of conduct by employees are dealt with through the Council's disciplinary procedures. The Councillor Conduct Standards Committee deals with Members who breach the Code of Conduct.

## **6. Training**

- 6.1 Implementing a successful Anti Fraud and Corruption Policy is largely dependent on the awareness and responsiveness of employees and Members throughout the Council.
- 6.2 The Council supports the concept of fraud awareness training for Members and employees to ensure that their responsibilities and duties in respect of this are regularly reviewed and reinforced.
- 6.3 The Council is also committed to training and developing staff who are involved in investigating fraud and corruption and suitable training will be provided where necessary.

## **7. Conclusion**

- 7.1 The Council will target and fight all identified or suspected instances of fraud or corruption including but not limited to:

- Financial irregularity
- Misuse of office
- Misuse of Council property
- Corruption
- Collusion
- Theft
- Bribery
- Stealing supplies
- Working while on sick leave
- Falsifying time sheets and expense claims
- Selling Council equipment
- Failure to declare an interest
- Fraudulent tendering process

- Fraudulent property letting
- Fraudulent certification for payment of goods or services not received.

7.2 The Council has a number of systems and procedures in place to assist in the fight against fraud and corruption. These arrangements need to keep pace with future developments in prevention and detection techniques.

7.3 Furthermore, the Council will also ensure that this policy document is regularly reviewed, so that it remains current and effective.

- Misuse of Council property
- Corruption
- Collusion
- Theft
- Bribery
- Stealing supplies
- Working while on sick leave
- Falsifying time sheets and expense claims
- Selling Council equipment
- Failure to declare an interest
- Fraudulent tendering process
- Fraudulent property letting
- Fraudulent certification for payment of goods or services not received.

## PART 9 – WHISTLEBLOWING POLICY

### 1. Introduction

1.1 The Council is committed to tackling all types of unlawful acts including fraud, bribery, corruption, unethical conduct and malpractice regardless of who commits them, or where in the Council they are committed. In this way the Council ensures that its services are used in the best interests of the local community.

1.2 The Council has agreed a ~~constitution~~Constitution, which sets out how the Council operates, how decisions are made, and the procedures to follow to ensure that these are efficient, transparent and accountable to local people. While some of these processes are required by law, others are a matter for the Council to choose. The ~~constitution~~Constitution also has a number of codified rules and regulations to make sure that financial, working and organisational procedures are properly controlled. These are an important part of the internal control processes, and it is important that all members and staff know about them. The most notable are:

- 1.2.1 Financial rules (Chapter 4, part 6);
- 1.2.2 Contracts rules (Chapter 4, part 7);
- 1.2.3 Employment rules (Chapter 4, part 8);
- 1.2.4 Members code of conduct (Chapter 5, part 1);
- 1.2.5 Employee code of conduct (Chapter 5, part 3); and
- 1.2.6 Code of corporate governance (Chapter 5, part 6).

1.3 The Council aims to ensure that anyone wishing to raise a concern feels confident in the process under this Policy. This Policy is designed to allow you to raise a concern without fear of reprisals or victimisation, if your disclosure is made in good faith.

1.4 To encourage and enable you to do this, the Council will ensure that anyone who uses this Policy to raise a concern will be protected from any form of detriment, harassment or victimisation regardless of:

- the content or severity of the concern you raise;
- with whom you raise the concern; and
- whatever the outcome of raising the concern.

1.5 The Policy provides an opportunity for your concern to be dealt with internally, after all that is where the solutions will be found, or through an agreed external body.

1.6 There is always a temptation to take a concern directly to the media, but this does not necessarily mean that the issues raised are appropriately addressed and often fails to protect innocent parties. You should remember that you have a duty of confidence to your employer and that unauthorised disclosure of information maybe a disciplinary offence. Please refer to section 16 below.

1.7 Staff should consider the repercussions of making disclosures to parties other than a specialist Whistleblowing Officer ~~(Appendix one)~~. –Where concerns are of a serious/severe nature, it is possible that an inadvertent or deliberate disclosure to a third party could result in prejudicing a criminal investigation, if such a criminal investigation is warranted.

1.8 The best advice before you decide on what action to take is to seek the advice of one of the specialist Whistleblowing Officers.

[A list of specialist Whistleblowing Officers can be found via this link:](#)

<http://just4you.medway.gov.uk/hr/hra-zofinformation/whistleblowingofficers.aspx>

## **2. What is covered by Whistleblowing?**

2.1 A concern can relate to any unethical or unprofessional conduct within the Council, including malpractice, and abuse. The Policy not only covers acts that have actually occurred but also potentially unethical or unprofessional conduct.

2.2 The person making the disclosure must do so in the reasonable belief that it shows one or more of the following:

- A criminal offence has been committed, is being committed, or is likely to be committed;
- A person has failed, is failing, or is likely to fail to comply with any legal obligation to which she/he is subject;
- A miscarriage of justice has occurred, is occurring, or is likely to occur;
- Acts or potential acts of fraud and corruption, bribery or the misuse of public funds;
- Failure to prevent acts of fraud and corruption or bribery under the Council's Anti-Fraud and Corruption Policy;
- The health & safety of any individual (employee or member of the public) has been, is being, or is likely to be endangered;
- The environment has been, is being or is likely to be damaged;
- Actual or potential acts of all forms of discrimination;
- The actual or possible abuse (sexual or physical) of clients in the Council's care;
- Actual or potential acts of harassment or bullying of, or by, someone working for the Council;
- Any unethical conduct that causes concern or brings the reputation of the Council into disrepute;
- The deliberate concealment of information that would indicate any of the above; or
- Information tending to show any matter falling within any one of these points has been, is being, or is likely to be concealed.

2.3 Other relevant documents to consider when considering raising a concern are:

2.3.1 The Council's Anti-Fraud and Corruption Policy;

- 2.3.2 The Employee's Code of Conduct; and
- 2.3.3 The Members' Code of Conduct.

2.4 If you are in any doubt as to whether or not to raise a concern then confidential advice can be sought from HR [Advice via Services \(contact employeerelations@medway.gov.uk\)](mailto:employeerelations@medway.gov.uk) or your trade union representative ~~(contact details are available on the Just4you intranet)~~ [hradvice@medway.gov.uk](mailto:hradvice@medway.gov.uk) or by calling 01634 334499 , via your trade union representative (contact details can be found via <http://just4you.medway.gov.uk/hr/hra-zofinformation/tradeunions.aspx> or through the Councils Equalities Forums (Black Workers Forum [bwf@medway.gov.uk](mailto:bwf@medway.gov.uk) , Disabled Workers Forum [dwf@medway.gov.uk](mailto:dwf@medway.gov.uk) , Lesbian, Gay, Bi-Sexual, Trans and Questioning Forum [lgbtq@medway.gov.uk](mailto:lgbtq@medway.gov.uk) ).

Note: If, when disclosing a concern you commit a criminal offence, for example accepting a bribe and or acts of corruption, you may lose your rights to protection from detriment. Further advice can be sought from one of the specialist teams.

### 3. Who Is Covered By the Whistleblowing Procedure?

- 3.1 The Public Interest Disclosure Act 1998 will protect Workers who disclose information in the correct manner from dismissal or penalisation. "Workers" include individuals who are;
  - employees employed under a contract of employment;
  - employed under any other contract, under which they perform personally any work or services;
  - agency workers; or
  - undertaking work experience as part of a training course.

### 4. How am I Protected?

- 4.1 Under the Public Interest Disclosure Act 1998, to qualify for protection for disclosure the Worker must:
  - be acting in good faith; and
  - have reasonable grounds for believing that the information disclosed indicates the existence of one of the problems itemised in section 2 above.

### 5. Confidentiality

- 5.1 The Council accepts that wherever possible the confidentiality of anyone wishing to raise a concern will be protected. There might however be occasions where your confidentiality cannot be protected, for example, where there is the involvement of the Police.
- 5.2 If there is any possibility that your confidentiality cannot be protected you will be told of the reasons and offered appropriate advice and support.

## 6. Raising a concern

- 6.1 You are encouraged to raise a concern provided that:
- you have reasonable belief that the information you hold, or the allegation is accurate; and
  - you make the disclosure in good faith.
- 6.2 Under no circumstances should you investigate a concern yourself. This shall avoid prejudicing any investigation, including a criminal investigation, if it is warranted. Further, this will protect you from any repercussions.

## 7. Anonymously raised concerns

- 7.1 Concerns expressed anonymously will be investigated on the basis of their merits. However, an investigation may be hampered by the inability to gain further information and the Council would encourage you to provide some method of contacting you to assist in the investigation.

## 8. Who can concerns be raised about?

- 8.1 You can raise a concern about the practice of anyone who undertakes work for, or on behalf of, the Council, including:
- Employees of the Council;
  - Contractors;
  - Councillors;
  - Volunteers; and
  - School Based staff (not Academies).
- 8.2 School based staff - In a school you would normally raise a concern with your direct Line Manager. If this is inappropriate then your Head Teacher or Chair of Governors should be contacted, who may involve the nominated Whistleblowing Officer.
- 8.3 Medway Council has a legal responsibility to deal with any issues raised under the Whistleblowing Policy, regardless of the type of School you work in, be it controlled, aided or foundation. If it is not appropriate for a School based whistleblower to raise a concern with the Head Teacher or Chair of Governors then they should contact the Head of HR Services [and Organisational Change via hradvice@medway.gov.uk or 01634 334499](mailto:hradvice@medway.gov.uk).
- 8.4 This Whistleblowing Policy does not relate to Academies.

## 9. How to raise a concern

- 9.1 No matter with whom you raise your concern it will be dealt with under this Policy. If the person with whom you raise the concern feels it necessary, they may refer your concern on to either a specialist team or a more senior Council officer, whichever is appropriate. If this is the case you will be contacted first and have the opportunity to discuss any issues this may raise.



- 9.2 Staff should be aware that raising a concern by email might result in third parties identifying a Whistleblower. Staff should therefore consider arranging a meeting with the relevant Whistleblowing Officer/~~Specialist Team~~ if they are concerned about third parties accessing emails.

### **As a First Point of Contact**

- 9.3 A concern would normally be raised initially with your Line Manager or Supervisor. However this may not always be possible, dependent on the nature of the concern and who is involved.

### **As an alternative**

- 9.4 If you feel unable to raise the matter with your Line Manager or Supervisor you may wish to contact your Director/Assistant Director of your sService or the Director/Assistant Director -of the sService to which your concerns relate (if different).

- 9.5 You may wish to refer your concern directly to one of the Council's ~~specialist teams-Whistleblowing Officers (see 1.8).~~as listed in Appendix one.

- 9.6 All the Whistleblowing Officers have received specialist training in dealing with concerns and will follow the procedure as laid out in this Policy.

## **10. Misuse of the Whistleblowing Policy**

- 10.1 Raising a concern with malicious intent or for personal gain or the gain of others is not acceptable and may lead to disciplinary action under the Council's Disciplinary Policy. If in any doubt employees should contact the relevant Whistleblowing Officer (see 1.8).

## **11. Responsible Officer**

- 11.1 Frauds are often discovered as a result of whistleblowing and the Council has arrangements in place to enable such information to be properly dealt with, and the Whistleblower protected.

~~11.11.2~~ 11.2 Referrals to particular Specialist teams may be forwarded to the Internal Audit & Counter Fraud Audit/Finance team if there is a financial aspect to a complaint. In particular, all whistleblowing cases related to fraud and financial irregularity will be subject to initial enquiries by ~~the-Audit & Counter Fraud Audit Services-Manager~~ to confirm or repudiate suspicions raised, and if the concerns are substantiated a full investigation will be undertaken.

- 11.3 The Chief Finance Officer needs to be informed of all fraudulent matters and will decide on the appropriate action following the results of the investigation. A report of instances of all uses of this Policy shall be provided to the Audit Committee and the Employment Matters Committee. This report will not identify any parties using this Policy, but is intended to monitor Whistleblowing procedures.

## 12. The Procedure

### 12.1 What to consider when expressing a concern –

To enable your concerns to be dealt with in a proper and effective manner here are some guidelines for you to consider:

- Be as clear as possible about what the concern is and to whom and what it relates. You may also want to discuss the concern with others to see if it is shared.
- Be as clear as possible about who maybe involved, when and where actions may have taken place. Please ensure the facts are recorded i.e. record the dates and times in a diary. This way you can be clear about what has actually been heard or seen and when, rather than rely on memory or hearsay.
- Ensure you ask for your concerns to be dealt with under this procedure.

## 13. The procedure to be followed

13.1 To ensure that all concerns raised are taken seriously and are fully investigated the Council has agreed a procedure to be followed in all cases.

13.2 Staff should be aware that raising a concern by email might result in third parties identifying a Whistleblower. Staff should therefore consider arranging a meeting with the relevant Whistleblowing Officer/~~Specialist team~~ if they are concerned about third parties accessing emails.

13.3 If, at any stage of the procedure, you are asked or wish to meet with someone addressing the concerns you have raised you have the option to be accompanied by a work place colleague, trade union representative or representative from a professional body.

13.4 Upon raising a concern:

13.4.1 However you wish to express your concern, by telephone or in person, you will:

- Receive an acknowledgement of your concerns within five working days of notifying the investigating person to whom you have expressed the concern (this can be sent to your home address);
- The investigating person will then decide how to progress your concern. This may mean undertaking an investigation. This does not mean that the concern is either true or untrue, but will help to assess the gravity of the complaint and establish the facts. It could be possible that concerns raised may be the result of a misunderstanding or an authorised change in practice.

13.4.2 Within ten working days of making your concerns known you will either:

- Have a confidential meeting with the investigating person to discuss further your concerns; or
- Have received, in writing, an outline of how the investigating person intends to deal with the concerns raised.

13.4.3 Dependent on the nature of the concerns you may have subsequent meetings with the relevant investigating persons. These can be held “off-site” if preferred.

## **14. The outcome of your concern**

14.1 Having raised the concern, the Council recognises that you will need to be assured that the issues have been dealt with correctly. You will be kept informed on a regular basis of what actions are being taken and the final results of any investigations.

14.2 In some situations, such as referrals to external bodies, it may not be appropriate (or legally possible) to supply you with the full information discovered. However the reasons for this will be explained at the appropriate time.

14.3 All uses of this Policy will be formally recorded and a register maintained.

## **15. Taking your concern further**

15.1 If you have exhausted all these channels and you still have concerns, or feel that the issues have not been fully or appropriately addressed, you can contact the Chief Executive, or have him contacted on your behalf, to discuss your concern in confidence. At this point, you may also raise your concerns with elected members.

15.2 However you should not refer the matter outside the organisation without first ensuring that all other possible avenues have been exhausted.

15.3 Details of regulatory bodies can be found in Appendix [twoone](#).

## **16 Contacting the media**

16.1 If a Worker is considering contacting the Press, they are strongly advised to seek guidance from professional or other representative bodies and to discuss the matter where possible with line and professional managers. Please be aware that contacting the media before allowing the Whistleblowing team to investigate could result in prejudicing any investigation.

16.2 If you decide to proceed with contacting the media, you must inform the Chief Executive of the action you have taken or are proposing to take and the Chief Executive will brief Group Leaders on the matter.

16.3 Disclosures to the media can be made under the law, and will be protected if the following circumstances are met:

- The disclosure is made in good faith;
- The employee reasonably believes the information and any allegations are substantially true;
- The employee does not act for personal gain.

16.4 Additionally, one or more of the following conditions must be met:

- The Worker reasonably believes they would be subjected to a detriment if disclosure were made to the employer or prescribed person;
- In the absence of an appropriate prescribed person, the Worker reasonably believes a disclosure to their employer would result in the destruction or concealment of information about the wrongdoing;
- The Worker has previously disclosed substantially the same information to their employer or prescribed person; and
- It must be reasonable to make the disclosure.

16.5 Please be aware that premature contact with the media, where none of the conditions above are met, may result in disciplinary action under the Council's Disciplinary Policy.

**Appendix one****Specialist Teams and Whistleblowing Officers**

Please note that there may be circumstances where it may be necessary for a concern to be sent to more than one Whistleblowing Officer, for example, where a concern spans two service areas.

<b>Specialist Team</b>	<b>Concerns</b>	<b>Whistleblowing Officer</b>	<b>Contact number</b>
Financial/ Audit and Corporate Fraud team	Fraud, corruption or misappropriation of Council assets or resources or financial irregularity	Alison Russell  Audit Services Manager  _____ _____ _____	01634 3 3 2 3 5 5
Adult and Community	The care and welfare of adults and community issues; e.g. the conduct of care staff, or housing staff	Genette Laws  Social Care Commissioning and Voluntary Sector Manager	01634 3 3 4 3 4 5
Children	The care and welfare of children e.g. the use of school funds (may overlap with the Financial/Audit team).  A child is being neglected or abused please contact the Local Authority	Ralph Edwards, Head of HR   Clare Wilkes,  The Local Authority Designated Officer	01634 3 3 4 0 9 0   01634 331229

	<b>Designated Officer</b>		
<b>Human Resources</b>	The conduct of employees in general and specific issues of discrimination, harassment etc	Lizzie Hunt  Employee Relations Consultant —————	01634 3 3 4 0 9 2
<b>Information Technology</b>	The misuse of information technology such as e-mail and the internet	Moira Bragg, Corporate Projects Manager —————	01634 3 3 2 0 8 7
<b>Regeneration</b>	Environmental issues, e.g. building control, planning etc	Joy Kirby, Business Quality Assurance Manager —————	01634 3 3 1 4 2 2
<b>All matters relating to the Council</b>	<b>Monitoring Officer</b>	<b>Perry Holmes</b>	01634  332133

### **Additional Information**

**Trade Unions:** -- contact details for the trade unions are available on the Just4you intranet at:

<http://just4you.medway.gov.uk/hr/a-zofhrinformation/tradeunions.aspx>

**Equalities Forums** – (Black Workers Forum (BWF), Disabled Workers Forum (DSW) and Lesbian, Gay, Bisexual and Trans staff (LGBT) Forum).

Concerns relating to all matters affecting the Council, contact details for the forums are available on the Just4you intranet at the following link:

<http://just4you.medway.gov.uk/support/staffforums.aspx>

## Regulatory and professional bodies

Health & Safety Executive

[www.hse.gov.uk](http://www.hse.gov.uk)

Tel. 0845 345 0055

Care Quality Commission

[www.cqc.org.uk](http://www.cqc.org.uk)

Tel. 03000 616161

Health Professions Council (HPC)

[www.hpc-uk.org](http://www.hpc-uk.org)

Tel 0800 328 4218

General Social Care Council

[www.gsc.org.uk/](http://www.gsc.org.uk/)

Tel 01788 532405

Nursing and Midwifery Council (NMC)

[www.nmc-uk.org](http://www.nmc-uk.org)

Tel 0207 333 9333

General Medical Council (GMC)

[www.gmc-uk.org](http://www.gmc-uk.org)

Tel 0161 923 6602

Audit Commission

[www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)

Tel. 0844 7983131

Local Government Ombudsman

[www.lgo.org.uk](http://www.lgo.org.uk)

Tel. 0300 061 0614

Information Commissioner's Office

[www.ico.gov.uk](http://www.ico.gov.uk)

Tel. 0303 123 1113

Equality and Human Rights Commission

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Tel. 0845 604 6610

Ofsted

[www.ofsted.gov.uk](http://www.ofsted.gov.uk)

Tel. 0300 123 4666

Institution of Civil Engineers

[www.ice.org.uk/homepage/index.asp](http://www.ice.org.uk/homepage/index.asp)

Tel. 020 7222 7722



## **PART 10 – ANTI-BRIBERY POLICY**

### **What is bribery?**

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

Bribery could be through:

- The giving, promising to give or offering payment, gift or hospitality in the hope of gaining a business advantage
- Accepting a payment from a third party when you know or suspect that it is offered with the expectation of business advantage.

Anyone receiving, or providing, gifts and hospitality, or having a business or personal interest beyond their main role within the Council, needs to consider whether their actions leave themselves and/or the Council vulnerable to allegations of bribery. Procurement, recruitment, key decision-making, and contract management, are all areas of particular vulnerability.

### **Council's statement**

Bribery is a criminal offence. The Council does not pay or accept bribes or offer or accept improper inducements.

The Council is committed to the prevention and detection of bribery, and aims to maintain arrangements to ensure compliance.

The Council is committed to:

- setting and maintaining a clear anti-bribery policy
- making all members and employees aware of this policy
- ensuring there are appropriate mechanisms for Members and employees to report any potential conflicts of interest
- encouraging vigilance
- ensuring there are suitable channels for Members, employees and the general public to report concerns
- taking appropriate action when a concern comes to light.

### **Bribery Act 2010**

The Act sets out the offences that relate to the behaviour of an individual.

- Bribery of another person (section 1)
- Accepting a bribe (section 2)
- Bribing a foreign official (section 6)

The Act also sets out the corporate responsibility by the offence of failing to prevent bribery (section 7). The organisation will have a defence to this corporate offence if it can demonstrate that it had adequate procedures in place to prevent bribery.

## **What are the penalties?**

For an individual who commits an offence under this act the maximum penalties are:

- Conviction in a magistrates court – imprisonment term of 12 months and a fine of £5,000
- Conviction in a crown court – imprisonment term of 10 years and an unlimited fine

If the Council was found to have committed the offence under section 7 there is an unlimited fine.

Employees who are found to have breached this policy may also be subject to disciplinary action.

## **Who in the Council is covered by this policy?**

This policy covers all personnel.

This includes all levels and grades of employees, employed on a permanent or temporary basis, working in all areas of the Council's business. It also includes contractors, volunteers and consultants. For ease of reference when this policy refers to "employees" it relates to all of the above. The policy is also relevant to Members.

The Council will work with schools to ensure that they comply with this policy.

The Council will also seek to promote this policy with partners and suppliers and will expect them to bring it to the attention of their staff when they are working for the Council and for large partner organisations and suppliers to have similar policies in place.

## **Employee responsibilities**

All employees are required to:

- act with honesty and integrity at all times
- avoid activity that breaches this policy
- read and understand this policy
- raise concerns if they believe/suspect a conflict with this policy has occurred, or is likely to occur in the future

## **Corporate responsibilities**

There is a corporate responsibility to ensure that the policy and procedures in place are appropriate.

## **Proportionality**

The policy and procedures have been developed based on the nature of the risk that the Council faces. In order to determine this the level and nature of the risk has been assessed.

## **Top level commitment**

The lead officer is the Chief Legal Officer. The Corporate Management Team is committed to upholding the highest standards of probity and integrity. The policy is presented to Audit Committee and formally approved by ~~Cabinet~~Council for inclusion within the Constitution.

## **Due diligence**

The Council applies due diligence procedures taking a proportionate and risk based approach.

## **Communication/training**

This policy is published to all employees, and on the Council's website, thereby demonstrating the top level commitment. Employee awareness is monitored.

## **Monitoring/review**

The number and nature of incidents reported will be recorded and reported annually to Audit Committee. Detailed reports of any investigations undertaken will also be provided to Audit Committee along with any lessons learned.

The policy will be subject to annual review which will include a review of the level of risk.

## **Raising a concern**

Employees and Members have a responsibility to raise any concern that they have in relation to this policy.

Employees concerns can be raised with a line manager, directly with the Chief Legal Officer, or through the whistleblowing procedure.

Members can raise a concern with the Chief Legal Officer.

## **Reporting mechanism**

The Chief Legal Officer has overall responsibility for this policy and will report annually to Audit Committee.

Any investigated incidents will be reported to the Audit Committee.

## **Wider framework**

Relevant policies

- Anti Fraud and Corruption Policy
- Whistleblowing Policy

Relevant rules

- Financial Rules (Chapter 4, part 6)
- Contract Rules (Chapter 4, part 7)
- Employment Rules (Chapter 4, part 8)

#### Codes of conduct

- Members code of conduct (Chapter 5, part 1)
- Employee code of conduct (Chapter 5, part 3)
- Code of governance (Chapter 5, part 6)

## **PART 11 – ANTI-MONEY LAUNDERING POLICY**

### **1. What is money laundering?**

1.1 Money Laundering means exchanging money or assets that were obtained criminally for money or other assets that are “clean”. The clean money or assets do not have an obvious link with any criminal activity. Money Laundering also includes money that is used to fund terrorism, however it is obtained.

### **2. Council’s statement**

2.1 The Council is committed to ensuring there are appropriate and proportionate anti-money laundering safeguards to prevent, wherever possible, the organisation and its staff being exposed to money laundering. The Council is similarly committed to identifying areas where it may occur, complying with all legal and regulatory requirements, and reporting actual or suspected cases.

2.2 All staff should be aware of this policy and it is important that staff involved in processing financial transactions are aware of the issues surrounding money laundering, and how any concerns should be reported.

### **3. Money laundering regulations**

3.1 The legal and regulatory framework is summarised below:

- The Proceeds of Crime Act 2002 (“POCA”) (as amended by the Serious Organised Crime and Police Act 2005)
- The Terrorism Act 2000 (“TA”) (as amended by the Anti-Terrorism and Security Act 2001 and the Terrorism Act 2006)
- The Money Laundering Regulations 2007 (“2007 Regulations”)

3.2 The primary money laundering offences are described in the POCA 2002, and are as follows:

- Concealing, disguising, converting, transferring criminal property or removing it from the UK
- Entering into or becoming concerned in an arrangements which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquiring, using or processing criminal property
- Doing something that might prejudice an investigation – for example falsifying a document
- Failure to disclose
- “tipping off” – which is where someone informs a person or persons who are, or suspected of being involved in money laundering, in such a way as to reduce the likelihood of being investigated or prejudicing an investigation

#### 4. **Corporate responsibilities**

- 4.1 The Council is subject to the full provisions of the TA and the first four offences of POCA.
- 4.2 The Authority is not subject to the 2007 Regulations although there are some Local Authority activities that could come within the scope of these regulations. The safest way to ensure compliance with the law is to apply these regulations to all areas of work undertaken by the Council.
- 4.3 The Council will seek to promote this policy with partners and suppliers.

#### 5. **Employee responsibilities**

- 5.1 Employees are required to act ethically and within the confines of the law.
- 5.2 If any one in the Authority knows or suspects that another person is money laundering or financing terrorism they must tell the nominated officer.

#### 6. **Key risk factors**

- Large volume/value cash transactions
- Payments received from unexpected sources
- Cancellation or reversal made of a previous transaction

#### 7. **Key prevention methods**

- Through this document all employees are informed of who the nominated officer is and what their role is
- Appointment of a nominated officer
- Records of all risk assessments completed
- Ensuring all staff are aware of the regulations and have had the necessary training
- Upper limit for cash transactions of £1000
- Sufficient identity confirmation checks when transacting monies, both in relation to individuals and companies
- Only refunding monies to the source bank accounts
- Retaining all documents that relate to financial transactions, the identity of customers and management procedures and processes

#### 8. **What are the penalties?**

- 8.1 In a Crown Court fines are unlimited and a custodial sentence can be imposed.

#### 9. **Nominated Officer/Money Laundering Officer**

- 9.1 As part of the anti-money laundering controls the Authority has responsibility for appointing a nominated officer (sometimes called the Money Laundering Officer) who is an employee at a sufficiently senior level within the Authority. The nominated officer for the Council is the Chief Finance Officer, ~~Mick~~ **Hayward**.

- 9.2 The nominated officer reviews any information that they receive and decides and if there are reasonable grounds for suspecting Money Laundering they inform Serious Organised Crime Agency (SOCA) as soon as possible, and obtain consent from SOCA to complete the transaction. If it was not possible to delay the transaction until consent was received then SOCA are made aware of this by the nominated officer when the matter is reported to SOCA.
- 9.3 Nominated officer responsibilities can be temporarily delegated to the Head of Finance Strategy ~~Finance Support Officer, Andy Larkin~~ when the Chief Finance Officer is absent, but the nominated officer retains overall responsibility.
- 9.4 The nominated officer will provide the Audit Committee with a record of the number and nature of incidents.
- 9.5 The nominated officer will review the policy annually in light of an assessment of the level of risk that the Council is exposed to.

## 10. **Wider framework**

- Relevant policies

Fraud and Corruption Policy  
Whistleblowing Policy

- Relevant Rules

Financial Rules (Chapter 4, part 6)  
Contract Rules (chapter 4, part 7)  
Employment Rules (Chapter 4, part 8)

- Codes of Conduct

Members Code of Conduct (Chapter 5, part 1)  
Employee Code of Conduct (Chapter 5, part 3)  
Code of corporate governance (Chapter 5, part 6)

*More information about the Money Laundering Regulations guidance is available on the HMRC website [www.hmrc.gov.uk/](http://www.hmrc.gov.uk/)*





## **PART 12 – WARD IMPROVEMENT FUND GUIDELINES**

1.1 The Personal Assistant to the Chief Finance Officer will be the central point of contact for members in relation to Ward Improvement Funding (“WIF”). WIF is a budget held and managed by the Chief Finance Officer in consultation with ward members.

1.2 The procedure for approving WIF proposals and releasing the funds is as follows:

- The ward member(s) should complete and sign part 1 (page 1) of the Request for Release of Ward Improvement Funding Form, which includes information regarding members interests; and the form should then be sent to Corporate Finance. E-mail copies will be accepted.
- Corporate Finance will confirm that there are adequate funds available for the WIF proposal and forward the form to the Chief Finance Officer for completion of Parts 2 and 3 (page 2). The Chief Finance Officer may either accept or reject the WIF proposal, giving due consideration to whether it meets the essential criteria, and notify the member(s) accordingly.
- Where the request requires technical input, the Chief Finance Officer may refer it to a Director, who will then assign a lead officer to confirm that the WIF project is feasible and can be delivered within the proposed fund allocated. The lead officer must complete part 2 of the form.
- The Director must then either accept or reject the WIF proposal, giving due consideration to whether it meets the essential criteria, and notify the member(s) and the Chief Finance Officer accordingly.

1.3 The essential criteria for WIF are as follows:

- The WIF proposal should command community support and strictly relate to an unmet need in the ward(s), or improve social, economic or environmental wellbeing in the ward(s). This can be demonstrated through constituency and surgery feedback, consultation exercises already undertaken e.g. residents opinion poll, consultation on the council’s 5 year and other plans, complaints analysis and analysis of civic warden calls logged, or future involvement exercises conducted for this purpose.
- No budget should already exist to cover the WIF proposal. This is to reflect the principle that the funds should not be considered as an extension of existing budgets.
- Members may, at their discretion, agree to pool their WIF with another member to a fund a proposal that delivers a benefit across ward boundaries.
- The project can be completed within the financial year and have no ongoing revenue implications. This is to ensure that the investment has an impact on Medway in the short term and does not commit the council to long term expenditure such as on-going maintenance costs for bollards/lighting, or emptying costs of litter and dog bins and refilling of salt bins.

- The project should be fully costed. This must be carried out by members/officers before the director assesses the proposal. Officers must confirm that there are no on-going costs of the proposal.
- Any approvals required from other bodies must have been received before the WIF proposal is submitted. An example might be where permission is required from another agency or landowner to take forward a project or where planning permission is required
- The proposal for WIF funding must constitute lawful expenditure for the Council. For example, the Local Government Act 1986 prohibits local authorities publishing any material which, in whole or part, appears to be designed to affect public support for a political party. The Council must also comply with the Code of Recommended Practice on Local Authority Publicity issued by the Secretary of State under the 1986 Act.
- Any works or services required from other bodies must be procured in accordance with the Council's Contract Procedure Rules. Submissions must be made in sufficient time to ensure that schemes can be completed before the end of the financial year as there will be no automatic roll-forward of unspent amounts. In past years, where a project has been committed with director approval before the 31 March but circumstances such as workload or the time of year in the case of tree planting, for instance, have prevented expenditure occurring, then funds have been rolled over, but there is no guarantee that this will continue in future years.

## **CHAPTER 6 - MEMBERS' ALLOWANCE SCHEME**

### **1. Introduction**

- 1.1 Councillors are not paid but they are entitled to claim certain allowances and expenses for carrying out public duties.
- 1.2 The Council is able to determine its own allowances scheme taking into account the recommendations of an Independent Remuneration Panel which has to be established and maintained by the Council under the Local Government Act 2000. A full copy of the [latest](#) report of the Independent Remuneration Panel, on which this scheme is based, can be obtained from the Head of Elections and Members' Services (tel: 01634 332864). This document outlines Medway Council's current scheme for Members' allowances and also the scheme of allowances for officeholders of the Kent and Medway [Towns Fire & Rescue Authority](#) and Kent [& Medway Police and Crime Panel Authority](#).
- 1.3 The criteria for allowances are complicated and not all duties qualify for an allowance. This guidance aims to set out clearly what duties qualify for payments and how they are made.

### **2. How payments are made**

- 2.1 When a Councillor is first elected, s/he will be asked to complete a form giving details of their national insurance number and the bank or building society account into which allowances are to be paid. Payments are made monthly, directly into the account, and a pay advice note will be issued monthly. The pay advice note details how much has been paid and what deductions have been made, eg for tax and national insurance. These should be kept safely to enable the completion of tax assessment returns each year.

### **3. National insurance, tax and benefit payments**

- 3.1 Allowance payments are regarded as income and are liable for tax and national insurance deductions. Being paid allowances may also affect any entitlement to social security benefits. How entitlements may be changed depends on the particular benefit being received: there is a full range of leaflets produced by the DSS explaining what happens when those in receipt of benefit receive income of any sort.
- 3.2 For confidential advice with regard to individual circumstances, please contact the Operations Manager, in the Business Support Department (01634 332210).

#### **4. Foregoing of allowances**

- 4.1 A Councillor or a co-opted member may forego any part of his/her entitlement to an Allowance under this Scheme. Such a Councillor or co-opted member must put such a request in writing to the Head of Elections and Member Services.

#### **5. Suspension of allowances**

- 5.1 Where payment of any Allowance is due or has already been made in respect of any period during which the Councillor concerned is

- (a) ceases to be a member of the Authority; or
- (b) is in any other way not entitled to receive the Allowance in respect of that period,

the Authority may withhold the payment of an Allowance for that period or, as the case may be, require that such part of the Allowance already paid as relates to any such period, be repaid to the Authority.

#### **6. Part-year entitlement**

- 6.1 If an amendment to this Scheme during any year changes the amount to which a Councillor is entitled in relation to the basic allowance or Special Responsibility Allowance, the entitlement to such a revised Allowance shall be to payment in proportion to the number of days that he/she has been entitled to the allowance during the period over which the revised amount comes into force.
- 6.2 Where the Scheme is amended as referred to in Paragraph 6.1 above, and the term of office of a Councillor does not continue throughout the period of the financial year, the entitlement of any such Councillor to a revised Basic Allowance shall be to the payment of such part in proportion to the number of days during which his or her term of office as a Councillor continues during the period over which the revised amount comes into force.
- 6.3 Where this Scheme is amended as mentioned in paragraph 6.1 and a Councillor has during part, but not throughout the whole, of any financial year been entitled to any Special Responsibility Allowance, that Councillor's entitlement shall be to payment of such part of the Allowance in proportion to the number of he or she has been entitled to the Special Responsibility Allowance during the period over which the revised amount comes into force.

- 6.4 Where the term of office of a Councillor begins or ends otherwise than at 1 April, (and otherwise than in the year of Local Council elections) the entitlement of that Councillor to a Basic Allowance will be in proportion to the number of days that he/she held office during that financial year
- 6.5 Where a Councillor has during part of, but not throughout, a financial year, such responsibilities as to entitle him or her to a Special Responsibility Allowance, that Councillor's entitlement shall be to a payment of that Allowance in proportion to the number of days during which he or she has such special responsibilities in that financial year.
- 6.6 In the year of Local Council elections, Councillors who are re-elected and had been entitled to Special Responsibility Allowances in respect of Portfolio Holder, Leader of the Council, Leaders and Deputy Leaders of Groups and Group Whips, shall receive payment of their Special Responsibility Allowance from the date each of the political Groups on the Council notify the Head of Democratic Services of the positions held by Councillors subsequent to the election.
- 6.7 In the year of Local Council elections, Councillors who are re-elected and had been entitled to any other Special Responsibility Allowances in the Scheme but who are not re-appointed to a position entitled to a Special Responsibility Allowance, shall cease to be entitled to receive payment for the Special Responsibility Allowance from the date on which the Councillors take up office after the election.
- 6.8 In the year of Local Council elections, those Councillors who are appointed to positions which are entitled to a Special responsibility Allowance other than those referred to in Paragraph 6.6 above, shall be entitled to receive such payments from the day after the date of the Council meeting confirming their appointment.
- 6.9 In the year of Local Council elections, Councillors who had been appointed as Mayor and Deputy Mayor, prior to the elections, shall be entitled to receive payment of such Allowance until the date of the Annual Council Meeting held after the election. even if they are not re-elected as Councillor.
- 6.10 In the year of Local Council elections, where a Councillor is in receipt of both a Special Responsibility Allowance from Medway Council and a Special Responsibility Allowance from the Kent & Medway Police and Crime Panel~~Kent Police~~ or Kent & Medway Fire & Rescue Authority~~ties~~, no deduction should be made to their Medway Special Responsibility Allowance until the Kent & Medway Police and Crime Panel or Kent & Medway Fire & Rescue Authority~~ies~~ have formally agreed their appointment. If the Kent & Medway Police and Crime Panel or Kent & Medway Fire & Rescue Authority Special Responsibility Allowance is backdated, the deduction from the Medway Special Responsibility Allowance shall be backdated to the same date.

## 7. The different types of allowances

### 7.1 Basic and special responsibility allowances

The Council has agreed that with effect from 1 ~~May 2012~~April 2016 allowances should be indexed linked to officer pay awards for the next four years. The following allowances are payable with effect from 1 April ~~2015~~2016:

	£
Basic allowance (55 councillors)	<u>8,783.00</u> <u>8835.70</u>
Leader of the Council (1) (+ 50% of Cabinet Portfolio Holder)	<u>20,269.68</u> <u>20391.30</u>
Deputy Leader (1) (+ 50% of Cabinet Portfolio Holder)	<u>14,741.64</u> <u>14830.01</u>
Cabinet Portfolio Holders (up to 8)	<u>11,056.20</u> <u>11122.54</u>
Chairs of Overview and Scrutiny Committees (4)	<u>9,213.48</u> <u>9269.10</u>
Opposition Group Leader (>20% of members) (1)	<u>9,213.48</u> <u>9269.10</u>
Opposition Group Leader (>10% of members) (1) (not currently payable)	<u>4,606.75</u> <u>4634.39</u>
Overview and Scrutiny Opposition Group Spokespersons (>20% of members) (4)	<u>5,528.16</u> <u>5561.33</u>
Chairman of Audit Committee (1)	<u>5,528.16</u> <u>5561.33</u>
Chairman of Employment Matters Committee (1)	<u>3,685.44</u> <u>3707.55</u>
Chairman of Health and Wellbeing Board (1)	<u>7,370.76</u> <u>7414.98</u>
Chairman of Planning Committee (1)	<u>7,370.76</u> <u>7414.98</u>
Vice-Chairmen of Overview and Scrutiny Committees (4)	<u>3,685.44</u> <u>3707.55</u>
Deputy Opposition Group Leader (>20% of members) (1)	<u>3,685.44</u> <u>3707.55</u>
Vice-Chairman of Planning Committee (1)	<u>3,685.44</u> <u>3707.55</u>
Opposition Group Spokesperson for Planning Committee (>20% of members) (1)	<u>3,685.44</u> <u>3707.55</u>
Ruling Group Whip (1)	<u>1,842.72</u> <u>1853.78</u>
Opposition Group Whip (>20% of members) (1)	<u>921.36</u> <u>926.89</u>
Attendance by Chairman of Licensing & Safety Committee and other Panel members at Licensing Panel Hearings and Licensing 1982 Act Hearings Panel	<u>31.97</u> <u>32.16</u> per day

The Basic Allowance is intended to recognise the time commitment of all Councillors, including meetings with officers and constituents and attendance at political group meetings. It is also intended to cover incidental costs such as the use of their homes, including IT consumables, paper, telephone line rental and call costs, broadband costs etc.

NOTES:

- 1) A Member of the Council, who is appointed to more than one position attracting a Special Responsibility Allowance, is only able to receive 50% of any second and subsequent additional Special responsibility Allowance.
- 2) Any Member of the Council who is appointed to a position within Medway Council attracting a Special Responsibility Allowance, and a position with the Kent and Medway ~~Towns~~ Fire & Rescue Authority and/or Kent & Medway Police and Crime Panel Authority attracting a Special Responsibility Allowance, will have the Medway Special Responsibility Allowance discounted by 25% of the Fire or Police allowance (whether basic or special responsibility), which they also receive. If the Fire/Police Authority allowances are greater than the Medway SRA, the discount is 25% of the latter.
- 3) A Member of the Council who is appointed to be Mayor, shall be entitled to receive an additional allowance of £~~13,347.00~~13427.08; a Member of the Council who is appointed to be Deputy Mayor, shall be entitled to receive an additional allowance of £~~6,725.04~~6765.39.
- 4) The level of basic, SRA and Mayoral allowances payable are raised annually in line with the pay award for Medway employees for a maximum period of 4 years from April 2016.

## 7.2 Dependent carer's allowance

Councillors of Medway or formally co-opted members of a Committee or sub-committee who have incurred expenses on babysitting or care of dependent relatives for the purposes of carrying out an approved duty qualify for reimbursement of the expenses incurred as set out below.

The amount of expenditure actually incurred by a Councillor or co-optee is reimbursable up to a maximum of £~~3,573.87~~ per hour. This is indexed to the average Medway childminder rate for the next four years and covers time spent in carrying out an approved duty and up to one hour in total travelling to and from the venue of the approved duty. The claim is per hour per child/dependent relative. The baby or child-sitting claim is only allowable for children aged 14 years or under.

Reasonable travelling expenses paid to the babysitter/carer are also claimable as follows:

- (a) public transport; or
- (b) in cases of urgency or where no public transport is reasonably available, the amount of any taxi fare actually paid.

The allowance does not apply where the babysitter/carer is a member of the Councillor's or co-optee's own household. The carer in respect of children must be a registered childminder with Medway Council. The carer in respect of a dependent relative must be aged 18 or over.

For attendance at conferences, the maximum claimable in any one 24 hour period (starting at 3pm) is £64,2669.66. This represents 18 hours and is indexed to the average Medway childminder rate. No allowance is claimable for periods whilst children are at school.

Claims are entirely the responsibility of the Councillor or co-optee making the claim. A member wishing to claim under this part of the allowance scheme will be required to register and to complete the necessary paperwork.

The Chief Executive has delegated authority to authorise payment of more than the maximum payable in circumstances where more than 18 hours care is required.

### **7.3 Subsistence and travelling allowances**

The duties for which subsistence and travelling allowances can be claimed are set out in appendix 1 and will not be uprated annually in line with allowances for officers subject to limits imposed by Members to avoid the creation of a tax liability. A co-optee's allowance equivalent to the amount which would be payable to Medway Councillors under the travel and subsistence scheme is payable on receipt of valid claim forms. Members of Education Schools Admission and Exclusion Appeals Panels are also eligible to claim travel and subsistence in accordance with this Scheme.

#### **7.3.1 Subsistence allowance**

Subsistence allowance can be claimed when a Councillor has had to be away from home at a mealtime as a result of carrying out an approved duty. It can be claimed when the absence from home (including travelling time) has been more than four hours and has covered certain specified times coinciding with a normal mealtime. The current levels of rates approved by the Council and the specified mealtimes are set out in appendix 2.

Overnight subsistence can be claimed if a Councillor is away from home for a continuous period of 24 hours carrying out an approved duty. This allowance is to meet the cost of accommodation and meals. Overnight subsistence should normally only be claimed if the Councillor has met the cost of accommodation and meals themselves. Usually the costs of a hotel and breakfast will be paid direct by the Council.

Subsistence allowances are a way of reimbursing expenditure that has been necessarily incurred when performing an approved duty. Members will normally be expected to meet the cost of any alcohol consumption whilst performing an approved duty.

#### **7.3.2 Travelling allowance**

##### **(i) Car/motorcycle allowances**

Councillors who use a private vehicle for Council business, including travelling to and from home for meetings or other duties, must ensure that their vehicle insurance provides cover for such journeys.



The Council will not be liable for any claims made against a Councillor in respect of motoring incidents or parking offences.

Mileage allowances payable to Members are the same as those payable to officer casual users, subject to a maximum of 40p per mile to avoid the need to submit tax returns. The current levels of car and motorcycle allowances are set out in appendix 3. The rates are set out at a level to cover fuel consumption, vehicle wear and tear, and to contribute towards maintenance and insurance costs. If a Member is claiming such allowances s/he will be asked to provide details of their vehicle to the Head of Members' Services and Elections and may be required to produce evidence to confirm engine size and insurance cover.

(ii) **Hired motor vehicles**

The rate of travel by a hired motor vehicle (other than a taxi cab) must not exceed the rate which would have been applicable had the vehicle belonged to the Member who hired it. The Council has agreed that the rate may be increased to an amount not exceeding the actual cost of hiring, only in circumstances where the cost to the Council of hiring a vehicle would be less than the rate payable for travel by public transport by the Member(s) concerned.

(iii) **Public transport/taxis**

Bus and train fares can be claimed when public transport is used to carry out approved duties. First class travel is only authorised where a Councillor has a disability and/or special mobility needs.

The rate of travel by taxicab or cab shall not exceed:

- (a) in cases of urgency or where no public transport is reasonably available, the amount of the actual fare and any reasonable gratuity paid;
- (b) in any other case, the amount of the fare for travel by appropriate public transport.

(iv) **Bicycles**

Councillors who use their personal pedal bicycle for Council business, including travelling to and from home for meetings or other approved duties, can claim an allowance. The allowance payable to Members is the same as those payable to officers and is currently 20p per mile. The allowance is set at a level to cover wear and tear, and to contribute towards maintenance and any insurance costs.

(v) **Journeys outside Kent or the London postal district (ie to other towns in the United Kingdom)**

Where an approved duty such as a conference normally takes place away from the county of Kent or the London postal area, any claim

for travelling expenses should be in accordance with one of the following:

- (a) if travel by train (second class only) then the actual cost of the train fare to be reimbursed; or
- (b) if travel by car the first 60 miles paid at 40p and 20p thereafter.

(vi) **Travel outside the UK**

Travelling expenses for journeys outside the UK will normally fall to be met by the relevant service department and Councillors should ensure they have the agreement of the Director that the costs will be paid/reimbursed. Such expenses will only be paid from the Members' allowances budget where the duty has been specifically approved by the Council.

(vii) **Travel by air**

The rate of travel by air shall not exceed the rate applicable to travel by appropriate alternative means of transport together with an allowance equivalent to the amount of any saving in financial loss allowance and subsistence allowance consequent on travel by air. The Council has agreed that where the saving in time is so substantial as to justify payment of the fare for travel by air, there may be paid an amount not exceeding:

- (a) the ordinary fare or any available cheap fare for travel by regular air service, or
- (b) where no such service is available or in case of urgency, the fare actually paid by the Member.

## 8. **Conference expenses**

The Council has agreed the attendance of Councillors at a number of approved conferences. The list of approved conferences is attached at appendix 4 together with the current guidelines for attendance by Councillors at conferences.

The balance of the available budget for conferences has been allocated to each party group.

The Chief Executive has delegated authority, in liaison with the party whips, to agree the nomination of Councillors to attend conferences and also to approve the attendance by Councillors at conferences where these do not appear on the approved list. This will only be considered in exceptional circumstances where it is clear the Council would be disadvantaged if there was no attendance.

If a Councillor would like to attend a conference which does not appear on the approved list s/he should contact their party group whip or the Head of Members Services and Elections.

All conference bookings must be made by the Members' Services staff. It is important to ensure that the agreed procedures are observed and that overnight accommodation and subsistence costs do not exceed the rates laid down by the Secretary of State. All hotel bookings for Councillors must also be arranged by the Members' Services staff.

## **9. Duties for which allowances can and cannot be claimed**

Subsistence and travelling allowances will only be paid for the duties specified in this guidance.

The main activities which do not qualify for allowances are party and group meetings or events, meetings with constituents and other Ward work.

## **10. How to claim travelling, subsistence and dependants' allowances**

Claims for travelling and subsistence must be made on the Members' allowances claim forms. A form will be sent out each month by the Head of Members' Services and Elections. Councillors should carefully check the details and add any additional claims.

Claims for allowances should be submitted to the Head of Members' Services and Elections by the second day of each month, and must be received within two months of the date of the duty concerned.

Claims should indicate clearly the duty concerned (ie the names of the committee or body attended; and in the case of meetings with officers the names of the officers concerned and the place of the meeting). This will avoid uncertainty about the eligibility of the duty and consequent delay in processing claims.

The Head of Members' Services and Elections is able to give advice on how to complete a claim form.

**APPENDIX 1 - DUTIES QUALIFYING FOR TRAVELLING AND SUBSISTENCE ALLOWANCE AND CHILDCARE AND DEPENDANT CARER'S ALLOWANCE**

1. Any duty approved by the Council.
2. Any duty for the purpose of or in connection with the discharge of the functions of the executive (ie Cabinet).
3. Attendance at meetings of the Cabinet, Committees of the Cabinet, full Council, Committees, sub-committees and other formal working parties.
4. Site visits and other one-off meetings of Members of a Committee or sub-committee which have been formally approved by the Committee concerned, provided that such meetings comprise more than one political party.
5. Attendance as a formally appointed representative of the Council at meetings of outside bodies (the Members' Services staff have a complete list of all outside bodies to which the Council has formally appointed Councillors).
6. Attendance by Members of more than one political group with Council officers at meetings with central government, local authority associations and other strategic local and regional forums.
7. Attendances as an approved delegate at authorised conferences.
8. Attendances at ad hoc meetings (including special events and training sessions) which Members have been invited to attend by a Medway Council officer, where the purpose of the meeting is directly relevant to the Council's functions and priorities and is a meeting to which members of more than one political group have been invited.

NOTE: Gaps of up to two hours between one approved duty ending and another beginning shall be permitted for the purposes of subsistence allowance where the Member concerned is of the opinion that it is unreasonable to expect him/her to return home during that time.



## APPENDIX 2 - SUBSISTENCE ALLOWANCES

A. In the case of an absence from the usual place of residence, not involving an absence overnight, the limits on claims for subsistence should be the lower of actual expenditure and the following:

1. **Breakfast allowance**  
Four hours or more away from home  
STARTING BEFORE 7.30 am £5.00
2. **Lunch allowance**  
Four hours or more away from home  
INCLUDING period 12 noon to 2 pm £7.00
3. **Tea allowance**  
Four hours or more away from home  
ENDING AFTER 6.30 pm £3.00
4. **Evening meal allowance**  
Four hours or more away from home  
ENDING AFTER 8.30 pm £12.00

5. **Overnight allowance**  
In the case of an absence overnight from the usual place of residence, reimbursement (or payment in advance by the Council) of reasonable and actual hotel expenses by agreement in advance with the budgetary accountable officer and group whip will be made.

B. The rates specified for day subsistence shall be reduced by an appropriate amount in respect of any meal provided free of charge by an authority or body in respect of the meal or the period for which the allowance relates.

C. When main meals (ie a full breakfast, lunch or dinner) are taken on trains during a period for which there is an entitlement to day subsistence, the reasonable cost of the meals (including VAT) may be reimbursed in full, within the limits specified below. Where the cost of meals taken on trains is reimbursed, the rate of day subsistence allowance for that period of duty shall not exceed the maximum payable if the period of absence from the usual place of residence were reduced by four hours in respect of each meal taken.

### **The limitations on reimbursements of actual expenditure incurred when performing an approved duty are:**

- (i) Absence of more than four but not more than eight hours, the cost of one main meal.
- (ii) Absence of more than eight hours but not more than 12 hours, the cost of two main meals.
- (iii) Absence of more than 12 hours, the cost of three main meals.

- D. In the case of overnight allowances, the annual conference of the following associations are approved:

The Association of British Market Authorities;  
The British Resorts Association; and  
The National Association of Local Councils.



**APPENDIX 3 - TRAVEL ALLOWANCES****A. Travel by car**

The following rates per mile for travel by a Member's own private motor vehicle, or one belonging to a member of his/her family, or otherwise provided for his/her use, or hire car over 500cc may be claimed with regard to journeys undertaken in respect of an approved duty within the County of Kent and the London postal area:

Up to 999cc	40.0p per mile first 8,500 12.1p per mile after 8,500
<hr/>	
1000-1199cc	40.0p per mile first 8,500 12.1p per mile after 8,500
<hr/>	
1200cc and over	40.0p per mile first 8,500 14.4p per mile after 8,500
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An additional 1p per mile may be claimed in respect of the carriage of each passenger, not exceeding four, to whom a travelling allowance would otherwise be payable under any enactment.

In respect of journeys outside Kent and the London postal area, the first 60 miles is paid at 40p per mile and 20p per mile thereafter.

**B. Travel by motor cycle**

24p per mile

**C. Travel by car/motor cycle**

The amount of any reasonable expenditure incurred on tolls, ferries or parking fees may be claimed.

**D. Travel by bicycle**

20p per mile



## APPENDIX 4 - APPROVED CONFERENCES FOR MEMBER ATTENDANCE

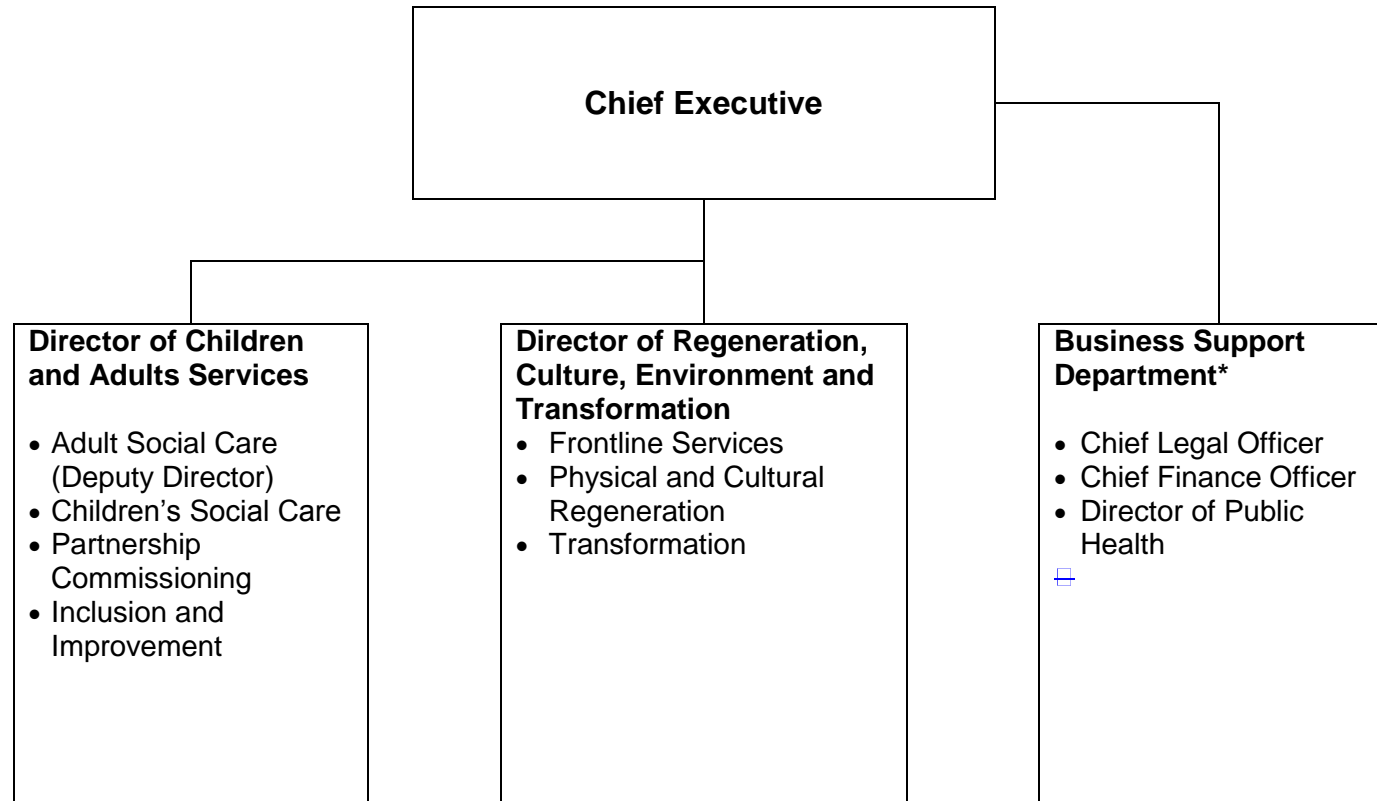
<b>Conference</b>
LGA/ADSS National Childcare and/or Adult Services Conferences
Local Government Association - Cultural Services
CIPFA
Local Government Association - Annual Conference
Local Government Association - Education Conference

### Guidelines for attendance by Councillors at conferences

1. The reasons for attendance at a conference and the likely benefits to the authority should be carefully evaluated in each case before booking any places.
2. There should be feedback to the authority after each conference. The lead officer will submit a report to the Cabinet and/or appropriate Committee and officer forum afterwards setting out the conference’s key themes. Councillors are asked to brief their political groups.
3. When attending conferences, delegates are asked to be mindful of the need to ensure value for money when deciding travel arrangements and any hotel accommodation.
4. The Council’s policy on any hospitality will apply. At present this means gifts of hospitality with a value in excess of £20 should be declined or returned courteously to the sender. If any hospitality or gifts are accepted this should be entered into the record of hospitality, which is maintained in the Chief Executive’s office.
5. Members are only entitled to claim travel and subsistence allowances when attending conferences (and not attendance allowance).
6. The Chief Executive has delegated authority, to approve the attendance by Councillors at conferences where these do not appear on the approved list of conferences in exceptional circumstances where it is clear the Council would be disadvantaged if there was not attendance.
7. Group whips are required to make substitution arrangements if a nominated member is unable to attend a conference in order to minimise financial loss to the Council.



## CHAPTER 7 - MANAGEMENT STRUCTURE



- The Chief Executive is also the Director of Business Support