

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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### Chief Executive

Julie Beilby BSc (Hons) MBA

Gibson Building  
Gibson Drive  
Kings Hill, West Malling  
Kent ME19 4LZ  
West Malling (01732) 844522

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To: MEMBERS OF THE COUNCIL

**NB Background reports to items referred from Cabinet and Committees have been omitted from printed agenda packs.**

Dear Sir/Madam

I hereby summon you to attend a meeting of the Tonbridge and Malling Borough Council which will be held in the Council Chamber, Gibson Drive, Kings Hill on Tuesday, 24th October, 2023 at **7.30 pm, or on the rising of the special meeting of Council whichever is later.**

Information on how to observe the meeting will be published on the Council's website.

The following business is proposed to be transacted:-

1. Guidance on the Conduct of Meetings 5 - 8

### **PART 1 - PUBLIC**

2. Apologies for absence 9 - 10
3. Declarations of interest

To declare any interests in respect of recommended items

4. Minutes 11 - 20

To confirm as a correct record the Minutes of the meeting of Council held on 11 July 2023

5. Mayor's Announcements

6. TM/23/00364/FL - 1A Croft Close, Tonbridge 21 - 44
- New bungalow to the rear of 15 Estridge Way (Revision to TM/20/00862/FL), 1A Croft Close Tonbridge Kent TN10 4LA
- Recommendation AP1 23/21 of the Area 1 Planning Committee of 27 July 2023 and reports of 27 July and 22 June 2023 attached.
- In order to facilitate the proper consideration of the application, the Council will need to suspend its own procedure rules and resolve itself into a committee to which rules relating to a planning committee will be applied.**
7. Questions from the public pursuant to Council Procedure Rule No 5.6 45 - 46
8. Questions from Members pursuant to Council Procedure Rule No 5.5 47 - 48
9. Motion submitted under Council Procedure Rule No 5.27 49 - 50
- To consider a Notice of Motion (23/004) proposed by Councillor G Bridge, seconded by Councillor M Tatton, on behalf of the Liberal Democrat Group in relation to Disability and Equalities.
10. Leader's Announcements 51 - 52

### **Matters for Decision**

11. Disabled Facilities Grant Funding 53 - 56
- The Borough Council has five cases where the cost of the mandatory Disabled Facilities Grant eligible adaptation works exceed the limit of £30,000 and in accordance with the Borough Council's adopted Housing Assistance Policy a discretionary Disabled Facilities Grant can be approved to top-up the mandatory Disabled Facilities Grant by up to a maximum of £30,000 to allow the adaptation works to proceed. This report seeks Council's approval for a virement of £150,000 from the mandatory to the discretionary Disabled Facilities Grant budget as there is no spend allocated to the discretionary Disabled Facilities Grant budget within the Borough Council's Capital Plan for 2023/24.
12. Changes to the Constitution 57 - 66
- The report recommends that changes are made to the Constitution to (1) update the Committee Procedure Rules and (2) include the Executive/ Scrutiny Protocol as an Annex.
13. Review of Arrangements for Dealing with Code of Conduct Complaints 67 - 106
- Consideration of recommendation ST 23/4 of the Joint Standards Committee of 12 July 2023

14. Local Code of Corporate Governance 107 - 134  
 Consideration of recommendation AU 23/29 of the Audit Committee of 24 July 2023
15. Council Tax Discount 135 - 140  
 Consideration of recommendation CB 23/84 of the Cabinet of 3 October 2023
16. Auditor's Annual Report 2022/23 141 - 184  
 Consideration of recommendation CB 23/85 of the Cabinet of 3 October 2023
17. Treasury Management Update 185 - 190  
 Consideration of recommendation CB 23/86 of the Cabinet of 3 October 2023.
- The detailed reports can be found on the website under the agendas of Audit Committee:
- Audit Committee of 24 July 2023 – [Treasury Management Update and Annual Report 2022/23](#)
- Audit Committee of 25 September 2023 – [Treasury Management Update and Mid-Year Review](#)
18. Feedback from Consultation on the Hackney Carriage and Private Hire Policy 2023-2028 191 - 320  
 Consideration of recommendation LA 23/17 of the Licensing and Appeals Committee of 27 September 2023
19. Appointments to Outside Bodies - Tonbridge United Charity 321 - 322  
 Consideration of outside body appointment, pending any outcomes of the ongoing review.
- Matters for Information**
20. Overview and Scrutiny - Annual Report 323 - 326  
 To provide a summary of the work of the Overview and Scrutiny Committee over the past year
21. Minutes of Cabinet and Committees 327 - 328  
 To receive and note the Minutes of meetings of Cabinet and Committees as set out in the Minute Book (attached as a supplement).

22. Sealing of Documents

To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

**Matters for Consideration in Private**

23. Exclusion of Press and Public 329 - 330

The Mayor to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**Part 2 - Private**

**Matters for Information**

24. TM/23/00364/FL - 1A Croft Close, Tonbridge 331 - 340

(Reasons: LGA 1972 - Sch 12A Paragraph 5 – information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.)

This report provided legal advice to the Area 1 Planning Committee of 27 July 2023 on the consequences of taking decisions against the advice of officers and is attached for information.

JULIE BEILBY  
Chief Executive  
Monday, 16 October 2023

## **GUIDANCE ON HOW MEETINGS WILL BE CONDUCTED**

- (1) Most of the Borough Council meetings are livestreamed, unless there is exempt or confidential business being discussed, giving residents the opportunity to see decision making in action. These can be watched via our YouTube channel. When it is not possible to livestream meetings they are recorded and uploaded as soon as possible:

<https://www.youtube.com/channel/UCPp-IJISNgoF-ugSzxjAPfw/featured>

- (2) There are no fire drills planned during the time a meeting is being held. For the benefit of those in the meeting room, the fire alarm is a long continuous bell and the exits are via the doors used to enter the room. An officer on site will lead any evacuation.
- (3) Should you need this agenda or any of the reports in a different format, or have any other queries concerning the meeting, please contact Democratic Services on [committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk) in the first instance.

### **Attendance:**

- Members of the Committee are required to attend in person and be present in the meeting room. Only these Members are able to move/ second or amend motions, and vote.
- Other Members of the Council can join via MS Teams and can take part in any discussion and ask questions, when invited to do so by the Chair, but cannot move/ second or amend motions or vote on any matters. Members participating remotely are reminded that this does not count towards their formal committee attendance.
- Occasionally, Members of the Committee are unable to attend in person and may join via MS Teams in the same way as other Members. However, they are unable to move/ second or amend motions or vote on any matters if they are not present in the meeting room. As with other Members joining via MS Teams, this does not count towards their formal committee attendance.
- Officers can participate in person or online.

- Members of the public addressing an Area Planning Committee should attend in person. However, arrangements to participate online can be considered in certain circumstances. Please contact [committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk) for further information.

Before formal proceedings start there will be a sound check of Members/Officers in the room. This is done as a roll call and confirms attendance of voting Members.

### **Ground Rules:**

The meeting will operate under the following ground rules:

- Members in the Chamber should indicate to speak in the usual way and use the fixed microphones in front of them. These need to be switched on when speaking or comments will not be heard by those participating online. Please switch off microphones when not speaking.
- If there any technical issues the meeting will be adjourned to try and rectify them. If this is not possible there are a number of options that can be taken to enable the meeting to continue. These will be explained if it becomes necessary.

For those Members participating online:

- please request to speak using the 'chat or hand raised function';
- please turn off cameras and microphones when not speaking;
- please do not use the 'chat function' for other matters as comments can be seen by all;
- Members may wish to blur the background on their camera using the facility on Microsoft teams.
- Please avoid distractions and general chat if not addressing the meeting
- Please remember to turn off or silence mobile phones

### **Voting:**

Voting may be undertaken by way of a roll call and each Member should verbally respond For, Against, Abstain. The vote will be noted and announced by the Democratic Services Officer.

Alternatively, votes may be taken by general affirmation if it seems that there is agreement amongst Members. The Chairman will announce the outcome of the vote for those participating and viewing online.

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Apologies for absence

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### COUNCIL MEETING

#### MINUTES

Tuesday, 11th July, 2023

At the meeting of the Tonbridge and Malling Borough Council held in Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 11th July, 2023

**Present:** His Worship the Mayor (Councillor J R S Lark), the Deputy Mayor (Councillor S M Hammond), Cllr L Athwal, Cllr B Banks, Cllr K Barton, Cllr Mrs S Bell, Cllr A G Bennison, Cllr R P Betts, Cllr T Bishop, Cllr M D Boughton, Cllr G C Bridge, Cllr C Brown, Cllr R I B Cannon, Cllr J Clokey, Cllr M A Coffin, Cllr A Cope, Cllr S Crisp, Cllr R W Dalton, Cllr D A S Davis, Cllr D Harman, Cllr P M Hickmott, Cllr G B Hines, Cllr M A J Hood, Cllr F A Hoskins, Cllr S A Hudson, Cllr D Keers, Cllr W J Mallard, Cllr A McDermott, Cllr A Mehmet, Cllr D W King, Cllr Mrs A S Oakley, Cllr W E Palmer, Cllr B A Parry, Cllr M R Rhodes, Cllr R V Roud, Cllr K B Tanner, Cllr Mrs M Tatton, Cllr M Taylor, Cllr D Thornevell, Cllr K S Tunstall and Cllr C J Williams

Apologies for absence were received from Councillors P Boxall, Mrs T Dean and R W G Oliver

#### PART 1 - PUBLIC

##### **C 23/55      DECLARATIONS OF INTEREST**

A dispensation had been granted by the Monitoring Officer to allow all Members of the Committee to participate in the discussion on Members Allowances and to consider and vote upon the recommendations of the General Purposes Committee.

##### **C 23/56      MINUTES**

**RESOLVED:** That the Minutes of the proceedings of the meeting of the Council held on 17 May 2023 be approved as a correct record and signed by the Mayor.

##### **C 23/57      MAYOR'S ANNOUNCEMENTS**

The Mayor advised of a number of engagements attended since the last meeting of Council and made particular reference to the following civic and charity events:

- Holmesdale School's Opening of new Amphitheatre
- The Quest School's 20th Anniversary Lunch
- The Kent International Piano Courses Concert & Prizegiving
- Hildenborough Farmer's Market
- Ightham Mote's Oldbury Campsite Opening at Seal Chart
- SERFCA Armed Forces Briefing
- Annual Father's Day Service at The Friars
- Chairman of KCC's Armed Forces Day Flag Raising Ceremony
- Tonbridge Lions It's a Knockout
- The Friars Fundraising Event
- Rotary Club of Tonbridge's Presidents Dinner & Jazz Evening
- Snodland TC's Carnival Parade
- Mayor of Medway's Cruise
- Bishops court Summer Garden Party
- Tonbridge Music Festival Event

Arrangements were being finalised for future civic and charity events and details would be shared as soon as possible.

Finally, the Mayor thanked the Deputy Mayor for attending a number of events on their behalf.

**C 23/58 QUESTIONS FROM THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE NO 5.6**

No questions were received from members of the public pursuant to Council Procedure Rule No 5.6.

**C 23/59 QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE NO 5.5**

No questions were received from Members pursuant to Council Procedure Rule No 5.5.

**C 23/60 LEADER'S ANNOUNCEMENTS**

The Leader's announcements focused on innovation, transformation, investment and service delivery as well as the importance of building effective working relationships with the other political parties.

The Leader welcomed the opportunity to consider the Member Call-in Protocol for Development Management later in the meeting, which was a good example of working together and the changes proposed would assist all Members in all parties in the planning process. The new Corporate Strategy 2023-27 also focused on co-operation and good will between political groups.

Reference was made to the networking opportunities afforded by the recent LGA Conference in promoting the Borough as a great place to

invest and build on the reputation as a local authority that used innovative solutions to promote growth and regeneration. The importance of reviewing how services were delivered to improve performance and to ensure effective management of differing and competing demands that local residents had was highlighted.

To address the outstanding recommendation of the Peer Review (undertaken in 2022) consideration would be given to having a dedicated resource committed to support transformation of council services. Options would be presented to Members in due course. However, residents had high expectations that the Borough Council would continue to perform and deliver services effectively, whilst maintaining value for money and investing and innovating for the future.

Particular reference was made to the successful re-rounding of the waste services contract and the Leader was pleased to report that collection rates remained high. Other recent achievements included the introduction of mobile CCTV cameras across the Borough to support enforcement of Public Space Protection Orders relating to anti-social behaviour; the decision to procure a third party enforcement contract to deal with fly-tipping and littering which demonstrated that Tonbridge and Malling would not tolerate this behaviour and the 99% satisfaction market survey response rate for Tonbridge Racecourse Sportsground was an excellent indicator of how much the site was valued.

Upcoming issues included a review of the Climate Change Action Plan and the ambition for Leisure Centres to be carbon neutral by 2030 was reiterated and support for rural businesses.

Finally, the housing crisis across Tonbridge and Malling remained significant and the Borough Council continued to assist residents as much as possible. A new Housing Policy had been introduced in June to improve support to the most vulnerable with links to Tonbridge and Malling.

Full Leaders announcements available on the Borough Council [YouTube channel](#)

### **MATTERS FOR DECISION**

#### **C 23/61 MEMBERS' ALLOWANCES - REPORT OF THE JOINT INDEPENDENT REMUNERATION PANEL**

Consideration was given to the recommendations of the General Purposes Committee in respect of Members Allowances following a review by the Joint Independent Remuneration Panel.

**RESOLVED:** That

- (1) the Basic Allowance payable to all Members remain at its current level of £5,175 per annum;
- (2) the level of the Special Responsibility Allowances (SRA) be set as follows:
  - (a) the Leader's Allowance remain at £20,706 per annum;
  - (b) the SRA for the Deputy Leader remain at £15,528 per annum (circa 75% of the Leader's Allowance);
  - (c) the SRAs for Cabinet Members remain at £8,802 per annum;
  - (d) the SRAs for Committee Chairs be set as follows:
    - (i) Area Planning Committees (x 3) - £1,725 per annum;
    - (ii) Audit Committee - £2,589 per annum;
    - (iii) General Purposes Committee - £1,725 per annum;
    - (iv) Joint Standards Committee - £2,589 per annum;
    - (v) Licensing and Appeals Committee - £2,589 per annum;
    - (vi) Overview and Scrutiny Committee - £2,589 per annum;
    - (vii) Scrutiny Select Committees (x 3) - £2,589 per annum;
  - (e) the SRAs for qualifying\*\* opposition group leaders be set at a flat sum of £4,401 per annum, and where applicable, a maximum of one additional SRA per Member (excluding group leader allowances) be applied;  
  
*\*\*To qualify, neither the leader of an opposition group nor any members of the leader's group can serve on Cabinet.*
  - (f) the SRAs for vice-chairs be set at 25% of the relevant Committee Chairs' allowances as follows:
    - (i) Area Planning Committees (x 3) - £431 per annum;
    - (ii) Audit Committee - £647 per annum;

- (iii) General Purposes Committee - £431 per annum;
  - (iv) Joint Standards Committee - £647 per annum;
  - (v) Licensing and Appeals Committee - £647 per annum;
  - (vi) Overview and Scrutiny Committee - £647 per annum;
  - (vii) Scrutiny Select Committees (x 3) - £647 per annum;
- (3) the Mileage Allowances remain at the HMRC approved rate;
  - (4) the existing scheme for meal and/or subsistence allowances be ceased;
  - (5) the carers' allowances be set at a maximum rate of £10.42 per hour per child (linked to the National Living Wage) for general childcare and £18.00 per hour for dependent carers;
  - (6) the allowances, including those for the Mayor and Deputy Mayor, be uprated in line with any increases in the remuneration of Council staff;
  - (7) the amended scheme of allowances, once approved, be agreed to take effect from the date of Council on 11 July 2023; and
  - (8) the Monitoring Officer be authorised to update Part 6 of the Constitution (Members' Allowances) to reflect any agreed changes to the current scheme of allowances arising out of the above recommendations.

## **C 23/62 CHANGES TO THE CONSTITUTION**

The report of the Monitoring Officer recommended changes were made to the Constitution to update the Members' Planning Code of Good Practice. An amended Code was attached at Annex 1.

In the interests of transparency, paragraph 8.6 of the Code had been amended to detail the scope of arrangements in respect of councillors whose business was, or included, the making of planning applications on behalf of others.

**RESOLVED:** That the Monitoring Officer be authorised to amend the Members' Planning of Code of Good Practice in Part 5 of the Constitution as set out at Annex 1 to give effect to the changes outlined in the report.

**C 23/63 APPOINTMENTS TO PARISH PARTNERSHIP PANEL AND TONBRIDGE COMMUNITY FORUM**

Following approval of appointments at Annual Council on 17 May 2023 a number of changes were required to the Parish Partnership Panel and Tonbridge Community Forum in respect of County Members who had an automatic appointment as councillors representing a parished area of the borough or a ward in Tonbridge.

The proposed changes were detailed in 1.1 and 1.2 of the report and reflected the recommendations of an Overview and Scrutiny Committee review of the Parish Partnership Panel and Tonbridge Community Forum (as the Tonbridge Forum) in 2021 that Members who were both Borough and Parish Councillors could not sit on the Panel in both capacities. This recommendation was supported and approved by Council on 26 October 2021. For consistency this would also apply to those Members who were both Borough and County Councillors.

It was recommended that Councillor M Boughton be appointed to the Parish Partnership Panel instead of Councillor S Hudson. As a consequence of this change, there was a requirement to nominate a replacement substitute member and Councillor D Davis was nominated.

It was noted that Councillor M Hood, who was appointed to the Tonbridge Community Forum in May 2023, attended as a County Member.

Consequently, the membership of the Tonbridge Community Forum was 13 Borough Councillors and not 14 as set out in the Constitution. This was because all Members representing Tonbridge and Hildenborough wards already sat on the Tonbridge Community Forum. No changes to the Constitution regarding composition of the Tonbridge Community Forum were recommended.

**RESOLVED:** That

- (1) Councillor M Boughton be appointed to the Parish Partnership Panel with immediate effect;
- (2) Councillor D Davis be appointed as a substitute member for the Parish Partnership Panel with immediate effect; and
- (3) The position in respect of the membership of the Tonbridge Community Forum, detailed in 1.2.5 of the report, until the next Borough or County Elections be noted.



**C 23/64 CHANGES TO SUBSTITUTE MEMBERS - THE GREEN GROUP**

The report of the Director of Central Services and Deputy Chief Executive advised of a request from the Leader of the Green Group to amend their nominated substitutes.

The change proposed by Councillor Hood related to the Finance, Regeneration and Property Scrutiny Select Committee and was detailed in 1.1.2 of the report.

The Leader of the Liberal Democrat Group took the opportunity to update their substitutes for the Joint Transportation Board and proposed that Councillor J Clokely replace Councillor T Dean as an approved substitute. This was seconded by Councillor D Thornewell.

**RESOLVED:** That

- (1) Councillor M Hood replace Councillor R Oliver as a substitute member on the Finance, Regeneration and Property Scrutiny Select Committee; and
- (2) Councillor J Clokely replace Councillor T Dean as a substitute member on the Joint Transportation Board.

**C 23/65 APPOINTMENTS TO OUTSIDE BODIES**

The report of the Director of Central Services and Deputy Chief Executive advised of a number of changes to be made to the Outside Bodies Schedule. These related to the number of appointees to the Snodland Partnership and the Kent Flood Risk Management committee. The Borough Council had also received notification that the Kent County Playing Fields Association no longer sought outside bodies representation.

The Leader and Chair of the Overview and Scrutiny Committee had both previously indicated the need to review the role of outside bodies to gain a better understanding of the aims and priorities of the organisations, the role of Borough Councillors and how information was fed back to the Council. A scoping report on a review would be presented to a future meeting of the Overview and Scrutiny Committee.

**RESOLVED:** That

- (1) Councillor P Hickmott be appointed as the Borough Council outside body representative for Snodland Partnership;
- (2) the Outside Bodies Schedule be updated to reflect that Snodland Partnership had 1 Town Council appointee and 1 Borough Council appointee;

- (3) the Kent County Playing Fields Association be removed from the Outside Bodies Schedule;
- (4) the position in respect of the Kent Flood Risk Management Committee be noted and that the organisation remain on the Outside Bodies Schedule so Borough Council nominees continued to receive information; and
- (5) a review of Appointments to Outside Bodies be undertaken by the Overview and Scrutiny Committee in due course.

#### **C 23/66 MEMBER CALL IN PROTOCOL - DEVELOPMENT MANAGEMENT**

Consideration was given to recommendation OS 23/25 of the Overview and Scrutiny Committee of 29 June 2023. Members welcomed the clarification in respect of conflicting views between the Director of Planning, Housing and Environmental Health and the Area Planning Chair which was now detailed in the Call-in Protocol.

**RESOLVED:** That

- (1) the amended Protocol attached at Annex 1 and as updated in the supplementary report to the Overview and Scrutiny Committee be endorsed;
- (2) the amended text in the Protocol be included in the Constitution as part of DPHEH 100 (Part 3 – Responsibilities); and
- (3) the Monitoring Officer be authorised to make any necessary consequential changes to the Constitution.

#### **C 23/67 CORPORATE STRATEGY 2023-27**

Consideration was given to recommendation CB 23/60 of the Cabinet of 4 July 2023 and the Leader of the Borough Council was pleased to present the Corporate Strategy 2023-2027 which emphasised the three key values of innovation, transformation and delivery.

**RESOLVED:** That

- (1) the Corporate Strategy (attached at Annex 1) be adopted;
- (2) the Corporate Strategy Action Plan (attached at Annex 2) be adopted;
- (3) the proposed new Key Performance Indicators (attached at Annex 3) be adopted;
- (4) authority be delegated to the Chief Executive, in liaison with the Leader of the Council, to approve any necessary further minor

changes to the Corporate Strategy, Action Plan and Key Performance Indicators that might be required for reasons of clarity or presentation.

### **MATTERS FOR INFORMATION**

#### **C 23/68 MINUTES OF CABINET AND COMMITTEES**

The Minutes of meetings of the Cabinet and Committees as set out in the Minute Book – Volume 3 (attached as supplement) were received and noted.

Any recommendations to the Council from Cabinet or Committees were resolved elsewhere on the agenda.

#### **C 23/69 SEALING OF DOCUMENTS**

**RESOLVED:** That authority be given for the Common Seal of the Council to be affixed to any instrument to give effect to a decision of the Council incorporated into these Minutes and proceedings.

#### **C 23/70 EXCLUSION OF PRESS AND PUBLIC**

The Mayor moved, it was seconded and

**RESOLVED:** That as public discussion would disclose exempt information, the following matters be considered in private.

### **PART 2 - PRIVATE**

#### **C 23/71 RECRUITMENT AND RETENTION ISSUES WITHIN THE PLANNING SERVICE**

Consideration was given to the recommendations of the General Purposes Committee held on 3 July 2023.

**RESOLVED:** That

- (1) a £5,000 annual market supplement payment (pro-rata'd for part-time staff) be paid to all current and future recruited qualified\* planning staff for a period of two years, subject to annual review thereafter;

*\*To qualify, the postholder must hold a degree of postgraduate qualification accredited by the Royal Town Planning Institute as stipulated in the Person Specification of their post in Planning.*

- (2) a £3,000 'Golden Hello' payment be paid to newly recruited planning staff joining the Borough Council in posts in planning of which the Person Specification stipulates that the postholder must

hold a degree of postgraduate qualification accredited by the Royal Town Planning Institute, subject to review; and

- (3) the aggregated cost of the market supplement payments and the 'Golden Hello' payments, estimated to be circa £320k over the two-year review period, be met from the Budget Stabilisation Reserve.

The meeting ended at 8.22 pm

## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

24 October 2023

Report of the Director of Planning, Housing and Environmental Health

#### Part 1- Public

#### Matters For Decision

1 **PLANNING APPLICATION TM/2300364/FL 1A CROFT CLOSE,  
TONBRIDGE**

#### Summary

Permanent planning permission is sought for a new bungalow to the rear of 15 Estridge Way (revision to TM/20/00862/FL). This is a retrospective application seeking to regularise works already undertaken.

The application was reported to the Area 1 Planning Committee on 22 June 2023 and 27 July 2023 (on the latter occasion accompanied by a Part 2 report from the Director of Central Services and Monitoring Officer).

Members of the Area 1 Planning Committee resolved not to accept the recommendation that planning permission be granted. As such, in accordance with the Constitution, this application is being reported to Council for a decision.

#### 1.1 Introduction

1.1.1 The reports to APC1 of 22 June and 27 July 2023, including the Part 2 report and associated appendices, are attached in full and set out in detail the reasoning behind the recommendation of the Director of Planning, Housing and Environmental Health. This report should be read in conjunction with those papers.

1.1.2 For the purposes of taking this decision, the Constitution provides that the same rules apply both to applications determined by an Area Planning Committee and where the matter is referred to full Council. Rule 16.1 of the Council and Committee Procedure Rules (Constitution: Part 4) provides that the public speaking rules apply to planning applications being considered by the Council when it has 'resolved itself into a committee of the full council'. As such, the procedure rules relating to Planning Committees are to be applied in this instance.

## **1.2 Legal Implications**

- 1.2.1 Prior to determining this application, Members are requested to note the Monitoring Officer's legal advice contained within the Part 2 report to members of Area 1 Planning Committee dated 27 July 2023. Again, to be read in conjunction with the associated papers appended to this report.
- 1.2.2 Planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise (see s.70 (2) Town & Country Planning Act 1990 and s.38 (6) Planning and Compulsory Purchase Act 2004). For TMBC, the development plan is currently the Local Development Framework adopted in 2007. The National Planning Policy Framework ("NPPF"), Planning Practice Guidance ("PPG") are important material considerations.
- 1.2.3 Paragraph 11(c) of the NPPF requires that planning authorities approve development proposals which accord with the development plan "without delay".

## **1.3 Financial and Value for Money Considerations**

- 1.3.1 An award of costs against the Council by the Planning Inspectorate would be for the expense incurred by the Applicant in lodging and pursuing a planning appeal. This would include any already engaged professional planning agents should the applicant seek assistance in taking and these would likely take such an appeal forward. Legal representation may also be instructed to assist in preparing and making their appeal case.
- 1.3.2 There would in addition be further costs to the Council in terms of its own officer time and resourcing up to and including the appearance at any appeal hearing or inquiry.

## **1.4 Risk Assessment**

- 1.4.1 The risk of an award of costs by the Planning Inspectorate presents a reputational risk because it would indicate that the Inspectorate considered the Council had behaved in an unreasonable manner.
- 1.4.2 Members' attention is also drawn to the previous advice of the Monitoring Officer in the Part 2 report.

## **1.5 Equality Impact Assessment**

- 1.6 No issues raised

## 1.7 Recommendations

### 1.7.1 Grant Planning permission

This was approved in accordance with the following submitted details: Location Plan dated 16.03.2023, Proposed Floor Plans 1000 dated 16.03.2023, Block Plan 5000 dated 16.03.2023, Perspective view 5100 dated 16.03.2023, Proposed Roof Plan 1200 dated 16.03.2023, Proposed Elevations 2201 dated 16.03.2023, Proposed Elevations 2202 dated 16.03.2023, Proposed Elevations 2203 dated 16.03.2023, Proposed Elevations 2204 dated 16.03.2023, Drainage Layout dated 17.03.2023,

#### Conditions / Reasons

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A, B, C and E of Part 1 of Schedule 2 of that Order.

Reason: To prevent an overdevelopment of the site.

2. The existing vehicle parking and turning area shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: In the interests of highway safety.

3. The development shall be carried out in accordance with the plans listed in the section of this decision notice headed 'This was approved in accordance with the following submitted details'.

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

Background papers: Documents from TM/23/00364/FL  
committee report from Thursday 27<sup>th</sup> July

contact: Maria Brown

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**TM/23/00364FL – 1A CROFT CLOSE TONBRIDGE**

**Item AP1 23/21 referred from Area 1 Planning Committee of 27 July 2023**

New bungalow to the rear of 15 Estridge Way (Revision to TM/20/00862/FL).

Further to Minute AP1 23/15 of the meeting held on 22 June 2023, the Committee considered the above application together with the report of the Director of Central Services and Monitoring Officer set out in Part 2 of the agenda (Minute AP1 23/24 refers). Members continued to express concern in respect of the materials used for the roof of the building and the distinctiveness of the roof was considered a harmful feature to the character and appearance of the street scene, in conflict with policies CP24 of the Tonbridge and Malling Borough Core Strategy (2007), SQ1 of the Managing Development and the Environment Development Plan Document and paragraph 130 of the National Planning Policy Framework.

**RECOMMENDED\***: That the application stand DEFERRED for determination by Full Council in accordance with Rule 15.25 of the Council and Committee Procedure Rules.

[Speakers: Mr N Coomber, Mrs L Hamilton and Mr D Parkinson – members of the public addressed the Committee in person and Mr S King (applicant) addressed the Committee via MS Teams]

**\*Referred to Council**

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**Tonbridge**  
Higham

**22 March 2023**

**TM/23/00364/FL**

Proposal: New bungalow to the rear of 15 Estridge Way (Revision to TM/20/00862/FL)  
Location: 1A Croft Close Tonbridge Kent TN10 4LA  
Go to: [Recommendation](#)

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**1. Description:**

- 1.1 Determination of this application was deferred on 22 June 2023 to allow for legal services to provide the committee with a report setting out the risks involved should the recommendation of officers to grant planning permission subject to conditions not being accepted, and planning permission refused.
- 1.2 This is in line with the Council's Constitution which sets out as follows:
- 1.3 If, contrary to a recommendation of the Director of Planning, Housing & Environmental Health, an Area Planning Committee is minded to determine an application in a way or on grounds which the Director does not consider can be substantiated, the application shall stand adjourned to the next meeting of the committee to enable the Director of Central Services and Monitoring Officer to submit a report on the possibility of costs or compensation being awarded against the Council in the event that the application is determined in that way.
- 1.4 If the Director of Central Services and Monitoring Officer's report indicates that there is likely to be a significant risk of costs being awarded against the Council at any appeal, or a potential liability to pay compensation, the committee may not determine the application in a manner contrary to the advice set out in the report, and a resolution by the committee to make such a determination will be a recommendation only and the application shall stand adjourned to Council for determination.
- 1.5 The June committee report can be found at Annexe 1. The report of the Director of Central Services and Monitoring Officer is contained within Part 2 of the agenda. This report should be read as a whole with both of those documents.

**2. Recommendation:**

2.1 Grant Planning permission

This was approved in accordance with the following submitted details: Location Plan dated 16.03.2023, Proposed Floor Plans 1000 dated 16.03.2023, Block Plan 5000 dated 16.03.2023, Perspective view 5100 dated 16.03.2023, Proposed Roof Plan 1200 dated 16.03.2023, Proposed Elevations 2201 dated 16.03.2023, Proposed Elevations 2202 dated 16.03.2023, Proposed

Elevations 2203 dated 16.03.2023, Proposed Elevations 2204 dated 16.03.2023, Drainage Layout dated 17.03.2023

### **Conditions / Reasons**

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A, B, C and E of Part 1 of Schedule 2 of that Order.

Reason: To prevent an overdevelopment of the site.

2. The existing vehicle parking and turning area shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: In the interests of highway safety.

3. The development shall be carried out in accordance with the plans listed in the section of this decision notice headed 'This was approved in accordance with the following submitted details'.

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

Contact: Maria Brown

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**Tonbridge**  
Higham

**22 March 2023**

**TM/23/00364/FL**

Proposal: New bungalow to the rear of 15 Estridge Way (Revision to TM/20/00862/FL)  
Location: 1A Croft Close Tonbridge Kent TN10 4LA  
Go to: [Recommendation](#)

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## 1. Description:

- 1.1 Planning permission was granted under planning reference TM/20/00862/FL for the erection of a detached bungalow in the rear garden of 15 Estridge Way in June 2020.
- 1.2 The current application seeks to amend the permitted scheme in the following ways:
- Minor increase in dwelling size
  - Minor reduction in window sizes
  - Introduction of porch projection
  - Use of render rather than brick
  - Use of grey metal roof tile rather than concrete
- 1.3 The application is retrospective and therefore the current application seeks to regularise works that have already been undertaken. The site is part of an ongoing enforcement action.

## 2. Reason for reporting to Committee:

- 2.1 The application has been called into Area One Planning Committee by the Ward Member Cllr King to consider the use of materials.

## 3. The Site:

- 3.1 The site lies within the confines of the settlement, within a wider residential estate. The host dwelling is a late 1940's semi-detached 3-bedroom house facing Estridge Way. The application site is to the rear and fronts onto Croft Close.
- 3.2 The application makes reference to the mixed character of the area and puts forward examples of the use of more contemporary materials in the wider area.
- 3.3 The area falls within E3 of the Tonbridge Character Appraisal Area which comprises Croft Close, Estridge Way and Godfrey Evans Close. The area is described as follows:

*Estridge Way forms a quadrangle with short culs-de-sac leading off it and is accessed from Cornwallis Avenue and Orchard Drive via Colin Blythe Road. The*

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*development was begun in the 1930s but was not completed until after the war. There has also been some more recent infill development which gives this area a more mixed character than the other areas.*

#### 4. Planning History (relevant):

TM/20/00862/FL            Approved                            19 June 2020

New bungalow to the rear of 15 Estridge Way

20/02173/NMA            Approved                            27 October 2020

Non Material Amendment to planning permission TM/20/00862/FL: Alteration to the internal layout only

#### 5. Consultees:

5.1 EP:                            No objection

5.2 BC:                            After looking at the design access statement primarily the executive summary and para 7.6 regarding Part O (over heating) relating to the changes in materials and the type of construction, the details provided would not be unreasonable when looking for compliance with the latest requirements under the Building Regulations. It should be noted that the Building Regulation compliance is being dealt with an Approved Inspector under Initial Notice 22/00906/IN.

5.3 Neighbours:                6 objections (summarised)

- The application is retrospective, flouting planning rules
- The roof material is totally out of keeping and unsympathetic in a dominant position
- The application shows properties in a much wider area to provide justification for the changes
- Lack of notification of changes
- Lack of Council action from planning enforcement or building control
- Overbright security lights
- Lack of privacy

#### 6. Determining Issues:

6.1 Retrospective planning permission can be sought and determined by the Local Planning Authority under Section 73a of the Town and Country Planning Act 1990. Extract of the act below.

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**73A Planning permission for development already carried out.**

- (1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
  - (2) Subsection (1) applies to development carried out—
    - (a) without planning permission;
    - (b) in accordance with planning permission granted for a limited period; or
    - (c) without complying with some condition subject to which planning permission was granted.
  - (3) Planning permission for such development may be granted so as to have effect from—
    - (a) the date on which the development was carried out; or
    - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.】
- 

6.2 Guidance on retrospective planning applications can be found on the National Planning Practice Guidance under Paragraph: 012 Reference ID: 17b-012-20140306 which states:

A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application ([section 73A of the Town and Country Planning Act 1990](#)) without delay. It is important to note that:

- although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way;
- an enforcement notice may also be issued in relation to other elements of the development.

6.3 This legislation and guidance confirm that it can be appropriate for an applicant to submit a planning application to regularise works that have already been carried out and whilst the LPA must not pre-empt any determination it is important to note that the determination must be carried out in the normal way.

6.4 The application states that the alterations were in response to the updating of the Building Regulations and the roadmap to the Future Homes Standard. This is in addition to the targets set out by the Royal Institute of British Architecture and the Institution of Structural Engineers. The application also makes reference to a restrictive covenant, but such matters are civil and beyond the control of the planning system.

6.5 The original application was determined with regard to the Local Development Plan and the National Planning Policy Framework. In particular the principle of the

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new dwellinghouse was found to conform to Policy CP11 of the TMBCS and paragraph 11 of the NPPF. In addition, the original assessment made reference to local plan policies Policies CP24 of the TMBCS and SQ1 of the MDE DPD, and paragraph 127 of the NPPF. The latter has since been updated and now paragraph 130 is of relevance.

- 6.6 The original Delegated Officer Report is attached at Appendix One. For completeness however the relevant policies can be summarised thus.
- 6.7 Policy CP24 of the TMBCS seeks to ensure that all development is well designed and respects the site and its surroundings. Policy SQ1 of the MDE DPD requires all new development to protect, conserve and, where possible enhance the character and local distinctiveness of the area. The aims of these local plan policies are echoed in paragraph 130 of the NPPF.
- 6.8 Paragraph 130 sets out that planning policies and decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and are sympathetic to local character and history.
- 6.9 The alterations to window sizes are minimal and make little discernible difference to the overall appearance of the dwellinghouse as built. Similarly, the introduction of a porch canopy and minor expansion of the dwellinghouse raise no further issues that were not considered at the time of the original submission. It would have been reasonable to deal with these amendments through the Non Material Amendment route. However, the change from brick to render and concrete roof tile to metal material alter the appearance of the dwellinghouse and therefore it is appropriate to submit a planning application for this element of the proposal.
- 6.10 Paragraph 134 of the NPPF seeks to ensure that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.
- 6.11 The National Design Guide sets out the characteristics of well-designed places and demonstrates what good design means in practice. It forms part of the government's collection of planning practice guidance and was intended to be read alongside the separate planning practice guidance on design process and tools.
- 6.12 Paragraph 56 of the National Design Guide states that:

*“Well-designed places contribute to local distinctiveness. This may include:*



- 
- *adopting typical building forms, composition, articulation, proportions, features, materials, details, patterns and colours of an area;*
  - *drawing upon the architectural precedents that are prevalent in the local area including the proportions of buildings and their openings;*
  - *using local building, landscape or topographical features, materials or planting types;*
  - *introducing built form and appearance that adds new character and difference to places, with particular attention to how buildings meet the ground and sky;*
  - *creating a positive and coherent identity that residents and local communities can identify with.”*

- 6.13 The wider area is identified as being of mixed character. The use of render is not unusual in the area, nor in similar residential estates within Tonbridge. The use of metal roofing however has been identified by objectors as being both out of keeping and unsympathetic, which is accentuated by the position of the dwelling being adjacent to the highway.
- 6.14 It is noted that the use of a metal roofing material is more contemporary than the original concrete tile. However, the area is identified as being of mixed character and does not benefit from any particular designation such as a Conservation Area. In light of the character of the immediate and wider area and the absence of any formal designation the use of a metal roofing material would not warrant a refusal of planning permission on this basis.
- 6.15 Objectors have drawn attention to the alleged lack of action on behalf of the Council. For clarity the site is the subject of an ongoing planning enforcement enquiry as demonstrated by the current application. It must also be noted that it is not the role of the building control regime to identify possible breaches of planning and it appears that the building control function is being undertaken by an independent building inspector rather than the Council.
- 6.16 Objectors also raise concern regarding the existing security lights at the dwellinghouse. The government planning portal website notes that light itself, and minor domestic light fittings, are not subject to planning controls. It is therefore usually accepted that unless the proposed lighting materially alters the appearance of the dwelling planning consent is not required. However complaints regarding artificial light can fall within the Environmental Protection Act 1990, should the level of intensity and subsequent harm constitute a statutory nuisance. This matter therefore falls beyond the scope of the planning system.
- 6.17 In conclusion, the amendments to the window sizes, introduction of a porch overhang and alteration to the size and position of the dwellinghouse do not materially affect the appearance of the dwelling. The use of render and metal roof

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material is also acceptable when assessed with regard to the relevant local and national planning policies and associated guidance. The retrospective nature of the application has no bearing on the appropriateness or otherwise of the amendments to the original approval and I therefore recommend planning permission is granted.

**7. Recommendation:** planning permission is approved

- 7.1 This was approved in accordance with the following submitted details: Location Plan dated 16.03.2023, Proposed Floor Plans 1000 dated 16.03.2023, Block Plan 5000 dated 16.03.2023, Perspective view 5100 dated 16.03.2023, Proposed Roof Plan 1200 dated 16.03.2023, Proposed Elevations 2201 dated 16.03.2023, Proposed Elevations 2202 dated 16.03.2023, Proposed Elevations 2203 dated 16.03.2023, Proposed Elevations 2204 dated 16.03.2023, Drainage Layout dated 17.03.2023

**Conditions:**

- 1 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A, B, C and E of Part 1 of Schedule 2 of that Order.

Reason: To prevent an overdevelopment of the site.

- 2 The existing vehicle parking and turning area shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: In the interests of highway safety.

- 3 The development shall be carried out in accordance with the plans listed in the section of this decision notice headed 'This was approved in accordance with the following submitted details'.

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

Contact: Maria Brown



**APPENDIX ONE**

Delegated Report for TM/20/00862/FL: New bungalow to the rear of 15 Estridge Way approved with conditions on 19 June 2020

**Applications delegated to Director of Planning,  
Housing & Environmental Health to determine**

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**TM/20/00862/FL**

**Location:** 15 Estridge Way Tonbridge Kent TN10 4JS

**Proposal:** New bungalow to the rear of 15 Estridge Way

**Target Date:** 19 June 2020

**EOT Target Date:**

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**1. Description of Proposal:**

- 1.1 Planning permission is sought to erect a single one bedroom dwelling in the rear garden of No 15 and access this from an existing vehicular access sited on Croft Close (positioned on the Northern side of the property).
- 1.2 The total site area currently measures around 594 m<sup>2</sup>. (Approx 0.06 hectares). It is proposed to subdivide this into two plots, 414m<sup>2</sup> for No 15 Estridge Way with 180m<sup>2</sup> available for the new dwelling.
- 1.3 The proposal is to construct a single detached bungalow of a similar scale and mass to the existing property No 2a Croft Close opposite. The Gross External Floor Area or footprint proposed for the new dwelling is to be 80.5 m<sup>2</sup>.

**2. The Site:**

- 2.1 15 Estridge Way is a late 1940's semi-detached 3-bedroom house situated on a corner plot, adjoining Croft Close within the built confines of Tonbridge. The house itself is defined by simple brick façades and sits beneath an interlocking concrete tiled roof. To the north of the dwelling is a single storey attached garage of brick construction which sits beneath a flat bitumen roof. Currently the property provides parking for three vehicles (plus the single garage).
- 2.2 Due to Covid 19 restrictions a site visit has not taken place. However recent photographs have been submitted of the site within the Design and Access Statement and these are reproduced as follows:-





### 3. Planning History (relevant):

TM/81/10926/FUL      grant with conditions      11 November 1981

Single storey extension at side to form garage, utility room and w.c. and new front porch.

### 4. Consultees:

4.1 EP : No objections

4.2 KCC Heritage: No response

4.3 Neighbours: (expired 27/05) No comments received

## 5. Relevant Policies & Determining Issues:

### Principle

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF at paragraph 12 asserts that it *'does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise'*.
- 5.2 The site lies within the Tonbridge urban confines where policy CP11 of the TMBCS will apply. Policy CP11 requires that development will be concentrated within the confines of urban areas. The proposal would therefore comply with the requirement of CP11.
- 5.3 TMBC cannot presently demonstrate a five year supply of housing when measured against its objectively assessed need (OAN). In the absence of a five year supply of housing, it is necessary to apply the presumption in favour of development as set out in paragraph 11 of the NPPF. For decision making, this means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 5.4 In this case there are no policies within the framework which would protect areas or assets of particular importance (footnote 6) that affect the application site. Paragraph 11(d)ii is therefore engaged and it will need to be considered whether there are any adverse impact of the scheme that would outweigh the benefits.

### Design/ street scheme / Layout

- 5.5 Policies CP24 of the TMBCS and SQ1 of the MDE DPD and the most relevant design policies and require development to be well designed and through its scale, density, layout, siting, character and appearance respect the site and its surroundings. Development should also protect, conserve and where possible enhance the character and local distinctiveness of the area, including its setting in relation to the pattern of the settlement, roads and surrounding landscape.

- 5.6 Paragraph 127 of the NPPF sets out that planning policies and decisions should ensure that developments:
- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
  - b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
  - c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
  - e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
  - f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users<sup>46</sup>; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 5.7 The proposal seeks to erect a one bedroom detached bungalow in the rear garden of 15 Estridge Way fronting on to Croft Close. The dwelling seeks to replicate the size and form of that of a bungalow that was built opposite the site of the proposed dwelling at 2a Croft Close in 1992 (ref 92/00726/FL) and this proposal also seeks to match its materials. The dwelling is of a simple form, brick built under a tiled pitched roof with a small courtyard area to the rear and a single parking space. I consider the design and appearance of the proposal to be wholly in keeping with the wider area.
- 5.8 With regards to the positioning of the dwelling within the site the dwelling does project beyond the return general building line in Croft Close, yet due to its subservient design it would not appear prominent or out of place, in my view. I therefore consider its positioning to be acceptable.
- 5.9 The proposed design would be appropriate for the character of the area and would not detract from the street scene to accord with Policies CP24, SQ1 and Paragraph 127 of the NPPF.

#### Residential Amenity

- 5.10 The new dwelling is a single storey bungalow with no rooms proposed in the roof, yet still allows for reasonable spacing to all the boundaries. There are secondary



windows proposed in one of the flank elevations yet the principle windows are to the front and rear of the proposed dwelling. Due to the existing 2m boundary fencing between the existing dwellings that will bound the site (13 and 15 Estridge Way and 1 Croft Close) with the proposed dwelling it will not result in over looking to existing private garden areas.

- 5.11 Based on its proposed position and the current level of privacy I do not consider the proposal would result in a loss of light or impact on privacy to significantly harm the residential amenity of the neighbouring properties.

Highway safety and parking provision

- 5.12 Paragraph 109 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Policy SQ8 of the MDE DPD states that development proposals will only be permitted where they would not significantly harm highway safety and where traffic generated by the development can adequately be served by the highway network.

- 5.13 The adopted parking standards are contained within Kent Design Guides Interim Guidance Note 3 on residential parking (IGN3). These set out that a one bed property within this urban/sub-urban area such as this should have a minimum of 1 parking spaces. The proposal therefore meets these requirements, additionally it utilises an existing access. The development is therefore acceptable in terms of paragraph 109 of the NPPF, accords with the adopted standard set out in IGN3 and policy SQ8 of the MDE DPD.

*Conclusion*

- 5.14 With the above assessment in mind, I consider that the proposal is acceptable in terms of the requirements of the NPPF and the adopted LDF policies. I do not consider the proposal would result in an adverse impacts that would significantly and demonstrably outweigh the benefits of the provision of the dwelling. The presumption remains to be applied and planning permission should be granted subject to conditions.

**6. Recommendation:**

- 6.1 **Approved** in accordance with the following submitted details

Block Plan JBA.95 TP 02 received 24.04.2020, Proposed Floor Plans JBA.95 TP 03 received 24.04.2020, Proposed Elevations JBA.95 TP 04 received 24.04.2020, Proposed Elevations JBA.95 TP 05 received 24.04.2020, Proposed Elevations JBA.95 TP 06 received 24.04.2020, Proposed Elevations JBA.95 TP 07 received 24.04.2020, Section JBA.95 TP 08 received 24.04.2020, Street Scenes JBA. 95 TP 09 received 24.04.2020, Artist's Impression JBA.95.TP 10 1

received 24.04.2020, Artist's Impression JBA.95 TP 11 2 received 24.04.2020, Location Plan JAB.95 TP 01 received 24.04.2020, Letter received 24.04.2020, Design and Access Statement received 24.04.2020 /subject to the following:

### Conditions/Reasons

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

- 2 All materials used externally shall accord with the approved plans.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

- 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A, B, C and E of Part 1 of Schedule 2 of that Order.

Reason: To prevent an overdevelopment of the site.

- 4 The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

Signed.....Rebecca Jarman....(signed electronically).....  
Rebecca Jarman

Endorsed By: Robin Gilbert (electronic signature)

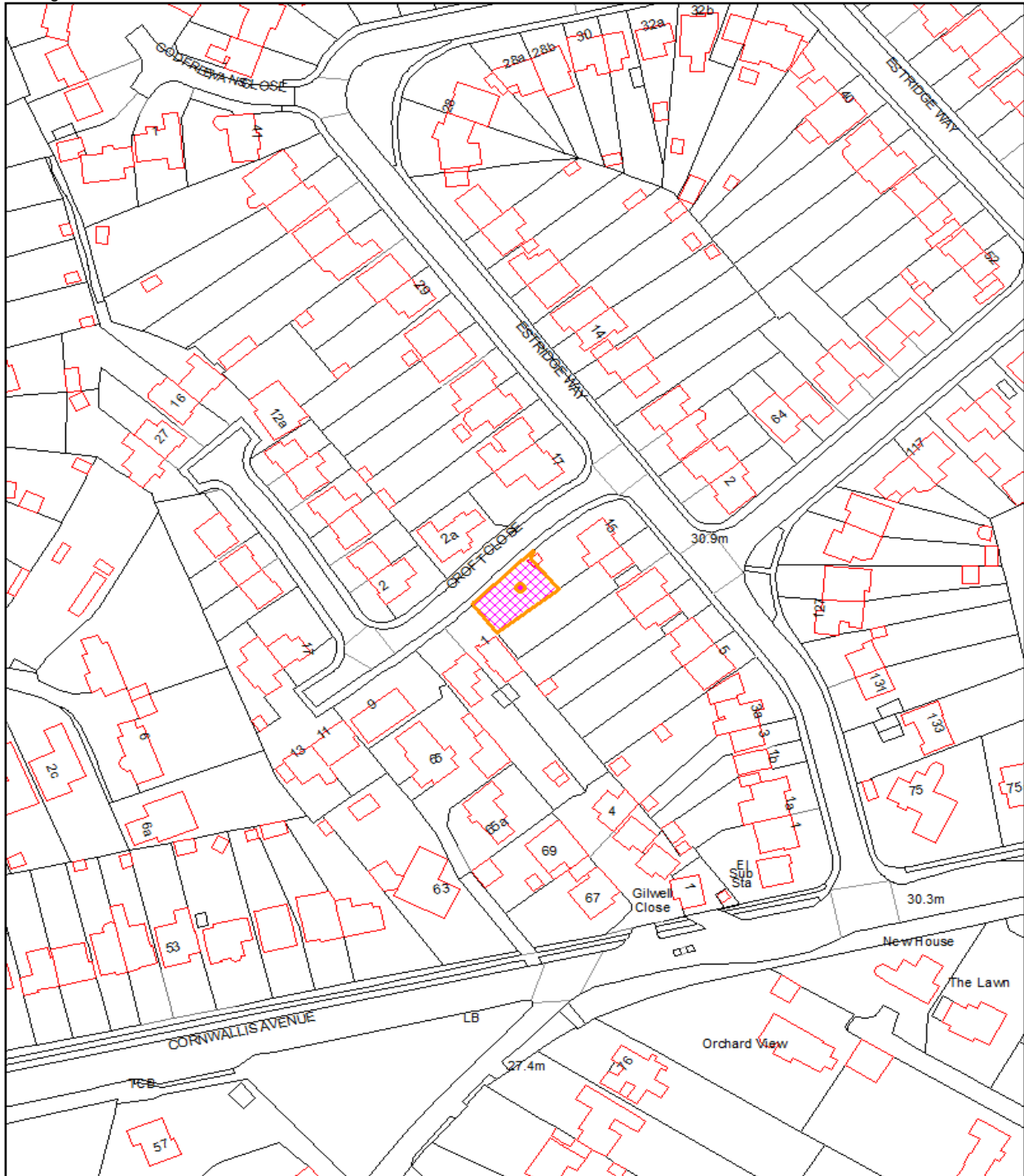
Dated 19.06.2020

**TM/23/00364/FL**

1A Croft Close Tonbridge Kent TN10 4LA

New bungalow to the rear of 15 Estridge Way (Revision to TM/20/00862/FL)

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# Agenda Item 7

Questions from the public pursuant to Council Procedure Rule No 5.6

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## COUNCIL

### MEETING OF 24 OCTOBER 2023

#### AGENDA ITEM 8 - QUESTION ASKED PURSUANT TO COUNCIL PROCEDURE RULE NO 5.5

The following question has been asked pursuant to Council Procedure Rule No 5.5 by Councillor A Cope:

'Please could the cabinet member for the environment let us know the impact of the removal of the recycling facilities at Longmead in Tonbridge and whether this has created an increase in household recycling from properties nearby? Additionally, when will recycling facilities for all the flats reach the standard specified by the council in the surrounding properties? If this hasn't happened, what alternative provision has been provided to residents in the Longmead area to compensate for the facilities having been removed?'

#### **Response of the Cabinet Member for Transformation and Infrastructure (Cllr M Coffin):**

The tonnage data we receive for recycling collections is not detailed at such a granular level as to be able to provide specific weight data for those properties around Longmead. However, there has been a significant reduction in rubbish being dumped at the site since the bring banks were removed in August this year. Waste Services have received no complaints about the removal of the banks from local residents.

Since the completion of the roll-out of improved dry recycling services to properties served by communal bin stores, only 124 properties across the Borough – out of over 57,000 - cannot accommodate additional bins for dry recycling. These include 40 flats in Hamble Road in Trench Ward - where, although there is sufficient room to provide additional recycling bins, Clarion Housing will not allow us to provide them in suitable locations, despite our offer to fund hard standing & fencing. Local Members have also previously liaised with Clarion Housing, to no avail. Should Clarion's management change their minds and allocate appropriate locations we will of course provide the bins required for any improved service.

The only other exception for flats currently is access to food waste collections. A trial of communal food waste collections is currently being planned and due to be implemented within the current financial year, with a view to the wider rollout during 2024/25, depending on the results of the trial.

Currently, the alternative provision for disposal of recycling for residents of the 40 flats referred to are (a) use alternative recycling sites in Tonbridge; (b) use their nearest

Household Waste Recycling Centre; (c) use the existing refuse bins for their waste, which will be used to generate electricity even though not recycled.



## **Notice of Motion submitted pursuant to Council Procedure Rule No. 5.27**

**To consider the following Notice of Motion proposed by Councillor G Bridge, seconded by Councillor M Tatton, on behalf of the Liberal Democrat Group in relation to Disability and Equalities:**

The demographic of our Borough is diverse in very many respects. Local authorities should welcome and celebrate diversity and difference but at the same time, where necessary, we must ensure staff and Councillors are equipped to understand and respond to the needs of different groups who may have additional hurdles to overcome in accessing services this Council provides and enjoying all our Borough has to offer. We should always be willing to see what we could do to better support and understand those who may be disadvantaged in doing so due to disabilities or inequalities – including those with physical disabilities and frailties, deafness, blindness and sight loss, autism and communication difficulties, and socio-economic challenges.

For some context, the latest Census data reveals that within this authority's area some 15.3% of residents are disabled under the Equality Act; in some sub-areas of the Borough this sits at almost 30%. In terms of poverty, 3 areas of our Borough are in the top 20% most deprived areas in the country; conversely 28 are in the 20% least deprived. Interestingly, in presenting Census data on its website the Office for National Statistics uses Tonbridge & Malling as a case study, noting that in the most deprived neighbourhood 24.9% of people are estimated to be income-deprived. This compares with 1.8% in the least deprived area of our borough. That is a very significant disparity indicating that some of our residents – almost a quarter in some areas – are significantly disadvantaged in some aspect of their lives.

Furthermore, the May 2022 'Facts and Figures' document on KCC's website notes that the number of pupils in Tonbridge & Malling with an Education Health and Care Plan is the second highest in the County at 2820. Obviously, not all children with additional needs and disabilities will have an EHCP; therefore, it is easy to see that the number of children and wider family groups impacted by disability and additional needs is somewhat greater.

While this authority does not have responsibility for education, we should still be concerned because these children are part of family units that need to access services and facilities, including recreation, within our Borough.

Members may have their own personal experiences of disability or inequality – if not directly then through family, friends, neighbours or acquaintances.

But it is not easy to fully comprehend just what a person living with a lifelong health condition or disability is truly experiencing or just how challenging navigating life can be. Financially, we have all seen our energy bills rise over the last year, but have probably not had to make the choice between putting the heating on or putting food on the table. That is a reality for some of our poorest residents.

We cannot know how to best deliver services for all of our residents unless we engage with, listen to and learn from those who have different life experiences, who face these challenges in their daily lives.

Members of this Council have previously benefitted from an excellent presentation and information session provided by Tonbridge Dementia Friendly Community. This gave an extremely valuable insight into the impact upon people living with dementia, their families and friends.

And, quite rightly, this Council has appointed Armed Forces Champions to raise the profile and needs of the Armed Forces Community. Appointing a Disability and Equalities Champion would similarly raise the profile and needs of those with disabilities and additional needs, and those facing disadvantage and inequality, sending a very clear and visible message that this Council has at heart the needs of disabled residents and visitors and the way in which they and others who are disadvantaged experience our Borough.

Therefore, this motion asks Council to:

- Recognise the difficulties some residents within and visitors to our Borough face in accessing every-day services and facilities due to disability, additional need, and other disadvantage including financial inequality
- Appoint a Councillor as a Disability & Equalities Champion to raise the profile and needs of those with disabilities, additional needs and inequalities within Tonbridge and Malling. The Disability & Equalities Champion will actively engage with disability and welfare groups and charities and interested individuals to ensure their voice of experience is heard and taken into account in decision making
- If there is no existing mechanism, the Borough Council will develop a Register of disability and welfare groups and charities within the Borough and a system for consulting those groups on matters that affect them and those they represent
- Demonstrate its commitment to further developing its understanding and approach to disability and equality needs within the Borough by inviting interested groups from the Register to give presentations and information sessions for Councillors, similar to the Tonbridge Dementia Friendly Tonbridge Community session, to support Cllrs to feel informed and equipped with respect to the challenges faced by those within our community who have disabilities, additional needs or who face inequality

Leader's Announcements

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

24 October 2023

#### Report of the Director of Planning, Housing and Environmental Health

#### Part 1- Public

#### Matters For Decision

### 1 DISABLED FACILITIES GRANT FUNDING

#### 1.1 Summary

The Council has five cases where the cost of the mandatory Disabled Facilities Grant eligible adaptation works exceed the limit of £30,000 and in accordance with the Council's adopted Housing Assistance Policy a discretionary Disabled Facilities Grant can be approved to top-up the mandatory DFG by up to a maximum of £30,000 to allow the adaptation works to proceed. Within the Council's Capital Plan for 2023/24 there is no spend allocated to the Discretionary Disabled Facilities Grant budget. This report seeks Council approval for a virement of £150,000 from the mandatory to the discretionary Disabled Facilities Grant budget.

#### 1.2 Background

1.2.1 Funding for all Disabled Facilities Grants (DFGs), mandatory and discretionary, comes from the Better Care Fund, which is awarded to the Council by the Department for Levelling Up, Housing and Communities (DLUHC) to fund adaptations to enable disabled persons to live healthily and independently or with family members in their household in their own homes.

1.2.2 DLUHC guidance on DFG delivery states "where an authority has a locally published Housing Assistance Policy under the Regulatory Reform (Housing Assistance) (England & Wales) Order 2002, authorities do have discretion to top up amounts above the DFG £30,000 limit per applicant. Where an authority has not used this discretion within their policy they will still need to give due consideration to exceptional cases".

1.2.3 The Council already have an adopted Housing Assistance Policy published in November 2022, which includes a discretionary DFG for topping up those mandatory DFG amounts of £30,000 by up to a further maximum of £30,000 where extensive adaptation works are needed.

1.2.4 The five cases the Council is currently processing where works are above the £30,000 threshold are for children. It is important to note that the works being

carried out fall under the mandatory element of DFG work and have been assessed as being necessary and appropriate to meet the needs of the disabled occupant, and that it is reasonable and practicable to carry out the relevant works having regard to the age and condition of the dwelling. Other sources of funding for these works will have been explored and also other housing options e.g. moving home considered before the discretionary top-up is utilised.

### **1.3 Legal Considerations**

- 1.3.1 The Council has a mandatory duty to deliver adaptations through the Disabled Facilities Grant scheme under the provisions of the Housing, Grants Construction and Regeneration Act 1996. Whilst it is able to offer additional discretionary assistance as provided for in the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002, such discretionary schemes must not disadvantage a person eligible to receive assistance under the mandatory scheme and the Council is required to publish a Policy on how it intends to use the powers under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 to provide housing assistance.

### **1.4 Financial and Value for Money Considerations**

- 1.4.1 The mandatory DFG budget for 2023/24 is £2,203,000 which is funded from the Better Care Fund and roll over from previous years. Spend to date on mandatory DFGs and commitment in 2023/24 is £920,000 however not all commitment may realise into actual spend within the year due to contractor availability/applicant choices etc. There is no spend allocated to the discretionary DFG budget. It was agreed by the Council in 2016 the budget for such discretionary DFG works in any one year will be limited to the amount by which the grant allocation, exceeds the budgeted mandatory DFG spend. I can confirm that proposed budget for discretionary DFG spend in this report is within the terms previously agreed.
- 1.4.2 On 07 September 2023 we were notified of a further £117,298 DFG funding to be allocated in year. We also know that funding for 2024/25 will continue at least at the level we had in the main allocation for this year (£1,344,236 minus agreed KCC top up for equipment etc.).
- 1.4.3 The £150,000 proposed funding for virement to the discretionary DFG budget is already available within the existing mandatory DFG budget and does not require any new funding.
- 1.4.4 The Council's Constitution sets out the limits for transfer of budgetary provision from one area of revenue or capital income/expenditure to another in order to finance spending in an area by using a saving in another area - known as a virement. The approval limit for the Executive is £50,000 hence this report into Council for decision.

## 1.5 Recommendations

- 1.5.1 To **APPROVE** the virement of £150,000 from the mandatory DFG budget for the 2023/24 financial year to the discretionary DFG budget on the capital plan.

Background papers:

contact: Linda Hibbs

Nil

Eleanor Hoyle

Director of Planning, Housing and Environmental Health

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

24 October 2023

#### Report of the Monitoring Officer

#### Part 1- Public

#### Matters For Decision

#### 1 CHANGES TO CONSTITUTION

The report recommends that changes are made to the constitution to (1) update the Committee Procedure Rules and (2) include the Executive/Scrutiny Protocol as an Annex.

#### 1.1 Committee Procedure Rules

- 1.1.1 At a recent meeting of the Area 1 Planning Committee a query arose about the operation of rule 15.25 of the Committee Procedure Rules, which deals with the situation where a Planning Committee is minded to determine a planning application in a way or on grounds which the Director of Planning, Housing and Environmental Health does not consider can be substantiated. Where this situation arises, rule 15.25 provides that the application shall stand adjourned to the next meeting of the committee to enable the Director of Central Services and Monitoring Officer to submit a report on the possibility of costs or compensation being awarded against the Council if the application is determined in that way.
- 1.1.2 The specific query was whether Members of the Committee needed to vote on a proposed motion before the rule was engaged, or did the fact a proposal had been made and seconded fulfil the requirement? In other words, what constitutes a 'minded-to' determination?
- 1.1.3 To avoid any potential for confusion, I have reviewed rule 15.25 of the Committee Procedure Rules at Part 4 of the Constitution.
- 1.1.4 It is proposed that rule 15.25 be amended to read as follows (new wording underlined and in italics): -
- 'If, contrary to a recommendation of the Director of Planning, Housing & Environmental Health, an Area Planning Committee is minded to determine an application in a way or on grounds which the Director does not consider can be substantiated, *a resolution by the committee to make such a determination will be a recommendation only and* the application shall stand adjourned to the next meeting of the committee to enable the Director of Central Services and Monitoring Officer to submit a report on the possibility of costs or compensation

being awarded against the Council in the event that the application is determined in that way.

If the Director of Central Services and Monitoring Officer's report indicates that there is likely to be a risk of significant costs being awarded against the Council at any appeal, or a potential liability to pay compensation, the committee may not determine the application in a manner contrary to the advice set out in the report, and a resolution by the committee to make such a determination will be a recommendation only and the application shall stand adjourned to Council for determination.'

- 1.1.5 The amended wording will require a vote to be taken, but any resolution (i.e. a formal decision taken by means of a vote) to determine an application in a way that the Director of Planning, Housing and Health does not consider can be substantiated will be a recommendation only and the matter shall stand adjourned to the next meeting of the relevant Area Planning Committee to enable the Director of Central Services to submit a costs report. If that report indicates that there is likely to be a risk of significant costs being awarded against the Council at appeal etc then the Committee may not determine the application in a manner contrary to the advice in the report and it shall stand adjourned to Council for determination.

## **1.2 Executive/ Scrutiny Protocol**

- 1.2.1 On 14 September 2023, the Overview and Scrutiny Committee undertook a review of the governance changes introduced in 2021. This included a review of the effectiveness of the Executive/ Scrutiny Protocol.
- 1.2.2 The Committee made several recommendations to the Executive, including 2 relating to the Protocol. The first of these, namely a recommendation that the Protocol be amended to include the LGA (Local Government Association) guidance on the setting of scrutiny work programmes was agreed by Cabinet on 3 October 2023.
- 1.2.3 It was also recommended that the Executive/ Scrutiny Protocol be published to the website as an Annex to the Constitution. This was agreed by Cabinet. Council are therefore invited to approve the inclusion of the Protocol as an Annex to the Constitution. A copy of the Protocol (as amended by Cabinet on 3 October) is attached as **Annex 1**.

## **1.3 Legal Implications**

- 1.3.1 Article 10 of the Constitution sets out the procedure for review and revision of the Constitution. Except in specified circumstances, changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

## **1.4 Financial and Value for Money Considerations**

1.4.1 None.

## **1.5 Risk Assessment**

1.5.1 The changes to the Constitution proposed in this report are intended to clarify the operation of the rules relating to decision making at Area Planning Committees.

## **1.6 Equality Impact Assessment**

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.7 Recommendations**

1.7.1 It is **RECOMMENDED** that the Monitoring Officer be authorised to amend the Constitution as set out at paragraphs 1.1.4 and 1.2.3 above.

Background papers:

contact: Adrian Stanfield

Adrian Stanfield  
Monitoring Officer

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## **Overview & Scrutiny – Cabinet Protocol**

This protocol sets out the relationship between the Council's Cabinet and its Overview & Scrutiny Committee/ Scrutiny Select Committees. This includes the processes that these bodies will follow, where they will interact with each other, and how they expect the other to conduct itself. The Protocol is in addition to requirements set out in the Council's Code of Conduct and the Officer/ Councillor Protocol.

This Protocol will promote an effective role for Scrutiny and foster a good working relationship between the Overview & Scrutiny Committee and the Cabinet that will ensure the Committee makes a valuable contribution to the effective running of the Council.

In seeking agreement to this protocol, it is acknowledged that there are different rights and roles of both Overview and Scrutiny and Cabinet Members but that both are committed to developing an effective relationship. This will involve but not be limited to:

- Frequent and honest dialogue between Cabinet Members and Overview and Scrutiny Members, either individually or collectively,
- Regular discussions regarding Cabinet and Overview and Scrutiny work programmes/activities including establishing joint activities/projects where possible,
- Establishing effective and formal reporting structures, and
- Respecting the confidential nature of the discussions that may from time to time take place.

### **Principles**

The following principles set out how the working relationship between the Cabinet and the Overview and Scrutiny Committee should operate.

- (a) The Cabinet and members of the Overview and Scrutiny Committee recognise that they each have different functions and responsibilities that contribute to securing the best outcomes for the people who live and work in the borough.
- (b) All participants in the working relationship between Cabinet and the Overview and Scrutiny Committee will do so in a spirit of mutual respect and constructive challenge.
- (c) Meetings of the Overview and Scrutiny Committee should be conducted in accordance with the statutory guidance (Annex 1)
- (d) The Cabinet recognises that the Overview and Scrutiny Committee has several rights, for example requiring Portfolio Holders to attend its meetings or calling-in Cabinet decisions which have not yet been implemented should they consider a decision to be reviewed. The Overview and Scrutiny Committee will exercise those rights responsibly.
- (e) One of the principal responsibilities of the Overview and Scrutiny

Committee is to hold the Cabinet to account. This enables non-Cabinet members to fully scrutinise important decisions made by the Cabinet whilst also allowing routine decision making to take place in a responsive manner. An important method to ensure accountability is through examining performance and decisions taken by the authority. To facilitate this challenge the Overview and Scrutiny Committee may:

- a. The Agenda for Overview and Scrutiny will include as an early standard item, Non-Key Decisions made by members of Cabinet and officers since the last Overview and Scrutiny Meeting.
  - b. Challenge the Cabinet about decisions (whether key or non-key) which have been taken by Cabinet
  - c. Require and consider Key Performance Indicators.
  - d. Query or ask for information about any item on the Notice of forthcoming Key Decisions.
- (f) In addition to their rights as councillors, members of the Overview and Scrutiny Committee and its working groups have additional rights of access to documents as included in the Access to Information rules in the Constitution. This allows the committee access to copies of any documents which are in the possession, or control, of the Cabinet or its committees. There are a few limits on this access, and these are identified in the rules.
- (g) Members of the Cabinet cannot be members of the Overview and Scrutiny Committee.
- (h) The Overview and Scrutiny Committee will report annually to Full Council to evaluate their work during the previous year and to summarise the programme for the forthcoming year.

### **Development of the Scrutiny Work Programme**

Individual Portfolio Holders and Overview and Scrutiny Chairs should consider meeting regularly to identify and plan for policy development work in which all members can participate.

The intention should be to programme such work at an early stage in the development of a policy.

Each meeting of the Committees will include an opportunity to consider forthcoming key decisions. The relevant committee shall identify any forthcoming key decisions which are (i) relevant to the functions of that committee and that (ii) it may wish to scrutinise.

The Chair of the relevant committee will inform the Leader or relevant Cabinet portfolio holder and the Chief Executive of the matters which it may wish to scrutinize.

The Chief Executive in consultation with Management Team will determine the appropriate lead officers for the matter in question.

The relevant Chair, Leader and Chief Executive/ lead officers will discuss the parameters for scoping that matter and any appropriate timescales for the matter to be reported to the Committee, taking into account any key milestones for decision making, including time needed to obtain any advice which is required.

The Scrutiny Work Programme will also have the following standing items (Scrutiny Select Committee identified in brackets where relevant):

Development of the Annual Budget (Overview and Scrutiny Committee)

Corporate Plan (Overview & Scrutiny Committee)

The Medium-Term Financial Strategy (Finance, Regeneration and Property Scrutiny Select Committee)

Any Treasury/Investment/Capital Strategies (Finance, Regeneration and Property Scrutiny Select Committee)

Any property acquisition and/or Disposal Strategy (Finance, Regeneration and Property Scrutiny Select Committee)

Development of the statutory Development Plan (Housing and Planning Scrutiny Select Committee)

Key Performance Indicators (relevant Scrutiny Select Committee)

In accordance with paragraph 8 of the Overview and Scrutiny Procedure Rules, a request may be made for other agenda items relevant to the functions of the Overview and Scrutiny Committee/ Scrutiny Select Committee(s) to be included on the agenda for the next meeting of the Committee/ Scrutiny Select Committee. Any such requests will be considered against the criteria attached to this Protocol at **Annex 2** in order to ensure that the scrutiny function is as effective as possible.

### **Expectations of the Cabinet**

It is expected that Cabinet Portfolio Holders should attend meetings of the Overview and Scrutiny Committee in person, when requested, to present reports relevant to their portfolio and answer any relevant questions. Where a Portfolio Holder is unable to attend on a particular date it is expected that another Portfolio Holder or the Leader will attend on their behalf

All Members should promote an atmosphere of openness at Scrutiny Committee Meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between Scrutiny Committee Members, the Cabinet Member and other participants.

In order to notify Scrutiny Members of upcoming business and potential items to be added to the Committee's Work Programme, the Principal Democratic Services Officer will ensure that the Scrutiny Officer is kept updated of all new items that are added to the Cabinet Work Programme.

If necessary, the Leader will meet with the Scrutiny Officer, Principal Democratic Services Officer and the Chair of the Overview & Scrutiny Committee to consider the best way to deal with any forthcoming items of business.

Where the Overview and Scrutiny Committee (or Scrutiny Select Committee) has

made recommendations to a decision-making body or person, that body or person will provide a written response to those recommendations setting out whether the recommendations are accepted or not, and the reasons for that decision.

Overview and Scrutiny Committee and the Scrutiny Select Committees are entitled to such information as is necessary to properly perform their functions. If the Overview and Scrutiny Committee or Scrutiny Select Committee request information from the Cabinet, the Cabinet will respond within 10 working days confirming whether the information requested exists and, if so, provide the committee with access to that information.

### **Expectations of the Overview & Scrutiny Committee**

The Committee will provide constructive 'critical friend' challenge to the Cabinet's proposals and decisions.

The Committee will remain non-political and be effectively led by Members who take responsibility in their role to drive service improvements.

The Cabinet's response to Scrutiny's recommendations will be published in the agenda of the next scheduled Overview & Scrutiny Committee meeting.

The Overview & Scrutiny Committee will monitor the effectiveness of services and undertake regular reviews of performance in relation to the Council's services.

### **Call-in**

Call-in is the exercise of the Overview & Scrutiny Committee's statutory power in section 21(3) of the Local Government Act 2000, to review a Cabinet decision that has been made but not yet implemented.

Once made, Cabinet decisions will ordinarily be published by the Democratic Services Team within two working days of the meeting, with date of publication included. Five clear working days are given before the decision can be implemented, in which time the Call-in must be made.

Requests for Call-in can be made by any 5 Members of the Overview and Scrutiny Committee.

Cabinet Members will be expected to attend any meeting of a Scrutiny Committee at which it is intended to consider a call-in request in relation to his/her area of responsibility. Where the relevant Cabinet Member cannot attend a call-in meeting, the Leader of the Council or Deputy Leader should attend in their absence. In the event of both the Leader and Deputy Leader also being unavailable, they should nominate another Cabinet Member to attend and be accountable for the decision.

The following procedure shall take place at call-in meetings:

- The Members who called in the decision should speak first.
- The Chair will then invite the Cabinet Member (decision maker) to respond.
- The Committee can then ask questions of the decision maker who may ask a relevant officer to supply further information if necessary.



The Committee will debate the issue and vote on the outcome.

The Overview & Scrutiny Committee cannot overturn the decision that has been called in. It may either agree with the decision/ decide to make no recommendations to the Decision Maker (in which case it will take immediate effect) or refer it back to the Cabinet/ Leader/ Portfolio Holder (as applicable) for further consideration, including any recommendations from Scrutiny Members.

It is the aim of the Council that call-ins should only be used as a last resort for resolution, and that other less-confrontational means should always be pursued prior to this option.

### **Compliance with this protocol**

The Scrutiny Officer is responsible for overseeing compliance with the protocol and ensuring that it is used to support the wider aim of supporting and promoting a culture of scrutiny. Matters relating to the protocol's success will be reported to full Council through the scrutiny annual report. The role also includes promoting the role of the authority's scrutiny committee, providing support and guidance to members and officers relating to the functions of the scrutiny committee and providing a link between the Cabinet and the Overview and Scrutiny Committee/ Select Committees.

## Annex 1 – Statutory guidance

Overview and scrutiny: statutory guidance for councils and combined authorities - GOV.UK ([www.gov.uk](http://www.gov.uk))

## Annex 2 - Criteria for assessing scrutiny requests

<b>Topics are suitable for scrutiny when</b>	<b>Topics are not suitable for scrutiny when</b>
-scrutiny could have an impact and add value	-the issue is already being addressed elsewhere and change is imminent
-the topic is of high local importance and reflects the concerns of local people	-the topic would be better addressed elsewhere (and will be referred there)
-the resources are available that would be required to conduct the review, in terms of manpower and budget	-scrutiny involvement would have limited or no impact upon outcomes
-it avoids work duplication elsewhere	-the topic may be sub-judice or prejudicial to the council's interest
-the issue is one that the committee can realistically influence	-the topic is too broad to make a review realistic
-the issue is related to an area where the council, or one of its partners, is not performing well	-new legislation or guidance relating to the topic is expected within the next year
-the issue is relevant to all or large parts of the local area	-the topic area is currently subject to inspection or has recently undergone substantial change.
-the review would be in the council's interests	

## **REVIEW OF ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS**

### **Item ST 23/4 referred from Joint Standards Committee of 12 July 2023**

Following Council's approval of the changes to the Borough Council's adopted Code of Conduct on 27 April 2022 in light of revisions to the Model Code of Conduct produced by the Local Government Association, the report outlined the suggested changes to the Borough Council's adopted arrangements, which set out the process for handling complaints against Borough/ Parish/ Town Councillors under the Kent Code, and sought Members' approval to recommend them to Council for adoption.

The revised Arrangements were set out at Annex 1 and the principal changes were summarised at 1.2.1 of the report. It was noted that the Borough Council was not obliged to accept the changes proposed by Kent Secretaries.

Members welcomed the proposed revisions to the existing arrangements for dealing with Code of Conduct complaints and had due regard to the legal implications, risk assessment and equality impact assessment arising from these changes.

**RECOMMENDED\***: That

- (1) the revised Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011, attached at Annex 1, be adopted.

**\*Referred to Council**

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**TONBRIDGE & MALLING BOROUGH COUNCIL**

**JOINT STANDARDS COMMITTEE**

**12 JULY 2023**

**Report of the Monitoring Officer**

**Part 1 - Public**

**Matters for recommendation to Council**

**1 REVIEW OF ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS**

**Summary**

**This report invites Members to consider revisions to the existing arrangements for dealing with Code of Conduct complaints**

**1.1 Introduction**

1.1.1 On 27 April 2022 Full Council agreed changes to the Borough Council's adopted Code of Conduct in light of revisions to the Model Code of Conduct produced by the Local Government Association.

1.1.2 Members of the Committee may be aware that the Borough Council's adopted Code of Conduct (which has also been adopted by many Parish Councils within Tonbridge And Malling) was produced by Kent Secretaries (a Kent-wide group of Monitoring Officers at all Districts plus Medway Council and Kent County Council) in 2012 in response to changes to the standards legislative framework under the Localism Act 2011. The Code (known as the 'Kent Code') has since been adopted by the vast majority of Borough Councils in Kent, together with Kent County Council.

1.1.3 Since the revision of the Kent Code last year, the associated arrangements (which set out the process for handling complaints against Borough/ Parish/ Town Councillors under the Code) have been subject to detailed review by Kent Secretaries, with a view to reflecting any changes to the Code and generally to ensure they remain up to date.

1.1.4 This report outlines the suggested changes to the Council's adopted arrangements and asks Members to recommend these to full Council.

**1.2 Changes to the existing arrangements**

1.2.1 The principal changes to the arrangements are as follows:-

<b>Arrangements</b>		
<b>Provision</b>	<b>Proposed amendment</b>	<b>Commentary</b>
Para 4.1 - making a complaint	New – allows for complaints to be submitted either via the form or via the Council's website using the on-line complaint form provided there.	This reflects the increased use of digital forms for interacting with the Council.
Para 14.1 - discontinuation of action	New – in the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the Borough or Parish/ Town Council the Monitoring Officer may decide to end the complaints process.	There is currently no provision within the current arrangements to end code of conduct complaints due to death, serious illness or resignation of the subject member.
<b>Annex 1 – Procedure on receipt of a complaint</b>		
Para 2.2 – legal jurisdiction test	Amendment – moving the 'official capacity' criteria from the 'local assessment criteria test' to 'legal jurisdiction criteria test'.	The question as to whether a member was acting in an official capacity is one for the legal jurisdiction test rather than the local assessment test
Para 4 – informal resolution	Amendment - broadens the scope of the provisions, allowing the Subject Member and Borough/ Parish Council to make reasonable offers of informal resolution	
<b>Annex 2 – Procedure for investigating the complaint</b>		
Para 2 – evidence of new breaches	New – deals with discovery of new	

	breaches by investigating officer during the course of an investigation	
Para 3 - referring cases back to the Monitoring Officer	New – details how the Monitoring Officer can end an investigation on the receipt of additional evidence	This allows for the early closure of an investigation, when new evidence is received that would render the investigation fruitless to continue.
Para 4 – deferring an investigation	New – allows for investigations to be deferred where there are either ongoing criminal proceedings/ police investigation or where the code of conduct investigation may prejudice another investigation or court proceedings.	
Para 6 - consideration of final report	Amendment – allows Monitoring Officer to resolve complaint informally.	The existing arrangements allow the Monitoring Officer to either take no action or refer the complaint to the Hearing Panel. This amendment will allow the Monitoring Officer to resolve complaints more quickly/ reduce costs for minor breaches of the code.
<b>Annex 3 – Hearing Panel procedure</b>		
Para 1.1 – pre-hearing procedure	New - in order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing	The introduction of a pre-hearing procedure will allow the Monitoring Officer to narrow the issues to be determined by the Hearing Panel and allow the hearing to

	<p>procedure to identify:</p> <p>-Which facts in the investigation report are agreed and which are in dispute.</p> <p>-Whether there is fresh evidence not mentioned in the investigation report which will be put before the hearing.</p>	<p>proceed as efficiently as possible.</p>
<p>Para 5.1 – introductory statement</p>	<p>New – the Monitoring Officer, legal advisor, or Chair of the Panel may make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.</p>	<p>As with the amendment to para 1.1, this new provision is intended to allow the hearing to proceed as efficiently as possible.</p>
<p>Paras 10.4 and 10.5 – Mitigating and aggravating factors</p>	<p>New – mitigating and aggravating factors</p>	<p>For transparency and to assist the Hearing Panel, the arrangements will now list relevant mitigating and aggravating factors.</p>
<p>Para 12.2 - role of Parish Councils</p>	<p>New - clarifies the role and powers of Parish Councils in relation to sanctions recommended by the Hearing Panel</p>	<p>To assist Parish/ Town Councils in considering sanctions following a finding by the Hearing Panel</p>
<p>Para 12.3 – Failure to comply with a sanction</p>	<p>New – clarifies that a failure to comply with a sanction may of itself be a breach of the Code.</p>	

1.2.2 The other changes to the arrangements are all relatively minor e.g., some changes to the time periods for assessment of complaints.



1.2.3 The Borough Council is not obliged to accept the changes proposed by Kent Secretaries.

### **1.3 Financial and Value for Money Considerations**

1.3.1 None arising out of this report.

### **1.4 Legal implications**

1.4.1 The Localism Act requires that the Borough Council adopt “arrangements” under which allegations can be investigated and decisions on allegations can be made. Such complaints can only be dealt with in accordance with such “arrangements”. A failure to comply with a Borough/ Parish/ Town code of conduct is not to be dealt with otherwise than in accordance with the Borough Council’s adopted arrangements.

### **1.5 Risk Assessment**

1.5.1 It is important that a robust system exists for the promotion and maintenance of high standards of conduct. The absence of such a framework will lower public confidence in the democratic process.

### **1.6 Equality Impact Assessment**

1.6.1 The issues detailed in this report have a remote or low relevant to the substance of the Equality Act. There is no perceived impact on end users.

### **1.7 Recommendations**

1.7.1 It is **RECOMMENDED** that the Council adopts the revised Arrangements at Annex 1.

contact: Adrian Stanfield

Background Papers: none

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## ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

### 1. Context

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

### 2. Interpretation

- 2.1 'Borough Council' means Tonbridge & Malling Borough Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the Borough [and Parish Council] [has] [have] adopted under section 27(2) of the Localism Act 2011.
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4 'Disclosable Pecuniary Interest' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Code of Conduct.
- 2.5 'Hearing Panel' means the panel appointed by the Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6 'Independent Person' means a person or persons appointed by the Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views are to be sought and taken into account by the Borough Council before it makes its decision on an allegation that it has decided to investigate and whose views may be sought by the Borough Council at any other stage;
  - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Borough Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the Borough Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the Borough Council nominated by the Monitoring Officer to act on their behalf.
- 2.9 'Parish Council' means the relevant parish/town council within the Borough of Tonbridge & Malling.

2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.

2.11 'Subject Member' means an elected member or co-opted member of the Borough or Parish Council against whom a complaint has been made alleging a breach the Code of Conduct.

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

3.1 The Borough Council shall appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.

3.2 The Independent Person (and any substitute) shall be treated as if they were a member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members.

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

4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made either:-

(a) in writing and addressed to the Monitoring Officer using the Complaint Form included within Annex 1 to these Arrangements or,

(b) via the Council's website using the on-line complaint form provided there.

Complainants who find difficulty in making their complaint in writing (e.g., because of a disability), should inform the Monitoring Officer of any such difficulty and the Monitoring Officer will arrange for assistance to be offered.

4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are sound reasons for granting such a request (refer to paragraph 5 of Annex 1 to these Arrangements).

4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 15 working days of receiving it. At the same time (and subject to paragraph. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 1 of Annex 1 to these Arrangements.

### **5. Criminal conduct**

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

(a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the authority;

(b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the authority (including

making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;

- (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
- (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
- (f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

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

## **6. Anonymous complaints**

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

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

7.1 The Independent Person must be consulted and have their views taken into account before the Borough Council makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **8. Preliminary tests**

8.1 The Monitoring Officer will put the complaint through a number of preliminary tests, in accordance with paragraph 2 of Annex 1 to these Arrangements and may do so in consultation with the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.

8.2 In the event that the Independent Person and Chair/ Vice-Chair of the Joint Standards Committee are being consulted and are unavailable or unable to act, the time limits specified in paragraph 2 of Annex 1 may either be extended by the Monitoring Officer or the Monitoring Officer may act alone in taking the decision or action.

## **9. Informal resolution**

9.1 The Monitoring Officer may consider that the complaint can be resolved informally at any stage in accordance with paragraph 6 of Annex 1 to these Arrangements and may do so in consultation with the Independent Person and Chair/ Vice-Chair of the Joint Standards Committee.

## **10. Investigation**

- 10.1 If the Monitoring Officer decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.
- 10.2 The Investigating Officer will investigate the complaint in accordance with Annex 2 to these Arrangements.

## **11. Hearing**

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

## **12. Sanctions**

- 12.1 Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with paragraph 12 of Annex 3 to these Arrangements.

## **13. Appeal**

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

## **14. Discontinuance of Action**

- 14.1 In the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the Borough or Parish Council the Monitoring Officer may determine to end the complaints process.

## **15. Revision of these Arrangements**

- 15.1 The Borough Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer [and the Hearing Panel] the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

## **Annexes**

**Annex 1 - Procedure on Receipt of A Complaint**

**Annex 2 - Procedure For Investigating The Complaint**

**Annex 3 - Hearing Panel Procedure**

## **PROCEDURE ON RECEIPT OF A COMPLAINT**

### **1. Notification of Complaint to Subject Member**

- 1.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member [and, if applicable, the Parish Clerk] of the complaint.
- 1.2 The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

### **2. Preliminary Tests**

- 2.1 The complaint will be assessed by the Monitoring Officer against the legal jurisdiction test in paragraph 2.2 and, if applicable, the local assessment criteria test in paragraph 2.4 below. The Monitoring Officer may assess the complaint in consultation with the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.

#### 2.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct? If the answer to this is 'Yes' the test is failed.
- (b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed.
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of supporting a finding of a breach of the Code of Conduct? If the answer to this is 'No' the test is failed.
- (f) Is the complaint about dissatisfaction with the Borough or Parish Council's decisions, policies, and priorities, etc? If the answer to this is 'Yes' the test is failed.

#### 2.3 Local assessment criteria test:

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

- (a) The complaint is substantially the same as a complaint which has previously been made.

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- (b) The complaint is anonymous, unless the Monitoring Officer is of the view, on the basis of corroborating evidence that it is in the public interest to accept the complaint. The Monitoring Officer may consult the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant.
- (d) The complaint is malicious or relatively minor, and, in the view of the Monitoring Officer, the public interest would not be served by taking further action.
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious.
- (f) The alleged misconduct happened more than 3 months prior to the submission of the complaint.
- (g) Dealing with the complaint would have a disproportionate effect on both public money and/or officers' and Members' time.
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action.
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken.
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g., where there is no firm evidence on the matter.
- (k) The complaint is about a deceased person.
- (l) The complaint is about a person who is no longer a Borough or Parish Councillor or Co-opted Member.

2.4 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 60 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

### **3. Asking for Additional Information**

3.1 The Monitoring Officer may ask the Complainant and the Subject Member [and, if applicable, the Parish Clerk] for additional information before deciding how to deal with the complaint.

### **4. What Process to Apply - Informal Resolution or Investigation and/or No Action?**

4.1 The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the Borough or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Monitoring Officer may refer the complaint for investigation when:



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- (a) It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see paragraph 12 of Annex 3 to these Arrangements); or
  - (b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.3 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex 2 to these Arrangements.
- 4.4 If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant may be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and if the complaint passes that test the Monitoring Officer may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and will apply the local assessment criteria test in paragraph 2.4 above.
- 4.5 The Monitoring Officer may decide to take no action or to defer further action on the complaint whilst one or more of the following apply:
- (a) On-going criminal proceedings or police investigation into the Subject Member's conduct.
  - (b) Investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
  - (c) The investigation might prejudice another investigation or court proceedings.
  - (d) Genuine long term (3 months or more) unavailability of a key party.
  - (e) Serious illness of a key party.
- 4.6 Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex 1):
- (a) Not to refer the complaint for investigation.
  - (b) Refer the complaint for investigation.
  - (c) Apply the informal resolution process either before or after an investigation.
  - (d) Refer the complaint to the relevant political group leader for action.
- 4.7 There is no right of appeal against the Monitoring Officer's decision.

## 5. Confidentiality

- 5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer when they initially assess the complaint (see paragraph 2 above). The Monitoring Officer may consult the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee.
- 5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g., a witness):
- (a) Is either vulnerable or at risk of threat, harm, or reprisal.
  - (b) May suffer intimidation or be victimised or harassed.
  - (c) Works closely with the Subject Member and are afraid of the consequences, e.g., fear of losing their job.
  - (d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
  - (e) May receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

- (a) May lead to evidence being compromised or destroyed; or
  - (b) May impede or prejudice the investigation; or
  - (c) Would not be in the public interest.
- 5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:
- (a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others.
  - (b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern.
  - (c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large.
  - (d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

- 5.4 If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

## **6. Informal Resolution**

- 6.1 The Monitoring Officer may seek to resolve a complaint informally at any stage in the process, whether without the need for an investigation, or before or after an investigation has been commenced or concluded. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.

- 6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough or Parish Council procedures; or
- (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the Borough or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough or Parish Council procedures, etc; or
- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough or Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted; or
- (j) The conduct complained of may be due to misleading, unclear, or misunderstood advice from officers.

- 6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough or Parish Council where it may be useful to address systemic behaviour:

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- (a) Training.
  - (b) Conciliation/mediation.
  - (c) Mentoring.
  - (d) Apology.
  - (e) Instituting changes to the Borough or Parish Council's procedures.
  - (f) Conflict management.
  - (g) Development of the Borough or Parish Council's protocols.
  - (h) Other remedial action by the Borough or Parish Council.
  - (i) Other steps (other than investigation) if it appears appropriate to the Monitoring Officer.
- 6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer may report the matter to the Joint Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action against the Subject Member.
- 6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer may report the matter to the Joint Standards Committee.

# Complaint Form

## Your Details

1. Please provide us with your name and contact details.

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An appointed Independent Person for the purposes of the Localism Act 2011
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details) \_\_\_\_\_

3. Please provide us with the name of the councillor(s) you believe has breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

4. Please explain in this section what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor, you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute you, you should state what it was they said or did.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

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5. **Only complete this next section if you are requesting that your identity is kept confidential. Please see the notes in the accompanying leaflet "How to make a complaint".**

There is a presumption that a copy of this form will be provided to the subject member of your complaint. If you wish to request that information relating to your identity is kept confidential and withheld from the subject please complete the box below.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Return Address:      The Monitoring Officer  
Tonbridge & Malling Borough Council  
Gibson Building, Gibson Drive  
West Malling, ME19 4LZ

**Complaints Form – Monitoring Information**

In order to ensure we target our services in the most effective way for our community, we would appreciate if it you would give answers to the following questions. Please note that the information on this page **will not** be provided to the subject member of the complaint.

Q1. Ethnic Group

- White:**  
British
- Irish
- Any other white background

- Black or Black British:**  
Caribbean
- African
- Any other black background

- Asian or Asian British:**  
Indian
- Pakistani
- Bangladeshi
- Any other Asian background

Q2. Sex

- Male
- Female

Q3. Partnership Status

- Single
- Married/Civil Partner
- Separated
- Divorced
- Widow/Widower

Q4. Age Group

- Under 16
- 16-19
- 20-24
- 25-59
- 60-64

65 and above

Q5. Do you have a disability?

- Yes
- No

Q6. What is the nature of your disability?

- Difficulty getting around
- Mental health problems
- Learning difficulty
- Difficulty seeing
- Hearing difficulty
- Other

Q7. To help us monitor issues for different sections of our community, we would appreciate it if you would tell us which faith group, if any, you belong to. If lack of faith is an issue in itself we would also like to know.



## **EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g., REFERRAL FOR INVESTIGATION**

*Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature or may be personal information.*

### **Complaint No:**

### **Complaint**

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Decision**

[Having consulted and taken into account the views of the Independent Person], the Monitoring Officer decided to refer the complaint for investigation.

### **Potential breaches of the Code of Conduct identified**

At this stage, the Monitoring Officer is not required or able to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

### **Notification of decision**

This decision notice is sent to the:

- Complainant.
- Member against whom the complaint was made.
- [Clerk to the relevant Parish or Town Council].
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both Borough and County level*).

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### **What happens now**

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

### **Additional Help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please refer to the attached Community Interpreting Service leaflet or contact our Customer Services on 01732 844522 or [emailcustomer.services@tmbc.gov.uk](mailto:emailcustomer.services@tmbc.gov.uk).

**Signed:**

**Date**

**Print name:**

Monitoring Officer of Tonbridge & Malling Borough Council

Gibson Building, Gibson Drive  
West Malling, Kent ME19 4LZ

## **PROCEDURE FOR INVESTIGATING THE COMPLAINT**

### **1. Preliminaries**

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK GDPR and the Data Protection Act 2018, Equalities Act 2010, the Human Rights Act 1998, and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial, and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for the purposes of establishing facts and making recommendations as to whether the facts disclose a breach of the relevant code of conduct.
- 1.4 Witnesses will be identified at the investigation stage and wherever possible their evidence supported by signed and dated witness statements and/or notes of interviews with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 20 working days of being appointed, and:
  - (a) Provide details of the complaint to the Subject Member.
  - (b) Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation.
  - (c) Detail the sections of the Code of Conduct that appear to be relevant to the complaint.
  - (d) Request contact details of any potential witnesses.
  - (e) Require that confidentiality is maintained throughout the duration of the investigation and the procedures contemplated by this Annex and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may conclude their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

## **2. Evidence of New Breaches**

- 2.1 The Investigating Officer may find evidence of conduct by councillors that breaches the Code of Conduct but extends beyond the scope of the investigation referred to them. Their powers as an Investigating Officer relate only to the allegation that they been given. While that means that the Investigating Officer may consider other parts of the Code than those initially considered if they are relevant to the matter in hand, they may also find evidence of a possible breach that does not directly relate to the allegation being investigated. If this happens, the Investigating Officer should tell the person they obtained the information from that they cannot investigate the possible breach as part of their existing investigation. The Investigating Officer should advise them that they are able to make a separate complaint to the Monitoring Officer.

## **3. Referring Cases Back to the Monitoring Officer**

- 3.1 During the course of an investigation, it may be necessary for the Monitoring Officer to consider whether the investigation should continue, for example, if:
- (a) Evidence suggests a case is less serious than may have seemed apparent originally and that a different decision might therefore have been made about whether to investigate it or not.
  - (b) It emerges during the investigation that the conduct under investigation was not conduct by the Subject Member in their role as a councillor but rather in a private capacity.
  - (c) Evidence indicates something which is potentially more serious which should be referred to the police.
  - (d) The Subject Member has died, is seriously ill, has resigned from the authority, or is otherwise reasonably unable to take part in the process for the foreseeable future and it is considered that it is no longer appropriate to continue with the investigation.
  - (e) The Subject Member has indicated that they wish to make a formal apology or take other action which should resolve the matter.
- 3.2 In this context 'seriously ill' means that the councillor has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. The Investigating Officer would be expected to establish this from a reliable independent and authoritative source other than the Subject Member. This would include where a councillor claims they are suffering from stress brought on by the investigation.
- 3.3 Ultimately it will be for the Monitoring Officer to conclude whether the investigation should continue. In reaching that decision, the Monitoring Officer may consult with the Independent Person before deciding to defer or end the investigation.
- 3.4 If the investigation has been deferred or ended the Subject Member and the complainant should be notified of the decision and where possible provided with timescales within which the matter will be dealt with if it has been deferred. This

would not always be possible, however, particularly if the matter has been referred to the police.

#### **4. Deferring an Investigation**

- 4.1 An investigation should be deferred when any of the following conditions are met:
  - (a) There are ongoing criminal proceedings or a police investigation into the Subject Member's conduct.
  - (b) The investigation might prejudice another investigation or court proceeding.
- 4.2 An investigation may also need to be deferred for any of the reasons set out in paragraph 4.5 of Annex 1:
- 4.3 When it is clear that there is an ongoing police or other investigation, or related court proceedings, the Investigating Officer should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.
- 4.4 If at any time during the investigation the Investigating Officer becomes aware of any circumstances that might require the investigation to be deferred, the Investigating Officer should notify the Monitoring Officer who should determine whether there should be a deferral. The Monitoring Officer may also wish to consult with the Independent Person.
- 4.5 In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The Investigating Officer should highlight those areas where investigation may be possible in the investigation plan.
- 4.6 The Monitoring Officer or the Investigating Officer should ask the police, other relevant organisation or individual, in writing to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. Any important dates, for example of committal hearings should be noted in the investigation plan review.
- 4.7 A deferred investigation should be kept under regular review, in the interests of natural justice.
- 4.8 Once a decision is taken to begin the investigation again the Investigating Officer should notify in writing: the Subject Member; the complainant; the relevant Independent Person; and the relevant town or parish council if the Subject Member is a town or parish councillor.
- 4.9 The investigation plan should be reviewed in the light of the outcome of any police investigation or court proceedings.

#### **5. The Draft Report**

- 5.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT and CONFIDENTIAL') to the Monitoring Officer for review.

- 5.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'DRAFT and CONFIDENTIAL' and will detail:
- (a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct.
  - (b) A summary of the complaint.
  - (c) The Subject Member's response to the complaint.
  - (d) Relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation.
  - (e) A list of any documents relevant to the matter.
  - (f) A list of those persons/organisations who have been interviewed.
  - (g) A statement of the Investigating Officer's draft findings of fact and reasons.
  - (h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct.
  - (i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.

5.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL and CONFIDENTIAL'.

## **6. Consideration of Investigating Officer's Final Report**

6.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.

6.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

6.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:

- (a) Take no action; or
- (b) Seek informal resolution; or
- (c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 3 to these Arrangements.

**7. Confidentiality**

- 7.1 The procedures detailed in this Annex are all treated as confidential to those involved in the process. Some details (which would include names and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.
- 7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-councillor complainants) if, they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true. Non-members may wish to seek their own legal advice.

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## Hearing Panel Procedure

### 1. Pre-Hearing Procedure

- 1.1 In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing procedure to identify:
- (a) Which facts in the investigation report are agreed and which are in dispute.
  - (b) Whether there is fresh evidence not mentioned in the investigation report which will be put before the hearing.
  - (c) Whether there is documentary evidence which a party intends to put before the hearing.
  - (d) Whether the parties intend to attend, whether the parties intend to be represented in accordance with paragraph 3 and, if so, by whom, the number and identity of witnesses to be called.
  - (e) Whether the Subject Member requests the whole or any part of the hearing to be held in private.
  - (f) Whether the Subject Member requests the whole or any part of the investigation report or other relevant documents to be withheld from the public.
- 1.2 The Monitoring Officer will notify the parties of the date, time, and place for the hearing.

### 2. Rules of Procedure

- 2.1 The Hearing Panel shall be comprised as follows –
- (a) Where the Subject Member is a Borough Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chair.
  - (b) Where the Subject Member is a Town or Parish Councillor, the Panel shall be comprised of three Borough Members and three Parish/ Town Members drawn from the Joint Standards Committee, one of whom shall be elected as Chair.
  - (c) Where the Subject Member is acting in a capacity both as a Borough Councillor and as a Town/ Parish Councillor, the Panel shall be comprised of five Borough Members and one Parish/ Town Member drawn from the Joint Standards Committee, one of whom shall be elected as Chair.

Where practicable, members of the Hearing Panel shall be drawn from a different planning area of the Borough than the member against whom the complaint has been made.

- 2.2 The quorum for a meeting of the Hearing Panel is three elected Members.

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- 2.3 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 2.4 The legal requirements for publishing agendas, minutes, and calling meetings, will apply to the Hearing Panel. The presumption is that the hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) may be applied to exclude the public and press from meetings of the Hearing Panel.
- 2.5 Once a hearing has started, the Borough Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 2.6 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 2.7 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.<sup>1</sup>

### **3. Right to be Accompanied by a Representative**

- 3.1 The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. The panel does, however, have the right to require a representative to leave if that representative disrupts the hearing. However, an appropriate warning will be given before requiring a representative to leave the hearing.

### **4. Order of Business**

- 4.1 Subject to paragraph 4.2 below, the order of business will be as follows:-
  - (a) Elect a Chair.
  - (b) Apologies for absence.
  - (c) Declarations of interests.
  - (d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 2.7 above).

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<sup>1</sup> Janik v Standards Board for England & Adjudication Panel for England (2007)

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- (e) Introduction by the Chair, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative.
- (f) To receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press.
- (g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

4.2 The Chair may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

4.3 The Hearing Panel may adjourn the hearing at any time.

## **5. Presentation of the Complaint**

5.1 The Monitoring Officer, legal advisor, or Chair may make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.

5.2 The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted.

5.3 The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer.

5.4 The Hearing Panel may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

## **6. Presentation of the Subject Member's Case**

6.1 The Subject Member or their representative presents their case and calls their witnesses.

6.2 The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member.

6.3 The Hearing Panel may question the Subject Member and any witnesses called by the Subject Member.

## **7. Summing Up**

7.1 The Investigating Officer sums up the complaint.

7.2 The Subject Member or their representative sums up their case.

## **8. Views/Submissions of the Independent Person**

8.1 The Chair will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

**9. Deliberations of the Hearing Panel to be in Private**

- 9.1 The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- 9.2 The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member, or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

**10. Announcing Decision on Facts Found**

- 10.1 The Hearing Panel will reconvene the hearing in public (if the public have not been excluded from the proceedings) and the Chair will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct.
- 10.2 Where the Hearing Panel considers that there has been a breach of the Code of Conduct, the Chair will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.
- 10.3 When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
  - (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (c) Has there been a breach of trust?
  - (d) Has there been financial impropriety, e.g., improper expense claims or procedural irregularities?
  - (e) What was the result/impact of failing to follow the Borough or Parish Council's Code of Conduct?
  - (f) How serious was the incident?
  - (g) Does the Subject Member accept that they were at fault?
  - (h) Did the Subject Member apologise to the relevant person(s)?
  - (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - (j) Has the Subject Member previously breached the Borough or Parish Council's Code of Conduct?
  - (k) Is there likely to be a repetition of the incident?

10.4 Mitigating factors may include:

- (a) An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- (b) A councillor's previous record of good service.
- (c) Substantiated evidence that the councillor's actions have been affected by ill-health.
- (d) Recognition that there has been a failure to follow the Code.
- (e) Co-operation in rectifying the effects of that failure.
- (f) An apology to affected persons where that is appropriate.
- (g) Self-reporting of the breach by the councillor.
- (h) Compliance with the Code since the events giving rise to the complaint.

10.5 Aggravating factors may include:

- (a) Dishonesty or breaches of trust.
- (b) Trying to gain an advantage or disadvantage for themselves or others.
- (c) Bullying.
- (d) Continuing to deny the facts despite clear contrary evidence.
- (e) Seeking unfairly to blame other people.
- (f) Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- (g) Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

10.6 Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.

**11. Final Decision**

11.1 Where the complaint has a number of elements, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each element separately.

11.2 The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.

11.3 Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chair will announce:

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- (a) The Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision.
- (b) The sanctions (if any) to be applied.
- (c) The recommendations (if any) to be made to the Borough or Parish Council or Monitoring Officer.
- (d) That there is no right of appeal against the Panel's decision and/or recommendations.

## **12. Range of Possible Sanctions or Other Actions**

12.1 Where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:

- (a) Report its findings in respect of the subject member's conduct to the Council (or the relevant Parish Council).
- (b) Issue (or recommend to the Parish Council to issue) a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand).
- (c) Recommend to the leader of the authority that the Subject Member be removed from positions of responsibility.
- (d) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member.
- (e) Recommend to Council (or recommend to the Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the parish Council).
- (f) Recommend to Council (or recommend to the Parish Council) that it withdraws facilities provided to the Subject Member by the authority for a specified period, such as a computer, website and/or email and internet access.
- (g) Recommend to Council (or recommend to the Parish Council) that it excludes the Subject Member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings, and/or restricts contact with officers to named officers only.
- (h) If relevant recommend to Council that the Subject Member be removed from their role as leader of the authority.
- (i) If relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
- (j) Recommend that the Subject Member make an apology in respect of the conduct or take some other action to resolve the matter.

12.2 Where the Subject Member is a Parish or Town councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Town or Parish Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They

cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction they should seek advice from the clerk and/or the Monitoring Officer. The panel should also ask the Parish or Council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

- 12.3 Note that under the Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.
- 12.4 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 12.4 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

### **13. Publicising the Findings**

- 13.1 The Monitoring Officer should arrange for a decision notice to be published on the website of any authorities concerned. A template decision notice is appended which may be used for these purposes.
- 13.2 If the panel finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.
- 13.3 If the panel finds that the Subject Member failed to follow the Code but that no action is needed, the public summary should:
  - (a) Say that the councillor failed to follow the Code, but that no action needs to be taken.
  - (b) Outline what happened.
  - (c) Give reasons for the panel's decision not to take any action.
- 13.4 If the panel finds that a councillor failed to follow the Code and it imposed or recommended a sanction or other action, the public summary should:
  - (a) Say that the councillor failed to follow the Code.
  - (b) Outline what happened.
  - (c) Explain what sanction has been imposed.
  - (d) Give reasons for the decision made by the panel.
- 13.5 The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.

### **14. Appeals**

- 14.1 Given that the framework and sanctions are meant to be light-touch and proportionate, there is no right of appeal against a decision on a Code of Conduct complaint.

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## **TEMPLATE – DECISION NOTICE (of Hearing Panel)**

### **Complaint No: xxxx**

On [insert date], the Hearing Panel of Tonbridge & Malling Borough Council considered a report of an investigation into the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Findings**

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s):

[Summarise the finding of facts and the Hearing Panel's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel's findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

### **Sanctions applied**

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

### **Appeal**

There is no right of appeal against the Hearing Panel's decision.

### **Notification of decision**

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- Monitoring Officer
- [Clerk to the xxxx Parish/Town Council]
- Kent County Council's Monitoring Officer *[applicable only where the Councillor is serving at both Borough and County level]*



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**Additional help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please contact our Customer Services on 01732 844522 or email [customer.services@tmbc.gov.uk](mailto:customer.services@tmbc.gov.uk).

**Signed:**

**Date**

**Print name:**

Chair of the Hearing Panel  
Tonbridge & Malling Borough Council

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## **LOCAL CODE OF CORPORATE GOVERNANCE**

### **Item AU 23/29 referred from Audit Committee of 24 July 2023**

The joint report of the Chief Executive and the Director of Central Services informed Members of the outcome of the annual review of the Local Code of Corporate Governance.

The Local Code was last reviewed in July 2022 and at the time required a number of material amendments due to a number of activities that had taken place which had consequences for the Local Code, including the LGA Peer Review Challenge 2022, changes to the executive governance arrangements, the adoption of a new Kent Code of Conduct for Councillors and an internal audit of the Local Code of Corporate Governance.

The proposed changes to the Local Code were relatively minor in nature, with no significant activities having taken place since July 2022 that impacted the Council's corporate governance arrangements. The revised Code was attached as Annex 1 to the report.

In response to Members, section 3.2 of the Local Code would be reviewed to incorporate a reference to the Climate Change action plan for 2023-24.

Members recognised their role as a Committee in sections 6.1, 6.3 and 6.4 of the Local Code.

**RECOMMENDED\***: That the amendments to the Local Code of Corporate Governance, as set out at Annex 1 to the report, be approved and commended to Council for adoption.

**\*Referred to Council**

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# TONBRIDGE & MALLING BOROUGH COUNCIL

## AUDIT COMMITTEE

24 July 2023

### Report of the Chief Executive and Director of Central Services

#### Part 1- Public

#### Matters for Recommendation to Council

#### 1 LOCAL CODE OF CORPORATE GOVERNANCE

This report informs Members of the outcome of the annual review of the Local Code of Corporate Governance.

##### 1.1 Introduction

1.1.1 The Local Code of Corporate Governance was last reviewed by this Committee in July 2022. At that time the Code required a number of material amendments due to a number of activities that had taken place which had consequences for the Local Code, including:

The LGA Peer Review Challenge 2022;

Changes to executive governance arrangements;

Adoption of a new Kent Code of Conduct for Councillors; and

An internal audit of the Local Code of Corporate Governance

1.1.2 The proposed amendments to the Code at this time are all relatively minor in nature, with no significant activities having taken place since July 2022 that impact upon our corporate governance arrangements.

1.1.3 A revised Code is attached as **Annex 1**. Changes to the code are shown as tracked changes. The principal amendment relates to the introduction of the new Corporate Strategy for 2023-25, that strategy having been submitted to Full Council earlier this month for final approval. All other changes are minor updates to the Code.

##### 1.2 Legal Implications

1.2.1 Whilst there is no legal requirement for Councils to develop a Local Code of Corporate Governance, such a Code provides a public document that demonstrates how the Council ensures it operates in a proper way and in accordance with the law.

### 1.3 Financial and Value for Money Considerations

1.3.1 There are no financial and value for money considerations arising from the Code.

### 1.4 Risk Assessment

1.4.1 Adoption of a Local Code of Corporate Governance is seen as good practice in that it demonstrates how the Council ensures it operates in a proper way and in accordance with the law and as such is subject to annual review to ensure it remains fit for purpose. Not to do so may attract unwelcome criticism.

### 1.5 Equality Impact Assessment

1.5.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### 1.6 Recommendations

1.6.1 Members are asked to **approve** the amendments to the Local Code of Corporate Governance set out at **Annex 1** and **commend** it to Council for adoption.

Background papers:

contact: Joy Ukadike

CIPFA/SOLACE – “Delivering Good Governance in  
Local Government Framework 2016”

Julie Beilby  
Chief Executive

Adrian Stanfield  
Director of Central Services

Local Code of Corporate Governance	Supporting Evidence
<b>1. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law.</b>	
<b>1.1 Behaving with Integrity</b>	
<p>Ensuring members and officers behave with integrity and lead a culture where acting in the public interest is visibly and consistently demonstrated thereby protecting the reputation of the organization</p>	<p>The Council has Codes of Conduct for both Members and Officers. The Member code is founded upon the seven Principles of Public Life (the Nolan Principles). The members Code of Conduct was reviewed on a Kent-wide basis in 2021/22 and the Council adopted the amended Kent code on 27<sup>th</sup> April 2022.</p> <p>The Members code is enforced (where necessary) through the Council's Joint Standards Committee. The Officer code is enforced (where necessary) through disciplinary procedures.</p> <p>In addition the Council has:</p> <ul style="list-style-type: none"> <li>• An Equalities Policy</li> <li>• a protocol for member/ officer relations</li> <li>• A Declaration of Interest Register for Members and for staff</li> <li>• A Register of Gifts and Hospitality offered to Members and staff</li> <li>• Financial Procedure Rules</li> <li>• Contracts Procedure Rules</li> <li>• A publicised complaints procedure</li> <li>• A fraud-aware culture, and an anti-fraud and corruption policy which is reviewed and updated annually.</li> </ul>
<p>Ensuring members take the lead in establishing specific standard operating principles or values for the organization and its staff and that they are communicated and understood. These should build on the Seven Principles of Public Life</p>	<p>The Council's constitution sets out clearly the standard operating procedures, and any delegation of responsibility from Council (and Cabinet) and the decision making powers of the Council,, Cabinet members, cabinet and the committees of the Council and the executive.</p> <p>The Council's Cabinet and Overview and Scrutiny Committee have established a Cabinet/ Scrutiny protocol which sets out the expectations that each body has of the other.</p> <p>The Seven Principles of Public Life are embedded within the Constitution and form part of the Members' Code of Conduct.</p>
<p>Demonstrating, communicating and embedding the standard operating principles or values through appropriate</p>	<p>The Council's constitution clearly sets out the process for holding the executive to account through a system of reporting to the Council's</p>

<p>policies and processes which are reviewed on a regular basis to ensure that they are operating effectively</p>	<p>Overview &amp; Scrutiny committee and the Scrutiny Select Committees.</p> <p>The Council has a Corporate Strategy for 2020-2023 which sets out an overarching vision for the Council. Following the Council's Peer Review Challenge 2022, the Council <del>is due to review</del> <u>has reviewed</u> its strategic aims, with a <del>view to producing a revised Corporate Strategy in 2022 for the period 2023-25 submitted to full Council in July 2023</del></p> <p>The Council <del>is</del> <u>has</u> also <del>in the process of developing revised its improved</del> internal communications processes in light of recommendations made by the Peer Review team. <u>A new post of internal communications officer has been created and a member of staff appointed in February 2023.</u></p>
<p><b>1.2 Demonstrating Strong Commitment to Ethical Values</b></p>	
<p>Seeking to establish, monitor and maintain the organisation's ethical standards and performance</p>	<p>The Council has a number of policies and Codes which officers and members are expected to adhere to:</p> <ul style="list-style-type: none"> <li>• A Code of Conduct for Members and Officers</li> <li>• An Equalities Policy</li> <li>• A Declaration of Interest Register for Members and for staff</li> <li>• A Register of Gifts and Hospitality offered to Members and staff</li> <li>• Financial Procedure Rules</li> <li>• Contracts Procedure Rules</li> <li>• an anti-fraud and corruption policy</li> <li>• a Standards Committee to promote and maintain high standards of conduct by Members</li> </ul>
<p>Underpinning personal behaviour with ethical values and ensuring they permeate</p>	<p>The Code of Conduct for Members is enforced through the Standards process.</p>



<p>all aspects of the organisation's culture and operation</p>	<p>Where members of staff depart from the officer Code of Conduct or other policies, these may be enforced through disciplinary measures. The Monitoring Officer and Deputy Monitoring Officer are available to provide advice to Members and staff on all aspects of standards of conduct and lawful and ethical behaviour.</p> <p>Professional officers are also accountable to their respective professional bodies and any applicable Codes of Conduct.</p>
<p>Developing and maintaining robust policies and procedures which place emphasis on agreed ethical values</p>	<p>The Council has robust arrangements in place to ensure that it does the right things, for the right people in a timely, inclusive, open, honest and accountable manner. These are monitored and publicized through:</p> <ul style="list-style-type: none"> <li>• The Council's performance reporting arrangements</li> <li>• Procedures for recruitment and training</li> <li>• Decision making practices (including requirements for the publication of officer decisions)</li> <li>•</li> <li>• publication of decisions and committee meeting minutes</li> <li>• Data transparency arrangements, such as the Council's Publication Scheme under the Freedom of Information Act 2000 and data published in accordance with the Local Government Transparency Code</li> <li>•</li> </ul>
<p>Ensuring that external providers of services on behalf of the organization are required to act with integrity and in compliance with ethical standards expected by the organisation</p>	<p>The Council's Contracts Procedure Rules require standard terms to be included in all contracts, including provisions relating to bribery, equalities and fraud.</p>
<p><b>1.3 Respecting the Rule of Law</b></p>	
<p>Ensuring members of staff demonstrate a strong commitment to the rule of law as well as adhering to relevant laws and regulations</p>	<p>The Council actively recognises the requirements and responsibilities placed on it by law and will act to observe all specific legal requirements placed upon it when taking decisions.</p>

	<p>Training is provided to new members of staff appropriate to their roles, and ongoing training (particularly in relation to regulatory functions) is also provided on both an ad hoc and programmed basis.</p> <p>This is underpinned by a series of policies and processes to ensure that staff adhere to legal requirements including:</p> <ul style="list-style-type: none"> <li>• a Code of Conduct for Members and Officers</li> <li>• A Declaration of Interest Register for Members and for staff</li> <li>• A Register of Gifts and Hospitality offered to Members and staff</li> <li>• Financial Procedure Rules</li> <li>• Contracts Procedure Rules</li> <li>• an anti-fraud and corruption policy</li> </ul>
<p>Creating the conditions to ensure that the statutory officers, other key post holders and members are able to fulfil their responsibilities in accordance with legislative and regulatory requirements</p>	<p>Training is provided to new members upon election, and ongoing training (particularly in relation to regulatory functions) is also provided on both an ad hoc and programmed basis.</p> <p>The Council's Monitoring Officer (the Director of Central Services &amp; Deputy Chief Executive) and Deputy Monitoring Officer (the Head of Legal &amp; Democratic Services), both of whom are qualified Solicitors with current practising certificates are responsible for ensuring that the Council acts in accordance with the law and that decisions made by the Council, however made, are made lawfully.</p> <p>The Council has appointed Deputies to each of the statutory officer posts to ensure resilience and also to ensure that those officers can act in the event of a conflict of interest arising.</p>
<p>Striving to optimize the use of the full powers available for the benefit of citizens, communities and other stakeholders</p>	<p>All departments are encouraged to work closely with the Council's legal team and where necessary to consult the Monitoring Officer to ensure that the most effective use is made of the Council's powers.</p> <p>Legal staff receive regular training and updates when new powers become available to the Council.</p>

	<p>The Council also strives to utilise its statutory powers to work in the public interest and to the full benefit of its citizens, particularly in relation to regulatory activity.</p> <p>All committee reports include a section to ensure any legal implications are fully analysed when making decisions.</p> <p>In addition, many committees (in particular where the Council is carrying out regulatory functions) sit with a legal advisor.</p>
<p>Dealing with breaches of legal and regulatory provisions effectively</p>	<p>Staff in enforcement roles are appropriately trained and (where necessary) professionally qualified in the relevant field.</p> <p>The Council has individual service enforcement policies which set out how breaches are to be investigated and enforced. The Council has also adopted -a Corporate Enforcement Policy.</p> <p>- Investigations are carried out with the assistance of legal advice where needed. Any prospective prosecution is assessed in accordance with the Code for Crown Prosecutors and considered by a senior lawyer before a decision is made.</p> <p>Enforcement staff are encouraged to work closely with the Council's legal team to ensure that the most effective use is made of the enforcement powers available to the Council.</p> <p>In committees where the Council is carrying out a regulatory function, the committee usually sits with a legal advisor.</p> <p>The Council has appointed a Data Protection Officer and Deputy Data Protection Officer, in accordance with GDPR, to ensure that following an internal investigation data breaches are reported to the ICO where necessary. The posts of Data Protection Officer and Deputy Data Protection Officer are currently undertaken by the Director of Central Services &amp; Deputy Chief Executive, and the Head of Legal &amp; Democratic Services.</p>
<p>Ensuring corruption and misuse of power are dealt with effectively</p>	<p>The Council takes corruption and misuse of power very seriously. The Council has an anti-fraud and corruption strategy and a whistleblowing policy in place.</p> <p>In addition, the Council has a Joint Standards Committee and Code of Conduct for Members which investigates complaints against members (both at Borough and Parish level).</p>

	<p>The Council's Monitoring Officer and Deputy Monitoring Officers are responsible for ensuring that the Council acts in accordance with the law.</p> <p>All staff are required to confirm their acceptance of all policies, including the anti-fraud and corruption and whistleblowing policies through netConsent. Such policies are ultimately enforceable through disciplinary measures.</p> <p>Internal audit also carry out programmed audits on matters such as corporate crime.</p>
<p><b>2. Ensuring openness and comprehensive stakeholder engagement</b></p>	
<p><b>2.1 Openness</b></p>	
<p>Ensuring an open culture through demonstrating, documenting and communicating the organization's commitment to openness</p>	<p>The Council follows both the mandatory and (where cost effective) recommended provisions of the Local Government Transparency Code for publication of information held by the Council, and has a detailed scheme of publication under the Freedom of Information Act. In addition, in relation to certain decisions made at officer level, the Council has implemented the requirements of the Openness in Local Government Regulations 2014.</p>
<p>Making decisions that are open about actions, plans, resource use, forecasts, outputs and outcomes. The presumption is for openness. If that is not the case, a justification for the reasoning for keeping a decision confidential should be provided</p>	<p>The Council has an adopted and published Corporate Strategy for 2020-2023 which sets out the Council's vision for a 3-year period, which is supplemented by a Corporate Strategy Addendum, setting out the Council's strategy for recovering from the effects of the Coronavirus pandemic.</p> <p>Following the outcomes of the Peer Review Challenge 2022 the Council <del>is due to reviewed</del> its corporate priorities and <del>publish</del> a new Corporate Strategy <del>in 2022</del> <u>for the period 2023-25 was submitted to Full Council for approval in July 2023.</u></p>

	<p>The Council's Constitution sets out clearly the decision- making powers of:</p> <ul style="list-style-type: none"> <li>• The Council</li> <li>• The Cabinet (including the Executive Leader and delegated decision-making to the Cabinet Portfolio Holders),</li> <li>• Other Council committees; and</li> <li>• powers delegated to officers and the limits of such delegation</li> </ul> <p>The Overview and Scrutiny Committee and the Scrutiny Select Committees are responsible for reviewing and scrutinizing decisions made by and performance of the cabinet, committees and officers. Decisions made by cabinet, committee or a cabinet member can be subjected to scrutiny via a call-in procedure allowing challenge within five working days of the decision being taken. Feedback from the Overview and Scrutiny Committee/ Scrutiny Select Committees, Cabinet, and other Committees is taken into account and given due consideration in the decision-making process.</p> <p>Forthcoming key decisions are published in advance at regular intervals. All Member meetings held by the Council are open to the public, unless the items being discussed are considered to be private under the Local Government Act 1972; these may include staffing and legal matters and those of a contractual nature. Where such an exemption applies, it is recorded in the relevant report and minute.</p>
<p>Providing clear reasoning and evidence for decisions in both public records and explanations to stakeholders and being explicit about the criteria, rationale and considerations used. In due course, ensuring that the impact and consequences of those decisions are clear.</p>	<p>Reports to members set out all relevant considerations in order to ensure that any decision taken is rational and lawful. In addition, reports of certain officer level decisions are required to be published under the Openness in Local Government Regulations 2014.</p>
<p>Using formal and informal consultation and engagement to determine the most appropriate and effective interventions/ courses of action.</p>	<p>The Council carries out consultation where this is a legal requirement.</p>
<p><b>2.2. Engaging comprehensively with institutional stakeholders</b></p>	
<p>Effectively engaging with institutional stakeholders to ensure that the purpose, objectives and intended outcomes for each stakeholder relationship are clear so that</p>	<p>The Council's Corporate Strategy 2020/23 outlines the means by which local stakeholders (including institutional stakeholders) will be engaged and how constructive, challenging relationships will be built.</p>

<p>outcomes are successfully achieved and sustainably.</p>	<p>The Council has Committees with cross-party representation to ensure effective and robust discussion of issues.</p> <p>The Council has a Parish Partnership Panel, the Tonbridge Community Forum and a Joint Transportation Board which ensure that the Council can effectively engage with external stakeholders, including institutional stakeholders such as Parish Councils and the County Council.</p> <p>The Council also has an Overview and Scrutiny Committee and three Scrutiny Select Committees to scrutinise decisions made (or which are due to be made) by Cabinet, and which has the ability to make recommendations (which could include recommendations on stakeholder engagement) to Cabinet.</p>
<p>Developing formal and informal partnerships to allow for resources to be used more efficiently and outcomes achieved more effectively</p>	<p>The Council seeks to utilise Shared Service and Joint Working arrangements which are intended to share resources with neighbouring authorities where these will improve efficiency and economic sustainability.</p> <p>Outside of such formal arrangements, Council officers have access to Kent-wide service groups such as Kent Chief Executives and Kent Chief Planners which allow for joint sharing of good practice and knowhow.</p>
<p>Ensuring that partnerships are built on trust, a shared commitment to change, a culture that promotes and accepts challenge among partners and that the added value of partnership working is explicit</p>	<p>The informal Kent-wide service groups enable relationships to be built with other Kent authorities such that as and when partnership arrangements such as joint working are carried out, they are based on each organisations knowledge and trust of the other.</p>

<b>2.3 Engaging with individual citizens and services users effectively.</b>	
Establishing a clear policy on the type of issues that the organization will meaningfully consult with or involve communities, individual citizens, service users and other stakeholders to ensure that service (or other) provision is contributing towards the achievement of intended outcomes	<p>The Council is clear that it is ultimately accountable to the citizens of Tonbridge &amp; Malling. The Council has a good understanding of who lives, works and plays in the borough and has mechanisms to listen to and respond to their needs, aspirations and concerns.</p> <p>All consultations are published on the Council's website. When considering consultation responses, the Council's decision considers the merit of the responses being made, regardless of the nature of the stakeholder group. The Council carries out consultation when legally required to do so.</p> <p>All reports and decisions include an equalities impact assessment which takes into account whether a decision would have a disproportionate impact on a certain section of society.</p>
Ensuring communication methods are effective and that members and officers are clear about their roles with regard to community engagement	<p>All consultations are published on the Council's website, and where legally required, are advertised in a relevant newspaper.</p> <p>The Council's constitution sets out the roles of members, and (in particular) cabinet members and their roles with regard to community engagement.</p> <p>Public-facing staff receive training relevant to their roles to ensure that their community engagement roles are clear.</p>
Encouraging, collecting and evaluating the views and experiences of communities, citizens, service users and organisations of different backgrounds including reference to future needs.	<p>The Council has taken action to develop and support effective engagement opportunities with all groups of the local community:-</p> <ul style="list-style-type: none"> <li>• The Council engages with the Parishes and unparished areas through the Parish Partnership Panel and Tonbridge Community Forum</li> <li>• The Council promotes the TM Youth Forum that represents the views of young people living in Tonbridge and Malling</li> <li>• The Council supports the Tonbridge &amp; Malling Seniors' Forum (TAMS) which promotes and the needs of the older resident.</li> <li>• The Council actively uses complaints received to learn and</li> </ul>

	<p>improve services, whether through the internal complaints system or via the Ombudsman.</p> <ul style="list-style-type: none"> <li>The Council operates a petition scheme whereby matters of significant local interest can be raised for discussion at full Council.</li> </ul>
Implementing effective feedback mechanisms in order to demonstrate how views have been taken into account.	<p>Consultation responses are reported upon to the relevant decision making person or body where that person or body has an opportunity to consider feedback received and how best to respond to such feedback.</p> <p>The Council also has in place a complaints procedure.</p>
Balancing feedback from more active stakeholder groups with other stakeholder groups to ensure inclusivity	When considering consultation responses, the Council's decision considers the merit of the responses being made, regardless of the nature of the stakeholder group.
Taking account of the impact of decisions on future generations of tax payers and service users.	All reports and decisions include an equalities impact assessment which takes into account whether a decision would have a disproportionate impact on a certain section of society. All reports also include a consideration of the financial implications (both short and long term) of matters which are being recommended for a decision.
<b>3. Defining outcomes in terms of sustainable economic, social and environmental benefits.</b>	
<b>3.1 Defining Outcomes</b>	
Having a clear vision, which is a clear formal statement of the organisation's purpose and intended outcomes containing appropriate performance indicators, which provide the basis for the organisation's overall strategy planning and other decisions	There is a clear statement of the organisation's purpose in the Tonbridge & Malling Borough Council Corporate Strategy <a href="#">2020-23</a> <del>2023-25</del> . This document sets out the key priorities for the authority and how the Council will work with a range of partners and the local communities towards achieving the objectives.
Specifying the intended impact on, or changes for, stakeholders including citizens and service users. It could be immediately or over the course of a year or longer	<p>Committee reports all contain an assessment of risk of the options being presented for a decision. Additionally, the Audit Committee has a role in scrutinizing corporate risk.</p> <p>Where any decision is recommended, reports contain an analysis of the intended impact or changes for stakeholders and the timescale on which that is anticipated to happen. Decisions which may have a disproportionate impact on a certain section of society are subject to an Equalities Impact Assessment.</p>



<p>Delivering defined outcomes on a sustainable basis within the resources that will be available</p>	<p>The Council's Medium Term Financial Strategy covers both revenue and capital budgets, and it is this strategy that underpins the budget setting process for the forthcoming year and over the strategy period. The aim of the MTFS is to give us a realistic and sustainable plan that reflects the Council's priorities and takes us into the future. Alongside the MTFS sits a Savings and Transformation Strategy. Its purpose, to provide structure, focus and direction in addressing the significant financial challenge that lies ahead.</p>
<p>Identifying and managing risks to the achievement of outcomes</p>	<p>The Council has arrangements in place to effectively monitor and manage risks to its business through the risk management strategy and strategic and service risk registers.</p> <p>Committee reports all contain an assessment of risk of the options being presented for a decision. Additionally, the Audit Committee has a role in scrutinizing corporate risk.</p>
<p>Managing service users' expectations effectively with regard to determining priorities and making the best use of the available resources</p>	<p>The Council is accountable to the citizens of Tonbridge and Malling in delivering its duties and responsibilities. The Council manages relationships with partners and consults the public through a number of mechanisms, including regular reporting to members, partnership arrangements (supported by partnership agreements) and the provisions of the Council's constitution.</p>
<p><b>3.2. Sustainable economic, social and environmental benefits.</b></p>	
<p>Considering and balancing the combined economic, social and environmental impact of policies and plans when taking decisions about service provision</p>	<p>Value for money considerations are set out in all committee reports, and the Council's external auditors have consistently found that the Council does give value for money. The social impact of decisions is considered throughout the decision-making process, including the carrying out of an Equalities Impact Assessment where it is considered that a recommendation may have a disproportionate impact on a particular section of society.</p> <p>Where relevant, policies are subject to Strategic Environmental Impact Assessment prior to adoption.</p> <p>The Council adopted a Climate Change strategy in 2020. The in-year action plans for 2020/21, <del>and 21/22</del> <a href="#">and 22/23</a> were approved by the Council's executive. <del>A further action plan for 22/23 is due to be adopted shortly.</del> The in-</p>

	year action plans set out climate change targets for the Council for that year along with timetables for implementation.
Taking a longer-term view with regard to decision making, taking account of risk and acting transparently where there are potential conflicts between the organisation's intended outcomes and short-term factors such as the political cycle or financial constraints.	The Corporate Strategy, together with the Medium Term Financial Strategy and supported by the Savings and Transformation Strategy set out the long term high level objectives of the Council.
Determining the wider public interest associated with balancing conflicting interests between achieving the various economic, social and environmental benefits, through consultation where possible, in order to ensure appropriate trade-offs	Council, Committee and advisory board reports set out all relevant considerations to enable members to make decisions which are appropriate and lawful.
Ensuring fair access to services	The Council has an equalities policy which seeks to ensure fair access to the Council's services by all sections of society.
<b>4. Determining the interventions necessary to optimize the achievement of the intended outcomes</b>	
<b>4.1. Determining interventions.</b>	
Ensuring decision makers receive objective and rigorous analysis of a variety of options indicating how intended outcomes would be achieved and associated risks, therefore ensuring best value is achieved however services are provided.	<p>Decision making mechanisms are set out in detail in the Council's constitution. Whether a decision is at council, cabinet or committee level it is informed by a report encompassing advice from relevant services across the Council.</p> <p>Where relevant, alternative options are presented within committee reports, with an assessment of the benefits and disadvantages of those options.</p> <p>The Council's enforcement policies will inform a decision where legal or regulatory action is</p>

	an option and reports will detail the legal implications of such action.
Considering feedback from citizens and service users when making decisions about service improvements or where services are no longer required in order to prioritise competing demands within limited resources available including people, skills, land and assets and bearing in mind future impacts	<p>Where appropriate, the Council carries out consultation with stakeholders, which is taken into account in the decision-making process. Consultations are published on the Council's website, or where statutory rules apply to such consultation those rules are followed.</p> <p>In addition, the Council uses its complaints procedure to understand where services can be improved.</p>
<b>4.2 Planning Interventions</b>	
Establishing and implementing robust planning and control cycles that cover strategic and operational plans, priorities and targets	<p>Strategic and operational plans (such as the Corporate Strategy) are reviewed on a regular basis.</p> <p>Feedback from consultations is taken into account in the decision-making process and reported to the relevant committee, cabinet or Council meeting.</p> <p>The Savings &amp; Transformation Strategy (STS) has been prepared in order to support the achievement of the Council's Medium-Term Financial Strategy and direct resources in line with the Council's Corporate Strategy. The STS recognizes that there is no one simple solution to addressing the financial challenges, and that the Council needs to embrace transformation in a multitude of ways in order to deliver savings within an agreed timetable. The STS sets out a measured structure and framework for delivering the necessary savings through a series of themes; each theme having a deliverable target.</p>
Engaging with internal and external stakeholders in determining how services and other courses of action should be delivered	The Corporate Strategy, medium term financial strategy and other key policies are set by cabinet or the Council following input from all service directors and the Chief Executive.
Considering and monitoring risks facing each partner when working collaboratively, including shared risks	Reports on proposals for shared services contain a risk assessment, and risks are mitigated through the shared service agreements.
Ensuring arrangements are flexible and agile so that mechanisms for delivering goods and services can be adapted to changing circumstances	<p>The Council has an internal procurement officers' group which meets to consider the Council's contracting arrangements.</p> <p>The Council's Contract Procedure Rules and standard contract terms are reviewed regularly</p>

	to ensure they are up to date with current best practice.
Establishing appropriate Key Performance Indicators as part of the planning process in order to identify how the performance of services and projects is to be measured.	Performance indicators are monitored within each service and reported to Management Team where appropriate.
Ensuring capacity exists to generate the information required to review service quality regularly	It is the responsibility of service directors and Management Team to ensure sufficient capacity exists.
Preparing budgets in accordance with objectives, strategies and the medium-term financial plan	<p>The Council's Medium Term Financial Strategy (MTFS) covers both revenue and capital budgets, and it is this Strategy that underpins the budget-setting process for the forthcoming year and over the strategy period.</p> <p>Budgetary control is undertaken on a monthly basis by services, who report known variations to Financial Services. These variations along with detailed monitoring of the Council's Salary Budget and Major Income Streams are reported to the Corporate Management Team and then onto Members via the Finance, Innovation and Property Advisory Board as part of the cycle of Councils meetings programme.</p>
Informing medium and long-term resource planning by drawing up realistic estimates for revenue and capital expenditure aimed at developing a sustainable funding strategy	<p>The Council's Medium Term Financial Strategy (MTFS) covers both revenue and capital budgets, and it is this Strategy that underpins the budget setting process for the forthcoming year and over the strategy period.</p> <p>The Strategy sets out the high level financial objectives the Council wishes to fulfil over the agreed time span. The Strategy also sets out, based on current financial information, not only the projected budgets for the period, but also the levels of council tax that are projected to be required to meet the Council's spending plans.</p> <p>The aim of the MTFS is to give us a realistic and sustainable plan that reflects the Council's priorities and takes us into the future. Underneath the Strategy sits detailed estimates formulated in conjunction with Services taking into account past outturn, current spending plans and likely future demand levels / pressures. It is acknowledged that circumstances will change and for this reason the Strategy needs to, and will, be kept under regular review.</p>
<b>4.3 Optimising achievement of intended outcomes</b>	

<p>Ensuring the medium term financial strategy integrates and balances service priorities, affordability and other resource constraints</p>	<p>The medium-term financial strategy is aligned with the Corporate Strategy. Service priorities are aligned to the Corporate Strategy.</p>
<p>Ensuring the budgeting process is all-inclusive, taking into account the full cost of operations over the medium and longer term</p>	<p>The budget monitoring process considers both revenue and capital budgets.</p> <p>Budget for the following financial year and longer term financial planning through the MTFS takes account of the impacts for service delivery through potential changes in client base, housing need and levels.</p> <p>The MTFS takes into account changes in Government Funding where these are known. Where these factors are unknown these are judged by officers and shared and confirmed with Members.</p>
<p>Ensuring the medium-term financial strategy sets the context for ongoing decisions on significant delivery issues or responses to changes in the external environment that may arise during the budgetary period in order for outcomes to be achieved while optimizing resource usage</p>	<p>In considering the preparation of the Budget for the current and future financial years, Chief Officers are asked to identify potential growth issues and savings for future years that can be assessed and included with the MTFS. This may include changes in demand for services, including the growth in property, and proposed changes in fees and charges.</p>
<p>Ensuring the achievement of “social value” through service planning and commissioning</p>	<p>The Council has a Social Value Policy Statement. Whilst the issues of cost and quality remain of key concern, the concept of social value means that where appropriate, the Council can seek to achieve added social benefits in its procurement processes that may otherwise not have been achieved by other means.</p>
<p><b>5. Developing the entity’s capacity, including the capability of its leadership and the individuals within it</b></p>	
<p><b>5.1. Developing the entity’s capacity</b></p>	
<p>Improving resource use through appropriate application of techniques such as benchmarking and other options to determine how resources are allocated so that defined outcomes are achieved effectively and efficiently</p>	<p>The Council works towards improving value for money through:</p> <ul style="list-style-type: none"> <li>• Exploration of innovative ways of working including potential for joint-working and shared services</li> <li>• Robust budgeting and financial monitoring arrangements including detailed reviews of budgets and potential savings opportunities</li> <li>• Internal and external audit</li> <li>• Publication of annual budget and accounts information</li> </ul>

Recognizing the benefits of partnerships and collaborative working where added value can be achieved	The Council works in partnerships with other authorities in Kent. A commitment to working in partnership is one of the Council's stated Corporate Objectives.
Developing and maintaining an effective workforce plan to enhance the strategic allocation of resources	<p>The Council has an extensive training programme for council officers including mandatory and voluntary training.</p> <p>The Council actively engages with its staff through:</p> <ul style="list-style-type: none"> <li>• Team meetings</li> <li>• Regular performance management meetings</li> <li>• The Joint Employee Consultative Committee</li> </ul> <p>The HR Strategy incorporates the Council's Workforce Development Plan which is <a href="#">due to be</a> reviewed and updated in light of recommendations made following the Peer Review Challenge 2022..</p> <p>The Council's digital strategy seeks to develop solutions which will increase the efficiency of the Council's resources.</p>
<b>5.2. Developing the capability of the entity's leadership and other individuals.</b>	
Developing protocols to ensure that elected and appointed leaders negotiate with each other regarding their respective roles early on in the relationship and that a shared understanding of roles and objectives is maintained	<p>The Council examines the capability of its people with governance responsibilities through appraisals, identifying any training gaps – the relevant training programmes are updated accordingly.</p> <p>The Cabinet and Overview and Scrutiny Committee have developed a Cabinet/Scrutiny protocol which sets out their respective roles.</p>
Publishing a statement that specifies the types of decisions that are delegated and those reserved for the collective decision making of the governing body	The Council's constitution sets out clearly the decision-making powers of the Council and its bodies and officers.
Ensuring the leader and the chief executive have clearly defined and distinctive leadership roles within a structure whereby the chief executive leads in implementing strategy and managing the delivery of services and other outputs set by members and each provides a check and a balance for the other's authority	the roles of the Leader of the Council and Chief Executive are clearly defined in the Council's Constitution.

<p>Developing the capabilities of members and senior management to achieve effective leadership and to enable the organization to respond successfully to changing legal and policy demands as well as economic, political and environmental changes and risks.</p>	<p>The Council has a training programme for Members and holds regular training sessions (both on a programmed and ad hoc basis) for Members on a variety of topics:</p> <ul style="list-style-type: none"> <li>• Induction training for all new members</li> <li>• Service-specific training, e.g. Community Safety</li> <li>• Committee-specific training, e.g. Audit Committee, Planning Committee</li> </ul>
<p>Ensuring that there are structures in place to encourage public participation</p>	<p>Consultations are published on the Council's websites. In relation to decisions taken by the Council on planning matters, and certain matters under the Licensing Act 2003, members of the public are able to make both written and oral representations to the committee. The Council also operates a petition scheme.</p>
<p>Holding staff to account through regular performance reviews which take account of training or development needs</p>	<p>Staff have access to appropriate induction training, and ongoing training on both an ad hoc and programmed basis relevant to their roles.</p> <p>The annual appraisal process reviews staff performance and also identifies training needs.</p> <p>Staff training takes place both through internal and external provision as appropriate.</p>
<p>Ensuring arrangements are in place to maintain the health and wellbeing of the workforce and support individuals in maintaining their own physical and mental wellbeing</p>	<p>The council has a Health and Wellbeing statement of intent recognizing that the Council's staff are its most valuable asset. The HR Strategy also recognizes the same. The Council has a Joint Employee Consultative Committee which enables employees to raise matters of concern, including health and wellbeing.</p>
<p><b>6. Managing risks and performance through robust internal control and strong public financial management</b></p>	
<p><b>6.1. Managing risk</b></p>	
<p>Recognizing that risk management is an integral part of all activities and must be considered in all aspects of decision making</p>	<p>Risk management practices are embedded within the organisation through the annual service and strategic planning processes, which is used to develop the Council's vision and objectives. This ensures that risks to the achievement of the Council's objectives are identified and managed appropriately. Risks identified are scored on the basis of their likelihood and impact and existing controls and required actions to further mitigate risks are captured in risk registers. The</p>

	<p>framework sets out the responsibility of Officers leading on areas with partnership arrangements to ensure that the partner has an adequate risk management strategy and sufficient insurance cover to protect the interests of the Council.</p>
<p>Implementing robust and integrated risk management arrangements and ensuring that they are working effectively</p>	<p>The Council has arrangements in place to effectively monitor and manage risks to its business through the:</p> <ul style="list-style-type: none"> <li>• Risk Management Strategy</li> <li>• Strategic Risk Register</li> <li>• Service Risk Registers</li> <li>• Audit Committee role in scrutinising corporate risk</li> <li>• Consideration of risk in all Committee reports</li> <li>• Annual Governance Statement</li> </ul> <p>The strategic and service risk registers are updated regularly.</p> <p>Risks associated with decisions are set out on relevant committee, cabinet or council reports.</p> <p>The Council's standard report template requires Officers and Members to carry out a risk assessment of the action recommended in the report ensuring risk is considered in all decision-making of the authority. This assessment also covers legal, financial and value for money considerations and equality issues where relevant.</p>
<p>Ensuring that responsibilities for managing individual risks are clearly allocated.</p>	<p>The service risk registers clearly identify responsibilities for managing individual risks.</p>
<p><b>6.2. Managing performance.</b></p>	
<p>Making decisions based on relevant, clear and objective analysis and advice pointing out the implications and risks inherent in the organisation's financial, social and environmental position and outlook</p>	<p>The performance of the Council and its partners in achieving its objectives is monitored and measured by services and their respective Service Management Teams and subsequently Management Team and Members. Individual services are accountable to the Corporate Management Team for operational performance monitoring and measurement and are responsible for taking action to correct any adverse performance, in the first instance, as appropriate.</p>
<p>Ensuring an effective scrutiny or oversight function is in place which provides constructive challenge and debate on policies and objectives before, during and after decisions are made thereby enhancing the organisation's performance and that of</p>	<p>The overview and scrutiny committee and the three Scrutiny Select Committees ("SSCs") are responsible for reviewing and scrutinizing the decisions made (or due to be made) by cabinet members and by Cabinet collectively.</p>



<p>any organization for which it is responsible (or for a committee system) encouraging effective and constructive challenge and debate on policies and objectives to support balanced and effective decision making</p>	<p>The Overview and Scrutiny Committee and SSCs are also responsible for reviewing the performance of the Cabinet, Cabinet members, Committees and Council Officers.</p> <p>Decisions made by Cabinet, a Committee or by a Cabinet Member can be subjected to scrutiny via a call-in procedure allowing challenge within 5 working days of the decision being taken.</p>
<p>Providing members and senior management with regular reports on service delivery plans and on progress towards outcome achievement</p>	<p>The Council has in place committees &amp; boards with cross-party representation to ensure effective and robust discussion of issues. Relevant boards, committees and the executive are provided with information reports on a regular basis to provide progress reports on service delivery and outcomes.</p>
<p>Ensuring there is consistency between specification stages (such as budgets) and post-implementation reporting (e.g. financial statements)</p>	<p>The medium-term financial strategy is aligned with the Corporate Strategy. Service priorities are aligned to the Corporate Strategy, which ensures consistency between budget-setting and service delivery.</p> <p>Capital schemes are subject to evaluation prior to the approval for implementation; the criteria of the evaluations are set by Council.</p> <p>Following the scheme's completion a post implementation review will be prepared and shared with members in order to determine the accuracy of the initial evaluation and identify lessons to be learned and considered in future evaluations.</p>
<p><b>6.3 Robust internal control</b></p>	
<p>Ensuring effective counter-fraud and anti-corruption measures are in place</p>	<p>The Council has an effective Internal Audit service and Anti-Fraud service in place. The Council also has an Anti-Fraud and Corruption Policy and Whistleblowing Policy.</p>
<p>Ensuring additional assurance on the overall adequacy and effectiveness of the framework of governance, risk management and control is provided by the internal auditor</p>	<p>The Council has in place arrangements to effectively monitor and manage risks to its business through the:</p> <ul style="list-style-type: none"> <li>• Risk management strategy</li> </ul>

	<ul style="list-style-type: none"> <li>• Strategic risk register</li> <li>• Service risk registers</li> </ul>
Establishing an audit committee or equivalent group/function which is independent of the executive and accountable to the governing body	The core functions of an audit committee as defined by <i>CIPFA's Audit Committees: Practical Guidance for Local Authorities</i> are fulfilled by the Council's Audit Committee. The Council's Constitution sets out the responsibility of the Audit Committee to provide independent assurance of the adequacy of the risk management framework and associated control environment. To do so, the Audit Committee has adopted a Risk Management Strategy that sets out the roles of Officers and Members in the identification and minimisation of risk. The Risk Register is a standing item at every Audit Committee meeting
<b>6.4 Managing Data</b>	
Ensuring effective arrangements are in place for the safe collection, storage, use and sharing of data, including processes to safeguard personal data	<p>The Council maintains a number of local policies which support and embed information processes. These include</p> <ul style="list-style-type: none"> <li>• Data Protection policy</li> <li>• Information Security policy</li> <li>• Data Retention policy</li> <li>• Use of removable media policy</li> <li>• Remote access policy</li> <li>• Social media policy</li> <li>• Information Asset register</li> <li>• Information Governance Policy</li> </ul> <p>The Council has a Data Protection Officer, appointed in accordance with GDPR, with overall responsibility for ensuring the Council follows proper data protection practices. The DPO chairs the Council's Information Governance Group ("IGG") which meets regularly to discuss data protection and related matters within the Council, including data breaches.</p> <p>Individual services have representatives appointed to sit on the IGG and feed back into their services to raise and maintain awareness of the requirements of GDPR.</p>
Ensuring effective arrangements are in place and operating effectively when sharing data with other bodies	The Council is a signatory to the Kent & Medway Information Sharing Agreement, which prescribes the procedures that are to be followed when sharing data with other public sector bodies in Kent. The Data Protection Officer, or his appointed Deputy, attend the Kent & Medway Information Sharing Partnership, which seeks to share best practice under GDPR across all Kent authorities.

<p>Reviewing and auditing regularly the quality and accuracy of data used in decision making and performance monitoring</p>	<p>An annual risk-based Internal Audit Plan is prepared to determine the priorities of the internal audit activity, consistent with the organisation's goals. The Plan aims to ensure that sufficient audit assurance work is carried out to enable the Chief Audit Executive to deliver an opinion regarding the adequacy and effectiveness of the internal control arrangements within the Council. Each audit review will cover data quality and accuracy relevant to the subject area.</p>
<p><b>6.5 Strong public financial management</b></p>	
<p>Ensuring financial management supports both long-term achievement of outcomes and short-term financial and operational performance</p>	<p>The Council's Financial Procedure Rules support the provision of high quality financial advice. The Council also acts in consultation with stakeholders. The Council's Internal Audit Service provides assurance on the quality of financial and performance data reported.</p> <p>The ongoing budget-setting and monitoring process together with the Medium Term Financial Strategy supports the long-term achievement of outcomes and short-term financial and operational performance.</p>
<p>Ensuring well-developed financial management is integrated at all levels of planning and control, including management of financial risks and controls</p>	<p>Annual budgets are set with involvement from budget holders across all council services. The MTFS is set considering longer-term risks.</p>
<p><b>7. Implementing good practices in transparency, reporting, and audit to deliver effective accountability</b></p>	
<p><b>7.1 Implementing good practice in transparency</b></p>	
<p>Writing and communicating reports for the public and other stakeholders in a fair, balanced and understandable style appropriate to the intended audience and ensuring that they are easy to access and interrogate.</p>	<p>The Council has implemented the mandatory and (where cost effective) recommended principles set out in the Local Government Transparency Code. The Council has set up a steering group which meets to discuss changes to the code and its ongoing implementation.</p> <p>Reports for both historic and prospective meetings of the Council and its committees and boards are made available to the public through the Council's website.</p> <p>Where possible, reports are written in a public-facing and non-technical manner. All reports (save those which are exempt from publication for reasons set out in the Local Government Act 1972) are made public and can be accessed through the Council's website.</p>

Striking a balance between providing the right amount of information to satisfy transparency demands and enhance public scrutiny while not being too onerous to provide and for users to understand	Where possible, reports are written in a public-facing and non-technical manner. All reports (save those which are exempt as discussed above) are made public and can be accessed through the Council's website.
<b>7.2 Implementing good practice in reporting</b>	
Reporting at least annually on performance, value for money and stewardship of resources to stakeholders in a timely and understandable way	<p>Annual Statement of Accounts report the Council's financial performance against the original estimate set for that financial year. The statement is prepared in accordance with the CIPFA Code for Local Authority Accounting.</p> <p>Included within the financial statements will be a judgement from the Council's external auditors on value for money and adequate use of resources.</p> <p>Included within the financial statements is the Annual Governance Statement. This is approved by Members and signed by the Chief Executive and Leader of the Council and provides evidence on the Council's adherence to the Code of Corporate Governance.</p>
Ensuring members and senior management own the results reported	The Annual Governance Statement is approved by the leader and Chief Executive, and the financial statements are considered and approved by Management Team and the Audit Committee.
Ensuring robust arrangements for assessing the extent to which the principles contained in the framework have been applied and publishing the results on this assessment, including an action plan for improvement and evidence to demonstrate good governance (the annual governance statement)	Compliance is reviewed on an annual basis and reported to Audit Committee.
Ensuring that the framework is applied to jointly managed or shared service organisations as appropriate	Where appropriate, the principles will be applied to jointly managed or shared services.
Ensuring that performance information that accompanies the financial statements is prepared on a consistent and timely basis and the statements allow for comparisons with other, similar, organisations.	Performance information is included as part of the budget-setting process.
<b>7.3 Assurance and effective accountability</b>	
Ensuring that recommendations for corrective action made by external audit are acted upon	Responsibility for acting upon recommendations from external audit rests with the relevant service, and is monitored

	through individual service management teams and the corporate management team.
Ensuring an effective internal audit service with direct access to members is in place, providing assurance with regard to governance arrangements and that recommendations are acted upon	The Council has an effective internal audit service, and an Audit Committee.
Welcoming peer challenge, reviews and inspections from regulatory bodies and implementing recommendations	The Council takes an active part in Peer Reviews, the most recent being the LGA Peer Review Challenge 2022. The Council is <del>in the process of</del> <a href="#">has implemented the majority of</a> recommendations arising from that exercise, <a href="#">with the remaining recommendations in progress.</a>
Gaining assurance on risks associated with delivering services through third parties and that this is evidenced in the annual governance statement	Risks are picked up through the contract monitoring process and reported through Audit Committee. Service delivery and performance can be scrutinised through Overview and Scrutiny Committee or the relevant Scrutiny Select Committee
Ensuring that when working in partnership, arrangements for accountability are clear and the need for wider public accountability has been recognized and met	Such arrangements are subject to public reports to each authority in the partnership. The Contracts Procedure Rules also ensure that standard contract terms are imposed ensuring proper accountability.

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## **COUNCIL TAX DISCOUNT**

### **Item CB 23/84 referred from Cabinet of 3 October 2023**

The report of the Director of Finance and Transformation reviewed the current position with regard to the 100% council tax discount being applied to uninhabitable properties for a maximum period of 12 months and sought Members' views on whether the discount should be retained or reduced from 1 April 2024.

Due regard was given to both the financial and non-financial considerations, legal implications, risk assessment and policy considerations should a change be made to the 100% discount that was currently offered by the Borough Council. Consideration was also given to positions of the neighbouring authorities in respect of the discount.

Members noted that in the extreme cases where a property was severely damaged, the Borough Council could use its discretionary powers under Section 13A Local Government Finance Act 1992 to waive the council tax charge.

**RECOMMENDED\***: That the percentage of the current period of twelve months 100% council tax discount for 'uninhabitable' properties be reduced to 0% with effect from 1 April 2024.

**\*Referred to Council**

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# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

03 October 2023

### Report of the Director of Finance and Transformation

#### Part 1- Public

#### Matters for Recommendation to Council

#### 1 COUNCIL TAX DISCOUNT

**A report seeking the views of Members as to whether there should be a change to the council tax discount for uninhabitable properties with effect from 1 April 2024.**

#### 1.1 Background

1.1.1 This matter was last considered by Members of the Finance, Innovation and Property Advisory Board on 24 September 2014.

1.1.2 Having considered the outcome of a consultation, Members recommended the twelve months discount for uninhabitable properties be retained at 100% from 1 April 2015.

1.1.3 This council tax discount has remained unchanged since then; however, as there have been multiple changes to empty property discounts in the ensuing years (namely empty property premiums) along with the changes that are being proposed in the Levelling Up Bill, I feel it is appropriate to revisit this subject and ask Members for their opinion on whether the discount should be amended or removed.

#### 1.2 The current position

1.2.1 Uninhabitable properties are defined as those requiring or undergoing structural alteration or major repair and are eligible for a 100% discount for a maximum period of 12 months. Members may, if they wish, reduce the level of discount to 0%; however, it is not possible to amend the period for which a discount is given.

1.2.2 There has never been a High Court case to determine the definition of 'major repair', and therefore, the decision to approve an award is down to individual officer's experience based on evidence received and decisions previously made at Valuation Tribunal hearings.

1.2.3 Owners' views on whether a property should be classed as 'uninhabitable' is often significantly different to the local authority's view [Council tax discounts –](#)

[Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](http://tmbc.gov.uk) which has led to an increasing amount of challenges in recent years, resulting in complaints and appeals being submitted to the Valuation Tribunal. This is time consuming for the officers involved and requires a disproportionate amount of effort being spent on a discount that is only awarded to approximately 50 properties (out of a total of 56,725).

### **1.3 Options for change – financial considerations**

- 1.3.1 If Members reduced the discount to 0%, the additional income generated would be in the order of £12,000 (based on current estimates). This amount is the Borough Council's share of the additional income; the other precepting authorities will also receive their own proportionate share.
- 1.3.2 Although this might not seem a significant figure in terms of the Council's overall budget, Members will be very aware of the Council's budget position and the requirement to make ever greater budget savings. In addition, there will be a saving in the amount of staff time being dedicated to dealing with the issues mentioned earlier.

### **1.4 Non-financial considerations**

- 1.4.1 There are, of course, reasons why Members might not wish to change the discount in such a way as to produce the maximum financial gain.
- 1.4.2 In the case of uninhabitable properties, if Members decided to reduce the discount to 0%, owners of properties that have been severely damaged by flood or fire would be left in the position of having to pay the full council tax even though they were unable to live there.
- 1.4.3 That being said, my experience of applications for the discount is mainly from owners who have just bought a property that requires refurbishment or renovation to either make it available for let or to modernise the property for their enjoyment.
- 1.4.4 In the extreme cases where a property has been damaged, the Council can use its discretionary powers under Section 13A Local Government Finance Act 1992 to waive the council tax charge.

### **1.5 Neighbouring authorities**

- 1.5.1 I have asked our neighbouring authorities what decisions they have made in respect of this discount and their responses are shown in the following table:

<b>Authority</b>	<b>Uninhabitable discount %</b>
Ashford	100 but under consideration
Canterbury	100 but under consideration
Dartford	0
Dover	100 but under consideration
Folkestone & Hythe	0
Gravesham	100 but under consideration
Maidstone	0
Medway	100
Sevenoaks	0
Swale	100
Thanet	100 but under consideration
Tunbridge Wells	0
Tonbridge and Malling	100 but under consideration

1.5.2 As can be seen from the above, the majority of authorities have either removed the discount or are considering the removal of the discount.

## **1.6 Legal Implications**

1.6.1 Class D of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 determines the criteria of an 'uninhabitable' property.

1.6.2 Sections 11A (5) and (6) of the Local Government Finance Act 1992 states that a billing authority may make a determination varying or revoking a determination for a financial year, but only before the beginning of the year. A billing authority which makes a determination under this section shall publish a notice of it in at least one newspaper circulating in its area and do so before the end of the period of 21 days beginning with the date of the determination.

## **1.7 Risk Assessment**

1.7.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
1) Additional income to TMBC is not fully realised due to the impact of the current economic climate on collection rates.	High	Medium	Collection to be closely monitored.
2) Adverse reaction from owners of 'uninhabitable' properties during a cost of living crisis	Medium	High	Give owners sufficient notice of the amendment

## 1.8 Equality Impact Assessment

1.8.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## 1.9 Policy Considerations

1.9.1 Communications. Publication of the decision must be made with 21 days of the decision as stated in the report.

1.9.2 Community

## 1.10 Recommendations

1.10.1 Cabinet is asked to **CONSIDER** whether they would wish to retain the current period of twelve months 100% discount for 'uninhabitable' properties or to reduce the percentage to an amount below 100%, for example 0%, with effect from 1 April 2024; and **RECOMMEND** to Council accordingly.

Background papers:

Nil

contact: Glen Pritchard  
Sharon Shelton

Sharon Shelton  
Director of Finance and Transformation

## **AUDITOR'S ANNUAL REPORT 2022/23**

### **Item CB 23/85 referred from Cabinet of 3 October 2023**

Consideration was given to the recommendations of the Audit Committee meeting held on 25 September 2023 (AU 23/41).

#### **RECOMMENDED\*:** That

- (1) the Auditor's Annual Report (attached at Annex 1) for 2022/23 be approved;
- (2) the key recommendations made in respect of 'performance management' and 'procurement' be noted and the management comments be endorsed;
- (3) the management comments to the improvement recommendations be noted and endorsed; and
- (4) the Audit Committee receive a progress report on the key recommendations made in respect of 'performance management' and 'procurement' at their next meeting.

**\*Referred to Council**

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## **AUDITOR'S ANNUAL REPORT 2022/23**

### **Item AU 23/41 referred from Audit Committee of 25 September 2023**

The report of the Management Team introduced the Auditors Annual Report (attached at Annex 1) prepared by Grant Thornton UK LLP in respect of the Borough Council's overall arrangements for securing economy, efficiency and effectiveness in the use of resources. In introducing the report, a brief outline of the national context was provided.

Grant Thornton believed that there were two significant weaknesses in the Council's arrangements to improve economy, efficiency and effectiveness. These related to procurement and performance management, and recommendations were made as to how this could be addressed. The responses of management were detailed at 1.3.4 and 1.3.9 of the report.

During discussion, Members raised concern regarding the Council's procurement resource and it was noted that the options for a procurement resource were being discussed and that the Procurement Strategy would be reviewed once the procurement resource issue had been resolved.

In addition, a number of improvement recommendations were also made and these were detailed in 1.4 of the report.

#### **RECOMMENDED\*:** That

- (1) the Auditor's Annual Report (attached at Annex 1) for 2022/23 be approved;
- (2) the key recommendations made in respect of 'performance management' and 'procurement' be noted and the management comments be endorsed;
- (3) the management comments to the improvement recommendations be noted and endorsed; and
- (4) the Audit Committee receive a progress report on the key recommendations made in respect of 'performance management' and 'procurement' at their next meeting.

**\*Referred to Cabinet**

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**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AUDIT COMMITTEE**

**25 September 2023**

**Report of the Management Team**

**Part 1- Public**

**Matters for Recommendation to Cabinet**

**1 AUDITOR'S ANNUAL REPORT 2022/23**

**Our external auditors (Grant Thornton UK LLP) are required to satisfy themselves that the Authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources and to report on the same to those charged with governance - which for this purpose is the Audit Committee – followed by Cabinet and Full Council.**

**Grant Thornton believes there are two significant weaknesses in the Council's arrangements to improve economy, efficiency and effectiveness. These relate to procurement and performance management, and recommendations are made as to how this might be addressed. In addition, a number of improvement recommendations are also made.**

**Members are invited to consider the report and make any specific recommendations to Cabinet and/or Full Council as the Committee feels appropriate.**

**1.1 Introduction**

- 1.1.1 The auditor is required to report on the Authority's overall arrangements for securing economy, efficiency and effectiveness in its use of resources, as well as key recommendations on any significant weaknesses in arrangements identified during the audit.
- 1.1.2 Auditors are required to report their commentary on the Authority's arrangements under specified criteria. The criteria are financial sustainability, governance and improving economy, efficiency and effectiveness.
- 1.1.3 The 2021/22 Annual Audit Report was not published by Grant Thornton until December 2022 and was therefore not considered by the Audit Committee until 16 January 2023. There were no significant weaknesses identified in that year's report, but there were some recommendations which we had begun to act upon. Unfortunately, with the short space of time between the two reports and especially given the corporate impact of local elections, progress has been limited.

## **1.2 Auditor's Annual Report 2022/23**

- 1.2.1 A copy of the Auditors Annual Report for 2022/23 is attached at **[Annex 1]**. The Engagement Lead, Sophia Brown, and/or her representative will be at the meeting to present the report and to answer questions.
- 1.2.2 Two significant weaknesses in arrangements have been identified by Grant Thornton relating to performance management and procurement under the heading 'Improving economy, efficiency and effectiveness'. This is discussed in greater details at paragraph 1.3 of the report.
- 1.2.3 For Members' information, 'Significant weakness' is the term used by the National Audit Office Code of Audit Practice. Where auditors identify significant weaknesses as part of their arrangements to secure value for money, it requires that they should make recommendations setting out the actions that should be taken by the Council. These recommendations are shown as 'Key Recommendations' within the report.
- 1.2.4 In addition, a number of 'improvement recommendations' are made which are addressed at paragraph 1.4. In comparison to key recommendations, improvement recommendations (if implemented) should improve the arrangements in place at the Council, but are not made as a result of identifying significant weaknesses in the Council's arrangements.
- 1.2.5 Members are reminded that the 2021/22 annual audit report highlighted some improvement recommendations but no significant weaknesses leading to key recommendations. A list of those previous improvement recommendations and the management response is set out at **[Annex 2]** for information.

## **1.3 Significant Weaknesses/Key Recommendations - Improving economy, efficiency and effectiveness**

### ***Performance Management***

- 1.3.1 The first area identified by Grant Thornton pertains to the arrangements for performance management, with GT noting that '*Cabinet members cannot hold officers to account for performance if reporting is lacking*'; and '*in 2022-23 the Council still lacked a performance framework meaning it was reactive to challenge, rather than proactively forward planning or anticipating issues before they emerged*'.
- 1.3.2 Grant Thornton concludes that the Council needs to improve its performance management arrangements by:
- 1) Using the reset Corporate Plan to establish a golden thread for the Council, by creating a performance management framework at corporate and service levels linking outcomes to expected annual measures to track success and report these to the public;

- 2) Developing annual delivery plans aligned with the Corporate Plan and reduce the number of service specific strategies to ensure the golden thread is in place;
- 3) Agreeing performance outcomes, that can be measured, at least annually as part of the new performance management framework;
- 4) Ensuring performance reporting include targets, RAG rating, and actual measures and benchmarking. Reports should use previous year and 'nearest neighbours' data where possible; integrating performance, risk and finance reporting to drive improvement;
- 5) Ensuring the Cabinet receives quarterly performance reports to enable it to hold officers to account;
- 6) Using performance and financial data and benchmarking to look at delivery levels of statutory services to ensure the Council is achieving value for money;
- 7) Ensuring that the new performance management framework and reporting extends to key contracts such as waste and leisure;
- 8) Developing a strategic approach to assessing the levels of statutory services needed to save money;
- 9) Engaging with hard-to-reach customers to ensure they can still access services given the Council's digital by default approach;
- 10) Ensuring partnership performance management, including outcomes, is reported regularly to Cabinet; and
- 11) Engaging key stakeholders, where appropriate, to determine local priorities for resources or opportunities for savings.

1.3.3 Management Team fully recognise the importance of the provision of performance management information for Members and work did begin on developing appropriate tools following the last Annual Audit Letter. For information, Members are advised that prior to 2023/24, individual Services did report performance information but it is acknowledged that this was piecemeal. During 2022/23 a suite of KPIs has been reported to Scrutiny Select Committees, but it is acknowledged this is just one part of the 'journey' towards the provision of effective performance management tools.

1.3.4 The management response to the key recommendation made in respect of performance management is as follows:

**“Following both this review and a Peer Challenge undertaken during 2022/23 a range of KPI’s have been introduced and, since the start of 2023/24, are presented to Members of Overview and Scrutiny Committee and the three**

Scrutiny Select Committees at quarterly intervals after their review by Management Team.

Management agrees that KPIs should also be formally shared with Cabinet and it is intended that they will now be introduced to Cabinet agendas as well as making them a standard regular item on all service management teams. The range of information captured and reported will also be reviewed and refined over the coming months.

Management acknowledges, and agrees with, the recommendation about a 'golden thread'. The need for greater focus of resources towards 'Policy and Performance' is also recognised to act as the 'golden thread' between finance and performance across the organisation and to enable officers to understand how they could contribute to corporate delivery or identify savings and achieve value for money.

Benchmarking information is already in use in some service areas (e.g. treasury management and recycling) and is reported to relevant Committees to aid review of performance, but more generally work is already underway to look at a wider range of benchmarking information which can be used to inform areas for transformation and value for money assessments. It is expected that this will be developed over the next 12 to 18 months.

In terms of engagement with residents, a consultation was undertaken to inform the development of the new Corporate Strategy and assess local priorities. Management will liaise further with Cabinet about further engagement with residents on resources and options for savings.”

1.3.5 Members are invited to note and endorse this response.

### ***Procurement***

1.3.6 The second area concerns procurement. Grant Thornton concludes that the Council needs to improve its procurement and contract management arrangement by:

- 1) Updating its procurement strategy;
- 2) Ensuring the contracts register is monitored, kept up to date and used by all services;
- 3) Ensuring it fully meets the Local Government (Transparency Requirements) (England) Regulations 2015 legislation;
- 4) Having a suitably trained client lead for procurement and contract management;

- 5) Provide training for officers and members on procurement and contract management to enable them to fully understand their responsibilities for social value and value for money; and
- 6) Ensuring the Council's shared arrangements for fraud also include procurement and contract management.

1.3.7 As some Members will be aware, the Council does not have its own procurement expert and has relied upon a working group of officers from across the Council to 'manage' procurement, and has looked to other partner authorities to assist with the letting of larger contracts at appropriate times. This had helped to minimise annual 'corporate' costs to TMBC, but Management Team do recognise that this has meant that we have not progressed as quickly as needed with certain things due to the workloads of officers in their 'day jobs'.

1.3.8 In respect of the 'fraud' recommendation, Member can be assured that the SLA with Kent County Council covers all types of fraud that might affect the Council. Having discussed this with our Fraud lead, it has been agreed that procurement fraud awareness training will be offered to procurement leads during 23/24 and a rolling programme will be established.

1.3.9 The management response to the key recommendation made in respect of performance management is as follows:

"Management Team acknowledges that updating of the procurement strategy has been an outstanding matter for some time. The Council does not have its own procurement resource and has relied on a working group of officers from across the Council to discuss and deliver procurement priorities and monitor/update the contracts register. For the letting of significant contracts, the Council has always sought professional assistance externally, but it acknowledged that a lack of 'in house' expertise in this discipline has led to a lack of progress.

We are now having discussions with another Local Authority with a view to developing a SLA for both the review and revision of the Procurement Strategy along with a named officer for day to day professional advice who could also sit on the Procurement working group. In order to bolster the profile and importance of the procurement function, the Procurement working group will now be chaired by a member of Management Team. Appropriate training for both officers and Members will be developed by the group over the next few months.

With regard to the risk of fraud within procurement, the Council's SLA with Kent County Council's Internal Audit and Fraud team does already cover this activity. Procurement fraud awareness training will be offered to procurement leads during 23/24 and a rolling programme will be established"

1.3.10 Members are invited to note and endorse this response.

## 1.4 Improvement Recommendations

### *Financial sustainability*

- 1.4.1 Two improvement recommendations were made under this heading relating to **transformation** and the **Workforce Strategy**.
- 1.4.2 Dealing firstly with Transformation, Grant Thornton recommends that the Council '*should develop a transformation programme to enable it to reduce spend by looking at different ways of delivering services or by enable others in its system leadership role.*' Full details of the recommendation are shown on page 13 of the Annual Audit Letter itself.
- 1.4.3 Members may be aware that transformation was raised through the Peer Challenge Review process and is an action that is still in progress. The management response is as follows:
- A Management Team/Cabinet LGA Development Day is being arranged for October, themed around transformation. It will look at development of the transformation programme and subsequently the resource requirement.
- As part of the budgetary process for the Revised Estimate for 2023/24 and Forward Estimates for 2024/25 Services are asked to identify whether services provided were mandatory or discretionary to help develop an overall understanding of cost and priorities.
- 1.4.4 In terms of workforce strategy, the recommendation is to "*improve the Workforce Strategy to include fully costed strategy over the medium to long term.*" Full details are set out on page 14 of the Annual Audit Letter itself.
- 1.4.5 It is acknowledged that the current workforce strategy is relatively short term and needs to now reflect the ambitions of the Corporate Strategy – i.e. transformation, innovation and delivery. The management response is therefore as follows:
- Future revisions of the Workforce strategy will include medium-term impacts requiring reviews of service delivery, succession planning, resilience as well as financial costing.

### **Governance**

- 1.4.6 There are two improvement recommendations under the heading Governance in relation to, firstly, **Risk Management** and, secondly, to the **integration of performance and financial reporting**.
- 1.4.7 In respect of **Risk Management**, Grant Thornton have highlighted that there are: '*areas of risk management that need improvement particularly relating to the Strategic Risk Register format, member scrutiny and challenge on risk management, and reporting risk to Members in committee reports*'.

- 1.4.8 Members are aware that the Strategic Risk Register is reported routinely to this Committee and in turn this Committee will advise the Cabinet of red risks. Some improvement to the SRR has been introduced this year including the “direction of travel” indicators. An internal audit report was also undertaken which has highlighted some recommendations which will also be put in place.
- 1.4.9 Following the recommendations in the last Audit Letter, Zurich (the Council’s Insurers) have already been commissioned to undertake a training programme for staff as well as providing an independent review of the Risk Strategy.
- 1.4.10 The management response is as follows:

Some changes have already been made to the SRR to indicate direction of travel and further changes will be made over the next few months. In the light of both last year’s recommendation and an internal audit report (which contained similar recommendations) Zurich, the Council’s insurers, are being asked to review the Risk Management Strategy, formats of risk registers and risk training for new employees.

- 1.4.11 In terms of the integration of performance and financial reporting, Grant Thornton has commented that *‘Revenue reporting is at an appropriate level with clear commentary of the current position, but service and workforce information is not integrated into financial reports’*.
- 1.4.12 At the time of receiving the final draft report from Grant Thornton, consideration was still being given to the management response. Following discussions by Management Team, the proposed management response is:

Management Team are currently considering this recommendation and at the time of responding have not finalised a view. Further discussions will take place with Cabinet and Grant Thornton, as it is important that Members are not overloaded with operational data and can focus their attention on strategic matters.

- 1.4.13 A further, verbal, update will be given at the meeting following discussions with Grant Thornton.

## 1.5 Summary

- 1.5.1 Like Management Team, Audit Committee will no doubt find this a more sobering report given perhaps the ‘lighter touch’ nature of preceding reports. It is important that Members read this thoroughly.
- 1.5.2 Putting this into context, Members will be aware of the ‘turmoil’ within the local government sector with numerous s114 notices being issued by different councils.
- 1.5.3 At the present time, TMBC has an ‘in-year’ balanced budget and is not in immediate danger of this serious action. However, the funding streams for local government are precarious and becoming even more uncertain and with this in

mind our MTFS identifies the need to find savings of circa £1.7m over the next 4 to 5 years. Members agree that £0.5m of this should be identified and implemented by April 2024. Work is underway to deliver this target and it is intended that a progress report will be brought to Cabinet in October/November.

- 1.5.4 The Director of Finance & Transformation maintains a thorough budgetary control and forecasting regime, with regular reports to Members. However, some improvements are needed to our procurement and performance management processes as identified within the External Auditor's Annual Audit Report to strengthen the arrangements we already have in place and ensure that TMBC is delivering effective, efficient and economic services to the public. Above all else we must be able to say that all Services are achieving value for money.
- 1.5.5 A partnership approach between Members and officers will be needed to ensure that we can respond to, and satisfy, the challenges set out above.

## **1.6 Legal Implications**

- 1.6.1 The Council's external auditor is required under s20(1)c) of the Local Audit and Accountability Act 2014 to satisfy themselves that the Authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.
- 1.6.2 The Code of Audit Practice issued by the National Audit Office in 2020 requires us (Grant Thornton UK LLP) to report to you our commentary relating to proper arrangements.

## **1.7 Financial and Value for Money Considerations**

- 1.7.1 As set out in the Auditor's Annual Report.
- 1.7.2 It has been established that the Auditor will not need to carry out any additional work as a result of identifying the two significant weaknesses above and therefore no additional fees should accrue.

## **1.8 Risk Assessment**

- 1.8.1 Grant Thornton identify two significant weaknesses leading to key recommendations. It is important that both Members and officers actively respond to these matters as quickly as possible in order to protect the Council and its services to residents.

## **1.9 Equality Impact Assessment**

- 1.9.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.



## 1.10 Policy Considerations

### 1.10.1 Business Continuity/Resilience

## 1.11 Recommendations

### 1.11.1 Members are **RECOMMENDED** to:

- 1) Consider and approve the Auditor's Annual Report [**Annex 1**] for 2022/23;
- 2) Note the key recommendations made in respect of 'performance management' and 'procurement' and endorse the management comments;
- 3) Note and endorse the management comments to the improvement recommendations made; and
- 4) Make any specific recommendations to Cabinet and/or Full Council as the Committee feels appropriate in light of the Annual Report.

Background papers:

Nil

contact: Sharon Shelton  
Julie Beilby

Julie Beilby  
Chief Executive

Sharon Shelton  
Director of Finance and Transformation  
on behalf of the Management Team

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# Auditor's Annual Report on Tonbridge & Malling Borough Council

Page 155  
For the period 2022-23  
September 2023





We are required under Section 20(1)(c) of the Local Audit and Accountability Act 2014 to satisfy ourselves that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The Code of Audit Practice issued by the National Audit Office (NAO) requires us to report to you our commentary relating to proper arrangements.

We report if significant matters have come to our attention. We are not required to consider, nor have we considered, whether all aspects of the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.



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The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed for the purpose of completing our work under the NAO Code and related guidance. Our audit is not designed to test all arrangements in respect of value for money. However, where, as part of our testing, we identify significant weaknesses, we will report these to you. In consequence, our work cannot be relied upon to disclose all irregularities, or to include all possible improvements in arrangements that a more extensive special examination might identify. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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# Executive summary



## Value for money arrangements and key recommendations




Under the National Audit Office (NAO) Code of Audit Practice ('the Code'), we are required to consider whether the Council has put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.

Auditors are required to report their commentary on the Council's arrangements under specified criteria. 2020-21 was the first year that we reported our findings in this way. As part of our work, we considered whether there were any risks of significant weakness in the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources. Our conclusions are summarised in the table below.

### Two significant weaknesses are identified in the Council's arrangements to improve economy, efficiency, and effectiveness

Our findings of the VFM audit for 2022-23 identify two significant weaknesses in the Council's arrangements to improve economy, efficiency, and effectiveness. The Council needs to develop a performance framework and use performance management to drive its required transformation as it makes increasingly hard choices to identify savings. It also needs to significantly improve its arrangements for procurement and contract management.

Criteria	Risk assessment	2020-21 Auditor judgment	2021-22 Auditor judgment	2022-23 Auditor judgment	Direction of travel
<b>Financial sustainability</b>	No risks of significant weakness identified from our planning and risk assessment work.	No significant weaknesses in arrangements identified, but three improvement recommendations made.	No significant weaknesses in arrangements or improvement recommendation made.	No significant weakness in arrangements identified, but two improvement recommendations made.	↓
<b>Governance</b>	No risks of significant weakness identified from our planning and risk assessment work.	No significant weaknesses in arrangements identified, but one improvement recommendation made.	No significant weaknesses in arrangements identified, but one improvement recommendation made.	No significant weakness in arrangements identified but two improvement recommendations made.	→
<b>Improving economy, efficiency and effectiveness</b>	No risks of significant weakness identified from our planning and risk assessment work.	No significant weaknesses in arrangements identified, but three improvement recommendations made.	No significant weaknesses in arrangements identified, but one improvement recommendation made.	Two significant weaknesses in arrangements identified and two key recommendations made.	↓

 No significant weaknesses in arrangements identified or improvement recommendation made.  
 No significant weaknesses in arrangements identified, but improvement recommendations made.  
 Significant weaknesses in arrangements identified and key recommendations made.

# Executive summary

## Key recommendations

We raised performance management as an improvement recommendation in the Annual Audit Reports (AAR) for both 2020-21 and 2021-22. In 2022-23 the Council still lacked a performance framework meaning it was reactive to challenge, rather than proactively forward planning or anticipating issues before they emerged. Cabinet members cannot hold officers to account for performance if reporting is lacking. Performance benchmarking is not built into the Council's arrangements. While the Council recognises it needs to look at levels of delivery for statutory services given long-term financial constraints impact on its financial sustainability, this relies on effective performance data.

The Council has an important responsibility to ensure that procurement and contract management arrangements maximise the use of public finances, that value for money is achieved, and procurement delivers strategic priorities. We previously raised this in 2020-21 and in 2021-22 as an improvement recommendation. We find the Council's arrangements for procurement and contract management are not adequate to ensure it is achieving value for money and we consider this to be a significant weakness.



## Financial sustainability

The Council has a ten-year Medium Term Financial Strategy (MTFS). Annual budget setting reflects the impact of key expenditure drivers, such as population changes, pay and other inflationary pressures. As part of the process in 2022-23 budgets were reviewed and changes made to adjust for pressures, new initiatives, expected cost increases and income changes. The 2022-23 expenditure outturn position was £10.231m against an expected £11.213m. Waste, homelessness/temporary accommodation and the Local Plan continue to have significant financial implications for the Council. General Fund Reserves balance on 31 March 2023 was £8.611m compared with £7.661m at the same time in 2022. General Fund working balances were set at £1.25m.

The Council has a Savings and Transformation Strategy, monitored at Cabinet as part of the MTFS report. A transformation approach to savings is needed by the Council as it will struggle to find the more savings by taking its traditional approach. In February 2023, an updated copy of the Strategy was presented to Cabinet, it included the need to save £1.9m, of which £1.7m must be made by 31 March 2028 plus the £200k from back-office savings by April 2024.

Once the new Corporate Plan is in place the Council needs to ensure spending reflects its priorities, particularly discretionary services but also explore the level which statutory services are funded to realise possible savings.

We make two improvement recommendations set out on pages 13-14.



# Executive summary



## Governance

The Council reviews its Risk Management Strategy annually with the last review agreed in January 2023. It outlines responsibility for risk. It is complemented by a risk management guidance document setting out what risk is, how to identify a risk, assess and evaluate it, escalate risk determine risk proximity, risk profile, allocate risk, and risk monitoring. The guidance also outlines the risk register template, a risk assessment form and how to determine likelihood. We see this as guidance as good practice. However, we identified improvements to risk in the 2020-21 AAR and again in 2021-22 saying the Strategic Risk Register could be improved to include direction of travel, sources of risk and assurance, dates of last and next review and we recommended a training module for all staff be developed. We find these issues are still outstanding.

Budgets are discussed with budget holders, senior leadership and Members prior to approval at Council level. But the budget process does not include consultation with the public and this is an area the Council may want to address. Without service data and effective performance management it is unclear how the Council can effectively plan to make £2m savings with limited experience of strategic transformation. This means that performance information, including good quality service data and benchmarking, is more even important to aid effective decision-making. We recommend that the Council fully integrates performance and financial reporting for revenue and capital to improve financial reporting.

We have made two improvement recommendations set out on pages 18-19.



## Improving economy, efficiency and effectiveness

In 2022-23, the Council lacked a performance management framework. The Corporate Plan was being developed during 2022-23 and multiple service strategies were in place which meant there was no compelling narrative and no suite of KPIs being reported to Cabinet. There is no golden thread through the Council and no benchmarking. A lack of a performance framework meant the Council was reactive to challenges, rather than proactively forward planning or anticipating issues before they emerged. The lack of performance management during 2022-23 means the Council could not use performance data to drive improvement or achieve value for money. Without integrated reporting the Council risks not focusing spend on its priorities to deliver improvement. The Council has not yet looked at levels of delivery for statutory services and recognises it needs to plan this work as long-term financial constraints impacts its financial sustainability. The Council needs a strategic approach to assess required service levels, but this relies on effective performance data. Partnership items are regularly reported to Cabinet but given the lack of effective performance management the delivery of outcomes by those partnerships is not actively managed.

The Council's Procurement Strategy is dated 2017 and requires updating, as we recommended in both the 2020-21 and 2021-22 AARs. The Council lacks an intelligent client function for procurement and contract management. It has no specialist trained officer to lead procurement and contract management or ensure regular training is provided to members and officers. The Council's contract standing orders (CSOs) in the constitution are out of date and there is evidence the CSOs are not complied with. The Council has a legal duty to secure value for money and social value in commissioning and procurement.

We find that the Council's arrangements for performance management and procurement and contract management are both significant weaknesses and raise two key recommendations (see pages 6 and 7).

Please note that our report covers budgeted figures for both 2022-23 and 2023-24 as the 2023-24 budget is developed and approved in 2022-23. We are also mindful of the fact that our 2021-22 Auditor's Annual Report (AAR) was issued 6 months ago and the Council has not had a full year to implement the recommendations made in our prior year AAR.

# Key recommendations



## Improving economy, efficiency and effectiveness

- Key recommendation 1** The Council needs to improve its performance management arrangements by:
- Using the reset Corporate Plan to establish a golden thread for the Council, by creating a performance management framework at corporate and service levels linking outcomes to expected annual measures to track success and report these to the public;
  - Developing annual delivery plans aligned with the Corporate Plan and reduce the number of service specific strategies to ensure the golden thread is in place;
  - Agreeing performance outcomes, that can be measured, at least annually as part of the new performance management framework;
  - Ensuring performance reporting include targets, RAG rating, and actual measures and benchmarking. Reports should use previous year and 'nearest neighbours' data where possible; integrating performance, risk and finance reporting to drive improvement;
  - Ensuring the Cabinet receives quarterly performance reports to enable it to hold officers to account;
  - Using performance and financial data and benchmarking to look at delivery levels of statutory services to ensure the Council is achieving value for money;
  - Ensuring that the new performance management framework and reporting extends to key contracts such as waste and leisure;
  - Developing a strategic approach to assessing the levels of statutory services needed to save money;
  - Engaging with hard-to-reach customers to ensure they can still access services given the Council's digital by default approach;
  - Ensuring partnership performance management, including outcomes, is reported regularly to Cabinet; and
  - Engaging key stakeholders, where appropriate, to determine local priorities for resources or opportunities for savings.

### Why/Impact

The Council needs to ensure it is delivering its corporate strategy and without a framework in place, underpinned by effective performance management and data, it will not understand required improvements or have a golden thread to enable officers to understand how they contribute to corporate delivery or identify savings and achieve value for money. The lack of performance management during 2022-23 means the Council could not use performance data to drive improvement or achieve value for money. Without a blended approach between finance and performance the Council could reduce spending in the wrong areas.

### Auditor judgement

The Council's arrangements for performance management is not adequate.

### Summary findings

We raised performance management as an improvement recommendation in the AAR for both 2020-21 and 2021-22. In 2022-23 the Council still lacked a performance framework meaning it was reactive to challenge, rather than proactively forward planning or anticipating issues before they emerged. Cabinet members cannot hold officers to account for performance if reporting is lacking. Performance benchmarking is not built into the Council's arrangements. While the Council recognises it needs to look at levels of delivery for statutory services given long-term financial constraints impact on its financial sustainability, this relies on effective performance data.



# Key recommendations



## Improving economy, efficiency and effectiveness

**Key recommendation 1** Following both this review and a Peer Challenge undertaken during 2022/23 a range of KPI's have been introduced and, since the start of 2023/24, are presented to Members of Overview and Scrutiny Committee and the three Scrutiny Select Committees at quarterly intervals after their review by Management Team.

### Management comments

Management agrees that KPIs should also be formally shared with Cabinet and it is intended that they will now be introduced to Cabinet agendas as well as making them a standard regular item on all service management teams. The range of information captured and reported will also be reviewed and refined over the coming months.

Management acknowledges, and agrees with, the recommendation about a 'golden thread'. The need for greater focus of resources towards 'Policy and Performance' is also recognised to act as the 'golden thread' between finance and performance across the organisation and to enable officers to understand how they could contribute to corporate delivery or identify savings and achieve value for money.

Benchmarking information is already in use in some service areas (e.g. treasury management and recycling) and is reported to relevant Committees to aid review of performance, but more generally work is already underway to look at a wider range of benchmarking information which can be used to inform areas for transformation and value for money assessments. It is expected that this will be developed over the next 12 to 18 months.

In terms of engagement with residents, a consultation was undertaken to inform the development of the new Corporate Strategy and assess local priorities. Management will liaise further with Cabinet about further engagement with residents on resources and options for savings

# Key recommendations



## Improving economy, efficiency and effectiveness

<b>Key recommendation 2</b>	<p>The Council needs to improve its procurement and contract management arrangement by:</p> <ul style="list-style-type: none"> <li>• Updating its procurement strategy;</li> <li>• Ensuring the contracts register is monitored, kept up to date and used by all services;</li> <li>• Ensuring it fully meets the Local Government (Transparency Requirements) (England) Regulations 2015 legislation;</li> <li>• Having a suitably trained client lead for procurement and contract management;</li> <li>• Provide training for officers and members on procurement and contract management to enable them to fully understand their responsibilities for social value and value for money; and</li> <li>• Ensuring the Council's shared arrangements for fraud also include procurement and contract management.</li> </ul>
<b>Why/Impact</b>	<p>The Council has an important responsibility to ensure that procurement and contract management arrangements maximise the use of public finances, that value for money is achieved, and procurement delivers strategic priorities.</p>
<b>Auditor judgement</b>	<p>The Council's arrangements for procurement and contract management are not adequate to ensure it is achieving value for money.</p>
<b>Summary findings</b>	<p>We raised an improvement recommendation to update the Council's Procurement Strategy in the 2020-21 and 2021-22 AARs. The Strategy is dated 2017 and needs to consider changes over the last six years including the Procurement Bill, Brexit, the National Procurement Policy Statement June 2021 and the LGA national procurement framework from 2018 that was updated in 2022. The Council lacks an intelligent client function for procurement and contract management. It has no specialist trained officer to lead procurement and contract management or ensure regular training is provided to members and officers, instead it has a procurement group and assigns responsibility to each service. The Council's contract standing orders (CSOs) in the constitution are out of date following the procurement changes since Brexit and need updating and communicating through the organisation. The Council has a legal duty to secure value for money and social value in commissioning and procurement.</p>
<b>Management comments</b>	<p>Management Team acknowledges that updating of the procurement strategy has been an outstanding matter for some time. The Council does not have its own procurement resource and has relied on a working group of officers from across the Council to discuss and deliver procurement priorities and monitor/update the contracts register. For the letting of significant contracts, the Council has always sought professional assistance externally, but it acknowledged that a lack of 'in house' expertise in this discipline has led to a lack of progress.</p> <p>We are now having discussions with another Local Authority with a view to developing a SLA for both the review and revision of the Procurement Strategy along with a named officer for day to day professional advice who could also sit on the Procurement working group. In order to bolster the profile and importance of the procurement function, the Procurement working group will now be chaired by a member of Management Team. Appropriate training for both officers and Members will be developed by the group over the next few months.</p> <p>With regard to the risk of fraud within procurement, the Council's SLA with Kent County Council's Internal Audit and Fraud team does already cover this activity. Procurement fraud awareness training will be offered to procurement leads during 23/24 and a rolling programme will be established.</p>

The range of recommendations that external auditors can make is explained in Appendix B.

# Opinion on the financial statements and use of auditor's powers

We bring the following matters to your attention:

## Opinion on the financial statements

Auditors are required to express an opinion on the financial statements that states whether the accounts: present a true and fair view of the Council's financial position; and have been prepared in accordance with the CIPFA/LASAAC Code of Practice on local authority accounting in the United Kingdom 2021-22.

Our work on the audit of the Council's 2022-23 financial statements is in progress.

## Statutory recommendations

Under Schedule 7 of the Local Audit and Accountability Act 2014, auditors can make written recommendations to the audited body which need to be considered by the body and responded to publicly.

We did not issue any statutory recommendations in 2022-23.

## Public Interest Report

Under Schedule 7 of the Local Audit and Accountability Act 2014, auditors have the power to make a report if they consider a matter is sufficiently important to be brought to the attention of the audited body or the public as a matter of urgency, including matters which may already be known to the public, but where it is in the public interest for the auditor to publish their independent view.

We did not issue any public interest report in 2022-23.

## Application to the Court

Under Section 28 of the Local Audit and Accountability Act 2014, if auditors think that an item of account is contrary to law, they may apply to the court for a declaration to that effect.

We did not make any application to the Court in 2022-23.

## Advisory notice

Under Section 29 of the Local Audit and Accountability Act 2014, auditors may issue an advisory notice if the auditor thinks that the authority or an officer of the authority:

- is about to make or has made a decision which involves or would involve the authority incurring unlawful expenditure;
- is about to take or has begun to take a course of action which, if followed to its conclusion, would be unlawful and likely to cause a loss or deficiency; or
- is about to enter an item of account, the entry of which is unlawful.

We did not issue any advisory notice in 2022-23.

## Judicial review

Under Section 31 of the Local Audit and Accountability Act 2014, auditors may make an application for judicial review of a decision of an authority, or of a failure by an authority to act, which it is reasonable to believe would have an effect on the accounts of that body.

We did not apply for any judicial review in 2022-23.

# Securing economy, efficiency and effectiveness in the Council's use of resources

All councils are responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness from their resources. This includes taking properly informed decisions and managing key operational and financial risks so that they can deliver their objectives and safeguard public money. The Council's responsibilities are set out in Appendix A.

Councils report on their arrangements, and the effectiveness of these arrangements as part of their Annual Governance Statement.

Under the Local Audit and Accountability Act 2014, we are required to be satisfied whether the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

The National Audit Office's Auditor Guidance Note (AGN) 03, requires us to assess arrangements under three areas:



## Financial Sustainability

Arrangements for ensuring the Council can continue to deliver services. This includes planning resources to ensure adequate finances and maintain sustainable levels of spending over the medium term (3-5 years).



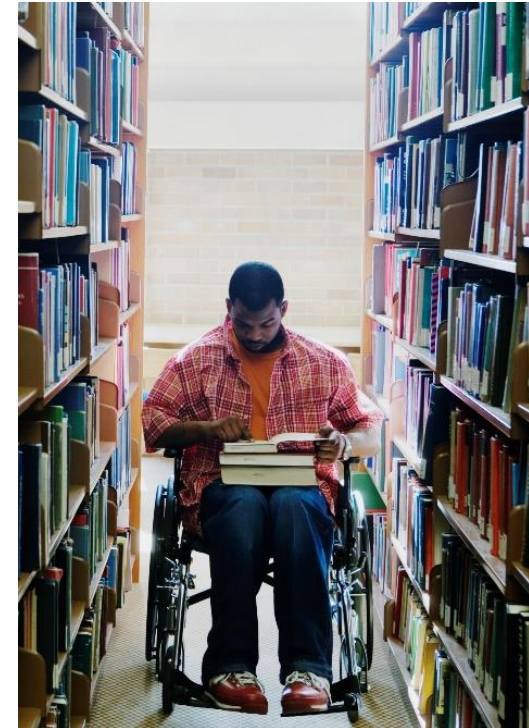
## Governance

Arrangements for ensuring that the Council makes appropriate decisions in the right way. This includes arrangements for budget setting and management, risk management, and ensuring the Council makes decisions based on appropriate information.



## Improving economy, efficiency and effectiveness

Arrangements for improving the way the Council delivers its services. This includes arrangements for understanding costs and delivering efficiencies and improving outcomes for service users.



Our commentary on the Council's arrangements in each of these three areas, is set out on pages 10 to 21.

# Financial sustainability



## We considered how the Council:

- identifies all the significant financial pressures that are relevant to its short and medium term plans and builds them into its plans
- plans to bridge its funding gaps and identify achievable savings
- plans its finances to support the sustainable delivery of services in accordance with strategic and statutory priorities
- ensures its financial plan is consistent with other plans such as workforce, capital, investment and other operational planning which may include working with other local public bodies as part of a wider system
- identifies and manages risk to financial resilience, such as unplanned changes in demand and assumptions underlying its plans

## How the Council ensures that it identifies all the significant financial pressures that are relevant to its short- and medium-term plans and builds them into its plans

The Council has a ten-year Medium Term Financial Strategy (MTFS). Annual budget setting reflects the impact of key expenditure drivers, such as population changes, pay and other inflationary pressures. As part of the process in 2022-23 budgets were reviewed and changes made to adjust for pressures, new initiatives, expected cost increases and income changes. Waste, homelessness including temporary accommodation, and the Local Plan continue to have significant financial implications for the Council.

In 2022-23 the annual funding settlement was again for one-year creating challenges for financial planning. It included an allocation of £1.19m for New Homes Bonus (NHB) and a one-off Services Grant to cover national insurance increases. The funding decrease on 2021-22 was £0.4m which represented a reduction of 7.6%. The council tax increase in 2022-23 was £5 or 2.3%, taking Band D council tax to £224.50 for district council services. The council tax base in 2022-23 was 52,247 Band D equivalent properties, an increase of 1.7% from 2021-22.

The 2022-23 outturn position was £10.231m spend against an expected £11.213m, but waste, homelessness/temporary accommodation and the Local Plan continue to have significant financial implications for the Council. In June 2023 Cabinet was advised the contribution to the General Revenue Reserve was £949,685, some £432,835 more than the £516,850 previously estimated. The variance was attributed to above profile performance on investment returns due to interest rate rises and improved income from planning application fees, garden waste and car parking.

General Fund reserve balance on 31 March 2023 was £8.611m compared with £7.661m at the same time in 2022. General Fund working balances were set at £1.25m. Plans to use reserves to fund budget deficits in the short term is not of immediate concern but should be monitored closely.

The Section 25 statement, for agreement of the annual budget and precept, reported to Cabinet on 14 February 2022 references the reserve levels,

confirming they are adequate and that external impacts on the budget have been considered.

Financial plans are discussed at Council, Cabinet and Finance, Overview & Scrutiny Committee, and Regeneration & Property Scrutiny Committee. The Council has a history of transparency in financial matters.

## How the body plans to bridge its funding gaps and identifies achievable savings

In 2022-23 Cabinet instructed the Corporate Management Team (CMT) to implement an “Essential Spend Only” ethos again to assist in containing in-year budget pressures. In-year pressures included a £0.249m contribution under the utility cost sharing agreement for the Leisure Trust and support on the Waste Contract with increases in HGV driver costs.

The Council has a Savings and Transformation Strategy that provides structure and direction to address the financial challenges it faces. The Strategy will be delivered in four tranches commencing 2022-23. The Council has a history of delivering savings, delivering over £3.8m of savings in the last seven years. Savings delivery is monitored at Cabinet as part of the regular MTFS report. A transformation approach to savings is important going forward as the Council will struggle to find the savings it needs by taking its traditional approach. **We make an improvement recommendation to develop a transformation programme related to cost savings for the medium to long-term (see page 13).**

In February 2022, an updated copy of the Savings and Transformation Strategy was presented to Cabinet, it included the need to save £2.15m, of which £1.5m must be ‘bridged’ in the next 3 years to protect the Council’s financial integrity. In February 2021, the projected gap was £0.475m. The increase to £2.15m was caused by waste management, the Local Plan costs, and temporary housing plus inflationary pressures. Added to this gap is £0.2m from the scaled back of office accommodation, giving £2.35m to find and deliver over the medium-term.

# Financial sustainability

Of the four tranches in the Savings and Transformation Strategy, by February 2023 full tranche 1 savings of £0.35m were achieved and the funding gap reduced to £1.7m to be delivered in three further tranches: tranche 2 – £0.5m by April 2024; tranche 3 – £0.60m by April 2025; and tranche 4 – £0.60m by April 2028. Plus, the scaling back of office accommodation to save £0.2m by April 2024.

The Savings and Transformation Strategy presented to Cabinet on 14 February 2023, lacks explicit detail and alternatives to consider, with no identified option appraisals. Going forward, as savings become more challenging to deliver, it will be important to develop early ideas for savings/transformation with budget holders and present these to a Members' challenge board to enable early engagement with key stakeholders and to allow Members to see options with associated impact of savings on residents. We address this improvement in the transformation recommendation on page 13.

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**How the body plans finances to support the sustainable delivery of services in accordance with strategic and statutory priorities**

**Financial planning in the Council does not demonstrate a clear understanding of the cost of delivering core statutory services as distinct from discretionary areas of spend and we make an improvement recommendation to address this on page 13.**

In 2022-23 the Council lacked an effective corporate strategy, but we recognise it was being addressed through development and consultation during 2022-23 and was agreed by Council on 22 July 2023. The one-page list of priorities in place from 2020-23 identified finance, climate change and sustainable growth as key priorities, but climate change activities are not costed in the MTFS.

Now the Corporate Plan is in place the Council needs to ensure spending reflects its priorities, particularly discretionary services but also explore the level which statutory services are funded to realise possible savings. **We include the need to link priorities and spending in our improvement recommendation on the development of a transformation programme on page 13.**

There is extensive internal consultation to ensure the annual budget meets the needs of the services provided, ensuring that key services remain funded. **However, financial plans are not discussed with wider stakeholders through an annual consultation exercise, and we make an improvement recommendation to address this on page 13.** We found no evidence of the need to curtail services to support short term funding deficits, but this may be required as savings become more difficult to find.

The Council has the necessary resources for financial management including a financial system able to provide timely financial information, the necessary financial skills, experience and capacity

in the finance team and budget holders in the services, and clearly defined responsibilities for budget management. Corporate Management and Members challenge performance, holding budget holders to account, and making decisive interventions where and when necessary. The finance team is well-established with significant experience of managing the Council's finances. We feel the Council has a positive financial culture and an appropriate 'tone from the top' set by the Chief Executive – the ongoing management of the Council's financial position over recent years is evidence of this.

Budget holders receive monthly budget reports. The onus is on budget holders to raise any issues with finance on an exception basis, rather than regular meetings being held. Any variances of £5,000 and above must be reported to the Director of Finance and Transformation. Finance carries out independent review of significant elements of the budget such as salaries and income to maintain oversight of the financial position.

**How the body ensures that its financial plan is consistent with other plans such as workforce, capital, investment, and other operational planning which may include working with other local public bodies as part of a wider system**

In June 2022 a new Workforce Strategy was agreed in line with LGA CPC recommendations. This is a 1-year strategy and given the need for additional capacity in performance, transformation, procurement and contract management and the programme office this needs planning over a long-term time horizon and be fully costed. **We make an improvement recommendation to develop a long-term term and costed Workforce Strategy on page 14.**

The Council has a Capital Plan and has adopted a Capital Strategy and capital planning process which are regularly reviewed to reflect changing circumstances. The capital outturn in 2022-23, net of grants, was £0.784m against a budget provision of £1.567m.

In addition to funding for the replacement of assets which deliver services and recurring capital expenditure, there is now an annual capital allowance for all other capital expenditure. Any 'bids' for capital schemes or discretionary capital grants are to be assessed in the context of the annual capital allowance. Priority is given to those schemes that generate income or reduce costs. The annual capital allowance is currently set at £0.25m.

The Council is risk adverse and debt-free, expected to remain debt free until 2029, and does not seek to invest in commercial assets. The capital programme largely consists of maintenance and improvement items and contains no major schemes. The capital programme is overseen by Cabinet, while projects are subject to a detailed appraisal and approval process.

The Capital budget sets out revenue impacts. There is an annual contribution to the revenue reserve for capital schemes to match the funding required for the replacement of existing assets (vehicles, plant and

# Financial sustainability

equipment) and recurring capital expenditure. The contribution in 2022-23 is £0.908m.

A Treasury Management & Annual Investment Strategy is in place and reported to Council annually. The Council uses external advisors Link Asset Services, to ensure risk is managed. There is an appropriate balance between mitigating risk and optimising opportunities, and the Council has set out the appropriate level of reserves to maintain, as well as the opportunity cost of holding reserves.

## How the body identifies and manages risks to financial resilience, such as unplanned changes in demand and assumptions underlying its plans

The Council identified the risk of not balancing the budget as a red risk in the latest Strategic Risk Register (SRR). Ways in which the Council is managing this risk include the regular budget monitoring and scrutiny, the Savings and Transformation Strategy, the MTFS and use of reserves. A list of financial risks is included in budget papers sent to Members when setting the Council's annual budget, but these are not aligned with the SRR risk references. [We address this issue in the risk improvement recommendation on page 18.](#)

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# Improvement recommendations



## Financial sustainability

### Improvement recommendation 1

The Council should develop a transformation programme to enable it to reduce spend by looking at different ways of delivering services or by enabling others in its systems leadership role. It needs to:

- Use the Corporate Plan reset to identify its budget priorities and reset the budget;
- Develop an understanding of the cost of delivering its core statutory services and discretionary spend where it meets clear political priorities;
- Identify ways to deliver for less and identify activity that can stop where it does not contribute to statutory services or to Corporate Plan priorities;
- Consult on changes to services and future spending plans with the public and include public engagement annually as part of business planning;
- Ensure it has transformation and programme management skills in place to manage the programme, lead change and explore new ways of working;
- Introduce service user testing, when making service changes as part of prototyping, to ensure groups are not adversely impacted by changes to delivery for example digital by default; and
- Develop early ideas for savings with budget holders and present these to a Members' challenge board to enable early engagement with key stakeholders and to allow Members to see options and the impact of savings on residents.

### Why/Impact

The Council has traditionally found the savings it requires but the scale of savings required going forward calls for a more transformative approach to achieve value for money and maintain effective services.

### Auditor judgement

The Council will not be able to achieve future savings using historic approaches and a more transformational model will be needed to help ensure financial sustainability while achieving value for money and outcomes for residents.

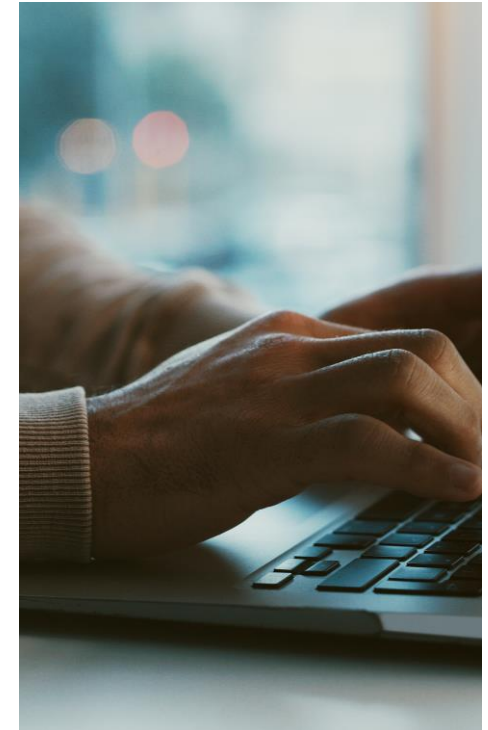
### Summary findings

The Council has a Savings and Transformation Strategy and a history of delivering savings, but a transformation programme would help it to deliver future savings whilst effectively considering value for money.

### Management comments

A Management Team/Cabinet LGA Development Day is being arranged for October, themed around transformation. It will look at development of the transformation programme and subsequently the resource requirement.

As part of the budgetary process for the Revised Estimate for 2023/24 and Forward Estimates for 2024/25 Services are asked to identify whether services provided were mandatory or discretionary to help develop an overall understanding of cost and priorities.





# Improvement recommendations



## Financial sustainability

### Improvement recommendation 2

Improve the Workforce Strategy to include fully costed strategy over the medium to long-term.

### Why/Impact

Costing the workforce requirements over the medium to long term will enable finance to build assumptions into the MTFS and ensure the Council has the right blend of skills for the future.

### Auditor judgement

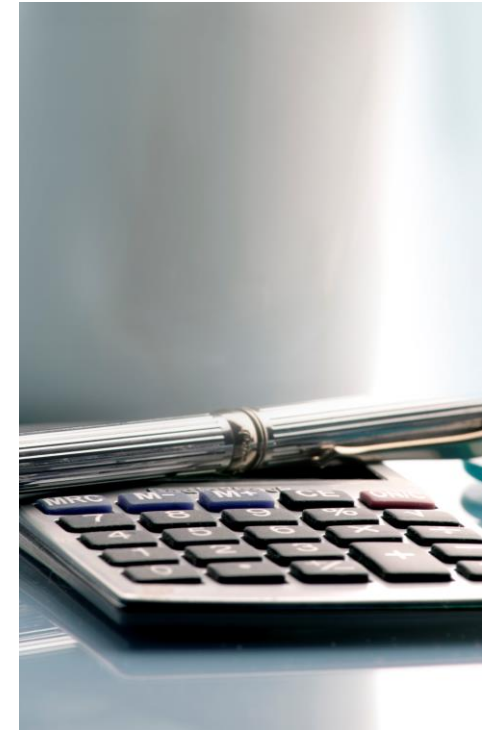
Developing a costed strategy will enable the Council to plan its future workforce requirements and build in medium-to long-term assumptions for budget planning.

### Summary findings

In June 2022, a new Workforce Strategy was agreed in line with LGA CPC recommendations. This is a 1-year strategy and given the need for additional capacity in performance, transformation, procurement and contract management and the programme office this needs planning over a long-term time horizon and be fully costed.

### Management comments

Future revisions of the Workforce strategy will include medium-term impacts requiring reviews of service delivery, succession planning, resilience as well as financial costing.



The range of recommendations that external auditors can make is explained in Appendix B.

# Governance



## We considered how the Council:

- monitors and assesses risk and gains assurance over the effective operation of internal controls, including arrangements to prevent and detect fraud
- approaches and carries out its annual budget setting process
- ensures effective processes and systems are in place to ensure budgetary control; communicate relevant, accurate and timely management information (including non-financial information); supports its statutory financial reporting; and ensures corrective action is taken where needed, including in relation to significant partnerships
- ensures it makes properly informed decisions, supported by appropriate evidence and allowing for challenge and transparency. This includes arrangements for effective challenge from those charged with governance/Audit Committee
- monitors and ensures appropriate standards, such as meeting legislative/regulatory requirements and standards in terms of staff and board member behaviour (such as gifts and hospitality or declaration/conflicts of interests) and where it procures and commissions services

## How the body monitors and assesses risk and gains assurance over the effective operation of internal controls, including arrangements to prevent and detect fraud

The Council adopted a Risk Management Strategy in February 2022 and agreed a revision in January 2023. It outlines responsibility for risk. It is complemented by a risk management guidance document setting out what risk is, how to identify a risk, assess and evaluate it, escalate risk determine risk proximity, risk profile, allocate risk, and risk monitoring. The guidance also outlines the risk register template, a risk assessment form and how to determine likelihood – we view this guidance to be good practice.

Any risk evaluated as ‘High Risk’ (score of 15 or above) is deemed by the Council to be beyond ‘risk tolerance’ and to have exceeded its ‘risk appetite’ and is escalated immediately. Such risks should be added to the service’s risk register and discussed in the Service Management Team (SMT) to inform a decision as to whether this should be escalated to Corporate Management Team (CMT).

CMT then considers whether to add the risk to the Strategic Risk Register (SRR). The SRR is a critical tool for the Council to capture and report on risk activity and their risk profile. The Council reviews its SRR quarterly. Each team is meant to discuss service risks at weekly meetings, and we have verified that this takes place with the finance team. There is also an element of internal peer challenge on risk.

While we found good practice in this area, we did identify improvements to the Council’s approach to risk management in our 2020-21 and 2021-22 Auditor’s Annual Reports (AAR). We set out how the SRR could be improved by including direction of travel, sources of risk and assurance, and dates of last and next review. We also recommended a training module for all staff be developed to raise awareness of risk. We find these recommendations are still outstanding.

In 2022-23 we have identified additional risk management improvements. The SRR should set out relevant key controls and assurances for each risk, include a direction of travel and have a single named owner. We expect to see the original risk score and likelihood scores after initial mitigation, current risk scores and target risk scores. It would be useful to identify issues, risk and impact separately.

Dates in the SRR mainly start from 2017 and mitigation actions/narrative does not make clear subsequent updates, making scrutiny difficult for Members. The Audit Committee receives the SRR for comment at each meeting, but a quarterly update would be helpful for Cabinet, integrated with reporting on performance and finance.

The Council needs to improve its committee reports to enable risk management and reference strategic risks and their scores and impact in all Council reports. This would also facilitate Member challenge on risk.

## We make an improvement recommendation concerning risk management on page 18.

Internal audit (IA) is provided by Kent County Council and the IA team reports into finance on a monthly basis. IA also leads on the Council’s risk management and fraud activities. During 2022-23 the IA team had a vacancy for a Principal IT Auditor. Council pay grades proved insufficient to attract a permanent in-house specialist IT Auditor and this has led to further delay to the Cyber Security and IT Infrastructure audits. However, this post was filled in 2022/23 and the Cyber Security and IT infrastructure reviews completed receiving substantial assurance.

# Governance

The most recent IA external quality assessment was undertaken in February to March 2021 and an improvement plan developed. The IA annual internal self-assessment against the Public Sector Internal Audit Standards was conducted in December 2022. It recommended eight improvements of which six were actioned in 2022-23. The two remaining actions in July 2023 were to identify a mechanism to review and provide assurance on fraud activity and have regular private meetings with the Chair of the Audit Committee and CAE/Audit and Assurance Manager.

In July 2023, the Audit Committee endorsed the opinion on the effectiveness of the IA function in place for 2022-23 as 'Good' with 92% of the audit plan completed. Of the 63 audit recommendations due for implementation in 2022-23 a fifth are still open, a slight increase of four percentage points from 2021-22. The Audit Committee also approved the 2022-23 Annual Governance Statement (AGS). The AGS is supported by signed Assurance Statements provided by CMT members including the three statutory officers.

The Council takes part in the National Fraud Initiative (NFI), which comprises of a nationwide data matching exercise comparing Council data to other council and third-party datasets. In 2022-23 the Counter Fraud Team delivered activity on the biennial data matches received in the 2021-22 exercise. This led to £151,815 in additional council tax being identified due to changes in discounts and exemptions being either removed or adjusted from council tax accounts. The delay was due to the diversion of resources to support due diligence checks on Covid grant payments made through 2020 to 2022.

The Council continues to benefit from the Kent Intelligence Network, a partnership led by Kent County Council, in place since September 2016. This partnership prevents and detects fraud, reduces risk profiles and supports fraud professionals locally. In 2022-23 it helped identify £0.639m of additional liability across Kent.

The Fraud team has delivered awareness training to Council staff in Revenues and Benefits and Human Resources (HR). HR has written to staff asking them to declare second jobs. The Fraud team also received 112 fraud referrals in 2022-23 mostly related to council tax and benefits.

## How the body approaches and carries out its annual budget setting process

The Council's annual budget setting process is described in the Financial sustainability section of this report, [pages 10-12](#). The Council's budget position is categorised as 'red' on the SRR. Budgets are discussed with budget holders, senior leadership and Members prior to approval at Council level. The budget process starts in August with a finance review of staffing. Budget working papers are circulated to budget holders in September and work their way to the management team for approval in November. When the settlement is received in December required adjustments are made and the budget goes to Members in January and February going through Cabinet to Council for approval. We found that there is no budget consultation with the public and this is one areas where the Council may want to address.

## How the body ensures effective processes and systems are in place to ensure budgetary control

During 2022-23 Cabinet and the Finance, Regeneration and Property Scrutiny Committee reviewed updates on the Council's financial position including the budget and savings position. These reports included reasons for variances and risks to budgets.

There is no evidence of serious and pervasive weaknesses in final accounts processes leading to material errors in draft accounts, failure to meet statutory reporting deadlines or a modified opinion on the financial statements. **Financial performance is a key objective the Council, but performance management is a significant weakness and requires improvement - see key recommendation concerning performance management (see page 6), identified as part of our work on the 3Es, refer to page 20 for detail.**

By understanding the performance of services managers will get better budgetary control.

## How the body ensures it makes properly informed decisions, supported by appropriate evidence and allowing for challenge and transparency

In 2022-23 the Council lacked a performance framework meaning it was reactive to challenge, rather than proactively forward planning or anticipating issues before they emerged. However, the Council has had limited need to transform and restructure but is now faced with a more significant budget gap for 2023-24 which will require transformation capacity and skills. The Council recognises the coming years will be challenging if sustainable and transformative solutions are not identified.

Without service data and effective performance management it is unclear how the Council can effectively plan to make £2m savings with limited experience of strategic transformation. This means that performance information, including good quality service data and benchmarking, is more even important to aid effective decision-making. **We recommendation the Council fully integrates performance and financial reporting for revenue and capital to improve financial reporting (see page 19).** The Leader is keen to increase the pace of change and bring fresh ideas. This leadership style creates an opportunity for the whole Council to innovate and look at how it could do things differently.

The Local Government Association (LGA) is the national membership body for local authorities working on behalf of member councils to support, promote and improve local government. In February 2022, the LGA corporate peer review team identified the Council lacked a shared strategic vision, with no strong sense of priorities being reflected in conversations with a wide range of different stakeholders. There were separate strategies for different parts of the Council but no overarching plan with key priorities. Performance reporting was fragmented during 2022-23 with no corporate overview to allow competing issues or challenges to be proactively evaluated against.

# Governance

each other. While we recognise the Council developed its Corporate Plan during 2022-23 (agreed at Council in July 2023), we raise a key recommendation concerning performance management (see page 6), identified as part of our work on the 3Es, refer to page 20 for detail.

The Council uses complaints data in its services to improve but it does not have a corporate resident satisfaction measures and does not have an annual survey or budget consultation with the public. The LGA report identifies that in delivering digital by default, some customers were finding it increasingly difficult to engage with the Council and further analysis of the impact on service provision and customer interaction should be undertaken.

## How the body monitors and ensures appropriate standards, such as meeting legislative/regulatory requirements and standards in terms of officer or member behaviour

During 2022-23 IA reviewed arrangements for Member declarations of interest / expenses allocation. This audit looked at arrangements for Members and staff and was concluded to have substantial assurance. We have not identified any non-compliance with the Constitution, statutory requirements or expected standards of behaviour. We have not been made aware of any data breaches at the Council.

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# Improvement recommendations



Governance

## Improvement recommendation 3

The Council needs to improve risk management by:

- Improving the format of the Strategic Risk Register (SRR) to add for each risk: key controls and assurances; direction of travel; a single named owner; the original risk score and likelihood scores after initial mitigation; current risk scores and target risk scores; and provide updated mitigation quarterly. It would be useful to identify issues, risk and impact separately;
- Updating the SRR format to align with our proposed SRR changes;
- Reviewing the SRR risks to ensure they have the right actions and are unique risks;
- Reporting the SRR quarterly to Cabinet alongside performance and finance;
- Improving committee reports to facilitate good risk management, referencing strategic risks and their scores and impact in all Council reports; and
- Developing training for members and staff to raise awareness of risk and responsibilities.

## Why/Impact

Effective risk management enables councils to: improve governance, confidence and trust; set strategy and plans through informed decision-making; evaluate options and deliver programmes, projects, and policy initiatives; prioritise and manage resources, manage performance, resources and assets; and achieve outcomes.

## Auditor judgement

While we found some good practice in relation to risk, we also found areas of risk management that need improvement.

## Summary findings

Areas of risk management that need improvement relate particularly to the SRR format, member scrutiny and challenge on risk management, and reporting risk to Members in committee reports.

## Management comments

Some changes have already been made to the SRR to indicate direction of travel and further changes will be made over the next few months. In the light of both last year's recommendation and an internal audit report (which contained similar recommendations) Zurich, the Council's insurers, are being asked to review the Risk Management Strategy, formats of risk registers and risk training for new employees.



# Improvement recommendations



Governance

## Improvement recommendation 4

The Council needs to fully integrate performance and financial reporting for revenue and capital to improve financial reporting.

## Why/Impact

Members need to have information that enables them to hold officers to account and challenge performance.

## Auditor judgement

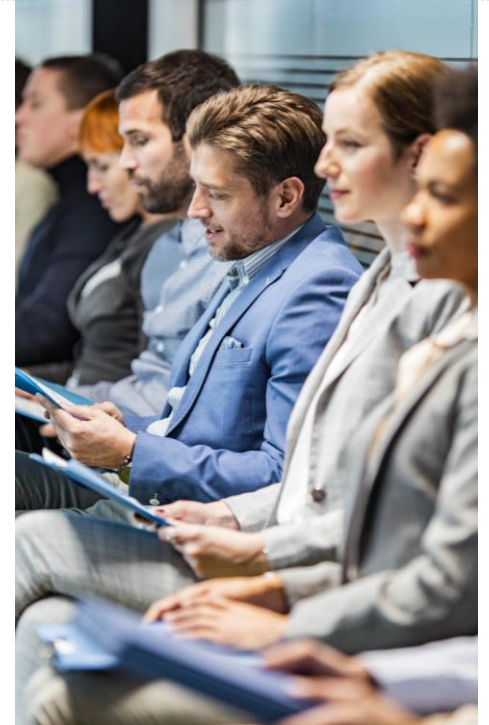
The Council needs to fully integrate financial and performance reporting including workforce information (such as interim spend, vacancy rates and sickness data) once it has addressed the recommendations on performance management.

## Summary findings

Revenue reporting is at an appropriate level with clear commentary of the current position, but service and workforce information is not integrated into financial reports.

## Management comments

*Management response to follow*



The range of recommendations that external auditors can make is explained in Appendix B.

# Improving economy, efficiency and effectiveness



## We considered how the Council:

- uses financial and performance information to assess performance to identify areas for improvement
- evaluates the services it provides to assess performance and identify areas for improvement
- ensures it delivers its role within significant partnerships and engages with stakeholders it has identified, in order to assess whether it is meeting its objectives
- where it commissions or procures services assesses whether it is realising the expected benefits

## How financial and performance information has been used to assess performance to identify areas for improvement

It is recommended by the LGA that councils have a Corporate Peer Review every five years which makes recommendations for improvement. The Council had their review in January 2022 and agreed an action plan. One action was to develop a compelling narrative as part of a new Corporate Plan. The draft Corporate Plan went to Overview and Scrutiny Committee in November 2022 and was shared for comment with staff and the public.

As part of the Corporate Plan review the basket of key performance indicators (KPIs) were reviewed. However, at no point during 2022-23 were KPIs or a paper on performance management presented to the Cabinet despite their constitutional remit. This limits Cabinet's ability to have visibility and oversight of how the Council is performing against its responsibilities and aspirations. We have raised this twice already; in our 2020-21 and 2021-22 Auditor's Annual Reports (AAR) we recommended that Cabinet receives performance reports including benchmarking.

In March 2023, the three select committees (Communities and Environment, Finance, Regeneration and Property, and Housing and Planning) received initial KPI reports relevant for their services. Joining these up with reporting to Cabinet jointly with finance and risk will be important for 2023-24. Providing Cabinet with an integrated performance report would enable them to hold officers to account for the delivery of the Council's Corporate Plan. A lack of a performance framework in 2022-23 meant the Council was reactive to challenges, rather than proactively forward planning or anticipating issues before they emerged.

## How the body evaluates the services it provides to assess performance and identify areas for improvement

Lack of performance management arrangements during 2022-23 meant the Council was reactive to challenges rather than proactively forward planning or anticipating issues before they emerged, and the Council was not able to use performance data to drive improvement or achieve value for money. Without integrated reporting the Council risks not focusing spend on priorities to deliver improvement.

The Council has not yet looked at levels of delivery for statutory services and recognises it needs to plan this work as long-term financial constraints impact financial sustainability. The Council needs a strategic approach to assess required service levels, but this relies on effective performance data.

In 2021-22 we recommended that the Council should re-introduce the benchmarking practices used pre-pandemic, to see how other councils provide services, with a view to introducing best practice and providing best value for money. We understand that plans are in place to introduce benchmarking in 2023-24 in line with the LGA action plan.

The Council has a long-term strategic approach to finance as demonstrated by its ten-year MTFS but given the lack of performance management arrangements and the short-term local government settlements, it is unclear how meaningful assumptions are in respect of future funding streams.

**We consider the Council's performance management arrangements to be a significant weakness and make a key recommendation on page 6.**

# Improving economy, efficiency and effectiveness

## How the body ensures it delivers its role within significant partnerships, engages with stakeholders it has identified

The Council delivers its waste collection service through a contract with Urbaser Ltd and its parent company Urbaser SAU that commenced in September 2019 with a value of around £121.34m. This is a joint contract with Tunbridge Wells Borough Council. Performance of this contract is reported regularly to members.

In the 2021-22 AAR we noted that waste collection performance improved in 2022. However, contract performance was impacted in 2021-22 and in 2022-23 by the nationwide shortage of HGV drivers, as a result the garden waste service was suspended during part of 2022. From late 2019 to November 2022 the contractor did not deliver recycling services for 2,500 households living in communal blocks. This service was introduced from November 2022. Instead, these customers had to travel to 'bring sites' to recycle.

In 2022 the contractor proposed an enhanced pay rate to improve performance by reducing reliance on agency staff and attracting permanent drivers. From May to October 2022 the two councils provided financial assistance towards the enhanced pay rate to a value of £178,897 split between the two councils, which helped to recruit and retain drivers. The pressures in the market continued, and the partnership provided further support from November 2022 to 31 March 2023. The Council contributed £770,000 to that support, funded from the Budget Stabilisation Reserve. It also made a one-off contribution to the contractor of £150,000 towards the costs of terminating some existing collection vehicle leases to facilitate a new fleet of collection vehicles in 2023-24. This was also funded from the Budget Stabilisation Reserve. A Voluntary Ex-Ante Transparency Notice was published due to the contract variation with Urbaser Ltd and Urbaser SAU to support with the enhanced pay for the HGV drivers.

Key performance indicators reported to Community and Environment Scrutiny Select Committee in June 2023 still show performance concerns with the waste contract including 100% of missed bin collections not completed on time and growing complaints about street cleaning. Some of the data collection systems are still not in place meaning the Council can not effectively hold the contractor to account for all its service level agreements.

Partnership items are regularly reported to Cabinet but given the lack of effective performance management the delivery of outcomes by those partnerships is not actively managed. We address this in our key recommendation on page 6.

## Where the body commissions or procures services, how the body assesses whether it is realising the expected benefits

The Council's Procurement Strategy is dated 2017 and it needs updating, as we recommended in both the 2020-21 and 2021-22 AARs, to consider changes over the last six years including the Procurement Bill, Brexit, the National Procurement Policy Statement in June 2021, and the LGA national procurement framework from 2018 that was updated in 2022. The Council lacks an intelligent client function for procurement and contract management. It has no specialist officer to lead procurement and contract management or ensure regular training is provided to Members and officers, instead it has a procurement group and assigns responsibility to each service. The Council's contract standing orders (CSOs) in the constitution are out of date following the procurement changes since Brexit and need bringing up-to-date and communicating. These changes need referencing in the new strategy.

The Council has a legal duty to secure value for money and social value in commissioning and procurement and a duty to manage its contracts effectively. It also has a duty to prevent fraud and corruption.

**The lack of effective procurement and contract management in the Council is a significant weakness and we make a key recommendation on page 7 of this report.**

The Council has a Leisure Trust, established in 2013. It is an important contract for the Council and there is evidence they work together to share costs and reduce future energy impacts. However, **there is a lack of effective scrutiny around how leisure services link to the health improvement and wellbeing of residents in the Borough, with more of a focus on how the contract is performing financially. This is part of the wider key recommendation on performance management on page 6 of the report.**



# Follow-up of previous recommendations

	Recommendation	Type of recommendation	Date raised	Progress to date – management comment	Addressed?	Further action required?
1	<p>Consideration should be given to improving the risk management process:</p> <ul style="list-style-type: none"> <li>a) consider providing additional information in the Strategic Risk Register (SRR), including direction of travel, sources of risk and assurance, and dates of last and next review.</li> <li>b) develop a training module for all staff to raise awareness of risk across the organisation.</li> </ul>	Improvement	December 2022	Some future review dates are now included in the SRR, but direction of travel, assurance, and previous dates are not. Training is not in place, and we make a further improvement recommendation concerning risk management.	No	Yes, refer to improvement recommendation 3
2	<p>The Council should consider the following improvements to its performance management framework:</p> <ul style="list-style-type: none"> <li>a) report a suite of key performance indicators to Cabinet every six months.</li> <li>b) re-introduce the benchmarking practices used pre-pandemic to see how other councils provide services, with a view to introducing best practice and providing value for money.</li> <li>c) the Procurement Strategy should be refreshed, informed by the National Procurement Strategy toolkit.</li> </ul>	Improvement	December 2022	Cabinet still does not receive performance reports. Benchmarking is not introduced in 2022-23 but plans are in place to introduce for 2023-24 in line with the LGA action plan. The Procurement Strategy is not updated.	No	Yes , refer to key recommendation 1

# Appendices

# Appendix A – Responsibilities of the Council

Public bodies spending taxpayers' money are accountable for their stewardship of the resources entrusted to them. They should account properly for their use of resources and manage themselves well so that the public can be confident.

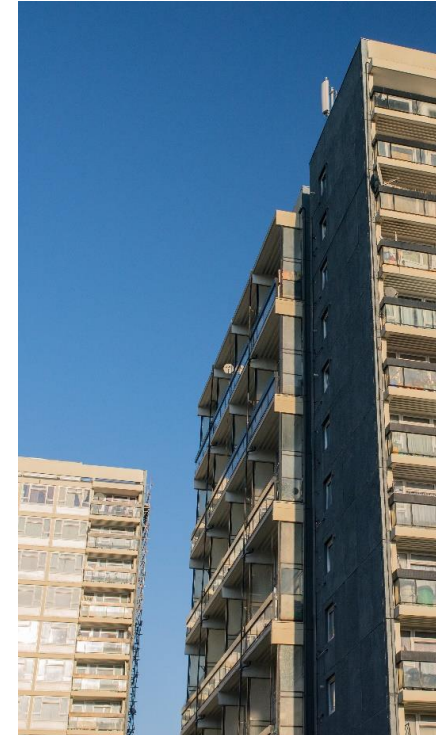
Financial statements are the main way in which local public bodies account for how they use their resources. Local public bodies are required to prepare and publish financial statements setting out their financial performance for the year. To do this, bodies need to maintain proper accounting records and ensure they have effective systems of internal control.

All local public bodies are responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness from their resources. This includes taking properly informed decisions and managing key operational and financial risks so that they can deliver their objectives and safeguard public money. Local public bodies report on their arrangements, and the effectiveness with which the arrangements are operating, as part of their annual governance statement.

The Chief Financial Officer (or equivalent) is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the Chief Financial Officer (or equivalent) determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The Chief Financial Officer (or equivalent) or equivalent is required to prepare the financial statements in accordance with proper practices as set out in the CIPFA/LASAAC code of practice on local authority accounting in the United Kingdom. In preparing the financial statements, the Chief Financial Officer (or equivalent) is responsible for assessing the Council's ability to continue as a going concern and use the going concern basis of accounting unless there is an intention by Government that the services provided by the Council will no longer be provided.

The Council is responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources, to ensure proper stewardship and governance, and to review regularly the adequacy and effectiveness of these arrangements.



# Appendix B – An explanatory note on recommendations

A range of different recommendations can be raised by the Council’s auditors:

Type of recommendation	Background	Raised within this report	Page reference
Statutory	Written recommendations to the Council under Section 24 (Schedule 7) of the Local Audit and Accountability Act 2014.	No	N/A
Key	The NAO Code of Audit Practice requires that where auditors identify significant weaknesses as part of their arrangements to secure value for money they should make recommendations setting out the actions that should be taken by the Council. We have defined these recommendations as ‘key recommendations’.	Yes	Pages 6 and 7
Improvement	These recommendations, if implemented should improve the arrangements in place at the Council, but are not a result of identifying significant weaknesses in the Council’s arrangements.	Yes	Pages 13, 14 and 18, 19

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## Extract from Management Team's report

following receipt of Grant Thornton's Annual Audit Letter for 2021/22

Reported to Audit Committee on 16 January 2023

Extract from the report/ Management comments, which were endorsed by the Audit Committee are in *red italics*.

### **Governance**

- 1 Consideration should be given to the following improvements to the risk management process:
  - Consider providing additional information within the Strategic Risk Register, including direction of travel, sources of risk and assurance, and dates of last and next review.
 

*Consideration to be given to providing additional information in the Strategic Risk Register from April 2023.*
  - Develop a training module for all staff to raise awareness of risk across the organisation.
 

*Appropriate training for staff in order to raise awareness of risk across the organisation to be considered after the May 2023 election.*

### **Improving economy, efficiency and effectiveness**

- 1.1.1. The Council should consider the following improvements to its performance management framework:
  - Report a suite of key performance indicators to Cabinet every six months.
 

*Management Team in liaison with Cabinet to consider how this might best be achieved.*
  - Re-introduce the benchmarking practices used pre-pandemic to see how other councils provide services, with a view to introducing best practice and value for money.
 

*Benchmarking can be resource intensive, that is not to say benchmarking is not a useful tool, adding insight and value when used*

*in the right context and will continue to look for opportunities to benchmark where and when it is determined it will be beneficial to do so when undertaking a review of a specific service area(s).*

- The Procurement Strategy should be refreshed, informed by the National Procurement Strategy toolkit.

*The nature, scale and size of procurement activity is relatively constant year on year. However, do acknowledge the need to revisit the Strategy when other more pressing priorities and work pressures allow and in recognition of the new procurement regime due to be implemented in 2023.*

### ***Financial sustainability***

- 1.1.2 No improvement recommendations made under this criteria.



## TREASURY MANAGEMENT UPDATE

### Item CB 23/86 referred from Cabinet of 3 October 2023

Consideration was given to the recommendations of the Audit Committee meetings held on 24 July 2023 (AU 23/30) and 25 September 2023 (AU 23/42) respectively.

#### **RECOMMENDED\*:** That

- (1) the action taken in respect of treasury management activity for the period April to July 2023 be endorsed;
- (2) the 2022/23 outturn position be noted;
- (3) the Audit Committee's appreciation of the work undertaken by officers in Treasury Management, be noted; and
- (4) the existing parameters intended to limit the Council's exposure to investment risks, as set out at Annex 5 to the report of the Director of Finance and Transformation for the Audit Committee meeting of 25 September 2023, be retained.

**\*Referred to Council**

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## TREASURY MANAGEMENT UPDATE AND MID-YEAR REVIEW

### Item AU 23/42 referred from Audit Committee of 25 September 2023

The report of the Director of Finance and Transformation provided an update on treasury management activity undertaken during April to July of the current financial year. A mid-year review of the Treasury Management and Annual Investment Strategy for 2023/24 was also included in the report.

A full list of investments held on the 31 July 2023 was attached at Annex 1 to the report and a copy of the lending list at Annex 2. In terms of cash flow and core cash investments, £813,500 was earned in interest to the end of July, which was higher than the original estimate for the same period. The increase reflected the continued upward movement of interest rate rises and the favourable rates available to the Council. During the period 1 April 2023 to 30 June 2023, the £5m investment in property funds generated dividends of £45,350 which represented an annualised return of 3.63%, compared to 3.29% in 2022/23.

Following the last meeting of the Audit Committee, the position of the Lothbury Property Trust had been reviewed and it was concluded that the new direction of the fund remained intrinsically the same as before but on a reduced scale, and the new strategy would focus on high conviction sectors such as student and commercial accommodation whilst reducing their position in the office and retail sector. As a result of discussions, an expression of interest had been communicated with Lothbury and a commitment would be provided to remain in the fund.

The parameters to limit the Borough Council's exposure to investment risks were summarised in Annex 5. There were no changes to the current approved risk parameters proposed at this time.

**RECOMMENDED\*:** That the following be commended to Council

- (1) the action taken in respect of treasury management activity for the period April to July 2023 be endorsed; and
- (2) the existing parameters intended to limit the Council's exposure to investment risks, as set out at Annex 5 to the report, be retained.

**\*Referred to Cabinet**

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## **TREASURY MANAGEMENT UPDATE AND ANNUAL REPORT 2022/23**

### **Item AU 23/30 referred from Audit Committee of 24 July 2023**

The report of the Director of Finance and Transformation provided an update on treasury management activity undertaken during April to June of the current financial year. The treasury management outturn position for 2022/23 was also set out.

The report provided an assessment of the current economic situation and interest rate forecasts together with a commentary on investments derived from cash flow surpluses, core cash balances and other long term cash balances. A full list of investments held on 30 June 2023 was set out in Annex 1 to the report. Member's attention was drawn to the Revenue and Capital Outturn report for 2022/23 as set out at Annex 4 which provided a summary of the investment performance. The combined performance of the Authority's investments exceeded the revised estimate by £812,755, and £1.367m when compared to the 2022/23 original estimates mainly due to the level and speed at which Bank Rate had risen throughout 2022/23.

**RECOMMENDED\*:** That the following be commended to Council:

- (1) the action taken in respect of treasury management activity for April to June 2023 be endorsed;
- (2) the 2022/23 outturn position be noted; and
- (3) the Audit Committee's appreciation of the work undertaken by officers in Treasury Management, be noted.

**\*Referred to Council**

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## FEEDBACK FROM CONSULTATION ON THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY 2023-2028

### Item LA 23/17 referred from Licensing and Appeals Committee of 27 September 2023

A revised Hackney Carriage and Private Hire Policy 2023 – 2028, attached at Annex 4, which went out for public consultation from 10 July 2023 to 1 September 2023, and a list of proposed changes within the consultation, attached at Annex 1, were presented for consideration. Responses to the consultation, including a response in the form of a petition from 31 drivers, were detailed in Annex 2 and Annex 3 respectively.

Members had due regard to the legal implications and risk assessment set out in the report whereby the need for the Borough Council to adopt a new policy was explained – this was due to the policy lasting for a maximum of five years and would by law lapse after five years unless reviewed and adopted by Full Council again.

#### **RECOMMENDED\*:** That

- (1) the following proposed changes to the Hackney Carriage and Private Hire Policy, as set out in Annex 1, be approved:
  - payment by credit/debit card be accepted for all Hackney Carriage journeys;
  - the Disclosure and Barring Service (DBS) checks be outsourced to an external third party, where a driver does not hold an online account update service;
  - the length of time for lost property to be kept be reduced from 12 months to 2 months;
  - for any Hackney Carriage driver failing to take a passenger on a journey, regardless of distance, or charging more than the fare shown on the metre when taking payment by credit/debit card, 9 penalty points and a two-week suspension be imposed on their TMBC driving licence, and subsequent offences be referred to the Licensing and Appeals Committee;
  - membership of the Chauffeurs Guild as mechanism to bypass the requirement to take the knowledge test be removed;
  - colour restriction for designated wheelchair accessible vehicles (WAV) be removed; and
  - a higher than 50 percent Manufacturer tint for back passenger windows be allowed for plate exempt vehicles undertaking Chauffeur work.
- (2) further investigation work by Officers in respect of the following areas, as identified in the proposed changes to the Hackney Carriage and Private Hire

Policy, as set out in Annex 1, be undertaken and reported to a future meeting of the Committee:

- CCTV in all licensed vehicles (Hackney Carriage and Private Hire);
  - Colour restriction of a Hackney Carriage Vehicle; and
  - Drivers badge for school runs only with specially defined plate.
- (3) the revised Hackney Carriage and Private Hire Licensing Policy 2023 – 2028, attached at Annex 4, be approved with the above agreed changes detailed in Recommendation (1) incorporated.

**\*Referred to Council**



**TONBRIDGE & MALLING BOROUGH COUNCIL**

**LICENSING & APPEALS COMMITTEE**

**27 September 2023**

**Report of the Director of Central Services and Deputy Chief Executive**

**Part 1- Public**

**Matters for Recommendation to Council**

**1 FEEDBACK FROM CONSULTATION ON THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY 2023 - 2028**

**1.1 Summary**

1.1.1 On 5 July 2023 Members approved, for consultation purposes, proposed changes to the existing Hackney Carriage and Private Hire licensing policy. This report asks Members to recommend to Council that the amended policy be adopted.

1.1.2 Hackney carriage and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where public transport is either not available or outside “normal” hours of operation such as in the evenings or at weekends or for those with mobility difficulties.

1.1.3 The current Hackney Carriage and Private Hire Policy was approved by Full Council on the 10 April 2018.

1.1.4 The current Hackney Carriage and Private Hire Policy again went out on consultation, to include the Department for Transport’s Statutory Taxi & Private Hire Vehicle Standards from 23 November 2020 until the 31 January 2021.

The updated policy was considered by the Licensing and Appeals Committee on the 9 March 2021 and was approved by Full Council on the 13 April 2021.

1.1.5 The proposed new policy went out for public consultation from the 10 July 2023 until the 1 September 2023. The consultation received 82 responses.

1.1.6 The proposed changes within the consultation are shown in **Annex 1**.

1.1.7 The 82 responses to the consultation are shown in **Annex 2**

1.1.8 The response to the consultation in the form of a petition from 31 drivers is shown in **Annex 3**

1.1.9 A copy of the proposed policy is shown at **Annex 4**

## 1.2 Background

1.2.1 Public safety is the paramount consideration when processing prospective candidate by ensuring only fit and proper persons are licensed to be entrusted to drive members of the public safely, professionally and courteously to and from their required destinations.

1.2.2 Furthermore, Hackney Carriage and Private Hire licensed drivers undertake great numbers of school contracts with Kent County Council transporting young children, people with special needs and vulnerable adults. From a safeguarding perspective, the Council needs robust policies in place to ensure, insofar as it can, that these particularly vulnerable categories of people are not put at risk when these transport contracts are undertaken.

1.2.3 Licensing Services works within a multi-cultural dynamic customer facing environment where we need to ensure that every applicant knows what is expected from them.

### 1.2.4 Process steps to develop this policy –2023 - 2028

Consultation agreed at the Licensing and Appeals Committee	5 July 2023
Public Consultation	10 July 2023 – 1 September 2023
Licensing and Appeals Committee	27 September 2023
Full Council adopt policy	24 October 2023
New Policy comes into force	1 December 2023

1.2.5 The Consultation was made available to taxi stakeholders via:

- the Tonbridge & Malling Web Site
- available to view at Council Offices (Tonbridge and Kings Hill)
- handed out to each taxi stakeholder at reception.
- handed out at Waterloo Rank
- Taxi driver meetings at the Council Offices

### **1.3 Legal Implications**

- 1.3.1 Under the Act, the Licensing Authority Statement of Policy will last for a maximum of five years and must be adopted by Full Council. Constitutionally, any new or amended policy has to be considered by the Licensing and Appeals Committee, and its recommendations are carried forward to Full Council.

### **1.4 Financial and Value for Money Considerations**

- 1.4.1 Fee levels for Taxi licences are set by the Licensing Authority. The proposed changes are unlikely to lead to any impact on fee income or additional administrative costs for the authority.

### **1.5 Risk Assessment**

- 1.5.1 The Council has a licensing policy in place for Hackney Carriage and Private Hire drivers. The policy provides a transparent and consistent basis for decision making, which in turn reduces the risk of decisions being successfully challenged in the Courts. The policy by law lapses after 5 years unless reviewed and adopted again. Allowing the policy to lapse would raise a number of risks for consistency in decision making, safeguarding, and an increased risk of court challenges which would also have cost implications for the Council. In any event, policies should be reviewed periodically to ensure they remain up to date with current best practice and take into account changes in legislation and case law.

### **1.6 Equality Impact Assessment**

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **1.7 Recommendations**

- 1.7.1 That the proposed changes to the Hackney Carriage and Private Hire policy, attached as Annex 1, be approved.

Background papers:  
Existing Policy  
Existing Licensing Legislation  
Government websites  
Institute of Licensing

Contact:  
Anthony Garnett 6151  
Katie Shipman 6027



Adrian Stanfield  
Director of Central Services and Monitoring Officer

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## Annex 1 Proposed changes

Ref:	Subject	Recommendation				
1	<p><b>With the increase in electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being able to be paid for by credit / debit card?</b></p> <p>Out of the 82 responses received, the feedback was:</p> <p>1. Hackney Carriage Journeys being paid for by Credit / Debit Card - With the increase is...</p> <table border="1"> <tr> <td>Yes</td> <td>56%</td> </tr> <tr> <td>No</td> <td>44%</td> </tr> </table> <p>Concern from Petition of 31 drivers.</p> <p>There were concerns raised about signal coverage in the Borough, however at the drivers meeting, it was reported that along as you have 4g or 5g you should be fine.</p> <p>The driver can always take cash as they are required to do so and carry sufficient change.</p>	Yes	56%	No	44%	<p><b>1. That all Hackney Carriage journeys must be able to be paid for by credit / debit card.</b></p>
Yes	56%					
No	44%					
2	<p><b>Outsourcing the Disclosure and Barring Service (DBS) to an external third party.</b></p> <p>10 drivers showed concern of extra cost. A lot of drivers expel the virtue of the On-line update service, paying yearly.</p> <p>The category for the DBS must be enhanced, and the category on the Certificate must be "Other workforce Taxi driver"</p> <p><a href="http://www.gov.uk">Find a DBS umbrella body company - GOV.UK (www.gov.uk)</a></p>	<p><b>2. Outsource the Disclosure and Barring Service (DBS) checks to an external third party, where a driver does not hold an online account update service.</b></p>				

## Annex 1

Ref:	Subject	Recommendation				
3	<p><b>Reduce the length of time lost property is kept from 12 months to 2 months.</b></p> <p>The licensing team is proposing to move the minimum period lost property is kept from Twelve months to three months.</p> <p>5. Reduce the length of time lost property is kept from 12 months to 2 months. The licensing team i...</p>  <table border="1"> <tr> <td>Yes</td> <td>99%</td> </tr> <tr> <td>No</td> <td>1%</td> </tr> </table>	Yes	99%	No	1%	<p><b>3. Reduce the length of time lost property is kept from 12 months to 2 months</b></p>
Yes	99%					
No	1%					
4	<p><b>Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire)</b></p> <p>A mixture of views on this topic of making CCTV compulsory in Hackney Carriage and Private Hire vehicles. Petition of 31 drivers indorsed the proposal.</p> <p>There are several issues and concerns to consider:</p> <ul style="list-style-type: none"> <li>• Drivers who have installed them, have installed a variety of different systems.</li> <li>• Some systems record Inside only; some inside and outside.</li> <li>• Different storage times.</li> <li>• All seem to have immediate access to footage.</li> <li>• Different type of camara.</li> </ul> <p>6. Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire) Do you agree?</p>  <table border="1"> <tr> <td>Yes</td> <td>47%</td> </tr> <tr> <td>No</td> <td>53%</td> </tr> </table>	Yes	47%	No	53%	<p><b>4. No change to current policy</b></p> <p><b>Licensing Officers will undertake further research on how other Licensing Authorities are managing CCTV and bring a paper back to a future meeting.</b></p>
Yes	47%					
No	53%					

## Annex 1

Ref:	Subject	Recommendation
5	<p><b>Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.</b></p> <p>With a growing number of complaints from members of the public about being refused to be taken on a short taxi journey or being charged more than the Fare shown on the Metre, the Licensing Team are proposing 9 penalty points being imposed on their TMBC driving licence and a two-week suspension. Subsequent offences will be referred to the Licensing and Appeals Committee.</p> <p>There is overwhelming support for this with 80% in favour.</p> <p>Drivers petition of 31 drivers feel we have current measures in place.</p> <p>The Licensing Authority will fully support any driver who refuses to take a fare where extenuating circumstances apply (Drunk, drugs etc.)</p> <p>8. Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short journey - Charging...</p>  <p><b>Taxi policy guidance on penalty points</b> Penalty points will only be imposed where the licensee agrees the breach or offence has taken place. Where the licensee does not agree that the breach or offence has taken place the matter will be referred in the first instance to the Licensing and Community Safety Manager for consideration regarding further action.</p>	<p><b>5. Any Hackney Carriage driver failing to take a passenger on a journey, however short, or who charges more than the fare shown on the metre when taking payment by credit / Debit card, will have 9 penalty points being imposed on their TMBC driving licence and a two-week suspension.</b></p> <p><b>Subsequent offences will be referred to the Licensing and Appeals Committee.</b></p>
6	<p><b>Remove membership of the Chauffeurs Guild as mechanism to bypass having to take the knowledge test.</b></p>	<p><b>6. Remove membership of the Chauffeurs Guild as mechanism to bypass having to take the knowledge test.</b></p>

## Annex 1

Ref:	Subject	Recommendation
7	<p><b>Colour of a Hackney Carriage Vehicle should be any colour (13 Comments)</b></p> <p>Example of comments</p> <ul style="list-style-type: none"> <li>• Used car prices have roughly doubled since pre-COVID.</li> <li>• Hard for us to find suitable vehicles at the right price.</li> <li>• Please allow use to use any coloured car. White and silver are very sought after colours and tend to be more expensive to buy</li> </ul> <p>Currently only white and silver allowed.</p>	<p><b>7. No change to White and Silver, except for designated wheelchair accessible vehicles (WAV) that can be any colour.</b></p>
8	<p><b>Accept Manufacturers speck for back windows (6 Comments)</b></p> <p>Current policy states</p> <p>Private hire and Hackney carriage vehicles must have at least 75 per cent of light passing through the front windscreen, 70 per cent through both front side facing windows, and 50 per cent through all other side facing windows.</p>	<p><b>8. To allow plate exempt vehicles who undertake Chauffeur work for back passenger windows can be a higher tint than 50 per cent.</b></p>
9	<p><b>Allow Drivers badge for just school runs with specially defined plate (3 Comments)</b></p> <p>The licensing team process a high number of Vehicles (594) and drivers (619).</p>	<p><b>9. Members direction sought -</b></p> <p><b>Licensing Officers will undertake further research on how the impact of such a Drivers badge just for school runs with specially defined plate would impact on the service.</b></p>



With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being able to be paid for by Credit / Debit Card?	Hackney Carriage Journeys being paid for by Credit / Debit Card -  With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being paid for by Credit / Debit Card - b...	Hackney Carriage Journeys being paid for by Credit / Debit Card -  Are there any comments you want to make?	Increasing the minimum number of Hackney Carriage passengers a vehicle can be licensed for from one to four passengers -  We are proposing to move the minimum number of passengers that a Hackney ...	Outsourcing the Disclosure and Barring Service (DBS) to an external third policy -  The licensing team currently spends time, completing the DBS application with applicants, checking all requir...	Reduce the length of time lost property is kept from 12 to 2 months.  The licensing team is proposing to move the minimum period lost property is kept from Twelve months to three months.	Reduce the length of time lost property is kept from 12 months to 2 months.  Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire)  Do you have any comments?	Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire)  Do you agree?	Hackney Carriage Journeys being paid for by Credit / Debit Card -  Do you have any comments?	Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.  Do you have any comm...	Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.  Do you have any additional comments, changes or recommendations to the policy that you would like the Licensing and Appeals Committee to consider?
Yes		Agreed		I think we need to make it mandatory for drivers to go to the online service but I can see some issues with outsourcing the applications. For instance, if the applicant doesn't apply early enough and doesn't have the certificate back, will we still renew the licence/issue the new badge? At least if we are doing the checks we know for sure it has been done and can hand over the new badge with confidence. I do agree that something needs to happen to take the burden away from the team for chasing DBS certificates.	Yes	I think this would help drivers safety and also give them more confidence when dealing with difficult passengers. I do think we would need to possibly give guidance or training on how to maintain the recording safely and in accordance with ICO guidelines	Yes	Yes I think it should be mandatory to accept card payments. I think the council will need to do some research into the different providers.	Yes	1. A more definitive set of criteria for Plate exemption. 2. Removal of Chauffeurs Guild - or a more definitive criteria to stop operators abusing it. 3. Introduction of door signs for ALL vehicles displaying the plate number and either "Pre-Book only" for PH and something for HCVL - possibly around not refusing short
No		logical	logical			All efforts to date have resulted in cheap, unreliable cctv equipment being installed, however the presence of a camera could act as a deterrent to would be attacks on drivers	No	Mobile card readers are notoriously unreliable due usually to lack of connectivity particularly in the Tonbridge outlying districts	Yes	The creation of a school run only driver and vehicle license would be beneficial to the industry as a whole
Yes		4 passengers	No kept in house		Yes	I already have the system fitted	Yes	None	Yes	Short or long all the same money
No		Fine	Fine		Yes		Yes	Why it is compulsory? All company charge for that we can't decide our fare it. Meter price does not included that charge. So it's extra burden to driver on rank we don't have enough business. So I request to councils don't put extra burden on us. Cost of living raise and petrol price also increased so please try to understand driver situation. If we allow to charge extra for card payment then it'd fair. Otherwise I think it is not fair to driver. I am very happy to discuss with Anthony about it.	No	Not agree with card payment if not extra charge for card payment. Extra charge mean what ever is card payment company charging to us.
Yes			Great idea,		Yes	Protection from the passengers and false statements being made. Safer all round	Yes	TfL been doing this for years, time we all move forward	Yes	The price you see is the price you pay... would you pay 1.89 a litre for diesel if it was displayed as 1.34?
Yes		Yes this I agree with	Yes I agree		Yes	Yes this will protect Drivers and customers alike	Yes	Drivers using excuses not to take a short trip If by now they don't have a card machine is more than likely there not paying income tax ether some will say they don't have a bank account to take card payment but all drivers in this borough are self Employed and you can't pay your taxes or fill a self assessment with out a bank account	Yes	Yes this happens every day in Tonbridge especially around 23:30 from the Waterloo Road Rank  Yes for all Drivers to show proof of Self Employment or Employment by means Of a Tax UTR number that can easily be checked with HRMC
Yes		Its totally fine	Yes, agreed		Yes		Yes	Only when journey is more than E10 because their is fee on every transaction which drivers has to pay. If passenger want to avail this facility they should bear this transaction fee not driver.  According to UK law drivers cannot charge transaction fee but atleast council can set minimum fare for card payment.On E5 journey if we pay transaction fee with fuel price than what is the purpose of doing job? If we drivers are brealy making money.	No	Hi, I would suggest not to apply any restrictions on rear passenger windows and rear windscreen because all vehicles comes with manufacturer fitted windows and replacement costs a lot. It will be highly appreciated if manufacturers windows would be allowed regardless of any UV value. However, ban on tinted film( after market) should be ok.  Best regards Asif mirza
No		Yes	Yes I agree		Yes	Are these cctv units always on, as my private hire vehicle is also my personal family car, and I do not want my personal life on video?	No	No	Yes	No
Yes					Yes		Yes	No	No	
Yes		I have no issue with this	I agree that all licence holders should be subscribed to the online service		Yes	This is an unnecessary expense in a relatively problem free area of the country that will discourage people from entering the trade	No	Every vehicle should have an official TMBC supplied notice that should be visible stating that there is no minimum charge, nor that there is any fee for using a card.	Yes	I agree that anyone in breach of this rule should be instantly suspended for 2 weeks, with any further breaches incurring doubling of the suspension each time. After 4 separate suspensions of up to 16 weeks then the driver should have his licence revoked
Yes		Why just leave as is	Will it speed up the process though I applied in October recieved it the following March		Yes	It's another expence to burden the operator with	No	In the modern day there is no excuse for not taking electronic payments except if your trying to hide cash flow	Yes	I would say one month ban minimal

With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being able to be paid for by Credit / Debit Card?	Hackney Carriage Journeys being paid for by Credit / Debit Card - With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being paid for by Credit / Debit Card - b...	Hackney Carriage Journeys being paid for by Credit / Debit Card - Are there any comments you want to make?	Increasing the minimum number of Hackney Carriage passengers a vehicle can be licensed for from one to four passengers - We are proposing to move the minimum number of passengers that a Hackney...	Outsourcing the Disclosure and Barring Service (DBS) to an external third policy - The licensing team currently spends time, completing the DBS application with applicants, checking all requir...	Reduce the length of time lost property is kept from 12 to 2 months. The licensing team is proposing to move the minimum period lost property is kept from Twelve months to three months.	Reduce the length of time lost property is kept from 12 months to 2 months. Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire) Do you have any comments?	Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire) Do you agree?	Hackney Carriage Journeys being paid for by Credit / Debit Card - Do you have any comments?	Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments. Do you have any comm...	Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments. Do you have any additional comments, changes or recommendations to the policy that you would like the Licensing and Appeals Committee to consider?	
No			Minimum license should be for 3 passengers. There are some vehicles which can fall into the size category that the owner may wish to carry less passengers plus as the future rolls on it may be beneficial to license smaller vehicles for certain locations	This should remain in control of the Council. The licensing function of any council for Taxi and Private Hire is required to be 'self funding' therefore cost savings should not be a factor when deciding on what services are required to operate the department. Perhaps a 'partnership' with other local councils may be a better way forward. Indeed, perhaps the licensing committee should study the operation of Wolverhampton Council who have the quickest, streamlined and cheapest system in the UK which is attracting applicants from all over the UK for these reasons.	Yes	It may be prudent for Hackney vehicles due to their nature of picking up 'unknown' passengers at will. Although CCTV can prove beneficial to both parties the vehicle owner should be assessing the risk of the operation and taking steps appropriately. The fitting of CCTV also brings it's own issues with access etc. However, if voluntary the council should look at the various systems available and recommend one or two that can be fitted and provide basic guidelines.	No	The accepting of card payments should be an individual choice for ANY business not just the Taxi & Private Hire industry. It is up to individuals to identify what is best practice for them.	If a driver accepts card payments for other jobs then some action is needed if the driver is refusing fares due to the distance involved. Also, any punishment for charging more than the metered rate, is already currently in the policy. Perhaps the licensing officers should be publishing more statistics about the number of complaints received about the nature of the complaints and action taken in their forum updates. It seems only the 'headline' cases get mentioned?		
No		Yes	Yes	Yes	Yes	It's not necessary in my opinion.	No	I've lost many fares over the years, because they didn't have enough money in their account, and it is the biggest problem we have is the signal there is no internet in the villages.	Yes	I never refuse any type of fares	
No		No comments	No comments	Not a good idea	Yes		Yes	Card payments only if they pay transfer fees Compulsory! The amount of jobs I've had passed back to me because those in front don't take card is ridiculous. They don't go to the back of the rank either, so effectively picking and choosing their jobs. Not on!	No	Why not put him in jail? No	
Yes			No because the cost will increase significantly and you won't be able to get them done in a timely timeframe			That should be a choice of vehicle owner, not compulsory at all.	No	I've lost many fares over the years, because they didn't have enough money in their account, and it is the biggest problem we have is the signal there is no internet in the villages.	Yes	How are you going to check without mystery shopper scenario?	
No			I didn't quite understand the proposal far as I understand for 1 taxi only take 3 customer its not a great idea it will effect our busines. Also people come from other town they not going to accept this. At the Rank most of the customers 1 or 2 passengers anyways. Only time we get 4 passengers if customer come back after day out and holiday's time and weekends lunchtime mum and 3 kids after high Street shopping. I'm also thinking it's not good for environment and traffic in town Customer will start arguments if we not take 4 in one car ask them to take 2 taxi for 4 people not a good idea	It's fine licencing team doesn't want to it just recommend some company's name on the application I think driver can do it by there self shouldn't be any problems But if licencing team do it its batter so they know its properly done by licencing team. Thanks	Yes	I used to have cctv in my car bought few of them from amazon and ebay they don't last long but it will add extra cost to driver also some customers don't like camrea in the car they don't want someone recordings them it lose there privacy some customer told me before. Also some drunk customer start playing with the camera and dancing swearing to the camrea so I took it off last year I think it should be decided by driver if they want to spend money or not for thete safety	No	I been taking card last 4 years but there is lots issues taking card poor signals our area big problems. also need to pay 3.9% every transaction then buy card reader and smartphone which is add extra cost'. In 4 year I bought 2 card reader costs me 94 pound for the last one. Just last week I lost 46 pound sunday night decline the payments customer naver contact me again I'm still wating it has been 8 days. Customers not going to pay for transaction fees At the rank we wait atleast 45 min to 1 hours for 1 job. under 5 pound job if driver take card he will loss atleast 4% fees from the fares. I think this should be driver rights to lookafter there own business and there own customers most of the driver are self employed and majority driver takes card. After covid we are still not	Yes	This is very inportent issues I think every job we should accept at the rank yes there are some diaver refuse job at the rank its giving us bad name because of them also we lost local job and wait more longer for job I been doing taxi nearly 8 year I don't have a single complaint on my records I always lookafter our locals customers from local job I make regular customers But to give 12 point on first time this is little bit to much I think first driver should get 6 points and warnings then 2time 12 point and suspended for 2 weeks Thanks	Thank you for giving us opportunity to tell licencing team our opinions As a taxi driver I will ask licencing team to consider this issues there are lots of new drivers are joining to rank we are getting less job every week. Also please do something for traffic light at Tonbridge the rank it coz so much trouble and extra traffic customer always complains Also we don't have a taxi sing at Tonbridge station lots of customs don't no where is the taxi rank . Thanks

<p>With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage Journeys being able to be paid for by Credit / Debit Card?</p>	<p>Hackney Carriage Journeys being paid for by Credit / Debit Card -</p> <p>With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage Journeys being paid for by Credit / Debit Card -</p>	<p>Hackney Carriage Journeys being paid for by Credit / Debit Card -</p> <p>Are there any comments you want to make?</p>	<p>Increasing the minimum number of Hackney Carriage passengers a vehicle can be licensed for from one to four passengers -</p> <p>We are proposing to move the minimum number of passengers that a Hackney...</p>	<p>Outsourcing the Disclosure and Barring Service ( DBS ) to an external third policy -</p> <p>The licensing team currently spends time, completing the DBS application with applicants, checking all requir...</p>	<p>Reduce the length of time lost property is kept from 12 to 2 months.</p> <p>The licensing team is proposing to move the minimum period lost property is kept from Twelve months to three months.</p>	<p>Reduce the length of time lost property is kept from 12 to 2 months.</p> <p>Making CCTV compulsory in all licensed Hackney Carriage or Private Hire</p> <p>Do you have any comments?</p>	<p>Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire)</p> <p>Do you agree?</p>	<p>Hackney Carriage Journeys being paid for by Credit / Debit Card -</p> <p>Do you have any comments?</p>	<p>Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.</p> <p>Do you have any comm...</p>	<p>Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.</p> <p>Do you have any additional comments, changes or recommendations to the policy that you would like the Licensing and Appeals Committee to consider?</p>
<p>Yes Yes</p>						<p>Yes</p>	<p>Yes</p>			<p>Yes</p>
<p>No</p>			<p>Is this not what the drivers pay for in renewal fees as part of the fee. Would it mean the council reducing renewal fee if they no longer had to do the dbs process ?</p>		<p>Yes</p>	<p>Just adding more costs for drivers to bear.</p> <p>No</p>		<p>You can't always take a card payment due to the remote rural locations where obtaining a signal is a problem so driver loses out on payment. Customers should always carry cash but drivers should always be willing to take a card payment if signal permits.</p> <p>No</p>		<p>Have a standard set fare for short journeys, customers can always pay cash so drivers avoid any costs on a minimal fare job.</p>
<p>No</p>					<p>Yes</p>		<p>Yes</p>		<p>When there is no signal in the place you go to ...what happens ? Yes As we can't check the ownership of the card at the time of payment it can cause further problems which it happened to me in last 2 years and that is the reason I stopped taking card payments</p>	
<p>No</p>		<p>Maximum number of passengers should be 3 same as new York Good idea</p>			<p>Yes</p>	<p>For both driver and passenger safety is a good idea</p>	<p>Yes</p>		<p>Yes</p>	<p>These drivers licenses should be taken straight away without any questions</p>

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<p>Yes</p>			<p>4 May be an issue, perhaps 2 (for the same reasons)? Some luxury cars only have three passenger seats and although that may not be an issue now going forward someone may want to license a luxury car and not be able too.</p>	<p>obvious an logical</p>	<p>Yes</p>	<p>Has to be done to protect both customers and Drivers! I have dealt with so many incidents that would have been resolved instantly with CCTV normally an accusation against a driver that 9/10 times turns out to be false.</p>	<p>Yes</p>	<p>Customers should have the ability to have the choice, A large majority now dont carry cash and anyone coming to the area from a City will just think we are a backward community if we dont have basic forms of payment available, its not a good look.</p>	<p>Yes</p>	<p>Should be a longer suspension and a fine, Hackneys are a public service not private they cant have it both ways</p>	
			<p>Fine</p>	<p>If it IS easier that is OK but I somehow feel delays will occur</p>	<p>Yes</p>	<p>Not required in my opinion</p>	<p>No</p>	<p>No problem but cash should still be available fare</p>	<p>Yes</p>	<p>It has been a totally unacceptable practice by a hard core of rank drivers and I think a 3 month ban should be the minimum penalty to deter those flagrantly doing such deeds.</p>	
<p>No</p>			<p>Agree</p>	<p>Disagree, The licensing should do it.</p>	<p>Yes</p>	<p>No</p>	<p>One should be paid by their preference</p>	<p>No</p>	<p>Card Payment should be minimum £10 because it's not worth if you take a fare to Baltic road for £4.40 and get paid by card and pay the card percentage on it. It is simply not worth it.</p>	<p>Give authority to reject a fare if the customer smells really bad. It is not Hygiene and not good for our Health. I was taking a fare and on A21 I was going 70 mph and had to leave the windows open because of the filthy smell.</p>	
<p>Yes</p>					<p>Yes</p>	<p>As long as it is independently controlled and requests for footage by customers is also provided upon request with no charge.</p>	<p>Yes</p>	<p>As long as a printed receipt is provided and cash is also accepted.</p>	<p>Yes</p>	<p>Assuming for one incident. However seems very harsh if that is the basis. Also why would a taxi driver request more than the fare in the first place...?</p>	
<p>Yes</p>					<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	
<p>Yes</p>					<p>Yes</p>	<p>If this was to be implemented you would need to be more specific, I currently use a dash cam that records the road and the cabin</p>	<p>Yes</p>	<p>On average it costs me 2p for every £1 I take on card - there isn't really an excuse not to accept card anymore</p>	<p>Yes</p>	<p>I am personally sick of this, it seems that some drivers "lose" their card machine if the journey isn't a favourable distance which means personally my average fare is probably lower</p>	
<p>Yes</p>			<p>4 should be fine.</p> <p>I would like to suggest to remove the door stickers from Taxis please.</p> <p>I would also like to suggest to remove the color restrictions of silver and white. It is very hard to find in those colours and it also cost us more. In our neighbour district , Sevenoaks there is no such kind of restriction and drivers find the car in different colours easily and cheaper as well.</p>	<p>Online update service should have been implemented long time ago. I agree.</p>	<p>Yes</p>	<p>I agree. It is good for the safety of passengers and driver.</p> <p>I have high level of Exec clients whom conduct millions of pounds of business in the car over the phone. They do not want their privacy invaded and surely this will need managing via GDPR which is another admin burden on the operators.</p>	<p>Yes</p>	<p>Taxi drivers with card machines often refuse short fares by saying they don't accept cards, then the customer have to ask every single one of them and mostly they have to ask 4-5 drivers until they found someone willing to take them on minimum charge of £10 or so, which is illegal and unethical.</p> <p>I am working in Tonbridge as a Taxi Driver from last 5-6 years so I know what is going on. I highly recommend implementation of card payments for all.</p> <p>Taxi drivers complains about signals, there is latest technology now of DOJO card machines, they are built in 4G and I take payments from DOJO machine</p>	<p>Yes</p>	<p>Please allow use to use any coloured car. White and silver are very sought after colours and tend to be more expensive to buy</p> <p>Please remove the door stickers signs.</p> <p>Please remove the colour restrictions of Hackney Carriage Vehicle as we spend a lot of time looking for Silver and White vehicle and also they cost more.</p> <p>I would like to see the reimbursement of the mentor license facility for exec services only. The previous system was great and worked a treat, we have to operate at high levels as we would lose clients so why hinder the driver license process for a few exec drivers needs? Maybe a variant of license for exec levels.</p>	
<p>Yes</p>			<p>A good move and will it make any financial savings that can be better utilised for improving the service levels?</p>	<p>Yes</p>	<p>Yes</p>	<p>No</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>How can you refuse a clients needs but there should be a minimum charge.</p>	

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Yes		No	No problem with this unless it adds any extra expense to the driver		Yes	Definitely not for private hire vehicles as journeys need to be pre-booked so records are kept with all the passenger information keeping the drivers fairly safe. It's too much added expense for private hire drivers. Hackney carriage drivers would benefit from cctv for security, but so lease don't enforce for private hire.	No	No	Yes	Nobody should be charging more for card payments	Hackney carriage and private hire drivers are totally different and provide very different services so please do not implement the same rules for both	
No			This is not a good idea as many customers are single people or tends to be a couple	Yes that sounds like a good idea	Yes	It is expensive and people don't like being on cctv	No	It is costly and the signal doesn't always work . When people's card don't work customers get aggressive with us.	No	Instead of points a fine would be more appropriate	No	
Yes					Yes		No		Yes		Used car prices have roughly doubled since pre-COVID. Having to choose from only white or silver vehicles has always made it very hard for us to find suitable vehicles at the right price and in the right location. Not to mention the national shortage on new and nearly new vehicles. Being able to choose from any colour would help a great deal as it would massively increase the chances of finding an appropriate purchase not too expensive or too far away.  Restricting HCVs to two colours does has no impact whatsoever on the general public trying to get into a PHV without being pre-booked.  Neighbouring boroughs all have different policies on vehicle type, colour and specification. Most of the general public frequently travel between boroughs and cannot be expected to remember what colour/type applies to HCV and PHV respectively in each borough they visit. In fact, most of the general public are completely unaware of the differences between PHV and HCV and the differences in local authority policies and borough boundaries in any case, despite the current colour restrictions on HCVs in TMBC. Many travellers passing through Tonbridge are from out of town, where the policy on vehicle type/colour currently imposed on HCVs.	
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Yes					Yes		No		Yes	
Yes					Yes		No		Yes	

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Yes						Yes	No	Yes	Yes	Do you have any additional comments, changes or recommendations to the policy that you would like the Licensing and Appeals Committee to consider?		
No						Yes	No	Technology insufficient... too many mobile black spots	Yes	Illegal to charge for card use therefore should be clamped down on		
Yes			I have been using the update service for a few years now and it's actually cheaper to do your DBS like this			Yes	I think the cost would really be much more than the problem of assaults. If a driver feels vulnerable he should have the choice to install cctv or not.	No	No	Yes	They are ripping off the very people we depend on to give us a living. It should be dealt with more severely	No
Yes			I have no real comment as am PH driver but unless I'm misunderstanding this the proposed change doesn't make sense? It reads that HC vehicles could refuse a fare if there's less than four passengers?	I subside to the online update service and believe this makes sense for all drivers to be required to subscribe to it as makes everyone's lives easier		Yes	This has to be a driver / operator choice. I know everyone of my customers, who are generally corporate customer and I do not require the benefit of CCTV for any security.	No	I've accepted credit / debit card payments for years and feel if a customer wishes to pay by card the facility should be available	Yes		
No				This should be kept in-house		Yes		Yes		Yes	Should be 3 strikes and out no ifs no buts lose their license	
Yes				Agreed		Yes		Yes		Yes		
Yes			No comment	No comment		Yes	No comment	Yes	No	Yes	No comment	No comment
No						Yes		No	It should up to the driver as all the card machine companies charge commissions on card payments	Yes		Hi I think road legal tinted rear windows should be allowed as most of us buy secondhand cars for taxi it's hard to find a car with the all requirements and most Japanese cars comes with factory tinted windows. As you know car prices very high since Covid would be appreciated if you could consider it. Thanks
Yes				Makes sense		Yes	Cctv is another expense the driver will have to pay also will have to pay to transfere it to a new vehicle and will also mean the driver will have to deal with the data,protection people	No	Taking card payment opens you up to more work and ease of payments	No		I dont think someone should lose there license surely.suspension would be sufficient
No			Four passengers as a minimum its ok	By using third party companies my details might be used by people who we dont have control so i would rather to stay the way it is and was		Yes	Depends on type of CCTV as there are designed systems or is if its a simple dual camera one for outside and one for inside ?	Yes	All our cars got card readers however there is no enough signal in borough TMBC even i dont have signal in west malling taxi rank so how can card payment can be mandatory its not possible	Yes		Tinted windows should be aloud for the back no matter if its hackney or private and no matter if its privately upgraded or original as they do the same purpose
No			I'm ok with four people	I'm ok with that		Yes	For the sake of passengers and drivers	Yes	Bank transfers are ok	Yes	I agree	The drivers should make sure that the queue for the rank is up when they are waiting for passengers
Yes						Yes		Yes	No driver should be allowed to say the journey is to short to be able to pay by card, or charge the customer 10 for a 5 pound journey on card	Yes	This has to stop	
No			Yes	As long as cost kept to minimum		Yes	The outlay for each vehicle	No	There are areas with very poor signal for phones and internet	Yes	Should not be acceptable	Drivers for local school runs to be DBS checked and just able to drive for school runs only Monday to Friday only
Yes			Yes use on-line service			Yes	I think its up to the driver	No		Yes		

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Yes			Well in my experience as a private hire driver there are always passengers who like travelling alone for privacy.				Yes	Convenience for Customers and I believe at present you are on most occasions expected to take card payment s and if you do not I think that the driver would lose a % of work not have the facility	Yes	I have also heard driver s from other companies making what would be a short journey and making them longer journeys by taking them a longer route and charging the longer rate fare per mile mainly for Customers who are clearly not from the area.
Yes			We are Executive Private Hire therefore be impractical to comment	i agree		Yes	Yes	We are Executive Private Hire therefore would be impractical to comment	Yes	As our business is solely Executive Private Hire and not Hackney carriage i strongly feel as we are under constant strain for fulfilling potential work and cannot fulfil new client/ requests due to the shortage of drivers as the application process is the same as Hackney Carriage to which a majority of which is irrelevant to the EPH sector. Therefore the probation / mentor policy which was previously in place would be far better for this sector for those concerned.
Yes			I don't know about	Yes it's very good idea		Yes	Yes		Yes	
Yes			All taxis should be of standard size. Cars with small boot for example hatch back should not be allowed.	All drivers should sign up for online DBS update service.		Yes	It should be optional.	No	Yes	12 points are too much, also 2 week suspension is too long. Is their any way where driver can prove himself if he is just accused of extra charge due to any unknown reason/ hate/ discrimination/ change of destination/ extra luggage ( where six seater is required but passenger want you to pay for standard car)?
Yes						Yes	It should be optional.	No	Yes	Yes, if total fare price is atleast £10. Because driver will be charged for every transaction.Low fare jobs with transaction fee is unfair with drivers.
No			Agreed	No objection		Yes	N/A	No	No	People often don't remember their PIN and even lie about having money in their accounts and end up having their payments declined at the end of their journeys. They make up stories, lie, get aggressive and even run away. Cash payments are the only suitable option in this trade.
Yes						Yes		No	Yes	The proposed measures are too harsh and unnecessary.
No			As most of the vehicles have four passenger seats this proposal is reasonable.	Okay and reasonable		Yes	Maintains cost goes up.	No	Yes	NA School run only badges Start Dbs checks at the start of a driver application
No						Yes	Maintains cost goes up.	No	Yes	Most of the places get Network issue, due to this card get declined. Most of the customers become annoyed and blame that card machine is not working properly. Where this is not true. There are various caveats to it: 1 - poor signals in various areas around the Borough which means we can't process the payments because the payment apps are Bluetooth based and not hard-wired in the Cabs. 2 - people say they will pay at the end of their journeys but their cards often decline, don't have funds in their accounts, short change the drivers, don't remember their PIN especially when drunk, get aggressive & abusive with the drivers and even do the runners. Police never come to help even if the drivers life is at stake.
No			No objection	No objection		Yes	It's a extra business cost. I do not mind as long as we get incentives from the council.	No	No	£500 fine and 6-12 point is fair enough.
No			I am okay with this policy.	Ok with this one.		Yes		No	No	Cash payments upfront are the best options in this trade.
No						Yes	This should not be mandatory as many people don't like being recorded and also the cctv lots of times have technical issues so it can cause trouble for drivers.	No	No	Too harsh.  Penalty should not be more than 2 points. Proposal seems to be too harsh. The driver should be given a change to explain the circumstances on his side as well, instead of one way story. Even if he found guilty the penalty should not be more than 2 points.
No						Yes		No	No	Because of the bad coverage area we have to let go many people without getting payments as they know everyone pays with cards these days. This should never be mandatory as it will result in to many journeys not being paid off.



<p>With the increase in electronic card payments for many goods and services, would you like to see all Hackney Carriage Journeys being able to be paid for by Credit / Debit Card?</p>	<p>Hackney Carriage Journeys being paid for by Credit / Debit Card -</p> <p>With the increase in electronic card payments for many goods and services, would you like to see all Hackney Carriage Journeys being paid for by Credit / Debit Card -</p>	<p>Hackney Carriage Journeys being paid for by Credit / Debit Card -</p> <p>Are there any comments you want to make?</p>	<p>Increasing the minimum number of Hackney Carriage passengers a vehicle can be licensed for from one to four passengers -</p> <p>We are proposing to move the minimum number of passengers that a Hackney...</p>	<p>Outsourcing the Disclosure and Barring Service (DBS) to an external third party -</p> <p>The licensing team currently spends time, completing the DBS application with applicants, checking all requir...</p>	<p>Reduce the length of time lost property is kept from 12 to 2 months.</p> <p>The licensing team is proposing to move the minimum period lost property is kept from Twelve months to three months.</p>	<p>Reduce the length of time lost property is kept from 12 months to 2 months.</p> <p>Making CCTV compulsory in all licensed Hackney Carriage or Private Hire</p> <p>Do you have any comments?</p>	<p>Making CCTV compulsory in all licensed Hackney Carriage or Private Hire</p> <p>Do you agree?</p>	<p>Hackney Carriage Journeys being paid for by Credit / Debit Card -</p> <p>Do you have any comments?</p>	<p>Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.</p> <p>Do you have any comm...</p>	<p>Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments.</p> <p>Do you have any additional comments, changes or recommendations to the policy that you would like the Licensing and Appeals Committee to consider?</p>	
Yes			Taxi Meeting - 27 July 2023 No issues raised	Taxi Meeting - 27 July 2023 No issues raised		Yes	Yes		Yes	<p>Discussion on a Drivers own badge for school runs only with specially defined plate for a licensed vehicle dedicated to school runs only - General acceptance of this - With drivers not undertaking knowledge test.</p> <p>Concern was shared of people just wanting to do school runs and not wanting to go back to the classroom to learn a lot of routes they will not use.</p> <p>SIGNS SHOWING WHERE TAXI RANK IS OUTSIDE TONBRIDGE STATION / CONCERN OVER DOUBLE YELLOW LINES / LIDL LORRIES UNLOADING ON WATERLOO ROAD OPPOSITE TAXI RANK</p> <p>These concerns will be discussed with TMBC Engineering and KCC</p> <p>AIR CONDITION Make Air Condition compulsory</p> <p>COLOUR OF VEHICLES Concern over White / Silver cars getting harder to find, with second hand market vehicles at very high prices. Request for any colour for vehicles Private hire can have door stickers on them with "Pre</p>	
										<p>Email received from Hi my name is ashratul Islam.I think the poroposal for the car tinted window must allowed.most of driver purchased second hand car and most car come with factory fitted tinted window .car price is really high.I think we should be allowed for tinted window for car. Thank you for understanding my comcent</p>	
										<p>I feel that the proposed suggestions are fair and reasonable. One thing that has not been mentioned is that I would like to see ALL COLOUR of cars to be able to be Hackney Vehicles. In Sevenoaks they allow ANY COLOUR car to be allowed to go on the rank. This makes sense as I know drivers denied silver cars as it is the wrong shade of silver. This has been very costly to the driver and if silver is stated on the log book then it should be allowed to be a Hackney Vehicle. There is also a shortage when trying to buy a white or silver vehicle often having to travel several hundred miles away just to buy a car of a specific colour. If this is passed it will save drivers a lot of money and be a lot easier to buy a car of their choice and quickly.</p>	
										<p>I personally have no comment against these ideas. From Gary at J AND L CARS</p>	
										<p>Hi I think road legal tinted rear windows should be allowed as most of us buy secondhand cars for taxi it's hard to find a car with the all requirements and most Japanese cars comes with factory tinted windows. As you know car prices very high since Covid would be appreciated if you could consider it. Thanks</p>	
Yes	No				Yes	Isn't needed and an added cost to the driver	No	No	Yes	Punish drivers that are greedy / refuse to take passengers with suspension	No
			EmploymentCheck are part of the wider Commercial Services Group (wholly owned by Kent County Council) We have a vast amount of experience in this area as we have been a registered body since 2002 and E-broker since day 1 of e-bulk (2012) We have developed an online system for processing DBS checks and we are an e-broker serving over 30 other Local Authorities. We also service hundreds through our Umbrella Body service and would welcome discussing your requirements to implement an online system.								
Yes					Yes				Yes		
Yes					Yes				Yes		
										credit card machines cost the driver. Over several journeys, this will cost them a lot of money, which is not fair. they should be allowed to charge enough to cover what they are being charged by credit card company	
No			What about single people travelling? we take a lot of business men on their own.		Yes		No	Not everyone has a card, and this can cause discrimination against those who do not have a card.	No		

With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being able to be paid for by Credit / Debit Card?	Hackney Carriage Journeys being paid for by Credit / Debit Card - With the increase is electronic card payments for many goods and services, would you like to see all Hackney Carriage journeys being paid for by Credit / Debit Card - b...	Hackney Carriage Journeys being paid for by Credit / Debit Card - Are there any comments you want to make?	Increasing the minimum number of Hackney Carriage passengers a vehicle can be licensed for from one to four passengers - We are proposing to move the minimum number of passengers that a Hackney...	Outsourcing the Disclosure and Barring Service ( DBS ) to an external third policy - The licensing team currently spends time, completing the DBS application with applicants, checking all requir...	Reduce the length of time lost property is kept from 12 to 2 months. The licensing team is proposing to move the minimum period lost property is kept from Twelve months to three months.	Reduce the length of time lost property is kept from 12 months to 2 months. Making CCTV compulsory in all licensed Hackney Carriage or Private Hire vehicles (Hackney Carriage or Private Hire) Do you have any comments?	Making CCTV compulsory in all licensed vehicles (Hackney Carriage or Private Hire) Do you agree?	Hackney Carriage Journeys being paid for by Credit / Debit Card - Do you have any comments?	Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short Journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments. Do you have any comm...	Drivers of Hackney Carriage Vehicles Failing to take a passenger on a short journey - Charging more than the Fare shown on the metre when taking Credit / Debit card payments. Do you have any additional comments, changes or recommendations to the policy that you would like the Licensing and Appeals Committee to consider?	
Yes			I am on the auto update service so isn't an issue but the auto update service makes life easier for everyone			This should be driver choice. As the majority of my passengers are corporate clients could this cause potential issues around GDPR?	No	Am PH but think electronic payments should be available to all customers	Yes	Customer should always take the first available car subject to them being able to access it	I am aware of the original plan on the deregulation bill back in 2014 raised by former MP Tom Brake regarding spouses driving PHV for non PH purposes but it was dropped prior to implementation. Is this something TMBC are willing or able to look at or does it require a parliamentary legislation change with regard to the miscellaneous provisions act.
No		One to four is fine	Online update service is the best			Yeah that's better about cctv but please don't include any specific cctv for the taxi (could be any one that every one can afford )	Yes	Should not take the freedom of cash from Hackney drivers	Yes	That's fine	Request to all the committee whatever they make or include in the policy related to cars/fares/CCTV try to make every thing affordable in our reach that every one can afford
No							No	Should be a personal choice	Yes		
Yes		I agree for a minimum of 4 passengers but obs you can take one passenger still	I agree to no outsourcing			While I do not have this yet it would be good if there is any rows between customers and the driver and good to record crashes if passenger does not want to be on cctv to record will be any option I am okay with it and it's a good idea	Yes	While cash is king I am aware of some drivers not having this facility. This makes them refuse some jobs at Waterloo Rank	Yes	I totally agree. When I was hackney customers would go to me saying they had been refused due to the short journey. I would take them but by doing the right thing, I may have missed out on a much longer journey. I would urge them to complain to you.	Yes - I would like you to accept any colour of car to be used as Hackney. There is no benefit to make us use a white or silver car. It leaves us with very little choice of what is on the market often resulting in us paying a lot more for a white or silver one. Sevenoaks accept any colour car and it works very well.
Yes		No comments	I am already subscribed yearly Good that it's lot cheaper				Yes	No	Yes	No matter sort or long journey should be charge same fares shouldn't charge extra End of the those passengers pays your bill	I don't have any problem with the changes Should be able to refuse a customer that is very dirty and smells horrible
No							Yes	It should be left to the driver preference			
No							Yes	Driver Choice	Yes	6 penalty points	
No							Yes	Yes	Yes		
No							Yes	Yes	Yes	Should be given 6 points	
No							No	What is the point of being Self Employed then	No	3 points	
No							No	Self Choice	No	3 points	
No		Will prefer current system	Isn't this going to add another layer of bureaucracy and cost on the driver?			This should be optional. This borough is a fairly safe place to work. If driver is worried for their safety, the judgement on having a cctv fitted in their vehicle should be made on individual basis. Once it becomes compulsory, that again add another cost/expenses to the driver as vehicles will not pass compliance test without cctv. Most cctv in vehicles don't work anyway after a short time so it's really pointless making it compulsory.	Yes	There are no network signal or good coverage in some areas within the local authority which prevents driver from taking payment from the passenger at destination point. Passengers will simply walk off and not pay if driver had no signal. This has happened many times to some drivers. Secondly, there are charges incurred for card payment which driver cannot pass on to passengers. Some card machine charges as much as 3.7% per transaction which means for every day a thousand pound worth of payment, the driver makes £37 of losses. If you cascade that to £10000 worth of card payment, that will be equivalent to £370 of losses to the driver! That's a big hit to the drivers income. Additionally, drivers do not get tips on card payment which is another loss for the driver.	No	Drivers should be encourage to take all passengers irrespective of the distance however I think the proposed penalty points and suspension is too severe for the offence.	

Tonbridge 19<sup>th</sup> July 2023

Dear Licensing Team.

We TMBC Taxi Stakeholders would like to give feedback for proposed changes on Hackney Carriage and Private Hire Policy related to CCTV in all licensed vehicles, payment by cards and Penalty Points System.

Making CCTV compulsory in all licensed vehicles (Hackney Carriage and Private Hire) is absolutely good idea and should be introduced on a new a new policy.

Mandatory for Hackney Carriage Drivers to take payment by cards seems to be highly controversial issue because of difficulties to process payment within or outside of the borough, which was confirmed by Licensing Authority last year when we received a message: Not a mandatory requirement for card payment facility. To process payments, there needs to be a secure internet connection (either Wi Fi or mobile phone), in some of the areas in and around Tonbridge & Malling Borough Council, this is limited.

Since that time, we haven't noticed any improvement in this matter.

We fail to process a card payment near Hildenborough Station Westbound (Philpots Lane area, the other side of A21), Poult Wood Golf Course, Higham Lane, Tonbridge, and from there towards Dunks Green and Plaxtol and further on. Same in a centre of Hadlow, Wrotham Heath and in a many more places.

Surrounding areas as well for example Penshurst or Brenchley .

The only way in independent drivers case to sort it out is take a phone number to the customer and send bank account details asking to transfer the fare on bank account, or try to establish connection to home Wi Fi, or drive around the area trying to get a decent mobile phone signal to process the payment. The company drivers if card payment is impossible can call company and process payment, giving 16-digit card number and other details.

We can face potential chaos and frustration in many areas, especially during the end of the night shift, which is very uncomfortable for busy sometimes exhausted taxi drivers.

Therefore, card payment should be still optional, but all taxi drivers should be equipped in card payment facility.

There are also cases when card payment is declined by bank or annoyed customer when card payment failing jumping out from a cab refusing any collaboration leaving unpaid fare, saying: It's not my problem.

We would like mention that there is a charge which is 2.75% on PayPal Card Machine If there were all card payments over a year period that charge is equal to week and half to work it out. In a case of SumUp 1.69 % its one working week in a year and payment is not available earlier than next day, even much longer.

Current Penalty Points Tariff say: Refusal to take a fare without a reasonable excuse is Level 2 – £500 fine and between 6-12 points on a Drivers Badge, which is fair enough and give Licensing Authority enough power to tackle the issue.

Few years ago, we had very good opinion about quality of our work sent to us by Anthony Garnet on a Christmas time, and we still fit and perform very well. Taxi Stakeholders know how to run their own business and its obvious that overcharging is illegal and immoral.

We've got enough change as well.

If there are bad opinions about our performance they are very rare.

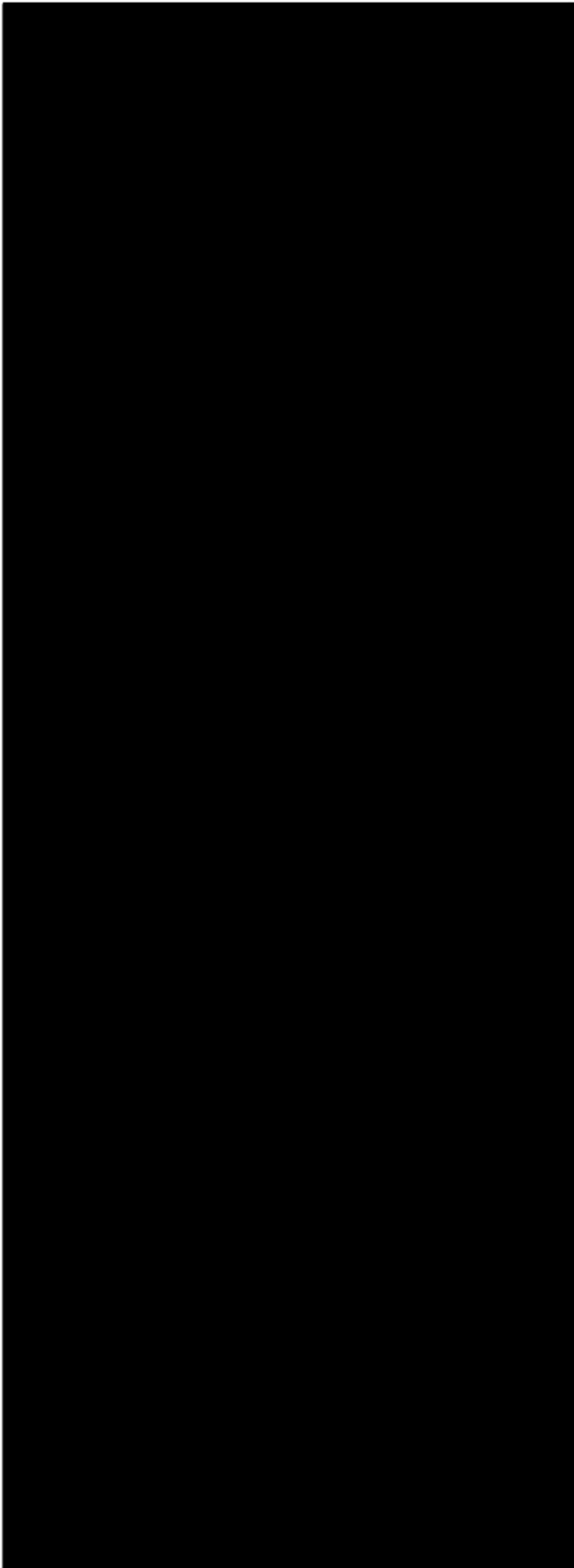
Vast majority of our customers are entirely happy and appreciate our service.

Yours sincerely.

TMBC Taxi Stakeholders signed below.

Name and Surname

Badge Number



1582

3001

3055

21

343

1558

364

255

814

813

711

802

811

116

34

110

3063

391

81

3046

49

1255

1473

1837

755

109

3027

2052

Name and Surname



Badge Number

1108

Name and Surname



Badge Number

249

1025

# **Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Licensing Policy 2023 - 2028**



# Overview

## Policy

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## 1 Introduction

### 1.1 Adoption of private hire licensing provisions

- Tonbridge and Malling Borough Council resolved to adopt the private hire licensing provisions contained in the Local Government (Miscellaneous Provisions) Act 1976 on 28 February 1991, such provisions taking effect on 1 November 1991. Since this date Tonbridge and Malling Borough Council has been the appropriate licensing authority within the borough of Tonbridge and Malling with responsibility for the regulation of private hire vehicles drivers and operators.
- Tonbridge and Malling Borough Council will have regard to this policy and the Institute of Licensing “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades – April 2018” (A copy is available on the Councils website)

### 1.2 Process steps to develop this policy –2023 - 2028.

Consultation agreed at the Licensing and Appeals Committee	5 July 2023
Public Consultation	10 July 2023 – 1 September 2023
Licensing and Appeals Committee	27 September 2023
Full Council adopt policy	24 October 2023
New Policy comes into force	1 December 2023

## 1.3 Key changes to previous policy

- That all Hackney Carriage journeys should be able to be paid for by credit / debit card
- That the minimum number of Hackney Carriage passengers a vehicle can be licensed for from one to four passengers.
- Outsource the Disclosure and Barring Service (DBS) checks to an external third party, where a driver does not hold an online account update service.
- Reduce the length of time lost property is kept from 12 months to 2 months
- Any Hackney Carriage driver failing to take a passenger on a journey, however short, or who charges more than the fare shown on the metre when taking payment by credit / Debit card, will have 9 penalty points being imposed on their TMBC driving licence and a two-week suspension. Subsequent offences will be referred to the Licensing and Appeals Committee.
- For applications for Plate exempt the Private Hire Operator must demonstrate that have proof from their bookings log that they run contracts with Government, executives, private sensitive clients (Hospitals etc.)
- Remove membership of the Chauffeurs Guild as mechanism to bypass having to take the knowledge test.
- To allow plate exempt vehicles who undertake Chauffeur work for back passenger windows to be a higher tint than 50 per cent.

## 1.4 Licensing of drivers and vehicles

- The key aim of licensing hackney carriage and private hire vehicles is to offer a flexible, multi-skilled resource (with high levels of knowledge and experience), embracing unified working practices, exhibiting best working practice, whilst maintaining a high service delivery with excellent customer service.
- Hackney carriage and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where public transport is either not available or outside “normal” hours of operation such as in the evenings or at weekends or for those with mobility difficulties.
- Hackney carriage and private hire licensed drivers undertake school contracts with Kent County Council, transporting young children, people with disabilities and vulnerable people.
- Public safety is a paramount consideration when processing application forms for prospective candidates by ensuring only fit and proper persons are licensed to be entrusted to drive members of the public safely, professionally, and courteously to and from their required destinations.

# Overview

- All licence drivers are required to undertake Child Sexual Exploitation and Safeguarding Training and Disability equality training.
- It is strongly recommended that back-office staff are encouraged to undertake the online safeguarding training.
- Full details of the current provider are shown on the Council website.
- All Hackney Carriage, Private Hire or Dual Driver licence holders are required to have an enhanced Disclosure & Barring Service (DBS) check on applying and renewing their badge, using the level of “Taxi Driver”, “Other Workforce”
- It is encouraged that every licensed driver applicant to hold and maintain an on-line Certificate through The Update Service (Details show at 4.7).
- **Whistleblowing policy** - Tonbridge & Malling Borough Council has a Whistleblowing policy, which latest version is dated the 31 January 2022. which can be found at <https://democracy.tmbc.gov.uk>

## 1.5 Appraising the current Licensing Services for Taxis

- In appraising the current licensing services for taxis the council has reviewed and is making on-going changes through channel shift (paper to electronic communication) and transition to people, process, technology and culture to ensure that we can deliver a first class customer focused service.

## 1.6 Service Aims

- The Licensing Services aims are:
  - To meet statutory responsibilities in a cost effective and responsible manner
  - For all licensed drivers to provide a first-class customer service.
  - To support a strong night-time economy whilst ensuring residents have a good night 'sleep.

## 1.7 Legislative framework

- This Statement of Licensing Policy is written pursuant to the powers conferred by the Town Police Clauses Act 1847 (as amended), and the Local Government (Miscellaneous Provisions) Act 1976 (as amended) which places on Tonbridge and Malling Borough Council (the “Licensing Authority”) the duty to carry out the function of licensing the hackney carriage and private hire trade.

# Overview

- In undertaking its licensing function, the Council will also have regard to other relevant legislation (and any legislation replacing or amending the same or any regulations made there under) including:
  - Transport Act 1980;
  - Transport Act 1985
  - Road Vehicles (Constructions and Use) Regulations 1986;
  - Crime and Disorder Act 1998;
  - Environmental Protection Act 1990;
  - Health Act 2006 and Smoke-free Regulations 2006/7;
  - Legislative and Regulatory Reform Act 2006;
  - Road Safety Act 2006;
  - Equality Act 2010
  - Deregulation Act 2015
  - Immigration Act 2016
  - Human Rights Act 1998
  - Regulators Code
  - Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022

## 1.8 Delegations

- In accordance the Constitution of Tonbridge and Malling Borough Council the Licensing Officers are authorised to exercise the delegated powers detailed in **Appendix O**

## 1.9 Background to Policy

- Tonbridge and Malling Borough Council has traditionally exercised the responsibility of licensing hackney carriages and private hire vehicles through a number of different conditions and procedures that have been developed over a number of years.
- The policy is revised every five years to reflect current working practices, legislative changes, new case law, local governance and needs of the community.

## 1.10 Best Practice Guidance

- The Department for Transport (DfT) has national responsibility for hackney carriage and private hire legislation in England and Wales. As a result of the Office of Fair Trading producing its report on the UK hackney carriage and private hire trade, the DfT was asked to produce Best Practice Guidance for local licensing authorities.
- This document interprets the DfT's considered views about what constitutes "Best or Good Practice" in terms of hackney carriage and private hire licensing, together with local factors specific to this Borough.

# Overview

- The Council, in adopting this licensing policy recognises both the needs of residents for safe, convenient and effective taxi transport while facilitating a sustainable taxi industry and the importance of this provision to the local economy and vibrancy of the borough.
- This Hackney Carriage and Private Hire Vehicle Licensing policy is also intended to ensure that both the trade and the public have a document that fully explains the licensing procedures in a clear and transparent manner.
- TMBC emails all drivers with any changes to working practices.
- A copy of the latest version published on the 28 March 2022 is shown at [Taxi and private hire vehicle best practice guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/taxi-and-private-hire-vehicle-best-practice-guidance)

## 1.11 Council's Vision and Values

- To be a financially sustainable Council that delivers good value services, provides strong and clear leadership and, with our partners, addresses the needs of our Borough.
- A copy of the Councils Corporate strategy can be viewed at :  
[Corporate strategy 2023 to 2027 – Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](https://www.tmbc.gov.uk/corporate-strategy-2023-to-2027)

## 1.12 Objectives

- In setting out its policy, Tonbridge and Malling Borough Council seeks to promote the following safeguarding objectives by:
  - Ensuring the safety of the public and of licensed drivers;
  - the prevention of crime and disorder and protection of customers and drivers from being victims of crime;
  - the provision of a professional and respected hackney carriage and private hire trade, by continued partnership working with the trade and also by monitoring and improvement of their required standards of service
  - Ensuring vehicle safety and the provision of assistance with public access to an efficient and effective public transport service.
- The aim of the licensing process in this context is to regulate the hackney carriage and private hire trade to promote the above objectives. It is the Licensing Authority's wish to facilitate well-run and responsible businesses which displays sensitivity to the wishes and needs of the public.

# Overview

- In exercising its discretion in carrying out its regulatory functions, the Licensing Authority shall have regard to this policy document and the objectives set out above. Applicants are therefore advised to read this policy carefully. Compliance with this policy is likely to assist the applicant to avoid the delay and expense of a hearing before the Licensing & Appeals Panel, and the risk of a refusal or the addition of unwanted licence conditions.
- This is not to say that an application which complies with the policy will necessarily be granted or one that does not will necessarily be refused. The licensing authority will always consider the merits of the case, and this policy is intended to act as a guide rather than a rule. However, the policy represents the Council's view of the best means of securing its licensing objectives in most normal cases, and it is intended to act as an aid to consistent decision making. It has been drawn up in consultation with the licensed trade, together with community stakeholders and other interested parties.
- This policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is also in accordance with the Regulator's Compliance Code. However, despite the existence of this policy, each application or enforcement measure shall be considered on its own merits.
- In certain instances, we may conclude that a provision in the policy or code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the policy or code will be reasoned, based on material evidence, and documented giving clear and compelling reasons for so doing.
- The Council acknowledges that the current fleet of hackney carriages and private hire vehicles and drivers set a reasonable standard of appearance and performance.
- Whilst the number of occasions where suspension, revocation or prosecution are very rare, this policy also emphasises the full range of enforcement options available should they be needed. Any enforcement action taken will be proportionate and each case will be considered on its own merits.

## 2 Definitions

### 2.1 Throughout this document:

- **'The Council'** means Tonbridge and Malling Borough Council
- **'The Licensing Authority'** means Tonbridge and Malling Borough Council
- **'TMBC'** means Tonbridge and Malling Borough Council
- **'Authorised Council Officer'** means any officer of the Council authorised under the Council's Scheme of Delegation as contained in the Constitution
- **'This policy'** means Tonbridge and Malling Borough Council's Hackney Carriage and Private Hire Licensing Policy
- **'Vehicle'** or **'Licensed Vehicle'** means both a Hackney Carriage and Private Hire Vehicle
- **'Hackney Carriage'** means a vehicle licensed under the Town Police Clauses Act 1847 to ply for hire throughout the district controlled by the Council.
- **'Private Hire vehicle'** means a vehicle licensed under the Local Government (Miscellaneous Provisions) Act 1976 to carry passengers for hire or reward by prior booking.
- **'Private Hire Operator'** means a person who makes provision for the acceptance of Private Hire bookings to undertake themselves or pass to others to undertake
- **'The DfT'** means the Department for Transport, including previous names under which that department has been known
- **'The DfT Guidance'** means The Department for Transport – Hackney Carriage and Private Hire Vehicle Licensing: Best Practice Guidance published in March 2010.
- **'DVLA'** means the Driver and Vehicle Licensing Agency
- **'ECMT-IRU'** means the European Conference of Ministers of Transport and the International Road Transport Union
- **'The Committee'** means the Licensing and Appeals Committee of the Council
- The term **'DVLA driving licence'** means a full original GB driving licence issued by the Driver and Vehicle Licensing Agency.
- The term **'Proprietor'** means the owner of the licensed vehicle – this may not necessarily be the driver of the vehicle
- The term **'DBS'** refers to the Disclosure & Barring Service

## 3 Vehicles

### 3.1 Limitation of Numbers

- 3.1.1 The Council does not set a limit on the number of hackney carriages which it licences.
- 3.1.2 No powers exist for licensing authorities to limit the number of private hire vehicles which they licence.
- 3.1.3 The present legal provisions on quantity restrictions for hackney carriage vehicles are set out in section 16 of the Transport Act 1985. This provides that the grant of a hackney carriage licence may be refused, for the purpose of limiting the number of licensed hackney carriages.

***“if, but only if the Local Authority is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet”.***

In the event of a challenge to a decision to refuse a licence on these grounds, it would, therefore, have to be established that the authority had been reasonably satisfied that there was no significant unmet demand.

### 3.2 Vehicle Specifications

- 3.2.1 Licensing Authorities have a wide range of discretion over the types of vehicles that they can licence as hackney carriages or private hire vehicles.
- 3.2.2 The Best Practice Guidance suggests that local Licensing Authorities should adopt the principle of specifying as many different types of vehicles as possible. Authorities are encouraged to leave it open to the trade to put forward vehicles of their own choice which can be shown to meet basic criteria. In that way, emerging new designs for vehicles can be readily considered.
- 3.2.3 The Council is empowered to impose such conditions, as it considers reasonably necessary, in relation to the grant of a hackney carriage or private hire vehicle licence. Hackney carriages and private hire vehicles provide a necessary service to the public, so it is appropriate to set standards for the external and internal condition of the vehicles, provided that the standards are reasonable and proportionate.



## 3.3 Accessibility

3.3.1 The Council is committed to social inclusion and ensuring a wide variety of opportunities are available to those with mobility difficulties to enjoy a high quality of life. It fully supports the view of the Equality and Human Rights Commission that,

*“Making successful journeys is critical to the social inclusion of people with disabilities. Without the ability to travel, people with disabilities are denied access to life opportunities. Their access to education, shopping, employment, healthcare, as well as social and family life is significantly improved when journeys become accessible”.*

3.3.2 For this reason, the Council considers it important that people with disabilities have access to all forms of public transportation and will keep this section of the policy under review through periodic Equality Impact Assessments.

## 3.4 Assistance Dogs

3.4.1 Under the Equality Act 2010, licensed drivers of taxis and private hire vehicles are under a duty to carry passengers with guide, hearing and other assistance dogs.

When carrying such passengers, drivers have a duty to:

- Convey the disabled passenger’s dog and allow it to remain under the physical control of the owner; and
- Not to make any additional charge for doing so.

3.4.2 Drivers who, for medical reasons are unable to accept assistance dogs are able to apply to the Council for an exemption certificate. Such a certificate will only be issued on production of medical evidence. Exemption certificates, which show the photograph of the driver, must be displayed in the vehicle at all times the driver is working.

3.4.3 It is arguable that different accessibility considerations should apply between hackney carriages and private hire vehicles in that hackney carriages can be hired in the street or at a rank, by the customer dealing directly with a driver. Private hire vehicles, however, can only be booked through an operator. It is considered particularly important that a person with a disability should be able to hire a hackney carriage with the minimum delay or inconvenience. The Council will, therefore, actively encourage the licensing of sufficient accessible vehicles and have regard to the requirements of the Equality Act 2010.

3.4.4 The private hire trade should, however, be aware of a good practice guide produced by the Equality and Human Rights Commission, as private hire operators also have a duty under the Equality Act 2010 to ensure people with disabilities are not discriminated against or treated less favourably.

3.4.5 The Blue Badge is linked to you rather than a vehicle, so you can use it with any car. This includes taxis and hire cars that you're driving, or travelling in as a passenger.. Further details can be viewed at [Using your Blue Badge - Citizens Advice](#)

## 3.5 Designated vehicles and Voluntary list of accessible vehicles

- 3.5.1 Tonbridge & Malling Borough Council will be publishing two lists on the council website in respect to wheelchair accessible vehicles:

A “designated vehicles list” of all wheelchair accessible vehicles will be maintained in accordance with section 167 of the Equalities Act 2010.

“**designated vehicles**” – where a person can use a Hackney Carriage or Private Hire Vehicle without getting out of a wheelchair (Ramp etc.)

”**voluntary list**” – where a Hackney Carriage or Private Hire Vehicle that are accessible to passengers in wheelchairs, who are able to transfer from their wheelchair into a seat within the vehicle and the wheelchair can be folded down and placed in the vehicle.

- 3.5.2 Section 165 of the Equalities Act 2010 requires the drivers of those vehicles to carry passengers in wheelchairs provide assistance to those passengers and prohibits them from charging extra.

- 3.5.3 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows Licensing Authorities to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.

## 3.6 Road Tax

- 3.6.1 Failure to have road tax will result in suspension of the licence until the vehicle is taxed.

- 3.6.2 All vehicles are checked to ensure they have paid road tax at the following web site:

<https://www.gov.uk/check-vehicle-tax>

## 3.7 Environmental Considerations

- 3.7.1 The Best Practice Guidance asks licensing authorities to consider how far their vehicle licensing policies can and should support any local environmental policies that they have adopted, bearing in mind the need to ensure that the benefits outweigh costs (in whatever form). They suggest that authorities may, for example, wish to consider setting vehicle emissions standards, perhaps by promoting cleaner fuels.

- 3.7.2 It is considered that efforts should be made, through the licensing policy, to improve, as far as possible, the efficiency of vehicles licensed in the borough by, in particular, reducing the levels of CO2 emitted. There is a movement towards the use of alternative fuels and in many areas LPG conversions to vehicles are perfectly acceptable and encouraged. This will, however, be dependent on supplies of such fuel being made readily available. It may also be the case that the installation of storage tanks into vehicles may affect the ability to carry luggage.

# Vehicles

Clearly emissions from hackney carriages and private hire vehicles could be reduced further, by encouraging better maintenance of vehicles and by switching off engines when stationary or idling, particularly at hackney carriage ranks. It is proposed that this aspect be tackled through education and promotion.

## 3.8 Vehicle age and other criteria

- 3.8.1 When first licensed, **all** vehicles must be less than six years old from the date of first registration. Exemption may apply under the Limousine and Special Event Vehicles section shown at **Appendix B**.

Vehicle	Age Criteria
Licensing a vehicle for the first time	All vehicles must be less than six years old (including wheelchair accessible vehicles but excluding Limousines and Special Event Vehicles) from the date of first registration.
Re-licensing a Saloon, estate, hatchback, or multi-passenger vehicle	Ten years from the date of first registration
Re-licensing a wheelchair accessible vehicle	Fifteen years from the date of first registration
Limousines and Special Event Vehicles	There will be no age restriction on licensing limousines and Special Event Vehicles

- 3.8.2 The Council will not licence any vehicle that is already licensed with another Council or with Transport for London.
- 3.8.3 Saloon, estate, hatchback, or multi-passenger type hackney carriages and private hire vehicles, may be licensed for a maximum of ten years from the date of first registration, subject to six-monthly testing by one of the Council's authorised garages. Each six-monthly test requires the vehicle to obtain a "Compliance Pass Certificate".
- 3.8.4 Wheelchair accessible vehicles may be licensed to a maximum of fifteen years from the date of first registration, subject to six-monthly testing by the Council's authorised garage. Each six-monthly test requires the vehicle to obtain a "Compliance Pass Certificate".
- 3.8.5 The physical condition of a licensed vehicle is an important criteria used when assessing the suitability of a vehicle. In exceptional circumstances a licence may not be renewed if the physical condition of the vehicle is not of a suitable standard despite having passed a MOT test.

# Vehicles

- 3.8.6 Hackney carriage and private hire vehicles (including stretch limousines vehicles and special events vehicles) are subject to both legislative and locally imposed conditions. **These combined conditions can be found in appendices A and B respectively.**
- 3.8.7 There is a restriction on the minimum number of seats to allow applications for vehicles with room for four passengers.
- 3.8.8 Vehicles must have no damage affecting the structural safety of the vehicle and must not have been written off for insurances purposes at any time.

## 3.9 Vehicle Testing and Inspections

- 3.9.1 An MOT pass certificate, from an inspection carried out by one of the authorised testing stations, must be produced for all vehicles. Subsequent MOT pass certificates must be produced annually.
- 3.9.2 In addition to the MOT testing, the vehicle must also be mechanically tested and inspected by a Council's nominated garage. This process is referred to as acquiring a "Compliance Certificate". When required to produce an MOT pass certificate, a "Compliance Certificate" pass certificate must also be produced.
- 3.9.3 A vehicle is required to be re-examined, when the licence has been in force for six months, to ensure that it continues to meet the standards referred to above.
- 3.9.4 The number of approved testing stations will be a minimum of six, all strategically positioned within the Borough and that the cost of the MOT test and compliance be determined by the provider.
- 3.9.5 The Authority may undertake its own programme of inspections between formal MOT tests, where an Officer is unsure as to a vehicle's compliance. The vehicle will be referred to the Council's nominated testing station for a formal assessment. Where the testing requirements are not met, the Officer may either agree a period of time for ratification and re-inspection or suspend the vehicle until rectification and re-inspection has occurred. The test will be at the Proprietor's expense.

## 3.10 Insurance

- 3.10.1 There shall be a policy of insurance, or such security as complies with the requirements of Part IV of the Road Traffic Act 1972, during the duration of the vehicle licence. Under no circumstances will a vehicle licence be issued or renewed without proof that this section has been complied with.
- 3.10.2 When applying an original certificate needs to be sent in by email.
- 3.10.3 The registered owner of the licensed vehicle shall ensure that it is adequately insured to the satisfaction of the Council and all relevant legislation at all times that it is available for the carrying of passengers.
- 3.10.4 At any time when the requirements of this section of the Policy have not been satisfied, the vehicle licence will automatically be suspended until such time as adequate insurance has been obtained.

# Vehicles

- 3.10.5 A copy of the current vehicle insurance must be available for inspection at all times. This can be a Paper copy, or a copy stored on a phone or tablet device.

## 3.11 Vehicles involved in an accident.

- 3.11.1 Any licensed vehicle involved in an accident must be inspected by an authorised licensing officer or an authorised garage to ensure the vehicle is roadworthy to continue operations. If a vehicle is taken off road for repair, there is an option for your insurance company to obtain a temporary licence for an accident replacement vehicle. This temporary vehicle will be subject to the same MOT and compliance requirements as the vehicle that it is replacing.

## 3.12 Signage

- 3.12.1 Within the Borough of Tonbridge and Malling both hackney carriages and private hire vehicles are required to **permanently display** licence plates externally on the rear of the vehicle.
- 3.12.2 This is a key feature in helping to identify vehicles that are properly licensed. The plate details Tonbridge and Malling Borough Council as the Licensing Authority, the vehicle make, model, colour and registration mark, the number of passengers the vehicle can carry and the expiry date of the licence.
- 3.12.3 In addition to the external plate all vehicles must display a small internal plate containing the same details as the external plate. This plate can be read from both inside and outside of the vehicle and must be positioned at the top of the front nearside corner of the windscreen.
- 3.12.4 Hackney carriage vehicles are required to display permanently affixed signage to the front side doors of the vehicle. This signage contains the Council logo and the words "Tonbridge & Malling Borough Council" and "TAXI" and shows the plate number.
- 3.12.5 Private Hire Vehicles required to display permanently affixed signage to the front side doors of the vehicle showing the plate number.
- 3.12.6 All hackney carriage vehicles, except those with built-in roof signs must carry white or silver illuminated roof-mounted sign indicating that they are a taxi and these must be lit when plying for trade. In order to differentiate between the two types of licensed vehicle, private hire vehicles must not carry roof-mounted signs of any kind, and they must have no signs (roof-mounted or otherwise) using the words "Taxi", "Hackney", "Cab", or "For hire".

## 3.13 Plate Exemption

- 3.13.1 Under certain circumstances a private hire vehicle operator may make a plate exemption application. This is normally made by operators involved in chauffeur work or work of an exclusive nature. If granted this absolves the operator from the requirement to display both the internal and external licence plates. In these circumstances plates will still be issued and should be carried within the vehicle, together with a signed notice of exemption.

## Vehicles

- 3.13.2 Before any plate exemption notice is issued, the operator must satisfy the licensing officer that such an exemption would be integral to his business.
- 3.13.3 Special Events Vehicles will normally be exempted from displaying a plate automatically due to the nature of the work they will be undertaking.
- 3.13.4 Plate Exempt Private Hire vehicles, Limousines and Special Events Vehicles will be exempt from displaying door insignia.

### 3.14 Advertising

- 3.14.1 No external third-party advertising will be permitted on any hackney carriage or private hire vehicle.
- 3.14.2 Limited advertising giving details concerning the proprietor's or operator's private hire business will be permitted, but this will be strictly controlled so that confusion between private hire and hackney carriage vehicles is kept to the minimum.

### 3.15 Security and Closed-Circuit Television (CCTV)

- 3.15.1 The hackney carriage and private hire trade provides a valuable public service, especially late at night when other forms of public transport are no longer available. Security for drivers and passengers is of paramount importance. CCTV cameras can be a valuable deterrent as well as protecting the driver from unjustified complaints.
- 3.15.2 It is not proposed that measures such as CCTV cameras should be required as part of the licensing regime, as it is considered that they are best left to the judgement of the owners and drivers themselves. The hackney carriage and private hire vehicle trade is, however encouraged to consider the installation of CCTV cameras in their vehicles on a voluntary basis and it will then be incumbent upon the operator to handle relevant data gathered in an appropriate and secure manner. For information and guidance on data protection see Information Commissioners Office (ICO) website <https://ico.org.uk/>
- 3.15.3 The hackney carriage and private hire trade are also encouraged to build good links with the local police force, including participation in any Crime and Disorder Reduction Partnerships.

### 3.16 Stretch Limousines

- 3.16.1 Stretched limousines are elongated saloon cars that are more frequently being used for mainstream private hire work. The number of stretched limousines being imported, particularly from the United States, has been increasing. Their use generally includes all private hire work plus special occasions such as days at the races, stag/hen parties and children's birthday parties.

# Vehicles

3.16.2 For the purpose of this policy and licence conditions a stretch limousine is defined as follows:

- A stretch limousine is a motor vehicle that has been lengthened by the insertion of an additional body section and modified by a coachbuilder to contain luxury facilities and fixtures;
- that is capable of carrying up to but not exceeding 8 passengers; and
- that is not a decommissioned military or emergency service vehicle.

3.16.3 Most limousines are imported for commercial purposes and are, therefore, required to take an Individual Vehicle Approval (IVA) test. They cannot be approved as Passenger Carrying Vehicles (PCV) because they cannot meet the required standards for the door arrangements and means of escape in an emergency.

The IVA Scheme is an Inspection Scheme for vehicles that are not approved to British and European Standards and its purpose is to ensure that these vehicles meet modern safety standards and environmental standards before being used on public roads. When presented for an IVA test the vehicle is produced with a declaration that it will never carry more than eight passengers.

The importer must inform any person who may use it of its restriction. Any subsequent purchasers must also be informed of the restriction.

3.16.4 The Local Government (Miscellaneous Provisions) Act 1976 defines a private hire vehicle as a motor vehicle constructed or adapted to carry fewer than nine passengers, other than the hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purposes of carrying passengers. Section 48 of the 1976 Act requires that before a licence is granted the Authority must be satisfied that the vehicle is:

- suitable in type, size and design for the use as a private hire vehicle.
- not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage.
- in a suitable mechanical condition.
- safe; and
- Comfortable.

3.16.5 Stretched limousines can be licensed for private hire work providing they may carry no more than eight passengers and meet the requirements of the Act. Possible exemptions under the Local Government (Miscellaneous Provisions) 1976 Act provide that nothing shall:

- apply to a vehicle used for bringing passengers or goods within a controlled district in pursuance of a contract for the hire of the vehicle made outside the district if the vehicle is not made available for hire within the district.

## Vehicles

- apply to a vehicle while it is being used in connection with a funeral or a vehicle used wholly or mainly, by a person carrying on the business of a funeral director, for the purpose of funerals.
  - apply to a vehicle being used in connection with a wedding.
- 3.16.6 Any stretched limousines, which are offered for private hire, or which are not used for funeral and weddings do, of course, require a licence. Some operators of these vehicles have a wedding car licence insurance policy on the basis that the vehicle will be used largely during daylight hours, once or twice per week. Before licensing for private hire, therefore, a full insurance policy for private hire purposes will be required.
- 3.16.7 All bookings for a stretch limousine licensed as a private hire vehicle by the Council must be booked through a private hire operator licensed by Tonbridge and Malling Borough Council in accordance with S55 of the Local Government (Miscellaneous Provisions) Act 1976.
- 3.16.8 In accordance with the Guidance, all applications to licence stretch limousines as private hire vehicles will be treated on their merits. The Council strongly recommends that anyone wishing to licence a limousine contacts the licensing authority before purchasing a vehicle to ensure that advice can be provided as to whether the vehicle will meet the required standards.
- 3.16.9 Because these vehicles will not meet the usual vehicle specification, additional documentation and inspection will be needed in order that the Council's responsibility to ensure safety and suitability, prior to a licence being issued, can be met. Imported stretch limousine type vehicles will:
- be granted an exemption from the requirement under the conditions of licence for private hire vehicles to be right hand drive.
  - be authorised as prestige type private hire vehicles; and
  - be approved for licensing as private hire vehicles subject to meeting the specified criteria and additional conditions detailed in **Appendix A**
- 3.16.10 It would be an offence under the Licensing Act 2003 to provide facilities for the sale of alcohol within a limousine. If the limousine is to be provided whereby part of the booking includes "free alcohol", the premises which accepts the booking and supplies the alcohol within the vehicle would need an appropriate licence under the Licensing Act 2003, otherwise a criminal offence would be committed.

### 3.17 Special Events Vehicles

- 3.17.1 The Licensing of Special Events Vehicles will be dependent on the Council being satisfied that the vehicle is suitable in size, type and design for use as a Special Events Vehicle. The prime consideration of the Council is the safety and comfort of the travelling public.
- 3.17.2 The Council considers the following types of vehicles to be Special Events Vehicles when considered in the context of licensing.



## Vehicles

- Decommissioned emergency service vehicles
- Vintage and luxury vehicles (where the normal private hire vehicle age limits would exclude them)
- Other non-standard type converted vehicles used for special events.

- 3.17.3 The ability to licence a vehicle as a Special Events Vehicle will be restricted to stretched Limousines and other types of “novelty” vehicles as outlined in **Appendix B**. Mass produced saloon cars or wheelchair accessible vehicles will be required to be licensed under the normal Hackney Carriage or Private Hire car requirements.
- 3.17.4 Special Events Vehicles will generally be used for special occasions such as days at the races, stag/hen parties, weddings, proms and children’s birthday parties.
- 3.17.5 In accordance with the Guidance, all applications to licence Special Events Vehicles as private hire vehicles will be treated on their merits. The Council strongly recommends that anyone wishing to licence a Special Events vehicle contacts the licensing authority before purchasing a vehicle to ensure that advice can be provided as to whether the vehicle will meet the required standards.
- 3.17.6 Once licensed in Tonbridge and Malling Borough Council as a private hire vehicle the Special Events Vehicle can only be driven by a private hire driver licensed by the Council. This applies at all times whilst the vehicle holds a private hire vehicle licence.

### 3.18 Contract Vehicles

- 3.18.1 Previously, under Section 75(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976 there was no requirement for a vehicle to be licensed where it was used for a contract with an organisation/firm for a period of more than seven days for carrying passengers for hire or reward under a contract for the hire of the vehicle. This exemption only applied to the vehicle and driver subject to the contract and then only during the period of the contract. Any vehicles being used for a contract with one firm could not be used for any other contract or purpose during the period of that contract.

This exemption has been repealed by provisions contained within the Road Safety Act 2006 that became effective in January 2008 and thus vehicles which previously took advantage of this exemption will now have to become licensed private hire vehicles.

- 3.18.2 The Department for Transport website gives details of the guidance notes on what is, and what is not, a private hire vehicle please find link to webpage below:

[www.gov.uk/government/publications/private-hire-vehicle-licensing-guidance-note](http://www.gov.uk/government/publications/private-hire-vehicle-licensing-guidance-note)

### 3.19 Funeral Vehicles

- 3.19.1 There is no requirement for a vehicle to be licensed where it is being used in connection with a funeral or is being wholly or mainly used by a person carrying on the business of a Funeral Director for the purpose of funerals.

## 3.20 Wedding Vehicles

- 3.20.1 A vehicle does not need to be licensed while it is being used in connection with a wedding. For clarity, the exemption applies only to services directly relating to the wedding service itself, for example transporting the married couple to the wedding service, from the service to the reception and from the service/reception to home. **Transporting the married couple to other locations such as the airport would be considered to be a licensable activity.**
- 3.20.2 Written certification from the Council of the relevant exemption claimed is not currently required and it is not proposed to change this arrangement.

## 3.21 Courtesy Cars

- 3.21.1 All vehicles with not more than 8 passenger seats carrying passengers for hire and reward must be licensed by the Local Authority. Although there has been some legal debate regarding this particular issue, current case law supports the view that vehicles which are used as 'courtesy cars', i.e. for transporting customers to and from hotel, night-clubs, etc. are being provided for hire and reward in the course of business, irrespective of whether or not a charge is made for such service. They should be licensed accordingly.
- 3.21.2 Those operating 'courtesy cars', e.g. for transporting customers to and from hotels, night-clubs, etc. should have an operator's licence and drivers must be appropriately licensed. All three licences (operator, vehicle and driver) must be from the same Licensing Authority.

## 3.22 Ambulances and Other Patient Transport

- 3.22.1 **Ambulances** - Whilst having respect to the Department for Transport guidance "genuine ambulances" will be exempt from private hire vehicle licensing:

*"emergency/specialist ambulance vehicles – likely to accommodate a stretcher and specialist equipment, and to require the presence of health professionals."*

## 3.23 Other Patient Transport -

- 3.23.1 "vehicles which operate as part of a formal Patient Transport Service – usually non-emergency, planned transport of patients, where the booking will only be made if the person to be carried has been assessed by a health professional as having a medical need for transport; these vehicles will be contracted to a health care provider and cannot be used for "social" hiring's;"
- 3.23.2 Other patient transport services provided by Primary Care Trusts, or Voluntary services, that do not qualify for exemption will require licensing as a private hire vehicle

## **3.24 Voluntary Sector Transport**

- 3.24.1 The Council will assess each individual organisation on its own merits to determine whether it will require licensing as a private hire business. Whilst it is clear that the organisation is providing a service, it is less clear that such provision can be defined as operating a private hire business.
- 3.24.2 The Council will, however, seek to enforce against unlicensed businesses where it can be proven that the business obtains a benefit, and the Council considers that private hire vehicle licensing is necessary.

## **3.25 Motorbikes**

- 3.25.1 There is currently no provision in the policy to licence motorbikes, however this will not preclude the option of licensing motorbikes at a later date.

## **3.26 Livery**

- 3.26.1 Hackney carriage vehicles must be wholly white wholly silver.
- 3.26.2 Private hire vehicles can be any colour.

## **3.27 Application Procedure**

- 3.27.1 The application procedures for a hackney carriage or private hire vehicle licence are prescribed by the Council. The Council requires that all applications must be made on a specified application form in accordance with the application procedures set out in **Appendix C**.

## **3.28 Consideration of Applications**

- 3.28.1 The Council will consider all applications on their merits once it is satisfied that the appropriate criteria have been met and the application form and supporting documents are complete and the fee has been paid.

## **3.29 Grant and Renewal of Licences**

- 3.29.1 The Guidance makes no recommendations in respect of the duration of hackney carriage or private hire vehicle licences, and legislation limits the maximum period of such licences to 12 months.
- 3.29.2 Hackney carriage or private hire vehicle licences will thereby continue to be issued for a one-year period from the date of grant, subject to the power to grant a licence for a shorter period, should this be appropriate in the circumstances.
- 3.29.3 When submitting renewal applications, applicants should be aware that it may take up to seven working days to process and issue a licence once all the necessary paperwork has been received. If the licence has not been issued at the point when an existing licence expires, the licence holder must cease operating until the new licence has been received.

## **3.30 Applicant Suitability**

- 3.30.1 Tonbridge and Malling Borough Council will have regard to this policy and the Institute of Licensing “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades – April 2018” (A copy is available on the Councils website)

## **3.31 Lost Property**

- 3.31.1 It is the responsibility of the Hackney Carriage and Private Hire Driver to check the vehicle for lost property frequently during their shift.
- 3.31.2 Lost property can be handed in at the Council Offices at Tonbridge Castle or Kings Hill.
- 3.31.3 Any Lost Property must be handed into Licensing Services, where the details will be entered into the Lost Property Log and kept for a period of 3 months.
- 3.31.4 Any monies unclaimed will be donated to the Mayors Charity. Any other items will be given to Charity shops or will be destroyed, depending on the condition of the items.

## 4 Drivers

### 4.1 Licences

4.1.1 This Council issues hackney carriage, dual and private hire driver licences.

### 4.2 Age and Experience

4.2.1 A licence to drive a hackney carriage or private hire vehicle will not be granted to a person who has not held a full driving licence for a period of at least 12 months immediately prior to the licence application.

4.2.2 An applicant who meets the licensing requirements by virtue of an acceptable non-UK driving licence must either:

- Obtain a full UK driving licence within twelve months of the issue of the hackney carriage/private hire drivers' licence, or
- Obtain a backing sheet from the DVLA within twelve months of the issue of the hackney carriage/private hire drivers' licence, which can be attached to the non-UK driving licence and used by the DVLA to monitor penalty points obtained whilst driving in the UK

4.2.3 Where this requirement is not satisfied, the hackney carriage/private hire driver's licence will be automatically suspended pending compliance.

4.2.4 Applicants must ensure their DVLA Driving Licences are kept up to date and that the address always remains correct. Applicants must also ensure they complete DVLA Licence renewals in a timely manner.

### 4.3 Driver Knowledge Tests

4.3.1 Drivers clearly need a good working knowledge of the area for which they are licensed. The DfT recognises that most authorities require prospective drivers to pass a test as to their knowledge of the local geography (known locally as the Knowledge Test) as a condition of first grant of a licence. This test will also test the driver's knowledge of the Council's Licensing Policy as well as basic knowledge of hackney carriage and private hire law. In addition, the test covers basic maths and an understanding of English.

4.3.2 The procedures in relation to the above are set out in **Appendix E**.

### 4.4 Driving Proficiency and Qualifications

4.4.1 The Council believes that as a profession, hackney carriage and private hire drivers have a special responsibility for the safe transportation of fare-paying passengers. An assessment of a driver's ability should, therefore, be obtained by all new applicants.

- 4.4.2 All new applicants for hackney carriage/private hire driver's licences are required to produce evidence that they have successfully completed a relevant practical driving test with Green Penny Ltd.

Booking form can be found at:

<http://www.greenpenny.co.uk/taxi-assessment-booking-form>

## 4.5 Medical Examination

- 4.5.1 The DfT recognises that it is clearly good practice for medical checks to be made on each driver as a condition for the initial grant of a licence and subsequent renewal. The Council has adopted the relevant DVLA medical standard i.e., Group 2. This is the standard applied to the licensing of lorry and bus drivers and is considered to be best practice.
- 4.5.2 A medical examination by a General Practitioner, to assess an applicant's fitness to drive a licensed vehicle, is required before a licence may be granted. A DVLA Group 2 Standard of medical fitness for professional drivers will be required.
- 4.5.3 A request form for a medical examination, which may be presented to the applicant's GP, is obtainable from the Council. The applicant will be responsible for paying the fee for the examination to the relevant surgery. On completion of the examination, the report must be submitted to the Council.
- 4.5.4 Existing licence holders, having presented a medical certificate upon first being granted a licence, will be required to be re-examined before the renewal of the drivers' licence, every three years. Drivers who are 65 years old and over must undertake a medical examination annually. More frequent checks will also be necessary if, in the opinion of the medical practitioner, it is necessary.
- 4.5.5 Licence holders must advise the Council of any deterioration in their health that may affect their driving capabilities. For the avoidance of doubt, the following medical conditions must be notified to the Council as soon as reasonably practicable; however, this list is not exhaustive:
- Any heart-related condition.
  - Abnormal blood pressure.
  - Diabetes (Type 1 or Type 2);
  - Epilepsy.
  - Sudden attacks of giddiness or fainting.
  - Conditions causing excessive daytime sleepiness such as sleep apnoea.
  - Alcohol or drug dependency.
  - Double vision or uncorrected vision disorder
  - Mental or psychological disorders; or
  - Any other condition that may affect the ability to drive.
- 4.5.6 Where there is any doubt as to the medical fitness of the applicant, the Council may require the applicant to undergo further medical examination by a doctor appointed by the Council. This will be at the applicant's own expense.

- 4.5.7 Where there remains any doubt about the fitness of any applicant, the Council will review the medical evidence and make any final decision in the light of the medical evidence available.
- 4.5.8 The format of the medical examination will be that prescribed by the standard Group 2 DVLA form issued. This form is available from Licensing Services on payment of the fee.

## 4.6 Disclosure and Barring Service

- 4.6.1 A Disclosure and Barring Service (DBS) check on a driver is seen as an essential safety measure in assessing whether or not an applicant is suitable to hold a licence. An Enhanced Disclosure provided by the Disclosure and Barring Service is required from all applicants, whether new or renewal applications. These disclosures include details of spent convictions and police cautions.
- 4.6.2 The Rehabilitation of Offenders Act 1974 does not apply to applicants for Hackney Carriage/Private Hire driving licences. Applicants are required to disclose all convictions, including those that would normally be regarded as spent.
- 4.6.3 The applicant will be responsible for payment of the appropriate fee.
- 4.6.4 An **Enhanced DBS check is required** on applying and renewing their badge, using the level of **“Taxi Driver”**, **“Other Workforce”**

## 4.7 The Update Service

- 4.7.1 It is strongly advised that every licensed driver applicant to hold and maintain an on-line Certificate through **The Update Service**.
- 4.7.2 The online Disclosure and Barring Service (DBS) update service allows:
- applicants to keep their DBS certificates up to date.
  - employers to check a DBS certificate.
- 4.7.3 You need to register to use the update service <https://www.gov.uk/dbs-update-service>
- 4.7.4 If you've not yet applied for a DBS check, you can register for the update service using your application reference number (the 'form ref' on your application form). DBS must receive your application form within 28 days.
- 4.7.5 If you've already applied, you can register for the update service using your DBS certificate number. You must do this within 30 days of the certificate being issued.
- 4.7.6 The licence or renewal is conditional upon there being no adverse information revealed on the DBS disclosure that would render the applicant not 'fit and proper'. If the licence is issued (which would only be under exceptional circumstances) and relevant information is later revealed on a disclosure certificate then that licence will be subject to review and possible revocation.
- 4.7.7 The Council is bound by rules of confidentiality and will not divulge information obtained to any third parties. The applicant for a DBS check will be sent a certificate to their home address. Information arising from disclosures will be kept on file only for as long as necessary and usually no longer than six months.

- 4.7.8 Information received from the Disclosure and Barring Service will normally be destroyed after a decision has been made concerning the application.
- 4.7.9 For more information on the retention and disposal of the DBS certificate please go online and see Tonbridge and Malling Borough Council's policy.
- 4.7.10 **Referrals to the Disclosure and Barring Service and the Police**
- 4.7.11 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS. A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS. The power for the licensing authority to make a referral in this context arises from the undertaking of a safeguarding role.
- 4.7.12 The Department for Transport recommends that licensing authorities should make a referral to the DBS when it is thought that:
- an individual has harmed or poses a risk of harm to a child or vulnerable adult;
  - an individual has satisfied the 'harm test' ; or
  - received a caution or conviction for a relevant offence and;
  - the person they are referring is, has or might in future be working in regulated activity; if the above conditions are satisfied, the DBS may consider it appropriate for the person to be added to a barred list.
- 4.7.13 These referrals may result in the person being added to a barred list and enable other licensing authorities to consider this should further applications to other authorities be made.

### **4.8 National Register (NR3)**

- 4.8.1 The Local Government Association (LGA) has commissioned the development of a national register of hackney carriage and PHV driver licence refusals and revocations, the 'National Register of Refusals and Revocations'.
- 4.8.2 The new register will allow licensing authorities to record details of where a hackney carriage or PHV drivers' licence has been refused or revoked, and allow licensing authorities to check new applicants against the register.
- 4.8.3 Tonbridge & Malling Borough Council are members and actively use the NR3 Taxi Licence Database

### **4.9 Multiagency Safeguarding Hubs**

- 4.10 **Tonbridge & Malling Borough Council** operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). As has been emphasised throughout this document, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and private hire vehicles is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.



## 4.11 Relevance of Convictions and Cautions

- 4.11.1 A guide to the relevance of previous convictions, cautions and fixed penalty notices is in **Appendix D**.
- 4.11.2 The Council will consider each application on its merits having regard to this policy.
- 4.11.3 In assessing whether the applicant is a “fit and proper” person to hold a licence the Council will consider each case on its merits. It will take account of cautions, convictions, and fixed penalty notices but only in so far as they are relevant to an application for a licence. Upon receipt of a licence application the Licensing Officer will assess from the information provided whether any or all of the convictions have any relevance as to whether the applicant is a fit and proper person to hold a licence and may refer the person to the Licensing and Appeals Panel for decision.
- 4.11.4 In relation to cautions the Council will have regard to the class and age of the offence and the age of the applicant when the offence occurred when considering their relevance to an application.
- 4.11.5 In relation to previous convictions the Council will have regard to the following:
- The class of the offences.
  - The age of the offences.
  - The apparent seriousness, as gauged by the penalty.
- 4.11.6 Without prejudice to the general right to refer any application to the Panel, applications will be referred to the Licensing and Appeals Panel where the applicants record includes one or more of the following:
- Any term of imprisonment or custody.
  - Any conviction for a violent or sexual offence, or dishonesty.
  - Any serious motoring offence, such as dangerous driving, driving whilst disqualified, or drink driving.
  - Any drug-related offence; or
  - Any combination of less serious offences where the Licensing officer is not minded to grant the application.
  - More than six points on their licence.
- 4.11.7 Where applicants have only been residing in the UK for six months or less the applicant **must** produce a Certificate of Good Conduct, or equivalent document, issued and authenticated by the appropriate embassy or a statutory declaration of absence of convictions, signed by a solicitor. This document must be translated into English.
- 4.11.8 A DVLA driver endorsement check will be required upon applications for new or renewal of a driver licence, to ensure that the information held by the DVLA is in accordance with the information submitted by the applicant.
- 4.11.9 Tonbridge and Malling Borough Council will have regard to this policy and the Institute of Licensing “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades – April 2018” (A copy is available on the Councils website)

## 4.12 Immigration Check

- 4.12.1 On the 1st December 2016 the Immigration Act 2016 came into force. It has now become a duty of the Council to carry out immigration checks on new applicants and those renewing a driver's badge. This is to ensure that the applicant has the right to work in the UK. A licence will not be granted until there is sufficient proof that the applicant has the right to work in the UK.

## 4.13 Grant and Renewal of Licences

- 4.13.1 An application for a hackney carriage or private hire driver's licence must be made on the specified application form. Drivers' licences are normally granted for a period of three years.
- 4.13.2 The application procedure is set out in **Appendix C**.
- 4.13.3 Applicants need to submit the application to renew the licence at least one week prior to the licence expiry to ensure that the licence is renewed on time. Officers may only accept complete applications comprising all the necessary paperwork. If an application is received late the applicant may be unlicensed for a period of time during which they will be unable to work as a licensed hackney carriage or private hire driver.
- 4.13.4 The licence fees payable are subject to periodic review. Whilst the fees are set by the Licensing Authority they will be published in a local newspaper at least 28 days prior to the proposed operational date, for constructive comment. They will also be published together with other Council licensing fees in the Fees & Charges document and on the Council's website under the licensing link.

## 4.14 Conditions of Licence

- 4.14.1 The Licensing Authority is not empowered to attach conditions to a hackney carriage driver, other than through Byelaws.
- 4.14.2 The Licensing Authority is empowered to attach such conditions to a private hire driver's licence as are considered necessary. The standard conditions applied to all private hire drivers are set out in **Appendix F**.
- 4.14.3 In accordance with the above, the penalty point system detailed in **Appendix G** is not a condition of licence. It is, however, a transparent and consistent method for the Council to determine whether or not a driver meets the 'fit and proper person' test.

## 4.15 Code of Good Conduct

- 4.15.1 The standards expected of licensed drivers are set out in the Code of Good Conduct, included in this policy document at **Appendix H**
- 4.15.2 Failure to comply with any aspect of the Code of Good Conduct may result in enforcement action. However, breach of the Code of Conduct is an indicator which officers will use to help decide upon subsequent enforcement action. This may result in advice or warnings being given by an authorised officer.
- 4.15.3 Repeated breaches following such advice or warnings may lead to more serious consequences including, if necessary, non-renewal, suspension or revocation of licences.

- 4.15.4 It is considered that in order to raise the profile of the licensed trade, drivers should operate at all times in a professional manner and dress so as to present a professional image to the public.

## 5 Private Hire Operators

### 5.1 Operators

- 5.1.1 Any person who operates a private hire service utilising one or more private hire vehicles must apply to the Council for a Private Hire Operator's Licence.
- 5.1.2 The primary objective in licensing private hire operators is the safety of the public, both in the vehicles and at the operator's premises.
- 5.1.3 A private hire vehicle may only be despatched to a customer by a private hire operator who holds a private hire operator's licence. Such a licence permits the operator to make provision for the invitation or acceptance of bookings for a private hire vehicle.
- 5.1.4 With the introduction of the Deregulation Act 2015 Private Hire Operators are allowed to sub contract work to other licensed Private Hire Operators who hold licences with a different Licensing Authority.
- 5.1.5 A private hire operator must ensure that every private hire vehicle is driven by a person who holds a private hire driver's licence.
- 5.1.6 All three licences detailed below must be issued by the same Licensing Authority:
- Private hire operator's licence;
  - Private hire driver's licence;
  - Private hire vehicle licence.
- 5.1.7 Applications for an operator's licence must be made on the prescribed form, together with the appropriate fee. The Council will then decide whether the applicant is a fit and proper person to hold an operator's licence.

### 5.2 Hackney Carriage

- 5.2.1 Individual Hackney Carriage drivers operating under their own or a trading name as a sole trader are not required to hold a Private Hire Operator's Licence.

### 5.3 Disclosure and Barring Service Checks

- 5.3.1 Private hire operators that are not licensed drivers are not required to produce an enhanced DBS disclosure. A Basic Disclosure from the Disclosure and Barring Service, or a certificate of good conduct from the relevant embassy for overseas applicants is required, as this is considered appropriate in promoting the objective of public safety.
- 5.3.2 Basic DBS check for vehicles/operator licences held by companies require any partner or director of the company must have had a basic DBS carried out if they are not licensed as a driver.
- 5.3.3 References from non-family members can also provide some assurance of the suitability of the applicant's character and ability to hold an operator's licence covering, for example, the applicant's financial records and/or business history; therefore all applications will require two references on the initial application.

## 5.4 Applicants Suitability

- 5.4.1 Tonbridge and Malling Borough Council will have regard to this policy and the Institute of Licensing “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades – April 2018” (A copy is available on the Councils website)

## 5.5 Conditions

- 5.5.1 The Council has the power to impose such conditions on an operator’s licence as it considers reasonable, necessary and proportionate. The conditions set out in **Appendix I** are those considered to be reasonably necessary.

## 5.6 Record Keeping

- 5.6.1 Operators are required to keep records of each booking, including the name of the passenger, the destination, the name of the driver and the number of the vehicle. This would, for example, assist the Licensing Officer or police with any future investigations.
- 5.6.2 Operators must keep records in respect of all bookings, vehicles and drivers for a period of one year. Full details in **Appendix I**
- 5.6.3 Such records are to be made available to any authorised officer of the Council or a police officer upon request.

## 5.7 Insurance

- 5.7.1 It is considered appropriate for a Licensing Authority to check that appropriate public liability insurance has been taken out for premises that are open to the public.
- 5.7.2 Before an application for a private hire operator’s licence is granted, the applicant must produce evidence that they have taken out appropriate public liability insurance for the premises to be licensed.

## 5.8 Licence Duration

- 5.8.1 The Department for Transport (DfT) considers that annual licence renewal is not necessary or appropriate for private hire operators. They recommend, as good practice, that a licence period of five years would be reasonable.
- 5.8.2 An Operator’s Licence issued by Tonbridge and Malling Borough Council will last for five years.

## 5.9 Address from which an Operator may operate

## Operators

- 5.9.1 The operator must provide evidence that appropriate permissions (and public liability insurance if relevant) are in place at any new premises to ensure continuity of licence; and within seven days inform the Council in writing of a home address change taking place. If the appropriate permission or insurance is not in place, the licence may be revoked or suspended pending compliance.
- 5.9.2 Operators will be required to supply the Council with an up-to-date list of all vehicles and drivers working under that licence and of any changes to that list.

## **6 Fares and Fees**

### **6.1 Hackney Carriage**

- 6.1.1 Hackney Carriage Fares, set by the Council, are a maximum and can be negotiated downwards by the hirer. Tonbridge and Malling Borough Council considers it good practice to review the fare scales at regular intervals upon request from the taxi trade and will, therefore, consider the fare scales on an annual basis.
- 6.1.2 When determining the level of fares consideration will be given as to what it is reasonable to expect the travelling public to pay as well as the need to give drivers an incentive to provide a cost-effective service at the times it is needed.
- 6.1.3 Fares can be negotiated prior to the commencement of the journey in both private hire vehicles and hackney carriages.
- 6.1.4 One of the main complaints relating to hackney carriages concerns overcharging. To protect the fare paying public from overcharging, as well as to protect the drivers from complaints, Tonbridge and Malling Council will operate a simple fare tariff that must be displayed in all hackney carriages. Negotiated fares may not exceed the set tariff for the journey.
- 6.1.5 In reviewing the fare tariff the Council will consult with the trade and publish the fares in a local newspaper, Council's Web Site and Council Offices at least 14 days before the fares are due to come into force.
- 6.1.6 These regulations in relation to fares do not apply to private hire vehicles.
- 6.1.7 A table of authorised fares will be provided to each hackney carriage licence holder, which must be displayed in each vehicle so that it is easily visible to all hirers.
- 6.1.8 A hackney carriage driver must, if requested by the passenger, provide a written receipt for the fare paid. Minimum information required is Drivers name; Drivers Badge Number and Vehicle plate number; Date; Time and Total Fare charged.
- 6.1.9 The Guidance also recognises that there is a case for allowing any hackney carriage proprietors who wish to do so, to make it clear by advertising that they charge less than the maximum fare.

### **6.2 Private Hire**

- 6.2.1 Private hire fares are not regulated by the Licensing Authority.

### **6.3 Fees**

- 6.3.1 The Guidance does not deal with the issue of licensing fees at all. It is, however, generally recognised that the fees set for all hackney carriage and private hire licences should be such as to ensure that the costs of the service, including the cost of issue and administration and enforcement will so far as possible be met from fee income.

### **Local Government (Miscellaneous Provisions) Act 1976**

## Fares and Fees

- 6.3.2 Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 covers Drivers' licences for hackney carriage and private hire vehicles, allows fees to recover the costs of issue and administration.
- 6.3.3 Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 covers fees for vehicle and operators' licences allows fees to: recover the reasonable cost of carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed; reasonable cost of providing hackney carriage stands; and any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.
- 6.3.4 A district council may remit the whole or part of any fee chargeable in pursuance of Section 48 – Licensing of private hire vehicles and Section 55 – Licensing of operators of private hire vehicles.
- 6.3.5 It is not lawful for the Council to seek to make a profit from licence fees that are within its discretion. In particular, regarding the fees charged for hackney carriage and private hire vehicle and operator licences, the legislation provides that these should be sufficient to cover the costs of inspecting the vehicles, providing hackney carriage stands and administering the control and supervision of hackney carriages and private hire vehicles.
- 6.3.6 All fees payable will be reviewed annually as part of the Council's budgetary process. The Council will publish the fees in a local newspaper at least 28 days prior to the fees coming into force to allow for constructive comments to be received and considered prior to the implementation date. The fees will be published together with other fees on the Council's website under the licensing link.

### 6.4 Payments

- 6.4.1 All cheques for licence applications should be made payable to "Tonbridge and Malling Borough Council" or "TMBC". Payments can also be made electronically, by credit and debit card or by cash at the Council offices.

### 6.5 Transfers, Duplicate Copies and Change of Address

- 6.5.1 A full list of fees associated with the administration and issuing of licences is available on the Council's website.
- 6.5.2 Where the holder of a driver licence, vehicle licence or operator's licence is referred to the Licensing and Appeals Committee and their licence is revoked or suspended no refund will be made.



# Disciplinary and Enforcement Measures

## 7 Disciplinary and Enforcement Measures

### 7.1 Enforcement

- 7.1.1 It is recognised that well-directed enforcement activity by the Authority benefits not only the public but also the responsible members of the hackney carriage and private hire trades. The DfT accepts that the resources devoted by licensing authorities to enforcement will vary according to local circumstances. They remind authorities, however, that it is desirable to ensure that hackney carriage and private hire enforcement effort is at least partly directed to the late night period, when problems such as touting tend most often to arise.
- 7.1.2 In pursuance of its objective to encourage responsible hackney carriage/private hire businesses, the Council will operate a firm but fair disciplinary and enforcement regime with a view to balancing the promotion of public safety with the need to permit individuals to safeguard their livelihood without undue interference. The Council will only intervene where it is necessary and proportionate to do so, having regard to the objectives outlined in section 2.5 of this document.
- 7.1.3 The Taxi Licensing and Enforcement Policy & Practice set out at **Appendix J** will be used to ensure that its enforcement effort is reasonable, transparent and well directed.

### 7.2 Disciplinary Hearings

- 7.2.1 Formal disciplinary matters will be dealt with by either an authorised Licensing Officer, or the Licensing Committee sitting as a panel. Informal disciplinary measures will be dealt with by an authorised Licensing Officer.

### 7.3 Range of Powers

- 7.3.1 The Council may take any of the steps below upon receipt of evidence that an offence has been committed in relation to hackney carriage licences, private hire licences or private hire operator's licences. A breach of a condition in the Licensing Policy amounts to an offence in this context.
- Suspension of the Licence.
  - Revocation of the Licence.
  - Refusal to Renew.
  - Issuing of Warnings or Cautions.
  - Issue penalty points
  - Prosecution.

### 7.4 Suspension

- 7.4.1 Hackney carriage vehicles and private hire vehicles must be kept at all times in an efficient, safe, tidy and clean condition. Compliance with the vehicle specifications and conditions is essential and will be enforced by periodic, random vehicle inspections by the Council. Where it is found that any vehicle is not being properly maintained, a defect(s) notice will be served on the proprietor setting out the defect(s) and where public safety is likely to be imperilled the further use of the

# Disciplinary and Enforcement Measures

vehicle will be suspended until the defects have been remedied. The suspension will then not be lifted until the vehicle has undergone a further test at the proprietor's expense and been passed as fit for use as a hackney carriage or private hire vehicle.

The Council may exercise its discretion to suspend the operation of a driver's licence for a specified period.

## 7.5 Revocation

- 7.5.1 Where a driver has accumulated 12 penalty points or more under the Authority's penalty points system, any decision as to whether a licence should be revoked or suspended will be made by the Licensing and Appeals Committee sitting as a panel.

## 7.6 Refusal to Renew

- 7.6.1 As an alternative to revocation an authorised licensing officer may decide that the appropriate action, in a situation where the licence is shortly to expire, is to order that the licence shall not be renewed.

## 7.7 Issuing of Warnings and Cautions

- 7.7.1 As a method of dealing with less serious matters, the Council will issue warnings and cautions as are appropriate to the circumstances in accordance with Home Office Circular 016/2008 – 'Simple Cautioning of Adult Offenders'. Minor or first-time transgressions are likely to attract either an oral or written warning. Repeated or more serious conduct is likely to lead to the issuing of a simple caution, provided:
- There is sufficient evidence to justify a prosecution.
  - The licence holder admits his/her guilt.
  - The licence holder agrees to be cautioned.

This is more fully discussed in **Appendix J**

## 7.8 Penalty Points Scheme

- 7.8.1 Whilst the operation of a successful hackney carriage and private hire vehicle service is important to the economic well-being of the Borough, it is equally important that the service provided by the trade is properly regulated in order to instil confidence in the travelling public who wish to use the service.
- 7.8.2 The Council clearly has a responsibility to ensure that all drivers, owners and operators of vehicles adhere to basic minimum standards and to do this in a consistent and transparent manner. These standards are defined by legislation, licence conditions and codes adopted by the Council. Together they identify what is required of the trade and help to ensure that a consistent approach is taken by Council Officers, in their application.
- 7.8.3 A number of licensing authorities have found that an effective means of applying the conditions at a local level is through the adoption of a penalty points scheme. This scheme will be used to enforce existing legislation and any future by-laws governing Hackney Carriage Drivers. This acts as a first step in ensuring compliance with the conditions and serves as an "early warning" system to drivers

# Disciplinary and Enforcement Measures

and owners or operators who see fit to ignore their responsibilities or fail to meet the requirements of the conditions.

7.8.4 Penalty points will remain on a licence for a period of two rolling years from the date on which they are imposed. If a driver accumulates twelve or more penalty points within a period of twenty four months, commencing from the date of imposition of the earliest 'live' penalty points, disciplinary action may be taken by either an authorised Licensing Officer or the Licensing and Appeals Panel, dependent on the category of non-compliance.

7.8.5 It is considered that the penalty points scheme assists the trade in maintaining its high standards. The Penalty Points System does not however compromise the Council's ability to enforce breaches of statute or local conditions in the courts should an offence warrant such action. A copy of the penalty points system can be found in **Appendix G**.

## 7.9 Prosecution

7.9.1 The Council will usually prosecute licence holders for relevant offences in the following circumstances:

- where the allegation is of a serious or repeated offence; or
- where the Council proposes to caution the licence holder, but the offence is not admitted, or the caution not accepted.

## 7.10 Offences

7.10.1 Offences in relation to hackney carriage and private hire vehicles are derived from the following sources:

- Town Police Clauses Act 1847 (hackney only);
- Local Government (Miscellaneous Provisions) 1976 (hackney and private hire);
- Transport Act 1980 (private hire only);
- Equality Act 2010
- Immigration Act 2016

The relevant offences under the 1847 Act, the 1976 and the 1980 Act are set out in **Appendices H and N**.

## 7.11 Taxi and Private Hire Complaints Procedure

7.11.1 The Taxi and Private Hire complaints procedure is specified in **Appendix L**

# Discipline and Enforcement Measures

## 7.12 Taxi Ranks

7.12.1 By the Borough of Tonbridge and Malling (Taxi Ranks) Regulation 2017, a number of ranks for hackney carriages have been designated within the Tonbridge and Malling Borough Council area and are sited as follows (number of spaces in brackets):

### **Tonbridge**

Waterloo Road (21)

Botany (2)

High Street (2)

Angel Lane (2)

## 7.13 Bus stops and taxis in Tonbridge High Street

7.13.1 The bus stops in Tonbridge High Street, allow taxis to use the bus stops between Vale Road and the Castle “out of hours” when the buses are not in service.

The restrictions that apply are;

- Bus stop clearway between 7:30am and 11:45pm
- Taxi rank (parking place for taxis only) between 11:45pm to 7:30am next day.

### **West Malling**

High Street (2)

### **Ranks not on the public highway**

Station Approach Borough Green (6)

Station Approach West Malling (2)

7.13.2 The number and position of taxi ranks within the borough will be subject to change due to usage and need.

## 7.14 Stands

7.14.1 It is an offence for any person to cause or permit any vehicle other than a hackney carriage to wait on any stand for hackney carriages. Drivers of hackney carriages may only wait on a stand whilst plying for hire or waiting for a fare; drivers who park on a stand and leave their vehicle unattended are committing an offence.

## 7.15 Rights of Appeal

7.15.1 In general terms, where an applicant is aggrieved by the Council’s decision to refuse to grant, refuse to renew, suspend or revoke a licence, the applicant has a right of appeal to the local Magistrates’ Court. The specific grounds for appeal are detailed in **Appendix K**.

7.15.2 Any appeal must be lodged at the Court within twenty-one days of the applicant receiving notification of the Council’s decision. The appeal must state the grounds upon which the appeal is based.

# Vehicle Specifications

## APPENDIX A

### **8** Hackney carriage and private hire vehicles specification and schedule of conditions

#### **8.1 General Construction**

8.1.1 Every hackney carriage and private hire vehicle must comply in all respects with these specifications and conditions

8.1.2 Whilst these specifications may have been complied with, a licence may nevertheless be withheld if the Council is of the opinion that any vehicle is unsuitable for public use.

#### **8.2 Age**

8.2.1 When first licensed, all vehicles must be less than six years old from the date of first registration.

8.2.2 Saloon, estate, hatchback, or multi-passenger type hackney carriages/private hire vehicles, may be licensed for a maximum of ten years from the date of first registration, subject to six-monthly testing by one of the Council's authorised garages. Each six-monthly test requires the vehicle to obtain a "Compliance Pass Certificate".

8.2.3 Fully Wheelchair Compliant vehicles (Mi specification with side loading for wheelchairs) may be licensed to a maximum of fifteen years from the date of first registration, subject to six-monthly testing by the Council's authorised garage. Each six-monthly test requires the vehicle to obtain a "Compliance Pass Certificate" from one of the Council's nominated garages.

8.2.4 Vehicles meeting this requirement may be licensed until such time as the above requirements cannot be achieved. At such a time, the vehicle will no longer be licensed. Where repair work will not be completed prior to the expiry of the previous licence, a valid renewal application and fee must have been received prior to the previous licence expiry date for this section to apply. The Authority will not renew a vehicle licence if it is more than 10 years old, at the time that it is presented for renewal, unless there are exceptional circumstances, to be decided by Committee.

#### **8.3 Body and Vehicle Colour**

8.3.1 The body must normally be of the fixed head type. In the case of a hackney carriage the body colour must be either wholly white or wholly silver.

8.3.2 Where the shade of colour is in dispute it is recommended that the advice of the authorised officer is sought before attempting to licence the vehicle.

8.3.3 If in the opinion of an authorised officer the colour of the vehicle is not white or silver the vehicle will not be licensed.

8.3.4 In the case of a private hire vehicle any colour is permitted.

# Vehicle Specifications

- 8.3.5 The vehicle must not be left-hand drive. Right hand drive passenger vehicles offer the drivers clearer and safer vision in an overtaking manoeuvre, and also eliminate the need for a front seat passenger to alight from the vehicle into the road.
- 8.3.6 Passengers conveyed in the vehicle must be provided and a separate means of ingress and egress for the driver must be provided by means of a door on the offside of the vehicle
- 8.3.7 The top of the tread of the lowest step for any entrance, or where there is no step the floor level at the entrance, must not be more than 15 inches (380mm) above ground level when the vehicle is unladen.
- 8.3.8 Passengers' doors must be capable of being readily opened from inside and outside the vehicle by one operation of the latch mechanism, provided that this condition shall not prevent doors being fitted with a child safety lock.

## 8.4 Windows

- 8.4.1 Private hire and Hackney carriage vehicles must have at least 75 per cent of light passing through the front windscreen, 70 percent through both front side facing windows, and 50 per cent through all other side facing windows.
- 8.4.2 Plate exempt vehicle who undertake Chauffer work can have back passenger windows at a higher tint than 50 per cent.
- 8.4.3 Vehicles must have windows at the side and rear with ventilation being provided for passengers
- 8.4.4 Provision must be made for carrying and securing luggage and if luggage is carried or intended to be carried on the roof, a roof rack of a type or roof mounted luggage box approved by European Union must be fitted.

## 8.5 Steering

- 8.5.1 The steering wheel must be on the offside of the vehicle and must not be left-hand drive.

## 8.6 Tyres

- 8.6.1 All tyres at normal pressure under load must have a suitable minimum circumference for correct operation of the taximeter. All tyres, including the spare wheel, must be suitable for use on the vehicle and conform to the requirements of the Original Manufacturers' Specification.
- 8.6.2 Run-flat tyres are acceptable on licensed vehicles.
- 8.6.3 'Space-saver' spare tyres are acceptable on licensed vehicles if they conform to the Original Manufacturers' Specification.
- 8.6.4 If a 'space-saver' spare tyre is used on a licensed vehicle it must only be for the duration of completing the current fare and returning to a garage to obtain a

# Vehicle Specifications

suitable replacement. No further fares may be taken whilst the 'space-saver' spare tyre is being used on the vehicle.

- 8.6.5 Original Manufacturers' Specification 'tyre repair kits/compressor' are permitted within licensed vehicles provided they comply with the relevant British Standards.
- 8.6.6 If a 'tyre repair kit/compressor' is used on a licensed vehicle in lieu of a spare tyre it must only be for the duration of completing the current fare and returning to a garage to obtain a suitable replacement. No further fares may be taken whilst the tyre repaired with the 'tyre repair kit /compressor' is being used on the vehicle.
- 8.6.7 In view of the high mileage covered by hackney carriage and private hire vehicles, the depth of tyre tread on all vehicles must be a minimum of 2mm.
- 8.6.8 The vehicle must be fitted with an efficient suspension system so designed and constructed that there is no excessive roll or pitch.

## 8.7 Fuel Tank

- 8.7.1 The filling point for all fuel tanks must be accessible only from the outside of the vehicle and filler caps must be so designed and constructed that they cannot be dislodged by accidental operation.

## 8.8 Seats

- 8.8.1 Unless the Original Manufacturers' Specification states otherwise, the front seat of the vehicle next to the driver will be regarded as a seat for one passenger only.
- 8.8.2 Passenger seats must be at least forty one centimetres wide per passenger with no significant intrusion by wheel arches, armrests or other parts of the vehicle. Measurements are to be taken laterally along the widest part of the seat.

## 8.9 Luggage

- 8.9.1 Adequate storage for passenger luggage must be available, adequately separated from the passenger compartment without obstructing any emergency exits. Luggage carried must be suitably secured in place.
- 8.9.2 Estate cars or multi-passenger type vehicles, can cause a safety concern when stacking luggage in the vehicle by the potential danger to passengers should the vehicle have to harshly brake or be involved in an accident. It is recommended that luggage should not be stacked above the height of the rear seats unless the vehicle is designed with, or fitted with suitable luggage restraints or covers to prevent luggage from entering the passenger compartment. Alternatively, a guard rail should be fitted.

## 8.10 Ventilation

- 8.10.1 Vehicles must have windows at the side and rear with ventilation being provided for passengers.

# Vehicle Specifications

## 8.11 Fire Extinguisher

8.11.1 Preferred

## 8.12 First Aid Equipment

8.12.1 Preferred

## 8.13 Communication Devices

8.13.1 All two-way radio equipment must be of a type currently approved by Ofcom for guidance please use the following link. <https://www.ofcom.org.uk/manage-your-licence/radiocommunication-licences/business-radio/guidance-for-licensees>

8.13.2 All radio equipment fitted to the vehicle must be fitted securely and safely in accordance with guidelines set out by Ofcom.

8.13.3 Only one two-way radio may be operational in the vehicle at any one time and this shall be an approved licensed radio used exclusively for the hackney carriage or private hire vehicle.

8.13.4 The use of a Citizen Band (CB) transmitter or receiver is prohibited.

8.13.5 The use of radio-scanning devices is prohibited and such devices must not be fitted or carried in the vehicle.

## 8.14 Mobile Telephones

8.14.1 Mobile Telephones may only be used whilst driving if you have hands-free access, such as:

- A Bluetooth headset
- Voice command
- A dashboard holder

If you use your phone hands-free, you must stay in full control of your vehicle at all times.

## 8.15 Identification Plates

8.15.1 Hackney carriages and private hire vehicles are required to **permanently display** licence plates externally on the rear of the vehicle.

8.15.2 All vehicles must display a small internal plate containing the same details as the external plate. This plate can be read from both inside and outside of the vehicle and must be positioned at the top of the front nearside corner of the windscreen.

8.15.3 External and internal plates remain the property of Tonbridge & Malling Borough Council and must be returned once expired, surrendered, suspended or revoked.

8.15.4 Lost plates must be reported within 24 hours or the next working day following a weekend. Lost plates must be replaced before licensed vehicles can continue to work.



# Vehicle Specifications

## 8.16 Insignia

- 8.16.1 Hackney carriage vehicles are required to display permanently affixed signage to the front side doors of the vehicle. This signage contains the Council logo and the words "Tonbridge & Malling Borough Council" and "TAXI" and shows the plate number.
- 8.16.2 Private Hire Vehicles required to display permanently affixed signage to the front side doors of the vehicle showing the plate number.
- 8.16.3 Plate Exempt Private Hire vehicles, Limousines and Special Events Vehicle will be exempt from displaying door insignia.

## 8.17 Fittings

- 8.17.1 No fittings other than those approved by the council shall be attached to or carried upon the inside or outside of the vehicle.

## 8.18 Seat Belts

- 8.18.1 All vehicles must be fitted with fully operational seat belts, one for each passenger carried, fully compliant with the relevant British Standard, except where legislation specifically provides an exemption.

## 8.19 Alteration of Vehicle

- 8.19.1 No material alteration or change in the specification, design, condition or appearance of any vehicle shall be made without the approval of the Council at any time while a licence is in force in respect of that vehicle.
- 8.19.2 Equipment must not be added or removed from a vehicle which is wheelchair accessible which would render the vehicle incapable of carrying wheelchair bound passengers.

## 8.20 Maintenance and Condition of the Vehicle

- 8.20.1 The exterior of all licensed vehicles shall be maintained in a clean, safe and proper manner at all times. In particular, the exterior of the vehicle shall:
- be free of large and/or sharp-edged dents;
  - be free of visible rust;
  - be free of unrepaired accident damage;
  - have uniform paintwork equivalent to that applied by the manufacturer; and
  - be maintained in an acceptable state of cleanliness, (discretion may be given during periods of adverse weather).
- 8.20.2 The interior of all licensed vehicles shall be maintained in a clean, safe and proper manner at all times. In particular, the interior of the vehicle shall:
- be free of all stains to the upholstery.

## Vehicle Specifications

- be free of all splits and tears to the seats.
- be maintained in an acceptable state of cleanliness.
- provide seats functioning in accordance with the Original Manufacturers' Specification.

8.20.3 For the avoidance of doubt, any vehicle that would not pass an Engineer's Report or MOT must not be used until such time as the requirements of the Engineer's Report and MOT can be met.

8.20.4 All licensed vehicles shall be liable to be randomly inspected and tested by an Authorised Council Officer or the Police. If it is discovered during an inspection that a vehicle is not being properly maintained, an Improvement Notice may be served on the owner under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976. This notice will specify the defects and the action required to remedy the problem.

8.20.5 Failure to comply with the requirements of an Improvement Notice will be considered a serious breach of licensing requirements and dealt with accordingly. If the requirements of an Improvement Notice are not rectified within two months, the vehicle licence can be revoked in accordance with Section 68 of the Local Government (Miscellaneous Provisions) Act 1976.

8.20.6 Vehicles must have no damage affecting the structural safety of the vehicle and must not have been written off for insurances purposes at any time.

### 8.21 Smoking

8.21.1 It is the responsibility of both the driver and the proprietor to ensure no smoking signage, as prescribed by the Health Act 2006, is displayed in all licensed hackney carriages or private hire vehicles at all times

8.21.2 No smoking or the use of E-Cigarettes and Vaping devices is permitted in licensed vehicles by Passengers or Drivers.

### 8.22 Disability Access

8.22.1 Where a vehicle is utilised for the carriage of wheelchair users, the following conditions shall apply:

- Access to and exit from the wheelchair position must not be obstructed in any manner at any time except by wheelchair loading apparatus;
- Wheelchair internal anchorage must be of the manufacturer's design and construction and secured in such a position as to not obstruct any emergency exit;
- A suitable restraint must be available for the occupant of a wheelchair;
- Access ramps or lifts to the vehicle must be securely fixed prior to use, and be able to support the wheelchair, occupant and helper; and
- Ramps and lifts must be securely stored in the vehicle before it may move off.

## Vehicle Specifications

- 8.22.2 Any equipment fitted to the vehicle for the purpose of lifting a wheelchair into the vehicle must have been tested in accordance with the requirements of the Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307). A current LOLER certificate must be issued and produced to the Licensing authority before a licence is issued. Any such equipment must be maintained in good working order and be available for use at all times.
- 8.22.3 Where a vehicle is designed or adapted to carry a wheelchair, the proprietor shall ensure that the driver has received sufficient training to safely load and convey wheelchair-bound passengers.

### 8.23 Assistance Dogs

- 8.23.1 Under the Equality Act 2010, licensed drivers of taxis and private hire vehicles are under a duty to carry passengers with guide, hearing and other assistance dogs without additional charge.

When carrying such passengers, drivers have a duty to:

- Convey the disabled passenger's dog and allow it to remain under the physical control of the owner; and
  - Not to make any additional charge for doing so.
- 8.23.2 Drivers who, for medical reasons are unable to accept wheelchair users or assistance dogs are able to apply to the Council for an exemption certificate. Such a certificate will only be issued on production of medical evidence. Exemption certificates, which show the photograph of the driver, must be displayed in the vehicle at all times the driver is working.
- 8.23.3 Any other driver who fails to comply with the duty is guilty if a criminal offence and liable, on summary conviction, to a fine of up to £1,000.
- 8.23.4 No animals, other than those falling into the criteria above or those owned by bona-fide fare paying passengers with the agreement of the driver, shall be carried in or on any licensed vehicle whilst the vehicle is so engaged under the terms of its licence.

### 8.24 Taximeters – Hackney Carriage Vehicles

- 8.24.1 A taximeter must be fitted in all hackney carriages and must be correctly calibrated, sealed and fully functional in accordance with the current Council approved fare structure.
- 8.24.2 All taximeters must be fitted by an approved agent of the taximeter manufacturer, accompanied by a calibration certificate, and also that the taximeter used must be certified / type approved under EU Directive '**2014/32/EU**' (measuring instruments)

## Vehicle Specifications

- 8.24.3 The taximeter shall be positioned so that the display on the face of the meter may be clearly visible to any person being conveyed in the vehicle at all times. The dial of the taximeter shall be kept properly illuminated throughout any part of the hiring.
- 8.24.4 The vehicle taximeter shall be brought into operation at the commencement of a journey. When the meter is operating, there shall be recorded on the face of the meter in clearly legible figures, a fare not exceeding the maximum fare that may be charged for that journey
- 8.24.5 An official copy of the Council's fare tariff shall be clearly displayed in the vehicles so as to be plainly visible to passengers carried therein.
- 8.24.6 In the event of a journey commencing in but ending outside the area covered by Tonbridge and Malling Borough Council, there may be charged for the journey, such fare as was agreed before the hiring was affected. If no such agreement was made then the fare to be charged should be no greater than that fixed by the Council in connection with the fare tariff for the hire of hackney carriages.

### 8.25 Taximeters – Private Hire Vehicles

- 8.25.1 Private hire vehicles are not required to be fitted with a taximeter.

### 8.26 Roof Sign – Hackney Carriage Vehicle

- 8.26.1 Hackney carriage vehicles, other than those with built-in roof signs, must be fitted with a **white** or **silver** illuminated external sign on the roof of the vehicle. The sign must display either:
- the word "TAXI; or
  - the name and telephone number of the hackney carriage company; or
  - the words "FOR HIRE; or
  - a combination of the above
- 8.26.2 The roof sign and lettering shall be of an appropriate size to enable it to be clearly identifiable to the public.
- 8.26.3 The illuminated external roof sign, including built-in roof signs, must be switched off when the vehicle has been hired and illuminated when available for hire.
- 8.26.4 The roof sign, other than those built-in to the vehicle, must be mounted on the roof and be adequately secured.
- 8.26.5 An additional internal illuminated "FOR HIRE" sign may be fitted in licensed hackney carriages, in a position approved by the Council. The sign's illumination must be switched off when the vehicle has been hired.

# Stretch Limousine Vehicles and Special Event Vehicles

## 9 APPENDIX B

### 9.1 ADDITIONAL CONDITIONS FOR PRIVATE HIRE LIMOUSINES AND SPECIAL EVENTS VEHICLES

#### 9.2 Stretched Limousines

#### 9.3 Definition

9.3.1 For the purposes of this Policy, a stretch limousine is defined as follows:-

*A stretch limousine is a motor vehicle that has been lengthened by the insertion of an additional body section and modified by a coachbuilder to contain luxury facilities and fixtures that;*

- *is capable of carrying up to but not exceeding 8 passengers;*
- *prior to the introduction of this Policy could not currently be licensed by the Council as a private hire vehicle; and*
- *is not a decommissioned military or emergency service vehicle.*

All references to limousine within this Policy assume compliance with the above definition.

#### 9.4 Licensing Conditions

9.4.1 Unless specifically stated otherwise below, all requirements relating to the licensing of private hire vehicles apply to limousines. The requirements below are additional requirements specifically for limousines licensed as private hire vehicles.

#### 9.5 Left-Hand Drive

9.5.1 Left-hand drive limousines will be permitted as private hire vehicles.

#### 9.6 Seating

9.6.1 Sideways facing seating will be permitted in limousines providing that it conforms to all relevant road traffic vehicle legislation.

#### 9.7 Roadworthiness

9.7.1 All limousines licensed as private hire vehicles must hold a valid Individual Vehicle Approval (IVA) Certificate.

#### 9.8 Insurance

9.8.1 All limousines licensed as private hire vehicles must have appropriate insurance to cover the provision of a service to the public for hire and reward, taking into account the specification of the vehicle.

# Stretch Limousine Vehicles and Special Event Vehicles

## 9.9 Tyres

- 9.9.1 Given the increased weight of the vehicle, the vehicle must be fitted with tyres of appropriate size and grade to conform to the Original Manufacturers Specification.

## 9.10 Vehicle Testing

- 9.10.1 All limousines licensed as private hire vehicles must obtain six-monthly test certificates showing that the vehicle has satisfied the standards of the appropriate MOT Class.

## 9.11 Carrying of Passengers

- 9.11.1 All limousines licensed as private hire vehicles must reduce their seating capacity to a maximum of eight passengers.
- 9.11.2 Passengers shall not be permitted to be carried on any seats in the driver's compartment.
- 9.11.3 The vehicle must not carry more than eight passengers at any time. For the purpose of counting passengers, a child of any age will be classed as a passenger.

## 9.12 Advertising

- 9.12.1 In any advertisement publicising a limousine service, the advertisement must state that the vehicle is only licensed to carry eight passengers.

## 9.13 Seat Belts

- 9.13.1 Seatbelts complying with all relevant legislation must be fitted to all forward and rear facing seats and must be worn by passengers at all times the vehicle is in motion.
- 9.13.2 There is no legal requirement for seatbelts to be fitted on sideways facing seats; however, if they are fitted they must be worn by passengers at all times the vehicle is in motion.

## 9.14 Provision of Alcohol

- 9.14.1 Alcoholic drinks may only be provided in the vehicle when the vehicle is complying with all relevant requirements of the Licensing Act 2003.
- 9.14.2 Alcohol shall only be served whilst the vehicle is stationary. Whilst the vehicle is in motion, all receptacles containing alcohol shall be securely stored.
- 9.14.3 Persons under the age of 18 must not be served alcohol.
- 9.14.4 All glassware used in the vehicle must be made of shatterproof glass, or alternatively be made of plastic. The vehicle proprietor should also be aware of the Council's Statement of Licensing Policy in respect of the Licensing Act 2003.

# **Stretch Limousine Vehicles and Special Event Vehicles**

## **9.15 Provision of Entertainment**

- 9.15.1 The driver shall not play or permit the performance of any media that, given its age classification or content, is unsuitable for the age of the youngest passenger in the vehicle.
- 9.15.2 The limousine proprietor shall ensure that a Performing Rights Society (PRS) Licence and Phonographic Performance Licence (PPL) are held for the vehicle, where appropriate.
- 9.15.3 If the limousine parks to provide some form of licensable entertainment for its passengers, only entertainment complying with the relevant requirements of the Licensing Act 2003 shall be permitted.

## **9.16 Luggage**

- 9.16.1 Limousines licensed as private hire vehicles are not permitted to carry luggage within the passenger compartment of the vehicle.

## **9.17 Safety Hammer**

- 9.17.1 Limousines licensed as private hire vehicles must carry a safety hammer capable of being used to break the window glass of the vehicle. The hammer must be securely located within the driver's compartment.

## **9.18 Driver and Operator Licensing Requirements**

- 9.18.1 A proprietor offering limousines licensed as private hire vehicles for hire in Tonbridge and Malling Borough Council must hold a private hire operators' licence with the Council.
- 9.18.2 All bookings for a limousine licensed as a private hire vehicle must be booked through the licensed private hire operator.
- 9.18.3 Once licensed in Tonbridge and Malling Borough Council as a private hire vehicle the limousine can only be driven by a private hire driver licensed by the Council. This applies at all times whilst the vehicle holds a private hire vehicle licence.
- 9.18.4 All drivers and operators of limousines licensed as private hire vehicles are required to satisfy all appropriate requirements of this Policy.

## **9.19 Vehicle Testing Stations**

- 9.19.1 Limousines licensed as private hire vehicles will be required to provide six-monthly MOT certificates from a VOSA goods vehicle testing station, or alternatively a VOSA approved class 5 testing station, that has appropriate facilities.

## **9.20 Special Events Vehicles**

- 9.20.1 Unless specifically stated otherwise below, all requirements relating to the licensing of private hire vehicles apply to Special Events Vehicles. The requirements below are additional requirements specifically for Special Events Vehicles licensed as private hire vehicles.

# Stretch Limousine Vehicles and Special Event Vehicles

9.20.2 For the purposes of this Policy, a Special Events Vehicle is defined as follows:

- Decommissioned emergency service vehicles
- Vintage and luxury vehicles (where the normal private hire vehicle age limits would exclude them)
- Other non-standard type converted vehicles used for special events.

9.20.3 The ability to licence a vehicle as a Special Events Vehicle will be restricted to those defined in 8.20.2. Mass produced saloon cars or wheelchair accessible vehicles will be required to be licensed under the normal Hackney Carriage and Private Hire requirements.

## 9.21 Age of the vehicle

9.21.1 All vehicles licensed for the first time must be no more than six years old from the date of first registration. This is not the requirement for Special Event Vehicles. There will be no maximum age as with stretched limousines however the vehicles must remain in good condition and pass regular compliance tests.

9.21.2 Vehicles will be inspected by an authorised officer before a licence is granted and thereafter annually at the point of renewal. Special Events Vehicles will also be required to complete six monthly MOT and Compliance Tests in the same way a standard Hackney Carriage or Private Hire vehicle must.

## 9.22 Vehicle Standards

9.22.1 The vehicle must be clean and well maintained. There should be no rust on the bodywork and paint and chrome areas must be in good condition.

9.22.2 Left hand drive vehicles will be permitted,

9.22.3 All vehicles licensed as private hire vehicles must reduce their seating capacity to a maximum of eight passengers.

9.22.4 The vehicle must not carry more than eight passengers at any time. For the purpose of counting passengers, a child of any age will be classed as a passenger.

9.22.5 An authorised officer will certify the vehicle for the carriage of an appropriate number of passengers and no passengers over that number should be carried. In addition, no more than eight passengers should be carried.

9.22.6 The fitting of a taxi meter in a Special Events Vehicle is prohibited.

## 9.23 Special Events Vehicle Conditions

9.23.1 Any vehicle licensed, regardless of age must be presented for an MOT and Compliance at a nominated garage every six months.

9.23.2 If a Special Events Vehicle cannot be MOT tested at a nominated garage due to its size or the unusual nature of the vehicle, the MOT can be carried out where possible with authorisation of an authorised officer and then the compliance test can be carried out at a nominated garage.



## **Stretch Limousine Vehicles and Special Event Vehicles**

- 9.23.3 The vehicle shall be maintained in a sound mechanical and structural condition at all times.
- 9.23.4 The vehicle must remain in an excellent visual standard, this includes the quality of the paintwork, physical condition including doors, all body panels, bumpers and interior floors. These areas must remain in a good condition, free from rust, holes, broken metal and any other visible damage.
- 9.23.5 The interior of the vehicle should be kept to the highest standard possible. It must be clean and free from any tears, damage or dirt.
- 9.23.6 All special events vehicles licensed as private hire vehicles must have appropriate insurance to cover the provision of a service to the public for hire and reward, taking into account the specification of the vehicle.
- 9.23.7 In any advertisement publicising a limousine service, the advertisement must state that the vehicle is only licensed to carry eight passengers.
- 9.23.8 Alcoholic drinks may only be provided in the vehicle when the vehicle is complying with all relevant requirements of the Licensing Act 2003. Alcohol shall only be served whilst the vehicle is stationary. Whilst the vehicle is in motion, all receptacles containing alcohol shall be securely stored.
- 9.23.9 A proprietor offering Special Events Vehicles licensed as private hire vehicles in Tonbridge and Malling Borough Council must hold a private hire operators' licence with The Council.

### **9.24 Limitations of Use**

- 9.24.1 Vehicles issued with a Special Events licence must only be used for special occasions and executive business contracts. Vehicles licensed under the Special Events Vehicle category must not be used for everyday Private Hire work.
- 9.24.2 Records of all work undertaken by a Special Events Vehicle must be recorded on the Private hire Operators Licence.
- 9.24.3 Special Events Vehicles will be exempt from the requirements to display licence plates and "Pre-booked only" door stickers. It is still a requirement for exempt vehicles to carry the licence plate in the boot of the vehicle at all times.
- 9.24.4 Drivers of Special Events Vehicle are required to observe a formal dress code or appropriate attire for the nature of the vehicle.
- 9.24.5 A licence for a Special Events Vehicle maybe suspended, revoked or not renewed if the vehicle is no longer considered, in the opinion of an authorised officer, to comply with these requirements and all of the criteria set out in these conditions.
- 9.24.6 Once licensed by Tonbridge and Malling Borough Council as a private hire vehicle the Special Events Vehicle can only be driven by a private hire driver licensed by the Council. This applies at all times whilst the vehicle holds a private hire vehicle licence

# Application procedure - Vehicles

## 10 APPENDIX C

### 10.1 VEHICLES

#### 10.2 New licences and renewal licences

10.2.1 An applicant will need to complete, in full, the necessary application forms as follows:-

- New application for hackney carriage vehicle licence
- Renewal application for hackney carriage vehicle licence
- New application for private hire vehicle licence
- Renewal application for private hire vehicle licence

10.2.2 There is a requirement for Basic DBS check for vehicle proprietors who do not hold a licence to driver a PH/HC vehicle.

10.2.3 The following documents must also be produced:-

- **The Vehicle Registration Document issued by the DVLA.** (If this is not available at the time of purchasing the vehicle then proof of ownership is required).
- **Insurance Certificate confirming the vehicle is covered for 'Hire and Reward'** (if a cover note is provided licence holders are required to produce further insurance certificates on or before the expiry of the cover note). When submitting an application an original certificate needs to be produced in person or by email.

Photocopies will be taken of all documents which will be retained and the originals returned to the applicant.

10.2.4 The relevant fee must also be paid.

10.2.5 Officers may only accept complete applications comprising of all the necessary paperwork. Documentation must be submitted in sufficient time to take into account that a minimum of one week is required before the appropriate licence can be issued.

10.2.6 Once the documentation has been validated a test voucher will be issued authorising the applicant to take the vehicle to one of the testing centres of his choice.

10.2.7 Once the vehicle has been successfully MOT and Compliance tested a pass certificate will be issued by the garage which enables the driver to collect his vehicle licence plates.

#### 10.3 Replacement Vehicle - existing hackney carriage or private hire vehicle

10.3.1 If, during the term of the vehicle licence, it becomes necessary to replace the existing vehicle with another, for example in the case of an accident, all of the

## **Application procedure - Vehicles**

supporting documents as detailed above must be submitted. A test voucher will then be issued and following a successful pass, a temporary licence plate will be issued.

- 10.3.2 When processing applications for replacement plates the licensing team will endeavour to provide a fast turnaround provided all the documentation submitted is valid and the appropriate fee is paid.
- 10.3.3 There will an administration fee charged for this process which takes into account the supply of a new vehicle plate.
- 10.3.4 This service will only be undertaken through an approved replacement vehicle company specified by the proprietor's insurance company.

### **10.4 Transfer of an existing hackney carriage or private hire vehicle**

- 10.4.1 Documentation as described above must be provided and must be submitted in sufficient time to take into account that a minimum of one week is required before the appropriate licence can be issued.
- 10.4.2 A fee will be charged for this application.

# Application procedure - Driver

## 11 APPENDIX D

### 11.1 Driver's application

11.1.1 An applicant will need to complete an application form for the following: -

- New application for hackney carriage drivers' licence
- Renewal application for hackney carriage drivers licence
- New application for private hire drivers' licence
- Renewal application for private hire drivers' licence

11.1.2 All applicants must have held a full driving licence or equivalent for a minimum period of one year prior to the date of making an application.

### 11.2 New Drivers

11.2.1 The following documentation must then be provided before a drivers' badge will be issued, which will be photocopied, and originals returned to applicant:

- **Full UK (or equivalent) Drivers' licence** which has been held for at least 12 months

Where applicants have recently arrived from countries within the European Union, any driving licence entitlement held in that country will automatically count towards the qualification requirement for the issue of a hackney carriage or private hire vehicle driver's licence.

Where applicants have recently arrived from other, non-EU countries, it is possible for them to convert any existing driving licence to a UK issue, either by straight transfer or by undertaking an appropriate driving test. The Council requires that the twelve-month qualifying period for holding a drivers licence is adhered to.

- **A Driving test pass certificate (for taxi drivers)** for hackney carriage and private hire drivers.
- **A medical certificate**, obtained from the Council's medical provider or the applicant's own GP, indicating that the applicant is physically fit and able to fulfil the role, to DVLA Vocational Group 2 Standards.
- **A completed application form for an Enhanced Disclosure and Barring Service Check.** All overseas applicants who have resided in this country for less than three years must obtain a Certificate of Good Conduct from their relevant embassy or consulate, at the applicant's expense, authenticated, translated and sealed by the embassy or consulate.
- **A Form permitting work in the UK** - Any foreign national will be required to give details of any residency outside the UK and sign a declaration that they are permitted to work in the UK. Applicants must also provide a document to evidence that they are permitted to work in

## Application procedure - Driver

the UK. **A Home Office check will be carried out if an authorised officer deems it necessary under the Immigration Act 2016.**

- **DVLA Share your Driving Licence Information Code** – this enables the Council to view an applicant's driving licence on the gov.uk website.
- **Knowledge Test** - New applicants will also be required to pass a Geographical/topographical examination of the Borough, known as the knowledge test. Details of this test are contained in **Appendix E** to this policy.

NB: The guidance shown above may be reviewed subject to the UK current Brexit negotiations.

- 11.2.2 The appropriate fee must be paid. Upon successful completion of the application procedure, applicants will be issued with a paper licence and also a driver's badge which shall remain the property of the Council and must be surrendered when the driver ceases employment.

### 11.3 Drivers renewing licences.

- 11.3.1 The following documentation must then be provided before a drivers' badge will be issued, which will be photocopied / scanned, and originals returned to applicant:

- **Full UK (or equivalent EU) Drivers licence**
- **A medical certificate**, obtained from the Council's medical provider or the applicant's own GP, indicating that the applicant is physically fit and able to fulfil the role, to DVLA Vocational Group 2 Standards. Medicals must be completed prior to completion of the renewal. Renewed Badges will not be issued before the Medical is completed.
- **A completed DBS form** for an Enhanced Disclosure and Barring Services (DBS) Check.
- **DVLA Share your Driving Licence Information Code** – this enables the Council to view an applicant's driving licence on the gov.uk website.
- **A Form permitting work in the UK** - Any foreign national will be required to give details of any residency outside the UK and sign a declaration that they are permitted to work in the UK. Applicants must also provide a document to evidence that they are permitted to work in the UK. A Home Office check will be carried out if an authorised officer deems it necessary under the Immigration Act 2016.

NB: The guidance shown above may be reviewed subject to the UK current Brexit negotiations.

- 11.3.2 Applicants will be issued with a paper licence and also a driver's badge which shall remain the property of the Council and must be surrendered when the driver ceases employment.

# Application procedure - Driver

- 11.3.3 A copy of the drivers' paper licence can be stored onto electronic devices (PDA's) rather than in paper format in the licensed vehicle.

## 11.4 Private Hire Operators

- 11.4.1 The following documentation must be provided before an operator's licence will be issued, which will be photocopied, and originals returned to applicant:
- Application form.
  - Proof of public liability insurance for the premises to be licensed if the public have access.
  - The appropriate fee.
  - A list of vehicles that will be recorded on the Operator's Licence.
  - A list of Drivers working for the Operator.

## 11.5 Applications general

- 11.5.1 If the application form contains any details to suggest that any relevant convictions or cautions have been imposed on the applicant since the licence was last issued or renewed, an authorised officer will discuss the matter with the applicant.
- 11.5.2 At that time it will be decided whether the application is likely to be successful in the light of the Council's Policy of the Relevance of Convictions as detailed in **Appendix D**, either by approval by authorised officers, or by reference to the Director of Central Services.
- 11.5.3 In both cases, the DBS check will be applied for before any further consideration of the application.
- 11.5.4 When the DBS check has been returned, the application will be considered in the light of the information provided. It is therefore necessary to ensure that details of ALL convictions and cautions are provided at the initial stage. A serious view will be taken of any application which seeks to conceal any caution or conviction in order to obtain a Licence. This will lead to automatic referral to the Licensing & Appeals Panel for consideration as to whether the applicant is a 'fit and proper person'. Applications will normally be refused where an applicant has sought to conceal information on their application form.
- 11.5.5 Tonbridge and Malling Borough Council will have regard to this policy and the Institute of Licensing "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades – April 2018" (A copy is available on the Councils website)
- 11.5.6 Any information relating to criminal background will only be kept as long as it is necessary for assessment purposes.
- 11.5.7 In the event of an application being refused the applicant has the right of appeal to Magistrates' Court, such appeal to be lodged within 21 days of the decision being notified.
- 11.5.8 **Where an application for a licence is refused (either a new application or a renewal), or a licence is revoked, a further application from the applicant/**

## **Application procedure - Driver**

**licence holder will not normally be considered for a period of two years from the date of refusal or revocation as the case may be. If the licence was refused/revoked due to relevant information on a DBS certificate/or result of a DVLA check, then an application will not be accepted until the relevant time period has elapsed as each offence carries a different time period where an application would be accepted.**

# Previous Convictions

## 12 APPENDIX E

### 12.1 GUIDELINES RELATING TO THE RELEVANCE OF PREVIOUS CONVICTIONS

#### 12.2 General Policy

- 12.2.1 Each case will be decided on its own merits.
- 12.2.2 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to operate private hire vehicles or to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers.
- 12.2.3 A person with a current conviction for a serious crime need not be permanently barred from obtaining a licence but should be expected to (a) remain free of conviction for an appropriate period and (b) show adequate evidence of good character from the time of the conviction. Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.
- 12.2.4 Where a person has been arrested and charged with an offence relating to traffic offences, drink/drug driving, violent or safeguarding offences there is a requirement to inform the licensing team within 48 hours of arrest
- 12.2.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.
- 12.2.6 An admission of guilt is required before a caution can be issued by the police. Although the Local Authority recognises that cautions are deemed to be a lower level offence these are still taken into consideration when determining an application.
- 12.2.7 For the purpose of these guidelines formal cautions and endorsed fixed penalties shall be treated as though they were convictions and must be disclosed.
- 12.2.8 The following examples afford a general guide on the action which might be taken where convictions are disclosed and the lists provided are not exhaustive.
- 12.2.9 Tonbridge and Malling Borough Council will have regard to this policy and the Institute of Licensing "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades – April 2018" (A copy is available on the Councils website)
- 12.2.10 Any offence not mentioned in this section, that is shown on a DBS Certificate, which causes concern over the applicant's suitability, may be referred to a Licensing Hearing. This relates to licensed Hackney Carriage Drivers, Private Hire Operators, or Private Hire Drivers.



# Previous Convictions

## 12.3 Offences of Dishonesty

- 12.3.1 Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.
- 12.3.2 Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may comprise especially of vulnerable people.
- 12.3.3 For these reasons a serious view is taken of any convictions involving dishonesty. In general, a period of 4 years free of conviction will be required before an application is likely to be considered.
- 12.3.4 In particular, an application will normally be refused where the applicant has a conviction for an offence of:-

Theft	<b>Theft Act 1968</b> Section 7
Burglary	<b>Theft Act 1968</b> Section 9
Fraud	<b>Fraud Act 2006</b> Section 1
Benefit fraud	<b>Social Security Administration Act 1992</b>
Handling or receiving stolen goods	<b>Theft Act 1968</b> Section 22
Forgery	<b>Forgery Counterfeiting Act 1981</b>
Conspiracy to defraud	<b>Common Law Offence</b>
Obtaining money or property by deception	<b>Fraud Act 2006</b> Section 5
Any other offence involving dishonestly	<b>Dependent on offence</b>

And the conviction is less than 7 years prior to the date of the application.

# Previous Convictions

## 12.4 Violence

12.4.1 As hackney carriage and private hire drivers maintain close contact with the public, in general a period up to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before an application is likely to be considered favourably.

12.4.2 An application will normally be refused where the applicant has a conviction for an offence of:-

Murder	<b>Common Law Offence</b>
Manslaughter	<b>Common Law Offence</b>
Malicious wounding or grievous bodily harm	<b>Offences Against the Persons Act 1861</b> Sections 18-20
Grievous bodily harm with intent	<b>Offences Against the Persons Act 1861</b> Sections 18-20
Actual bodily harm	<b>Offences Against the Persons Act 1861</b> Section 47

And the conviction is less than **10** years prior to the date of application.

12.4.3 An application will normally be refused where the applicant has a conviction for an offence of:-

Criminal damage	<b>Crime and Disorder Act 1998</b>
Racially-aggravated criminal damage	<b>Crime and Disorder Act 1998</b> Section 30
Harassment/ - alarm distress (Public Order Act 1986)	<b>Public Order Act 1986</b>

And the conviction is less than **8** years prior to the date of application.

Exception - Crimes resulting in death Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

## Previous Convictions

12.4.4 An application will normally be refused where the applicant has a conviction for an offence of:-

Common assault / Battery	<b>Criminal Justice Act 1988</b> Section 39
Assault occasioning actual bodily harm	<b>Crime and Disorder Act 1998</b> Section 30
Harassment/ - alarm distress	<b>Public Order Act 1986</b>
Assault on a police officer	<b>Police Act 1996</b> Section 89(1)
Affray	<b>Public Order Act 1986</b> Section 3
Riot	<b>Public Order Act 1986</b> Section 1
Obstruction	<b>Summary Offences Act 1981</b> Section 22
Possession of offensive weapon	<b>Prevention of Crime Act 1953</b> Section 1A
Possession of firearm	<b>Firearms Act 1968</b> Section 5
Violent disorder	<b>Public Order Act 1986</b> Section 2
Resisting arrest	<b>Police Act 1996</b> Section 89(1)

And the conviction is less than **10** years prior to the date of application.

### 12.5 Drugs

12.5.1 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

12.5.2 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

# Previous Convictions

## 12.6 Drunkenness not in a motor vehicle

- 12.6.1 An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination and refusal of a licence.
- 12.6.2 In addition, applicants will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if (s)he was an alcoholic.

## 12.7 Sexual Offences

- 12.7.1 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted.
- 12.7.2 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

Rape	<b>Sexual Offences Act 2003</b> Section 1
Sexual assault	<b>Sexual Offences Act 2003</b> Section 3
Gross indecency with a female	<b>Sexual Offences Act 1956</b> Section 14
Gross indecency with a male	<b>Sexual Offences Act 1956</b> Section 15
Child sex offences	<b>Sexual Offences Act 2003</b> Sections 9 – 13.
Buggery	<b>Sexual Offences Act 1956</b> Section 12
Persistently soliciting a woman for prostitution	<b>Sexual Offences Act 2003</b> Section 51A
Is on the sex offenders register	<b>Sexual Offences Act 2003</b>

## Exploitation

- 12.7.3 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

# Previous Convictions

## 12.8 Motoring Convictions

### 12.8.1 Major Traffic Offences

12.8.2 An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.

12.8.3 More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

12.8.4 A list of offences to which this paragraph applies can be found below:

### MAJOR TRAFFIC OFFENCES

#### 12.8.5

Offence code	Description of offence
AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA20	Attempting to drive while disqualified by order of court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving

## Previous Convictions

Offence code	Description of offence
DD90	Furious driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
DG10	Driving or attempting to drive with drug level above the specified limit
DG 60	Causing death by careless driving with drug level above the limit
IN 10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

### **Aiding, abetting, counselling or procuring**

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

### **Causing or permitting**

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

### **Inciting**

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

## Previous Convictions

### 12.9 Drunkenness involving a motor vehicle.

- 12.9.1 A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. Where a disqualification has occurred as a result of a drink-driving offence, at least 7 years free from conviction should elapse after the restoration of the DVLA licence before an applicant is granted a licence.
- 12.9.2 An isolated conviction for drunkenness, without disqualification, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction for this type of offence or one such offence within the last 7 years is likely to merit refusal.
- 12.9.3 In addition, applicants will normally be required to show a period of at least 7 years has elapsed after completion of detoxification treatment if (s)he was an alcoholic.

### 12.10 Drink driving/driving under the influence of drugs.

- 12.10.1 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

### 12.11 Minor Traffic Offences

- 12.11.1 Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months.
- 12.11.2 In particular, an application will normally be refused where the applicant has 6 or more penalty points on his DVLA licence (whether or not the applicant was convicted by a court for the offences for which the points were imposed) or where the applicant has more than one conviction for this type of offence within the last 6 months. All applications with 6 or more points will be considered by the Licensing and Community Safety Manager to determine appropriate action.
- 12.11.3 A list of offences to which this paragraph applies can be found below:

#### MINOR TRAFFIC OFFENCES

Offence code	Description of offence
MS60	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test

## Previous Convictions

MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver, etc.
MW10	Contravention of Special Road Regulations (excluding speed limits)
Offence code	Description of offence
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

### **Aiding, abetting, counselling or procuring**

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

### **Causing or permitting**

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

### **Inciting**

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)



# Previous Convictions

## 12.12 Hybrid Traffic Offences

12.12.1 Offences of the type listed below will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

Offence code	Description of offence
CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
Offence code	Description of offence
CU40	Using a vehicle with defective steering
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	Breach of requirements as to control of the vehicle, mobile telephone etc.
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence

### **Aiding, abetting, counselling or procuring**

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomeCU12)

### **Causing or permitting**

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomesCU14)

### **Inciting**

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

## 12.13 Using a hand-held device whilst driving

12.13.1 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

# Previous Convictions

## 12.14 Motoring Convictions Offences Table

Traffic Offences	Comment	Attendance at a Hearing
Minor	Up to and including 9 points on your licence	Licensing Officer discretion
Major	Up to and including 6 points on your licence <b>Over 6 points on your licence</b>	Licensing Officer discretion (depending on the offence) <b>You will be required to attend a Hearing</b>
Hybrid	Up to and including 6 points on your licence <b>Over 6 points on your licence (Except Speeding)</b>	Licensing Officer discretion (depending on the offence) <b>You will be required to attend a Hearing</b>
Speeding Offences	SP (Speeding offences) - Up to and including 9 points on your licence <b>SP (Speeding offences) - Over 9 points on your licence</b>	Licensing Officer discretion <b>You will be required to attend a Hearing</b>

## 12.15 Disqualification

- 12.15.1 Where an applicant has been disqualified from driving because of a major traffic offence the application will generally be refused unless a period of 2 years free from conviction has elapsed from the restoration of the DVLA licence.
- 12.15.2 Where several minor traffic offences have resulted in the applicant being disqualified from driving for a period of time this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 12 months free from conviction must have elapsed from the restoration of the DVLA licence.
- 12.15.3 In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify a driver (e.g. because of exceptional circumstances) the Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

## 12.16 Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847

- 12.16.1 One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying

## Previous Convictions

for hire) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence.

- 12.16.2 In particular, an applicant will normally be refused a licence where (s)he has been convicted of an offence under the Acts at any time during the 6 months preceding the application or has more than one conviction within the last 2 years preceding the date of the application.

### **12.17 Spent Convictions and the Principles of The Rehabilitation of Offenders Act 1974**

- 12.17.1 Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.
- 12.17.2 The possibility of rehabilitation and the length of time before rehabilitation occurs is dependent on the sentence imposed, and not the offence committed.
- 12.17.3 Where a person is sentenced to imprisonment for a period exceeding thirty months, the conviction can never be spent.
- 12.17.4 Despite the above, the principles of the Act do not apply to applicants for hackney carriage and private hire drivers' licences. This is because the driving of these vehicles is listed as a 'Regulated Occupation' in relation to which questions may be asked as to the suitability of individuals to be granted a licence.
- 12.17.5 Although the Act does not prevent any judicial authorities, including the Licensing Authority, from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a 'fit and proper person' to hold a licence.
- 12.17.6 The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.
- 12.17.7 The rehabilitation periods to which reference is most commonly made are set out below. For further details on the periods of rehabilitation applicable to all sentencing options, reference will need to be made to a specialist textbook on the Act

<b>Sentence</b>	<b>Rehabilitation Period</b>
Sentence of imprisonment or detention exceeding six months but not exceeding thirty months	Four years
Sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's Service	One year
Sentence of imprisonment not exceeding six months	Two years
Sentence of dismissal from Her Majesty's Service	One year

## Previous Convictions

Sentence of detention in respect of a convictions in services disciplinary proceedings	One year
A fine, compensation, probation, community service or combination order	One year
Absolute discharge	Six months
Conditional discharge	Last day on which the order is to have effect.
Action plan, curfew, drug treatment and testing order, or reparation order	Last day on which the order is to have effect.

# Driver Knowledge Tests

## 13 APPENDIX F

### 13.1 DRIVER KNOWLEDGE TESTS

#### Introduction

- 13.1.1 All new applicants for either a private hire, dual or hackney drivers badge will need to take a written knowledge test.
- 13.1.2 Applicants wishing to sit the Knowledge Test should complete the booking form which can be found on the councils website and return it with the appropriate fee in order to be allocated a place on the next available Knowledge Test.
- 13.1.3 After a booking form and fee has been submitted, candidates must sit at least one test in a six month period.
- 13.1.4 Revision Material will be supplied, by email, before the test takes place. This will include the Knowledge Test booklet and a copy of the current hackney carriage and private hire licensing policy. When marking Section One for the Routes, we will use Google Maps.
- 13.1.5 All elements of the test must achieve the required pass mark. For Hackney Carriage and Dual tests, the required pass mark for the routes is 80%, with all successful candidates achieving an overall pass mark of 70%. For Private hire applicants, an overall pass mark of 70% is required.
- 13.1.6 A candidate can retake the Test until they reach the required pass mark as long as the required fee is paid for each resit.
- 13.1.7 Knowledge Test will be held a minimum of four times per year.
- 13.1.8 If an authorised officer has reason to believe that a candidate is cheating or has cheated, they will be disqualified from the test and another application will not be accepted for a period of one year.
- 13.1.9 Candidates may not use any device to assist them in the Knowledge Test; this includes but is not exclusive to – Mobile Phones, Satellite Navigation devices and copies of Maps.
- 13.1.10 Tests will be marked within 7 days and applicants will be informed of the result by email.
- 13.1.11 Authorised officers will not enter into any discussion regarding the outcome of the test and any queries or questions should be sent by email to the Licensing Team.

# Driver Knowledge Tests

## 13.2 The Knowledge Test

13.2.1 The test will consist of various sections including the following –

- Routes
- Places of Interest
- Local amenities and sports and leisure facilities
- Locating towns and villages on a map
- Math and English
- Current policy and legislation

13.2.2 The Tonbridge & Malling Knowledge Test is subject to change without prior notice. However all those candidates that are waiting to sit the test will be supplied with an updated Knowledge Test booklet prior to the test they have been allocated a place on.

# Private Hire Drivers Conditions

## 14 APPENDIX G

### 14.1 PRIVATE HIRE DRIVER'S LICENCE CONDITIONS

#### Conduct of Driver

- 14.1.1 The holder of a private hire driver's licence (hereafter known in this Appendix as the driver) shall comply with the following conditions, which should be read in conjunction with the Code of Conduct set out in **Appendix I**
- 14.1.2 The driver shall be respectably dressed, clean and tidy in appearance at all times whilst his vehicle is being made available for hire.
- 14.1.3 The driver shall at all times, when acting in accordance with the drivers licence granted to him, wear such badge as supplied by the Council in such a position and manner as to be plainly and distinctly visible at all times.
- 14.1.4 The driver shall not lend the badge to any other person or cause or permit any other person to wear it.
- 14.1.5 All licences, badges and plates remain the property of the Council at all times. They must be returned forthwith when employment as a licensed driver ceases, the licence expires or is not renewed, or where the licence is suspended or revoked.
- 14.1.6 The driver shall behave in a civil, polite and orderly manner and shall take all reasonable precautions to ensure the safety of persons conveyed in, or entering or alighting from, the vehicle.
- 14.1.7 The driver shall not wilfully or negligently cause or permit the vehicle licence plate to be concealed from public view, or allow the licence plate to be so defaced as to make any figure or information illegible.
- 14.1.8 The driver who has agreed to, or has been hired to, be in attendance with the vehicle at an appointed time and place shall, unless delayed or prevented by some sufficient cause, punctually attend with such vehicle at such appointed time and place.
- 14.1.9 The driver when hired to drive to a particular destination shall proceed to that destination by the shortest available route.
- 14.1.10 The driver shall not convey, or permit to be conveyed, in such vehicle any greater number of persons than the number of persons specified on the vehicle licence.
- 14.1.11 The driver shall convey a reasonable amount of luggage and afford reasonable assistance in loading and unloading luggage.
- 14.1.12 The driver must not solicit, by calling out or otherwise importune, any person to hire or be carried for hire and must not accept an offer for the hire of the vehicle except where that is first communicated to the driver by PDA, Radio or telephone from the Operator.

## Private Hire Drivers Conditions

- 14.1.13 The vehicle shall be presented in a clean and tidy condition for each journey.
- 14.1.14 The private hire vehicle must only be driven with the consent of the proprietor of the vehicle.
- 14.1.15 The driver must not drink or eat in the vehicle whilst in the presence of customers.
- 14.1.16 The driver must comply with any hirer's request not to play any radio or sound equipment which is not connected with the operation of the business.
- 14.1.17 The driver must ensure that the noise emitted from any sound equipment in the vehicle does not cause annoyance to any persons, whether inside or outside the vehicle.
- 14.1.18 The driver shall not operate the horn late at night as a means of signalling that the vehicle has arrived.
- 14.1.19 The driver must not cause or permit the vehicle to stand on a public road, on a hackney carriage rank, or in a public place so as to suggest that it is plying for, or available for, hire.
- 14.1.20 It is illegal to use a hand held mobile phone while driving since December 2003. From March 2017 the Fixed Penalty Notice for using a handheld mobile phone while driving is £200 and 6 points.
- 14.1.21 Drivers must not use a mobile phone whilst driving unless it is designed for hand-free operation.
- 14.1.22 Any change affecting the licence must be notified in writing to the Council. Notification should be as soon as reasonably practicable and in any event, no later than seven days after the change was effected.
- 14.1.23 If the driver is convicted or bound over for any offence, he shall within 7 days give details in writing of the conviction or binding over to the Council.
- 14.1.24 The private hire driver's licence must be made available for inspection, upon request, by any authorised officer of the Council or any police officer.
- 14.1.25 The driver must notify the Council within seven days of starting or terminating employment, as to the name and address of the proprietor concerned and the date when the employment either started or ended.
- 14.1.26 The private hire driver's licence must be presented to the proprietor concerned at the beginning of the employment.
- 14.1.27 In accordance with section 50(3) of the Local Government (Miscellaneous Provisions) act 1976, any accident to a private hire vehicle causing damage materially affecting:
- The safety, performance or appearance of the vehicle
  - The comfort or convenience of the passengers



# Private Hire Drivers Conditions

must be reported to the Council as soon as reasonably practicable, and in any case within 72 hours of the accident.

## 14.2 Assistance Dogs

- 14.2.1 Under the Equality Act 2010, licensed drivers of taxis and private hire vehicles are under a duty to carry passengers with guide, hearing and other assistance dogs without additional charge.
- 14.2.2 When carrying such passengers, drivers have a duty to:
- Convey the disabled passenger's dog and allow it to remain under the physical control of the owner; and
  - Not to make any additional charge for doing so.
- 14.2.3 Drivers who, for medical reasons are unable to accept wheelchair users or assistance dogs are able to apply to the Council for an exemption certificate. Such a certificate will only be issued on production of medical evidence. Exemption certificates, which show the photograph of the driver, must be displayed in the vehicle at all times the driver is working.

## 14.3 Medical Fitness of Driver

- 14.3.1 The driver of a private hire vehicle must at any time, or at such intervals as the Council may reasonably require, produce a certificate issued by the Council's medical examination provider to the effect that he is, or continues to be, physically fit to be a driver of a private hire vehicle.
- 14.3.2 The driver must cease driving any private hire vehicle and contact the Council immediately if they know of any medical condition which may affect their:
- Driving ability
  - The health and safety of themselves or any passengers.

## 14.4 Fares and Journeys

- 14.4.1 The driver/operator of a private hire vehicle may make their own agreement with the hirer as to the fare for a particular journey.
- 14.4.2 The driver shall, if requested by the hirer, provide him with a written receipt for the fare paid.
- 14.4.3 If the vehicle is fitted with a taximeter, then the driver of a private hire vehicle must:
- Unless the hirer expresses at the commencement of the journey his desire to engage by time, bring the meter into operation at the commencement of the journey, and bring the machinery of the taxi-meter into action by moving the said key, flag or other device, before beginning a journey and keep the machinery of the taxi-meter in action until the termination of the hiring.

## Private Hire Drivers Conditions

- When standing (stationery), keep the key, flag or other device fitted for that purpose locked in the position in which no fare is recorded on the face of the meter. The meter must not show a fare until the journey commences.
- Cause the dial of the taxi-meter to be kept properly illuminated throughout any part of the hiring which is during the hours of darkness as defined for the purposes of the Road Traffic Act 1972, and also at any other time at the request if the hirer.
- Not demand from any hirer of a private hire vehicles a fare in excess of any previously agreed for that hiring between the hirer and the operator or, if the vehicle is fitted with a fare meter, the fare shown on the face of the taxi-meter.

14.4.4 In the event of a journey commencing in but ending outside the Borough of Tonbridge and Malling there may be charged, for the journey, such fare or rate (if any) as was agreed before the hiring was effected. If no such agreement was made then the fare to be charged should be no greater than that determined by the taxi-meter.

### 14.5 Wheelchair Accessible Vehicles

14.5.1 All drivers of wheelchair accessible vehicles must:

- Be fully conversant with the correct method of operation of all ramps, lifts and wheelchair restraints fitted to the vehicle.
- Before any movement of the vehicle takes place, ensure that all wheelchairs are firmly secured to the vehicle using an approved restraining system and the brakes of the wheelchair have been applied.
- Ensure that any wheelchairs, equipment and passengers are carried in such a manner that no danger is likely to be caused to those passengers, or to anyone else, in accordance with the regulations detailed in section 100 of the Road Vehicles (Constructions and Use) Regulations 1

# Penalty Points System

## 15 APPENDIX H

### 15.1 PENALTY POINTS SYSTEM

- 15.1.1 This scheme will be used to enforce current legislation and any future by laws in respect of Hackney Carriage Drivers and will be operated as follows:
- 15.1.2 The Council's Taxi Licensing and Enforcement Policy will be fully considered by an authorised officer when determining the manner on which any breach of legislation or the requirements of this Policy are dealt with.
- 15.1.3 Where it is decided that the use of the penalty points system is appropriate, the points will be issued in accordance with this appendix. If this appendix allows a range of points for a particular incident, the authorised officer will determine the appropriate number of points proportionate to the offence.
- 15.1.4 Penalty points will only be imposed where the licensee agrees the breach or offence has taken place. Where the licensee does not agree that the breach or offence has taken place the matter will be referred in the first instance to the Licensing and Community Safety Manager for consideration regarding further action.
- 15.1.5 The imposition of penalty points against a driver who is an employee will not necessarily result in additional imposition of points to his/her employer or operator. However the Council retains the discretion to issue penalty points to drivers, driver/proprietors and operators for a single contravention if the circumstances warrant it i.e. the breach is one against all these licences and it is considered joint responsibility is held.
- 15.1.6 Points issued to either a proprietor or driver will be confirmed in writing.
- 15.1.7 When issued, the penalty points will remain "live" for a period of two years from the date they are imposed so that only points accumulated in a rolling twenty four months period will be taken into account.
- 15.1.8 There is no financial penalty associated with the system, and the licensee may continue to work. However, the licensee may be asked to attend either a meeting with the Licensing and Community Safety Manager or attend a hearing of the Licensing and Appeals panel if 12 penalty points are imposed on an individual licence in any one 24 month period, where appropriate action will be taken in accordance with this policy.
- 15.1.9 Where a driver, proprietor or operator attains more than 12 penalty points, disciplinary options available to the Licensing and Appeals panel will include suspension or revocation of the driver's licence, where appropriate.
- 15.1.10 If it is felt that the matter does not warrant suspension or revocation of the licence, the period for which the points are to remain "live" may be extended or a written warning may be issued to the driver as to his future conduct.

# Penalty Points System

- 15.1.11 Periods of suspension of a licence will be dependent upon the seriousness of the breaches of the legislation or the requirements of this Policy. The compliance history of the licence holder will also be taken into account.
- 15.1.12 A driver will always have the right to be represented at any meeting, either legally or otherwise, and to state any mitigating circumstances he deems necessary.
- 15.1.13 Any driver or vehicle proprietor or operator subject to suspension or revocation has the right of appeal to the Magistrates Court. All suspensions will therefore be subject to a 21-day appeals period prior to implementation to allow for the formal appeals process.
- 15.1.14 The penalty points system will operate without prejudice to the Council's ability to take other action under appropriate legislation or as provided for by this policy.
- 15.1.15 The penalty points system outlined below identifies a number of breaches of conditions, byelaws and/or statutory provisions. It then indicates the number of points to be invoked should the breach be proven.

## 15.2 Penalty Points Tariff

- 15.2.1 Two statutes principally create offences relating to hackney carriages and private hire vehicles –
- Town Police Clauses Act 1847
  - Local Government (Miscellaneous Provisions) Act 1976
- 15.2.2 The offences are set out below under the relevant statute
- 15.2.3 In relation to the maximum penalties specified, the levels of fine are currently as follows:
- Level 1 - £200  
Level 2 – £500  
Level 3 - £1,000  
Level 4 - £2,500
- 15.2.4 Any subsequent amendments to the legislation will supersede the tables below and this appendix may be amended to reflect the revised legislation by way of an addendum to this policy.

# Penalty Points System

## Town Police Clauses Act 1847

Section	Offence	Level of Fine	Penalty Points
40	Giving false information on a hackney carriage licence application	1	12
44	Failure to notify change of address on a hackney carriage licence	1	2
45	Plying for hire without a hackney carriage licence	4	8-12
47	Driving a hackney carriage without a hackney carriage driver's licence	3	8 -12
47	Lending or parting with a hackney carriage driver's licence	3	4
47	Hackney carriage proprietor employing an unlicensed driver	3	8
48	Failure of a proprietor to hold a hackney carriage driver's licence	1	6
48	Failure of a proprietor to produce a hackney carriage driver's licence	1	4
52	Failure to display a hackney carriage plate	1	4
53	Refusal to take a fare without a reasonable excuse	2	6-12
54	Charging more than the agreed fare	1	6-12
55	Obtaining more than the legal fare (including failure to refund)	3 and 1 month's imprisonment	6-12
56	Travelling less than the lawful distance for an agreed fare	1	6
57	Failure to wait after a deposit to wait has been paid	1	6
58	Charging more than the legal fare	3	12
59	Carrying persons other than with the consent of the hirer	1	8
60	Driving a hackney carriage without the proprietor's consent	1	6-12
60	Allowing a person to drive a hackney carriage without the proprietor's consent	1	6-12
62	Driver leaving a hackney carriage unattended	1	4
64	Hackney carriage driver obstructing other hackney carriages	1	4

# Penalty Points System

## Local Government (Miscellaneous Provisions) Act 1976

Section	Offence	Level of Fine	Penalty Points
46(1)(A)	Using an unlicensed private hire vehicle	3	12
46(1)(b)	Driving a private hire vehicle without a private hire driver's licence	3	12
46(1)(c)	Proprietor of a private hire vehicle using an unlicensed driver	3	8
46(1)(d)	Operating a private hire vehicle without a private hire operators' licence	3	8
46(1)(e)	Operating a vehicle as a private hire vehicle when the vehicle is not licensed as a private hire vehicle	3	12
46(1)(e)	Operating a private hire vehicle when the driver is not licensed as a private hire driver	3	8
48(6)	Failure to display a private hire vehicle plate	3	4
49	Failure to notify the transfer of a vehicle licence	3	4
50(1)	Failure to present a private hire vehicle for inspection upon request		6-12
50(2)	Failure to inform the Council where a private hire vehicle is stored, if requested	3	4
50(3)	Failure to report an accident to the Council within seventy two hours	3	6
50(4)	Failure to produce the private hire vehicle licence and insurance certificate upon request	3	8-12
53(3)	Failure to produce a driver's licence upon request	3 by virtue of s76	4
54(2)	Failure to wear a private hire driver's badge	3	4
56(2)	Failure of a private hire operator to keep proper records of all bookings, or failure to produce them upon request of an authorised officer of the Council or a police officer	3 by virtue of s76	6
56(3)	Failure of a private hire operator to keep proper records of all private hire vehicles, or failure to produce them on request of an authorised officer of the Council or a police officer	3	6
56(4)	Failure of a private hire operator to produce his licence upon request	3	4
57	Making a false statement or withholding information to obtain a hackney carriage private hire driver's licence	3	12

# Penalty Points System

## Local Government (Miscellaneous Provisions) Act 1976

Section	Offence	Level of Fine	Penalty Points
57	Making a false statement or withholding information to obtain a hackney carriage private hire driver's licence	3	12
58(2)	Failure to return a plate after notice has been given following expiry, revocation, or suspension of a private hire vehicle licence	3	6-12
61(2)	Failure to surrender a driver's licence after suspension, revocation, or refusal to renew	3	6-12
64	Permitting any vehicle other than a hackney carriage to wait on a hackney carriage rank	3	6
66	Charging more than the meter fare for a journey ending outside the District, without prior agreement	3	6-12
67	Charging more than the meter fare when a hackney carriage is used for pre-booked work	3	6-12
69	Unnecessarily prolonging a journey	3	6-12
71	Interfering with a taxi-meter with intent to mislead	3	12
73(1)(a)	Obstruction of an authorised officer of the Council or a police officer	3	12
73(1)(b)	Failure to comply with a requirement of an authorised officer of the Council or a police officer	3	6-12
73(1)(c)	Failure to give information or assistance to an authorised officer of the Council or police officer	3	6-12

## Penalty Points System

	<b>Breach of Policy Requirement consider reordering in category – Drivers – Vehicle – Operators etc.</b>	<b>Points</b>
P1	Failure to wear a driver's badge	4
P2	Failure to adhere to the Code of Good Conduct for Licensed Drivers where not mentioned below	6
P3	Failure to ensure the safety of passengers	12
P4	Concealing or defacing a vehicle licence plate	6
P5	Failure to attend on time for a pre-arranged booking without reasonable cause	6
P6	Conveying a greater number of passengers than permitted	6
P7	Failure to give reasonable assistance with passenger's luggage	6
P8	Private hire soliciting for hire or accepting a fare that is not pre-booked	6-12
P9	Operating/using a vehicle that is not clean and tidy and in a safe condition internally or externally	6
P10	Driving without the consent of the proprietor	8-12
P11	Drinking or eating in the vehicle whilst carrying passengers	2
P12	No Smoking, Vaping or the use of e-cigarettes is permitted in a licensed vehicle at any time	12
P13	Causing excessive noise from any radio or sound-reproducing equipment	2
P14	Sounding the horn late at night to signal that the vehicle has arrived disturbing residents	2
P15	Allowing a private hire vehicle to stand in such a position as to suggest that it is plying for hire or using a hackney carriage stand	6
P16	Using a non-hands-free mobile telephone whilst driving	12
P17	Failure to advise Licensing Services of a relevant medical condition	6-12
P18	Failure to provide a receipt for a fare when requested	2
P19	Failure to operate the meter from the commencement of the journey and /or charging more than the fixed charge for hire of a hackney carriage	4-12
P20	Failure to notify the Council of any amendment to the details of your DVLA licence (change of personal details or points being given) within fourteen days of the date printed on the amended licence.	3
P21	Failure to produce a licence upon request	3



## Penalty Points System

	<b>Breach of Policy Requirement</b>	<b>Points</b>
P22	Failure to notify within seven days of starting or terminating employment, the name and address of the proprietor and the term of employment	3
P23	Failure to show a private hire driver's licence to the private hire operator at the commencement of employment	2
P24	Failure of a private hire operator to request and/or record details of a private hire driver's licence at the beginning of employment	2
P25	Failure to surrender a driver's licence, badge or plate upon request	6-12
P26	Failure of a licence holder to disclose convictions within seven days of conviction	12
P27	Carrying any animal other than a guide, hearing or other prescribed assistance dog or those owned by bone-fide fare paying passengers	2
P28	Failure to search a vehicle after a journey or failure to take found property to the Licensing Team at the Council Offices within forty-eight hours of finding	3
P29	Failure to report an accident to Licensing Services within seventy two hours	3
P30	Failure to comply with requirements for the safe carrying of a wheelchair	6
P31	Operating a vehicle that does not comply with the Council's licensing policy where such a breach of policy requirements is not otherwise specified herein	2-6
P32	Operating/using a vehicle which is not maintained in a sound and roadworthy condition	6-12
P33	Modifying a vehicle without the consent of the Council	12
P34	Failure to display or maintain external plates as issued by the Council or displaying them incorrectly e.g. in the window of a vehicle	4
P35	Failure to display or maintain Internal plates as issued by the Council or displaying them incorrectly (displayed in a position at the top offside corner of the front windscreen)	4
P36	Affixing or displaying a roof sign on a private hire vehicle	12
P37	Displaying a sign or advertisement on a licensed vehicle that does not satisfy the policy requirements or has not been approved by the Council	4

## Penalty Points System

	<b>Breach of Policy Requirement</b>	<b>Points</b>
P38	Carrying radio equipment or similar devices not in accordance with Council requirements	2
P39	Using a taxi-meter that does not conform to Council requirements	6
P40	Driving with no insurance or inadequate insurance for the vehicle	12
P41	Permitting the vehicle to be used for any illegal or immoral purposes	12
P42	Failure of a private hire operator to ensure that office staff act in a civil and courteous manner at all times	3
P43	Failure of a private hire operator to keep the operating premises in accordance with council requirements	3
P44	Failure of a private hire operator to ensure that all vehicles operated by him are adequately insured	12
P45	Failure of a private hire operator to obtain public liability insurance for the operating premises if the public are allowed access	12
P46	Failure to display Insignia on exterior of the two front doors of the vehicle	3
P47	Failure to keep a copy of a valid insurance certificate in the vehicle or with you on an electron device for inspection	3
P48	Failure to display the current fare chart so that it is clearly visible to passengers	3
P49	Failure to have a working Hackney Carriage Roof Light that is lit when available for hire	3
P50	Any other Operator breach of policy not mentioned herein	3
P51	Any other driver breach of policy not mentioned herein	3
P52	Failure to take a passenger from Waterloo Rank due to short journey, having no change with you to take cash, or charging more than the Fare shown on the Meter when taking a credit card payment.	9

## 16 APPENDIX I

### 16.1 Code of good conduct for licensed drivers

16.1.1 In order to promote its licensing objectives as regards hackney carriage and private hire licensing, the Council has adopted the following Code of Good Conduct, which should be read in conjunction with the other statutory and policy requirements set out in this document.

### 16.2 Responsibility to the trade:

16.2.1 Licence holders shall endeavour to promote the image of the hackney carriage and private hire trade by:

- complying with this Code of Conduct
- complying with the Council's Hackney Carriage and Private Hire Licensing Policy
- behaving in a civil, orderly and responsible manner at all times.

### 16.3 Responsibility to clients and high level of customer service:

- Be courteous at all times when talking to anyone, especially customers
- be polite, help customers with their baggage or shopping
- maintain your vehicles in a safe and satisfactory condition at all times
- keep your vehicles clean and suitable for hire to the public at all times
- attend punctually when undertaking pre-booked work
- assist, where necessary, passengers' ingress to and egress from the vehicle
- ensure you have change with you – (a fare may well require change).

### 16.4 Responsibility to residents:

- avoid being a nuisance to residents when picking up or waiting for a fare
- do not sound the vehicle's horn illegally
- keep the volume of all audio equipment and two-way radios to a minimum
- switch off the engine if required to wait
- take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood
- When picking up a customer from a pre-booked appointment avoid "obstructive parking".

# Code of conduct

## 16.5 At hackney carriage ranks, in addition to the requirements above:

- Rank in an orderly manner and proceed along the rank in order and promptly using both lanes, leaving no gaps.
- The hackney carriage at top of rank will take the customer to any destination within the Borough regardless of how short the journey may be.
- No driver will tell a customer that the minimum fare is higher than the current fare chart minimum fare.

## 16.6 At private hire offices:

- do not undertake servicing or repairs of vehicles
- do not allow volume of all audio equipment and two-way radios to unduly disturb residents of the neighbourhood
- take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood, which might arise from the conduct of their business.

## 16.7 General

### 16.7.1 Drivers shall:

- pay attention to personal hygiene and dress, so as to present a professional image to the public
- drive with care and due consideration for other road users and pedestrians and, in particular, shall not use a hand held mobile phone whilst driving
- obey all Traffic Regulation Orders and directions at all time
- not smoke at any time when inside the vehicle
- not consume alcohol immediately before, or at any time whilst driving or being in charge of a hackney carriage or private hire vehicle (any amount of alcohol can affect a drivers' judgement)
- not drive while having misused legal or illegal drugs (any amount of drugs can affect a driver's judgement). If a driver is prescribed prescription drugs that make him drowsy he should not drive
- fulfil their responsibility to ensure compliance with legislation regarding the length of working hours
- not eat in the vehicle in the presence of customers

## 16.8 Disciplinary Hearings

16.8.1 Drivers should be aware of the powers the Council can enforce, by way of suspension, revocation or refusal to renew a driver's licence where:

## **Code of conduct**

- the driver has been convicted, since the grant of the licence, of an offence involving dishonesty, indecency or violence
- the driver has been convicted of an offence under any legislation relating to hackney carriage or private hire regulation
- the driver has breached any requirements of the Council's Hackney Carriage and Private Hire Licensing Policy
- there is a breach of conditions of this code

### **16.9 Responsibility towards Council Employees**

- 16.9.1 Licensed drivers are expected to be polite and courteous at all times and to comply with any reasonable request made by a Licensing or Civil Enforcement Officer. Verbal or physical abuse will not be tolerated.

# Private Hire Operators - conditions

## 17 APPENDIX J

### 17.1 PRIVATE HIRE OPERATORS LICENCE CONDITIONS

#### Standards of Service

##### 17.1.1 The operator shall:

- Provide a prompt, efficient and reliable service to members of the public at all reasonable times.
- Ensure that their office staff act in a civil and courteous manner at all times.
- Ensure that when a vehicle has been hired, it arrives punctually at the appointed place, unless delayed, informing the client of any unforeseen circumstances.
- Ensure that premises provided for the purpose of booking or waiting are kept clean and are adequately lit, heated and ventilated.
- Ensure that any waiting area provided has adequate seating facilities and telephone facilities are in good working order.
- Fulfil their responsibilities to ensure compliance with legislation regarding the length of working hours.
- Maintain a register of all staff that will take bookings or dispatch vehicles
- Operators should evidence that they have had sight of a Basic DBS check on all individuals listed on their register of booking and dispatch staff and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders.
- Operators may outsource booking and dispatch functions but they cannot pass on the obligation to protect children and vulnerable adults. Operators should be required to evidence that comparable protections are applied by the company to which they outsource these functions.
- Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences as follows:
  - i. Crimes resulting in death
  - ii. Exploitation
  - iii. Offences involving violence against the person
  - iv. Possession of a weapon
  - v. Sexual offences
  - vi. Dishonesty
  - vii. Drugs
  - viii. Discrimination

# Private Hire Operators - conditions

- ix. Motoring convictions
- x. Drink driving/driving under the influence of drugs
- xi. Using a hand-held device whilst driving

## 17.2 Records

- 17.2.1 Records, which must be kept by private hire operators under the Local Government (Miscellaneous Provisions) Act 1976, shall be kept in a suitable electronic log or book.
- 17.2.2 All records shall be maintained by the operator shall be kept for at least twelve months after entry and shall be produced for inspection, on request, by any authorised officer of the Council or any police officer.
- 17.2.3 The private hire operator's licence shall similarly be available for inspection upon request by any authorised officer of the Council or any police officer.
- 17.2.4 The operator shall, at all times keep a copy of these conditions at any premises used by him for a private hire business and shall make the same available for inspection by fare-paying passengers.

## 17.3 Bookings

- 17.3.1 Prior to each journey, the operator shall enter the following particulars of every booking of a private hire vehicle accepted, pursuant to section 56(2) of the Local Government (Miscellaneous Provisions) Act 1976, namely the:
  - xii. the name of the passenger;
  - xiii. the time of the request;
  - xiv. the pick-up point;
  - xv. the destination;
  - xvi. the name of the driver;
  - xvii. the driver's licence number;
  - xviii. the vehicle registration number of the vehicle;
  - xix. the name of any individual that responded to the booking request;
  - xx. the name of any individual that dispatched the vehicle
- 17.3.2 booking records should be retained for a minimum of six months.
- 17.3.3 Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats required or to accommodate

## Private Hire Operators - conditions

luggage, the booker should be informed that a PSV is necessary, and that a PCV licenced driver will be used who is subject to different checks and not required to have an enhanced DBS check.

### 17.4 Vehicles

17.4.1 The operator shall keep records of the particulars of all private hire vehicles operated by him, pursuant to section 56(3) of the Local Government (Miscellaneous Provisions) Act 1976, namely the:

- Type, make, model, colour and engine size of vehicles
- Year when the vehicle was first licensed for private hire
- Vehicle registration numbers
- Number of seats for passengers
- Owners of the vehicles
- Insurance details of vehicles
- Method of charging, i.e. whether or not a meter is fitted
- Private hire vehicle plate numbers

### 17.5 Drivers

17.5.1 The operator shall keep records of the particulars of all drivers of private hire vehicles operated by him, pursuant to section 56(3) of the Local Government (Miscellaneous Provisions) Act 1976, namely:

- The names and addresses of drivers, and their call signs if any
- Date any new driver begins service
- Date when any driver ceases service
- Any change of address of any driver in service
- Any illness, disability or condition which may affect the driver's ability to safely carry out his duties, if the operator becomes aware of any such condition they must inform the Licensing Authority in writing immediately.
- Expiry dates of drivers badges and vehicle licence

### 17.6 Disclosure of Convictions

17.6.1 The operator shall, within seven days of conviction, notify the Council in writing, of any conviction or fixed penalty notice imposed on him during the period of duration of his operator's licence.

17.6.2 If the operator is a company or partnership, this requirement shall equally apply if any of the directors or partners receives a conviction or fixed penalty notice.

### 17.7 Insurance



## Private Hire Operators - conditions

- 17.7.1 The operator shall ensure that a certificate of motor insurance covers every private hire vehicle operated by him under the operator's licence, which is compliant with the Road Traffic Act 1988 as regards the carriage of passengers for hire or reward.
- 17.7.2 If the private hire operator has premises to which the public have access, in connection with the hiring of vehicles, he shall ensure that there is public liability insurance in force, which indemnifies him against any claim for loss, damage or personal injury by any person using those premises.

### 17.8 Private Hire Drivers' Licences

- 17.8.1 The operator shall ensure that every driver engaged by him has obtained a private hire driver's licence obtained by the same Licensing Authority which issued the private hire operator's licence. The operator shall ensure that all drivers have a badge issued by the Council and that the drivers wear the badge in a conspicuous place at all times whilst available for hire

### 17.9 Miscellaneous

- 17.9.1 If a licensed operator changes either his home or business address, he must, within seven days, give written notice to the Council specifying his new address.
- 17.9.2 The operator shall ensure that the licence plate issued and allocated by the Council is permanently fixed to the rear of the vehicle in a conspicuous upright position and in a manner as approved by an authorised officer.
- 17.9.3 The operator shall ensure the licence plate is maintained in a clean and legible condition and shall inform the Council immediately if it becomes lost, broken or defaced.
- 17.9.4 To operate a private hire business from home, planning permission will normally be required. A private hire operator's licence will not be granted without evidence that either planning permission has been issued for the premises concerned, or planning permission is not required for the use proposed.
- 17.9.5 An operator's licence is liable to suspension or revocation on any of the following grounds:
- Any offences under, or non-compliance with, the provisions of Part II, Local Government (Miscellaneous Provisions) Act 1976
  - Any conduct on the part of the operator which appears to the council to render him unfit to hold an operator's licence.
  - Any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted
  - Any other reasonable cause.

# Taxi and Private Hire Enforcement Policy

## 18 APPENDIX K

### 18.1 HACKNEY CARRIAGE AND PRIVATE HIRE ENFORCEMENT POLICY

#### Enforcement Policy Statement

- 18.1.1 It is the policy of Tonbridge and Malling Borough Council to ensure that taxi drivers and operators are licensed correctly and carry out their trade in accordance with both the relevant law and the conditions attached to the licences.
- 18.1.2 This policy is in accordance with the Regulators' Compliance Code and the regulatory principles set out in the Legislative & Regulatory Reform Act 2006. The Council will seek to adopt a positive and proactive approach towards ensuring compliance, in accordance with the following key principles –
- **Economic progress** – the Council recognises that a key element of our enforcement activity will be to allow/ encourage economic progress and we shall only intervene where there is a clear case for protection
  - **Risk Assessment** – we shall use a comprehensive risk assessment to concentrate resources in the areas that need them most
  - **Advice and guidance** – we will provide authoritative, accessible advice easily and cheaply
  - **Compliance and enforcement actions** – the few businesses that persistently break statutory requirements will be identified quickly and face proportionate and meaningful sanctions.
  - **Accountability** – the Council will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions it takes,
- 18.1.3 All enforcement action, be it verbal warnings, the issue of written warnings, penalty points, statutory notices, appearance before the committee or prosecution, will primarily be based upon the seriousness of the breach and the possible consequences arising out of it. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.
- 18.1.4 Authorised officers, when making enforcement decisions, will abide by this policy. Any departure from the policy must be exceptional, capable of justification, be fully considered and be endorsed by the Licensing and Community Safety Manager or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 18.1.5 Authorised officers must be fully acquainted with the requirements of the policy and appropriate training will be provided where required.

# Taxi and Private Hire Enforcement Policy

18.1.6 Officers will be authorised by the Licensing and Community Safety Manager to take enforcement actions relevant and appropriate to their level of competence. Competency will be assessed individually by reference to qualifications and experience.

## 18.2 Enforcement Options

18.2.1 Achieving and maintaining a consistency of approach to making all decisions that concern taxi licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that the policy guidelines are always considered and followed where appropriate.

18.2.2 Enforcement decisions must always be consistent, balanced, proportionate and relate to common standards which ensure that the public is adequately protected. In reaching any decision many criteria must be considered including the:-

- seriousness of any offences.
- driver or operator's past history.
- consequence of non-compliance.
- likely effectiveness of the various enforcement options.
- the economic consequences of enforcement
- danger to the public.

18.2.3 Having considered all relevant information and evidence, the choices for action are:-

- take no action.
- take informal action.
- issue penalty points (see **Appendix G**)
- use statutory notices, (stop notices etc.).
- suspend a licence.
- revoke a licence.
- use simple cautions.
- Prosecute.
- a combination of any of the above.

18.2.4 This policy document provides detailed guidance applicable to the various options for enforcement action.

# Taxi and Private Hire Enforcement Policy

## 18.3 Informal Action

- 18.3.1 Informal action to secure compliance with legislation includes offering advice, verbal and written warnings and requests for action and the use of letters.
- 18.3.2 Such informal enforcement action may be appropriate in any of the following circumstances: -
- the act or omission is not serious enough to warrant more formal action.
  - it can be reasonably expected that informal action will achieve compliance, perhaps by taking into account the individual driver or operator's past history.
  - confidence in the operator's management is high.
  - the consequences of non-compliance will not pose a significant risk to the safety of the public.
- 18.3.3 Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.

## 18.4 Appearance before the Licensing & Appeals Panel

- 18.4.1 An offending individual or company may be summoned before the Licensing and Appeals Panel to answer allegations of breaches of relevant legislation or conditions attached to licences or a contravention of this policy.
- 18.4.2 Current licence holders who report convictions or breach relevant legislation during the period of their licence may also be brought before the Licensing and Appeals Panel.
- 18.4.3 The Panel may decide to take one or more of the following actions: -
- no action.
  - a written warning.
  - require the production of driving licences or other specified documentation at the Council's Office.
  - suspend a licence.
  - revoke a licence.
  - recommend prosecution action.
  - other appropriate action as deemed necessary.

## 18.5 Section 68 Notices (Stop Notices)

- 18.5.1 An authorised officer may serve notice in writing for a hackney carriage or private hire vehicle, or the taximeter affixed to such vehicle to be examined at the Council's appointed garage at a time specified in the notice. This notice must only be served having had due regard to the condition of the vehicle or with reasonable grounds to suspect the accuracy of the taximeter.
- 18.5.2 An authorised officer may, in addition to requiring the vehicle to be tested, suspend the vehicle licence until such time as he is satisfied with the condition of the

# Taxi and Private Hire Enforcement Policy

hackney carriage or private hire vehicle. This action will only be taken when he has reasonable grounds to suspect that the condition of the vehicle is an immediate danger to passenger and/or other road users.

- 18.5.3 The suspension notice will remain in place until such time as the Officer issuing the notice is satisfied that the grounds for suspension have been satisfactorily resolved. Written confirmation of the lifting of the suspension notice will be given. Until such time as written confirmation has been received, the suspension notification will remain active.
- 18.5.4 If the Authorised Officer who issued the suspension notice is not satisfied that the appropriate action has been taken to allow the suspension notice to be withdrawn within a period of two months from the date of issue, the vehicle licence shall be deemed to be revoked.

## 18.6 Appeals

- 18.6.1 Appeals against decisions of the Licensing and Appeals Panel or authorised officers may be made to the Magistrates' Court.
- 18.6.2 Any notifications of enforcement actions will include written information on how to appeal. Where the Council suspends or revokes a driver's licence the revocation or suspension may come into effect immediately although the driver may have made an appeal against the decision to the Magistrates' Court.
- 18.6.3 A driver can also appeal against a refusal to renew his driver's licence, but if his previous licence has already expired he cannot continue to drive as he would no longer hold a current licence.

## 18.7 Prosecution

- 18.7.1 The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate requirements of the Council are not followed and / or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards which ensure a consistent approach.
- 18.7.2 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following: -
- where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it.
  - when there appears to have been reckless disregard for the safety of passengers or other road users.
  - where there have been repeated breaches of legal requirements.
  - where a particular type of offence is prevalent.
  - where a particular contravention has caused serious public alarm.

# Taxi and Private Hire Enforcement Policy

- 18.7.3 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair and objective decision to be made.
- 18.7.4 Before referring a matter to the Legal Section for possible prosecution, the Licensing and Community Safety Manager must be satisfied that there is relevant, admissible, substantial, and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, the issue of a simple caution is not an alternative.
- 18.7.5 In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.
- 18.7.6 When a decision is being taken on whether to prosecute, the factors to be considered may include: -
- the seriousness of the alleged offence.
  - the risk or harm to the public.
  - identifiable victims.
  - failure to comply with a statutory notice served for a significant breach of legislation.
  - disregard of safety for financial reward.
  - the previous history of the party concerned.
  - offences following a history of similar offences.
  - failure to respond positively to past warnings.
  - the credibility of any important witnesses and their willingness to cooperate.
  - the willingness of the party to put right the loss or harm that has occurred,
  - whether a prosecution would have a significant positive impact on maintaining community confidence.
  - whether other action, such as issuing a simple caution in accordance with the Home Office Circular 016./2008 would be more appropriate or effective.

This list is not exhaustive, and regard will be had in particular to the matters set out in the Code for Crown Prosecutors.

## 18.8 Simple Cautions

- 18.8.1 A simple caution may be used as an alternative to a prosecution in certain circumstances.
- 18.8.2 The purposes of the simple caution are: -
- to deal quickly and simply with less serious offences where the offender has admitted the offence.

# Taxi and Private Hire Enforcement Policy

- to divert offenders where appropriate from appearing in the criminal Courts.
- to reduce the chances of re-offending
- To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered: -
- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.
- the suspected offender must have made a clear and reliable admission of the offence;
- the suspected offender must understand the significance of a simple caution and give informed consent to being cautioned.
- A simple caution must be appropriate to the offence and the offender.

18.8.3 If there is insufficient evidence to consider taking a prosecution, then by implication, the above criteria is not satisfied for the use of a simple caution. A simple caution should not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

18.8.4 Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will usually mean prosecution, this is not necessarily inevitable. For example, it may be considered that a written warning would be appropriate.

## 18.9 Transparency

18.9.1 Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.

18.9.2 Any written documentation issued or sent will: -

- contain all the information necessary to understand the offence and what needs to be done to rectify it. Where works are required, the period allowed for them to be completed will be indicated.
- indicate the legislation or conditions contravened and measures which will enable compliance with the legal requirements and point out, where appropriate, that other means of achieving the same effect may be chosen.
- clearly indicate any recommendations of good practice under an appropriate heading, to show that they are not a legal requirement.

18.9.3 There is a clear distinction between legal requirements and matters which are recommended as good practice. Recommendations in all enforcement action, even if only giving verbal advice, is vitally important.

## 19 APPENDIX L

### 19.1 GROUNDS FOR APPEAL TO MAGISTRATES' COURT

#### An Appeal

19.1.1 An appeal may be made to the Magistrates Court against the following decisions:

#### Hackney Carriage

- Refusal to grant a vehicle or driver's licence.
- Any conditions attached to a vehicle licence.
- Suspension/ revocation or refusal to renew a vehicle or driver's licence.

#### Private Hire

- Refusal to grant a vehicle, driver's or operator's licence.
- Any conditions attached to a vehicle, driver's or operator's licence.
- Suspension/ revocation or refusal to renew a vehicle, driver's or operator's licence.

19.1.2 The time within which any appeal as mentioned above may be brought is 21 days from the date on which notice of the Council's requirement, refusal or other decision was served upon the person.



## 20 APPENDIX M

### 20.1 Taxi and Private Hire Complaints Procedure

20.1.1 <https://www.tmbc.gov.uk/council/council-works-complaints>

# Summary of Legislation

## 21 APPENDIX N

### SUMMARY OF LEGISLATION - TOWN POLICE CLAUSES ACT 1847

Section 46 Driver not to act without first obtaining a licence	No person shall act as a driver of any hackney carriage without first obtaining a licence
Section 48 Proprietors to retain licences of drivers and produce the same before justices' on complaint	Proprietors must retain licences of drivers while they remain in his employment. Where the proprietor of a hackney carriage is summoned before a justice or to produce the driver he shall also produce the licence of the driver if he is in his employment
Section 52 Penalty for neglect or refusing to exhibit the prescribed number of passengers	If the proprietor, or driver of any hackney carriage permits the same to be used, employed, stand or ply for hire without having the number of persons to be carried displayed in the in the prescribed manner
Section 53 Penalty on driver for refusing to drive	The driver of any hackney carriage standing at any stands for hackney carriages or in any street, without reasonable excuse shall not refuse or neglect to drive such carriage to any place within the prescribed distance
Section 54 Demanding more than the sum agreed	Proprietors or drivers of hackney carriages or any person on his behalf is not permitted to exact or demand more than the fare agreed
Section 55 Payment of more than the legal fare	No agreement whatsoever shall be made between the driver or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any byelaw or Act
Section 56 Agreement to carry passengers a discretionary distance for a fixed sum	If the proprietor or driver of any hackney carriage, or any other person on his behalf, agrees to carry persons for a distance at the discretion of the proprietor or driver, and for a sum agreed upon, he shall not carry those persons for a lesser distance than would be allowed by the sum agreed according to the scale of fares in force
Section 57 Deposits made for hackney carriages required to wait	When a hackney carriage is hired and taken to any place, and the driver is required to wait by the hirer, the driver may demand his fare for driving to such place, and a fare for the waiting period
Section 59 Persons riding without the consent of the hirer	No proprietor or driver of any hackney carriage which is hired, shall not without the express consent of the person hiring the said hackney carriage permit any other person to be carried in such hackney carriage

## Summary of Legislation

Section 60 No unauthorised person to act as driver	No authorised driver of a hackney carriage shall allow any person, whether licensed or not, to act as the driver of any hackney carriage without the consent of the proprietor
Section 61 Drunkenness and furious driving	No driver or any other person having or pretending to have the care of any such hackney carriage shall do so whilst intoxicated, or drive in a wanton and furious manner, or by any other wilful misconduct injure or endanger any person in his life limb or property
Section 62 Carriages being left at places of public resort	A driver of any hackney carriage may not leave it in any street or any place or public resort or entertainment, whether it be hired or not, without someone proper to take care of it
Section 64 Drivers obstructing other drivers	Any driver of any hackney carriage shall not obstruct or hinder any driver of any carriage in taking up or setting down any person into or from that carriage, nor shall they, in a forcible manner prevent or endeavour the driver of any other hackney carriage from being hired

# Summary of Legislation

## LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

<p>Section 46 Vehicle, driver and operators licences</p>	<p>No person being the proprietor of any vehicle not being a hackney carriage in respect of which a vehicle licence is in force, shall use or permit the same to be used in a controlled district as a private hire vehicle without having for such a vehicle a current licence under section 48 of this Act</p> <p>No person shall act in a controlled district as a driver of any private hire vehicle without having a current licence under section 51 of this Act</p> <p>No person being the proprietor of a private hire vehicle licensed under this part of this Act shall employ as the driver thereof for the purpose of any hiring any person who does not have a current licence under the said section 51</p> <p>No person in a controlled district shall operate any vehicle as a private hire vehicle without having obtained a current licence under section 55 of this Act</p> <p>No person licensed under the said section 55 shall in a controlled district operate any vehicle as a private hire vehicle – (i) if the vehicle does not have a current licence under section 48 of this Act (ii) if the driver does not have current licence under section 51 of this Act</p>
<p>Section 49 Transfer of hackney carriage and private hire vehicles</p>	<p>The proprietor of a hackney carriage or private hire vehicle shall give written notice to the district council within fourteen (14) days of the transfer of the vehicle. Such notification shall specify the name and address of the person to whom the hackney carriage or private hire vehicle has been transferred</p>
<p>Section 50 Provisions as to proprietors</p>	<p>(1) The proprietor of any hackney carriage or private hire vehicle licensed by a district council shall present such hackney carriage or private hire vehicle for inspection and testing by or on behalf of the council within such period and at such place within the area of the council as they may by notice reasonably require</p> <p>(2) The proprietor of any hackney carriage or private hire vehicle shall, within such period as the district council may by notice reasonably require, state in writing the address of every place where such hackney carriage or private hire vehicle is kept when not in use</p> <p>(3) The proprietor of a hackney carriage or private hire vehicle licensed by a district council shall report to them as soon as reasonably practicable, and in any case within 72 hours of the occurrence thereof any accident to such hackney carriage or private hire vehicle causing damage materially affecting the safety, performance or appearance of the hackney carriage or private hire vehicle or the comfort or convenience of persons carried therein</p>

## Summary of Legislation

	(4) The proprietor of any hackney carriage or private hire vehicle licensed by a district council shall at the request of any authorised officer of the council produce for inspection the vehicle licence for such hackney carriage or private hire vehicle and the Certificate of Policy of Insurance or security required by the Road Traffic Acts in respect of such hackney carriage or private hire vehicle
Section 53 Drivers' licences for hackney carriage and private hire vehicles	The driver of any hackney carriage or of any private hire vehicle licensed by a district council shall at the request of any authorised officer of the council or of any constable produce for inspection his drivers' licence forthwith or  (a) in the case of the request by an authorised officer at the principal offices of the council, before the expiration of the period of five days beginning with the day following that on which the request was made  (b) in the case of a request by a constable, before the expiration of the period aforesaid at any police station which is within the area of the council and is nominated by the driver when the request is made
Section 54 Wearing of drivers badges	A driver shall at all times when acting in accordance with a drivers licence granted to him wear such badge in such position and manner as to be plainly and distinctly visible

Section 56 Operators of private hire vehicles	(i) Every contract for the hire of a private hire vehicle licensed under this Act shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle  (ii) Every person to whom a licence in force under this Act shall keep a record in such form as the council may by condition attach to the grant of the licence, and enter details in the record before the commencement of each journey, particulars of every booking of a private hire vehicle invited or accepted by him whether by accepting the same from the hirer or at the request of another operator. The operator shall produce such record on request to any authorised officer of the council or constable for inspection.  (iii) Any person who has a licence under this Act shall enter details in the record the particulars of any private hire vehicle operated by him and shall produce the same on request to any authorised officer of the council or constable for inspection  (iv) A person to whom a licence has been granted under this Act shall produce the licence on request to any authorised officer of the council or constable for inspection
Section 57 power to require applicants to submit information	Any applicant for a licence under the Act of 1847 and this part of this Act shall submit to a district council such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any licence
Section 58 Return of identity plate or disc on	(a) On the revocation or expiry of a vehicle licence in relation to a hackney carriage or private hire vehicle  (b) The suspension of a licence under section 68 of this Act

## Summary of Legislation

revocation or expiry of licence	The proprietor of the hackney carriage or private hire vehicle shall, on request of the district council issuing the licence, return within 7 days to the council the plate or disc
Section 59 Qualifications for drivers of hackney carriages	A person must be authorised to drive a motor vehicle under Part III of the Road Traffic Acts for a minimum of twelve months prior to the application for a driver licence
Section 64 Fares for long journeys	A driver of a hackney carriage must not charge a fare for a journey ending outside the licensing district, greater than that agreed before the hiring was effected or that indicated on the taxi meter or fixed by the table of fares in force within the licensing district
Section 67 Hackney carriages used for private hire	No hackney carriage shall be used in the district under a contract or proposed contract for private hire except at a rate of fares or charges not greater than that fixed by the table of fares, and when any such hackney carriage is so used the fare or charge shall be calculated from the point in the district at which the hirer commences his journey
Section 69 Prolongation of journeys	No person being the driver of a hackney carriage or private hire vehicle licensed by a district council shall without reasonable excuse unnecessarily prolong, in distance or in time, the journey for which the hackney carriage or private hire vehicle has been hired
Section 71 taximeters	Any person who (a) tampers with any seal on any taximeter without lawful excuse; or (b) alters any taximeter with intent to mislead; or (c) knowingly causes or permits a vehicle of which he is the proprietor to be used in contravention of this section shall be guilty of an offence
Section 73 Obstruction of authorised officers	(1) Any person who (a) wilfully obstructs an authorised officer or constable; or (b) without reasonable excuse fails to comply with any requirements properly made to him by such officer or constable; or (c) without reasonable cause fails to give such officer or constable so acting any other assistance or information which he may reasonably require of such person for the purpose of the performance of his functions shall be guilty of an offence  (2) If any person in giving any information to (1) makes any statement he knows to be false he shall be guilty of an offence

## 22 Appendix N Delegations

### 22.1 Delegations

22.1.1 In accordance with Part 3 of the Constitution of Tonbridge and Malling Borough Council the Licensing Officers are authorised to exercise the following delegated powers :

DCS 800	To exercise all of the Council's functions with regard to the licensing of Hackney Carriage vehicles and drivers and Private Hire vehicles drivers and operators. This authority shall include power to grant or refuse applications for licences under the applicable legislation.	C
DCS 801	To permit departures from the standard licence conditions in respect of specific hackney carriages or private hire vehicles in circumstances where he considers it appropriate so to do.	C
DCS 802	To take all enforcement action including the power to suspend/ revoke: <i>(i)</i> vehicle licences <i>(ii)</i> drivers' licences <i>(iii)</i> operators' licences  Under the Local Government (Miscellaneous Provisions) Act 1976, including where the suspension is to have immediate effect.	C

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

24 October 2023

#### Report of the Director of Central Services and Deputy Chief Executive

#### Part 1- Public

#### Matters For Decision

#### **1 APPOINTMENTS OUTSIDE BODIES**

#### **1.1 Tonbridge United Charity**

1.1.1 The Tonbridge United Charity has asked that former councillor Vivian Branson be formally endorsed as the Borough Councils outside body appointment to their organisation.

1.1.2 This was a role held by former councillor Branson until the recent local elections in 2023 and is considered a much valued appointment by the Charity.

1.1.3 As this is a non-annual appointment, the term of office would be for four years and would expire in October 2027.

1.1.4 There is no requirement for an appointment to be a member of the Council and the Charity has emphasised the value of retaining a person with experience of their aims and role.

#### **1.2 Legal Implications**

1.2.1 The matters raised in this report are considered to be routine, uncontroversial or not legally complex and a legal opinion has not been sought on these proposals.

#### **1.3 Financial and Value for Money Considerations**

1.3.1 N/A

#### **1.4 Risk Assessment**

1.4.1 N/A

#### **1.5 Equality Impact Assessment**

1.6 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

**1.7 Policy Considerations**

1.7.1 Community

**1.8 Recommendations**

1.8.1 That Vivian Branson be appointed as the Borough Council representative to serve on Tonbridge United Charity for a further four year period up to October 2027.

Background papers:

Nil

contact: Allison Parris  
Principal Democratic Services  
Officer

Adrian Stanfield  
Director of Central Services and Deputy Chief Executive

## TONBRIDGE & MALLING BOROUGH COUNCIL

### COUNCIL

24 October 2023

#### Report of the Chair of Overview and Scrutiny

#### Part 1- Public

#### Matters For Information

### 1 OVERVIEW AND SCRUTINY – ANNUAL REPORT

To provide a summary of the work of the Committee over the past year

#### 1.1 Background

1.1.1 This report sets out a summary of the activities and work undertaken by the Overview and Scrutiny Committee (O&S) over the past twelve months. Full details of all the reviews undertaken and other matters considered by the Committee over this period are set out on the Council's website.

1.1.2 In the last 12 months, 6 programmed meetings of the Committee took place, plus an additional meeting to accommodate one of the two "Call-Ins". In addition to these formal meetings the Chairs and Vice Chairs of O&S and the Chairs and Vice Chairs of the three Scrutiny Select Committees (SSC) have undertaken a "Scrutiny Essentials" training session provided by the Centre for Governance and Scrutiny in October 2022. There has also been one workshop between Cabinet Members and the Chair of O&S and the Chairs and Vice Chairs of the SSC's in October 2022.

#### 1.2 Reviews over the year

1.2.1 Set out below are details of the Committee's main meetings and a brief description of the work undertaken.

#### 1.3 O&S Committee Meeting – 6 October 2022

1.3.1 The agenda for this meeting included the Planning Enforcement Review and the Annual Review Letter from the Ombudsman.

1.3.2 Members were invited to consider an updated version of the Planning Enforcement Plan, alongside a PowerPoint presentation in respect of the Planning Enforcement Tracker Tool.

1.3.3 All recommendations from this review were subsequently considered and endorsed by Cabinet and Council.

#### **1.4 O&S Committee Meeting – 17 November 2022**

- 1.4.1 The agenda for this meeting included an Executive Decision “called in” – Sports Development and Youth Provision. Members of the Committee considered the grounds for the call in and had regard to the responses provided by the Cabinet Member for Community Services. There was detailed discussion on the merits of the proposals and the concern raised in relation to impacts on vulnerable people and communities. The Cabinet Member reminded the Committee of the challenging financial position faced by the Borough Council, but recognised the importance of embracing diversity with reference to the Leisure Pass Scheme and consideration would be given to improve diversity and disability access. Following a formal vote, there were no further recommendations to make to the Cabinet, therefore the proposals in respect of Sports Development and Youth Provision could be implemented.
- 1.4.2 The Corporate Strategy Consultation Draft was also discussed at this meeting, with attention drawn to the four priorities set out in the Strategy. Members commented on the proposals for public consultation and a number of minor and factual corrections were identified. The Committee recommended the Corporate Strategy Draft to Cabinet for approval.
- 1.4.3 There was also an information report on the Tonbridge and Malling Leisure Trust in response to a Member request. The report outlined savings over the past 9 years as a consequence of the Council’s decision to outsource to a local Trust.

#### **1.5 O&S Committee Meeting – 26 January 2023**

- 1.5.1 The Committee considered the Capital Plan Review 2022-23 and all recommendations from the Review were referred to Cabinet for endorsement. The Revenue Estimates were also considered and endorsed for referral to Cabinet along with the recommendation to update the Savings and Transformation Strategy to reflect that latest funding gap as part of the budget setting process.
- 1.5.2 There was also a Review of Section 106 Matters. This included recommending to Cabinet a revised S106 Protocol and process including the new monitoring structure.

#### **1.6 O&S Committee Meeting – 6 April 2023**

- 1.6.1 The Committee considered the Corporate Strategy – Community Consultation and the final amendments required following feedback received from residents. The Strategy and Action Plan with aligned Key Performance Indicators were commended to Cabinet for approval.
- 1.6.2 The Committee also considered a proposed response to the DLUHC Technical Consultation and that it be endorsed and submitted on behalf of the Borough Council.

1.6.3 A Scoping Report – Governance Arrangements was also given consideration, but it was decided that the final stage of this review would take place later in the year to allow new Councillors an opportunity to assess the arrangements.

## **1.7 O&S Committee Meeting – 29 June 2023**

1.7.1 Member Call in Protocol – Development Management, was considered by the Committee. The amendments were aimed at making the process clearer for both Members and officers and encouraged a collaborative approach. All recommendations were endorsed.

1.7.2 A Scoping Report considered Housing Associations Performance Framework and the Committee decided which of the suggested scoping considerations they wished to be progressed for the main report. It was also agreed that Clarion Housing (as the largest provider of affordable housing in the borough) be invited to a meeting of the O&S Committee to advise of their work in the Borough and to detail performance.

1.7.3 In addition, the Committee had an information report which detailed the Decarbonisation and Energy Efficiency Measures at Leisure Trust Sites.

## **1.8 O&S Committee Meeting – 1 August 2023**

1.8.1 Following a valid “Call In” request of the Decision Notice in relation to TMBC Owned Sites – Local Plan, five members of the Committee raised the Call-In in respect of three sites identified in the Urban Capacity Study. A response was provided by the Cabinet Member for Climate Change, Regeneration and Property and the Leader. Following a formal vote, the grounds for the Call In were not supported and the proposals were implemented with immediate effect.

## **1.9 O&S Committee Meeting – 14 September 2023**

1.9.1 Clarion Housing provided a comprehensive PowerPoint presentation regarding the organisations operations in the Borough including detailed performance on repairs, changes to services, casework processes, estate management and voids turnaround. There was also information regarding how anti-social behaviour was addressed.

1.9.2 The Committee also considered the final report of the Review of Governance Arrangements and the changes that have taken place since May 2022. The increase in the number of scrutiny committees was generally considered positive but it was recognised that further time was needed to identify if any further, or significant, changes were required. Recommendations from the Review were referred to Cabinet.

1.9.3 A Scoping Report – Review of Outside Bodies was considered, with options for the final stage of the review agreed by the Committee. Further evaluation of

Outside Bodies and the Council appointments to these organisations will be considered at the next meeting.

- 1.9.4 Finally, the Annual Local Government and Social Care Ombudsman – Annual Review Letter was considered as an information report at the meeting.

### **1.10 Summary of activity**

- 1.10.1 Overall, it has been a busy and productive year for the Committee, with two “Call-Ins” and a number of reports/papers/presentations considered and referred to Cabinet. Going forward it has been agreed that additional meetings will take place between the Chairs of O&S and the Chairs of the SSC’s along with greater liaison between the Chair of O&S and the Cabinet. An additional Scrutiny Training Session is also planned for the coming months.

- 1.10.2 The Chair of the Committee commented as follows:

“The O&S Committee hit the ground running at the beginning of the year with interesting reports coming thick and fast. The need for scrutiny will not diminish and with a challenging financial environment the norm, I hope we will continue to identify areas that need dusting off. I am looking forward to working more closely with both the Executive and chairs of other SSC’s.”

Background papers:

contact: Gill Fox

Nil

Cllr Anita Oakley  
Chair of Overview & Scrutiny Committee

# Agenda Item 21

To receive and note the Minutes of meetings of Cabinet and Committees as set out in the Minute Book (attached as a supplement).

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# Agenda Item 23

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT  
INFORMATION**

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