

# CONSTITUTION

## PART 6 - MEMBER/OFFICER PROTOCOL

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# PROTOCOL ON MEMBER/OFFICER RELATIONS

## 1. Introduction and Principles

- 1.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in a way which ensures the smooth running of the Council.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive in most instances. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- 1.3 This Protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. The Protocol gives guidance on the respective roles and expectations of Members and Officers. The Protocol also gives guidance on what to do when things go wrong.
- 1.4 The Protocol reflects the principles underlying the respective Codes of Conduct which apply to Members and Officers. Consequently, a breach of the provisions of this Protocol may also constitute a breach of those Codes. The shared object of these Codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- 1.5 An effective working relationship between Members and Officers is crucial to the successful operation of the Council's business. Mutual trust and respect is key to achieving effective working relationships.
- 1.6 The Protocol should be read in conjunction with relevant legislation, national and local Codes of Conduct, the Council's Constitution and any guidance issued by the Standards and Personnel Appeals Committee and/or Monitoring Officer. Questions of interpretation shall be determined by the Monitoring Officer.
- 1.7 Most issues can be resolved informally, however, the Council will not condone misconduct or let it go unchecked.
- 1.8 Any allegations of breaches by Officers will be dealt with under the Council's Disciplinary Procedure. Where a Member identifies an alleged breach by an Officer they shall inform the Chief Executive (Head of Paid Service). If a Member has identified a breach by the Chief Executive the Member should report this to the Monitoring Officer.
- 1.9 If an Officer believes a Member has breached the Members' Code of Conduct, he/she should:
  - Not offer any opinion or judgment upon that conduct to the Member;
  - Advise the Monitoring Officer immediately of the circumstances, facts, his/her belief and rationale including supplying relevant documentation; and

- Not comment further on the issue to any other Officer or Member without the prior consent of the Monitoring Officer.

These provisions are to protect both the Member and Officer and are to ensure any investigation can be carried out in an unbiased and unfettered manner.

## **2. Member/Officer Relations: General Points**

- 2.1 Both Members and Officers are servants of the public and they are indispensable to one another. However, their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council, the Executive, their Committees and Sub-Committees.
- 2.2 At the heart of the Code of Conduct, and this Protocol, is the importance of mutual respect. Member/Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

Members legally have no role in appointing, disciplining or dismissing officers except in respect of Chief Officers as outlined in the Employment Procedure Rules (Part 4 of the Constitution) and should not explicitly or implicitly suggest that this is the case.

- 2.3 A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. An Officer has no means of responding to such criticisms in public.
- 2.4 Members should not abuse Officers, or question their impartiality in public, or through the press nor seek to undermine their position by abuse, rudeness or ridicule.
- 2.5 If a Member abuses Officers, or questions their impartiality in public, or through the press or seeks to undermine their position by abuse, rudeness or ridicule in a public meeting then Officers shall advise the Chairman that such behaviour is unacceptable and the Chairman shall inform the Member to desist. In accordance with Council Procedure Rule 25.3, if a Member persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructs business, the Chairman may move that the Member be not heard further. If the Member continues to behave improperly after such a motion is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he/she thinks necessary (Rule 25.5). If no motion is carried and if the unacceptable behaviour continues, the Officers shall leave the meeting after advising the Chairman. The Officer will advise the Chief Executive as soon as reasonably practicable of their reasons for leaving the meeting. In these circumstances, the Chairman will make a complaint to the Monitoring Officer.

- 2.6 If a Member abuses an Officer in a face-to-face private meeting, the Officer shall tell the Member to desist. If the Member continues, the Officer will terminate the meeting and inform the Chief Executive as soon as reasonably practicable of their reasons for doing so. If a Member is abusive in an e-mail or telephone conversation to an Officer, then the Officer is justified in not responding to the e-mail or in ending the telephone call. In both cases the Officer shall inform the Chief Executive of their actions and their reasons for doing so as soon as reasonably practicable.
- 2.7 Where an Officer feels that s/he has not been properly treated with respect and courtesy by a Member, s/he should raise the matter with his/her Chief Officer as appropriate. In these circumstances the Chief Officer will take appropriate action either by approaching the individual Member and/or Group Leader or by referring the matter to the Monitoring Officer as a Code of Conduct complaint.
- 2.8 Many complaints are capable of informal resolution without the need for formal action. In this regard political groups may consider appointing a group member to lead and be a contact for identification and resolution of such problems.
- 2.9 If a Member feels s/he has not been treated with proper respect and courtesy by an Officer or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, s/he should raise the matter with the Chief Executive. Any formal action taken against an Officer in respect of a complaint will be in accordance with the provisions of the Council's Disciplinary Policy and Performance and Capability Policy.
- 2.10 An Officer should not raise with a Member matters relating to the conduct or capability of another Officer or to the internal management of a Section or Directorate in a manner that is incompatible with the overall objectives of this Protocol.
- 2.9 Members should take care not to disrupt the work of Officers. Members should (wherever reasonably possible) make appointments with Officers in advance so that the most appropriate Officers are able to deal with the Members' requests. Chief Officers may put in place arrangements for dealing with Members for the better, more efficient running of services.

### **3. Officer Support to Members: General Points**

- 3.1 Officers are responsible for day-to-day managerial and operational decisions within the Council and will provide support to both the Executive and all Members in their several areas.
- 3.2 Certain statutory officers — the Chief Executive (Head of Paid Service), the Monitoring Officer and the Chief Financial Officer — have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.
- 3.3 The following key principles reflect the way in which Officers relate to Members:
- All Officers are employed by, and accountable to the Council as a whole;

- Support from Officers is needed for all the Council's functions including Council, Overview and Scrutiny, the Executive, Committees, individual Members representing their communities etc.;
- Day-to-day managerial and operational decisions should remain the responsibility of the Chief Executive and other Officers;
- All Officers will be provided with training and development to help them support the various Member roles effectively.

3.4 It is important that all Members, in exercising their functions as a Councillor, take all appropriate legal, financial and professional advice offered by an Officer.

3.5 It must be remembered that Officers within a Directorate are accountable to their Executive Director and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Executive Director.

#### **4. Members' Role**

4.1 Members have five main areas of responsibility:

- Determining the budget and policy framework of the Council and giving it political leadership and strategic direction;
- Monitoring and reviewing the performance of the Council in implementing that policy and delivering services;
- Representing the Council externally;
- Representing the local community and acting as advocates for their constituents;
- Scrutinising the implementation and effect of their decisions.

#### **5. Officers' Role**

5.1 The role of Officers is to:

- Manage the organisation;
- Develop policy proposals which accord with the overall framework set by the Council;
- Implement policy;
- Give professional advice;
- Ensure the Council acts lawfully and with financial propriety;
- Take action under delegated powers.

## **6. Expectations**

### **6.1 Members can expect from Officers:**

- A commitment to the Council as a whole, and not to any political group;
- Respect, dignity and courtesy;
- An effective working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Timely response to enquiries and complaints;
- Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of Officers;
- Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold;
- Awareness of and sensitivity to the political environment;
- Training and development in order to carry out their role effectively;
- Integrity, mutual support and appropriate confidentiality;
- Not to have personal issues raised with them by Officers outside the agreed procedures;
- That Officers will not use their relationship with Members to advance their personal interests or to influence decisions improperly;
- That Officers will at all times comply with the relevant Codes of Conduct;
- Support for the role of Members as the local representatives of the Authority, within any scheme of support for Members which may be approved by the Authority;

### **6.2 Officers can expect from Members:**

- An effective working partnership;
- Respect, dignity and courtesy;
- An understanding of and support for respective roles, workloads and pressures;
- Leadership and direction in terms of the Council's duties and responsibilities;
- Integrity, mutual support and appropriate confidentiality;

- No bullying or to being put under undue pressure. Members should have regard to the seniority of Officers in determining what are reasonable requests, having regard to the power relationship between Members and Officers, and the potential vulnerability of Officers, particularly at junior levels;
- That Members will not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly;
- That Members will at all times comply with the relevant Codes of Conduct;
- Lawful actions;
- That advice and recommendations for the purpose of making informed decisions will be fully considered.

## **7. Personal Relationships**

- 7.1 Mutual respect between Members and Officers is essential to good local government. Close personal familiarity in public between individual Members and Officers can damage this relationship and should be avoided as it can prove embarrassing to other Members and Officers.
- 7.2 Notwithstanding 7.1 above, the Council recognises that there may be close social or personal relationships between Members and Officers that have commenced before, or after, a Member is elected to the Council or before, or after, a person becomes employed by the Council. In a large organisation this may be inevitable. In order to maintain the integrity of the individuals concerned and the Council, such relationships should never be hidden. To do so can lead to suspicion and mistrust.
- 7.3 A Member must declare, in writing, to the Monitoring Officer and his/her Group Leader/Party Whip any relationship with an Officer which might be seen as influencing his/her work as a Member and the Officer must notify the Chief Executive in writing. This includes any family relationships.
- 7.4 The Group Leaders and the Chief Executive will endeavour to ensure that neither the Member nor the Officer are placed in a position where such relationship between the two will be seen to conflict with the provisions of this Code.

## **8. Officer Support: Members and Party Groups**

- 8.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.
- 8.2 Political party groups have statutory recognition and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision-making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political



neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.

8.3 The support provided by Officers can take many forms. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

8.4 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when matters of party business are to be discussed;

- Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such;
- Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.

8.5 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by the National Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) or the local Members' Code of Conduct and for this and other reasons, such as confidentiality of information and the handling of potentially exempt items of business, Officer attendance at such meetings must be agreed by the Chief Executive in advance.

8.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group. However, Members should be aware that this will not prevent Officers from disclosing such information to other Council Officers as far as is necessary to perform their duties.

8.7 It must not be assumed by any party group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.

8.8 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s)/Members.



## **9. Officer Support: The Executive**

- 9.1 It is clearly important that there should be a close working relationship between Executive Members and the Officers who support and/or interact with them. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups. Written advice given by an Officer to the Executive should be available to all Members if requested.
- 9.2 Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, a Chief Officer will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgment of the author of the report. This is to be distinguished from a situation where there is a value judgment to be made. Any issues arising between an Executive Member and a Chief Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 9.3 The Executive and its members have wide-ranging leadership roles. They will:
- Lead the community planning process and the search for Best Value, with input and advice from the Select Committees and any other persons as appropriate;
  - Lead the preparation of the Council's policies and budget;
  - Take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Council; and
  - Be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 9.4 Where functions which are the responsibility of the Executive are delegated to Officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through the Principal Select Committee, for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- 9.5 Under Executive Arrangements, individual members of the Executive are able to formally take decisions. The Executive and its members must satisfy themselves that they are clear what exactly they can and cannot do.
- 9.6 The Council has put in place mechanisms which ensure that (as with the Council, its Committees and Sub-Committees, and the Executive and its Committees) an individual Executive Member seeks advice from relevant Officers before taking a decision within her or his delegated authority. This includes taking legal advice, financial advice and professional Officer advice (particularly about contractual

matters) as well as consulting the Monitoring Officer where there is doubt about vires.

9.7 Officers will continue to work for and serve the Council as a whole. Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the Officers. Officers must ensure that, even when they are predominantly supporting the Executive, their political neutrality is not compromised.

9.8 In organising support for the Executive, there is a potential for tension between Chief Officers and Cabinet Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid the existence of such tensions and conflicts either real or perceived.

## **10. Officer Support: Overview and Scrutiny**

10.1 Overview and Scrutiny is an important constituent part of effective democracy and the Council's Constitutional arrangements. Officers have a leading and significant role in making it effective. However, it is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Members or Officers.

10.2 The Principal Select Committee, Place and Innovation Select Committee, and Environment and Communities Select Committee should not act as a "court of appeal" against decisions or to pursue complaints by individuals (Members, Officers or members of the public) as other procedures exist for this. These are internal, (for example, the Corporate Complaints Procedure), and external / statutory (for example, Local Government Ombudsman or appeal to the Courts). However:

- Select Committees may investigate the manner in which decisions are made but should not pass judgments on the merits of a decision in individual cases; and/or
- Can comment on the merits of a particular policy affecting individuals.

10.3 It would be unfair to invite someone to appear before a Select Committee without telling him/her in general terms what he/she will be asked, or not giving him/her adequate time to prepare. Questioning should not stray outside the subject area that the Committee had previously indicated.

10.4 The Overview and Scrutiny Procedure Rules, in Part 4 of the Council's Constitution, sets out guidelines for questioning Members, Officers and members of the public.

## **11. Support Services to Members and Party Groups**

11.1 The only basis on which the Council can lawfully provide support services (for example, stationery, typing, printing, photocopying, transport etc.) to Members relates to assistance for the discharging of their role as Members of the Council.

Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes. Requests for assistance shall be made to the Assistant Director - Democracy.

## **12. Members' Access to Information and to Council Documents**

- 12.1 Members can ask for information pursuant to their legal rights to information. This right extends to such information, explanation, and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the service Assistant Director or Executive Director. In cases of doubt, Members should approach the Monitoring Officer for assistance.
- 12.2 In terms of the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 12.3 Members will find set out in Appendix C guidance on their rights to obtain information. The guidance note set out in Appendix C maps the hierarchy of rights of Members to information, but should be read in combination with the contents of the Constitution, most particularly the Access to Information Procedure Rules which cover the statutory obligations of the Authority in terms of information and its relationship with the decision-making process.
- 12.4 Business of the Executive is covered by Regulation 16 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and
- Where there is a meeting (for example, Cabinet) and there is a document which is in the possession / under the control of the Executive relating to the business to be conducted at that meeting, that document shall be available for inspection at least five clear days before that meeting;
  - Where the decision is made using delegated powers by an Executive Member or an Officer, the document shall be available after the decision is made;
  - This is not the case for exempt and confidential material in some circumstances.
- 12.5 Finally, any Council information provided to a Member is subject to the protections afforded by the Data Protection Act 1998 and must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasized in paragraph 2.5 of the Members' Code of Conduct:

2.5 **“Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

- (a) You have the consent of a person authorized to give it;
- (b) You are required by law to do so;
- (c) The disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
- (d) The disclosure is:
  - (i) Reasonable and in the public interest; and
  - (ii) Made in good faith and in compliance with the reasonable requirements of the Authority; and
  - (iii) You have consulted the Monitoring Officer prior to its release.”

Failure to observe this obligation or disclosure of confidential information may amount to a breach of the Code of Conduct. Failure to safeguard and protect the confidentiality of personal information within the meaning of the Data Protection Act 1998 may result in prosecution of the Council and/or any individual Officer or Member by the Information Commissioner and the imposition of significant monetary penalties.

12.6 Any Member request for personal information or personal data about an individual employee (rather than a general group of employees as a whole) should only be supplied where there is a demonstrable need for that Member to have the information at that level of detail in order to carry out their duties as a Member of the Council. Any such requests should be referred to and considered by the HR manager who may, if necessary, refer the request to the Monitoring Officer.

12.7 In cases where such information is to be released, the HR Manager will specifically remind the Member that the information is confidential, subject to the protection of the Data Protection Act 1998 and confirm the necessary measures for handling that data in order to keep it confidential and ensure that it is not further disclosed to any other person or body either within or external to the Council.

### **13. Correspondence and Advice**

13.1 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. A system of “blind copies” should not be employed.

13.2 Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate

in certain limited circumstances (for example, representations to a Government Minister) for a letter to appear in the name of a Cabinet Member or the Leader, or the Group Leaders by agreement, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member, Executive or otherwise.

13.3 Correspondence received from the public with a request that it is either copied to Members and/or forwarded to Members will, subject to any overriding legal considerations, be forwarded/copied.

13.4 Officers responding to Members queries should do so in a timely manner.

#### **14. Publicity and Press Releases**

14.1 Local authorities are accountable to their electorate. Accountability requires local understanding which is often achieved by the Authority issuing press releases or other forms of publicity.

14.2 Publicity and press releases issued by the Council must be published in accordance with the provisions of the Local Government Act 1986 (as amended) and the Code of Recommended Practice on Local Authority Publicity (which is attached as Appendix A). The legislation prohibits the Council from publishing material which appears to be designed to affect public support for a political party.

14.3 Further guidance on the legal constraints placed on local authority publicity during an election period is set out in Appendix B to this Protocol.

#### **15. Involvement of Ward Members**

15.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member, should be discussed with relevant Ward Members, Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

#### **16. Officer / Member Protocol**

16.1 This version was approved by the Council on 16 May 2019 and will form part of the Constitution.

16.2 Questions of interpretation of this Protocol will be determined by the Monitoring Officer.

## APPENDIX A

### THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

#### Introduction

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “*any communication in whatever form, addressed to the public at large or a section of the public*”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newssheets and maintenance of websites — including the hosting of material which is created by third parties.
3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

#### Principles

4. Publicity by local authorities should:
  - Be lawful;
  - Be cost-effective;
  - Be objective;
  - Be even-handed;
  - Be appropriate;
  - Have regard to equality and diversity;
  - Be issued with care during periods of heightened sensitivity.

#### Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.



6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.1. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.
9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (SI. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

### **Cost-effectiveness**

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case, authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

### **Objectivity**

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should



avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.

16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.
17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

### **Even-handedness**

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual Members do not reflect the views of the local authority itself, such publicity should make this fact clear.
21. It is acceptable for local authorities to host publicity prepared by third parties — for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.
21. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and

referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.

22. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
23. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.
24. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

### **Appropriate Use of Publicity**

25. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
26. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
27. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
28. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
29. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newsheets or similar publications published by the local authority, should do this on the front page of the publication.

### **Equality and Diversity**

30. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local

- people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
31. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations. Care during periods of heightened sensitivity.
  32. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums — see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
  33. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.
  34. In general, local authorities should not issue any publicity which seeks to influence voters. However, this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

## APPENDIX B

### GUIDANCE ON PUBLICITY DURING AN ELECTION PERIOD

#### 1. Introduction

This note gives guidance on publicity during an election period. It does not seek to explain in full the legal basis for publicity, or the legal restrictions, or The Code of Recommended Practice on Local Authority Publicity (“the Code”). It is assumed that officers responsible for publicity are aware of the general provisions. This advice deals only with the special circumstances in the period immediately before any election.

#### 2. Election Period

The election period for any election is the time between when the Notice of Election is published and polling day itself. Caution should therefore be exercised throughout this period and the guidance below strictly adhered to.

#### 3. What is Publicity?

Publicity is defined as “any communication, in whatever form, addressed to the public at large or to a section of the public.” This includes newspapers, press releases, newsletters, booklets, leaflets, posters, banners, badges, advertising, etc. Campaigns, conferences, seminars and exhibitions may also be regarded as publicity.

#### 4. The Public

The public can be defined as the people at large or a section of them. Communications addressed to a defined group of people are not restricted. For example, a newsletter to Council employees or information provided for members of a voluntary organisation are not communications addressed to the public and are not subject to the restrictions.

#### 5. Political Publicity Restrictions

Local authorities may not issue publicity which appears to be designed to affect public support for a political party.

Local authorities must have regard to the Code which provides (inter alia):

*“The period between the notice of election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members of groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a*

*genuine need for a member level response to an important event outside the authority's control. Proactive events arranged in this period should not involve members likely to be standing for election."*

## 6. Checklist

- **Does the publicity relate to a matter of political controversy?**

Such matters should be avoided during the election period if possible. If publicity is unavoidable — such as to explain a new Council policy or scheme — it should be factual, objective and balanced. Style is important. If comment is necessary, it should be accurate and not prejudiced. It should not attack any political party or person associated with such a party or be identifiable as the view of a particular party. Issues should not be over simplified.

- **Does it refer to a political party?**

Do not refer to political parties. Parliament, the Government, the Opposition or the Council may be referred to as the source of decisions, policies or action.

- **Is there reference to a politician?**

It would be preferable for any press release comment on behalf of the authority to come from an officer rather than a Member. Particular care should be taken to avoid mention of any Member or Member of Parliament who is seeking re-election. If it is absolutely necessary, such as where there is an official event or opening, it would be sensible to try to ensure that the corresponding opposition Members are given equal publicity. Care should be taken even when referring to Members not standing in the election as they are likely to be associated with a particular political party.

- **What is the likely effect on the public?**

In the event of a legal challenge, the test will not be the intention of the authority in issuing the publicity but whether the material appears to be designed to affect support for a political party. Consider the overall effect or impact of the publicity before releasing it.

## 7. Assistance to Other Organisations

Material published by other bodies, such as voluntary organisations, with financial or other assistance granted by the Council may also breach the prohibitions.

## 8. Further Advice

If in doubt, please consult the Code (DoE Circular 20/88 as amended) and if further advice is required contact either the Monitoring Officer.

## APPENDIX C

### MEMBERS' ACCESS TO INFORMATION

#### Introduction

1. The rights of access to information by Members is a complex mix of legislation available to Members and the public alike, legislation specific to local government and “common law rights” given to Members by the Courts. This Guidance endeavours to provide some guidelines for Members through this “maze”. Members may also seek advice from the Principal Solicitor or Monitoring Officer.
2. For general rights of access available to the public, please see the Access to Information Procedure Rules as set out in the Council’s Constitution.

#### What is the Hierarchy of Rights?

3. The law relevant to access to information by Members includes the following:
  - 3.1 **The Freedom of Information Act 2000.** This makes non-personal information freely available to all, with only limited exceptions.
  - 3.2 **The General Data Protection Regulation 2018 and the Data Protection Act 2018.** These relate to personal information, and generally makes this non-disclosable except in certain circumstances.
  - 3.3 **Local Government Legislation**
    - Access to Information provisions of the **Local Government Act 1972.** This gives the public access to Committee Minutes and Agenda, and to background material relevant to those documents.
    - **Local Government (Executive Arrangements) (Meetings and Access to Information) Regulations 2012)** ensures that Members are entitled to material relevant to public/private meetings of the Leader and Cabinet (and decision making by individual Executive Lead Members). However, these rights do not apply to draft documents, to the advice of a political advisor or to most exempt / confidential information (unless such information is needed for the work of a Select Committee).
  - 3.4 **Common Law Rights** (derived from Court judgements) give Members the right to inspect Council documents insofar as this is reasonably necessary to enable a Member to perform his/her duties as a Member — this is known as the “need to know” basis.
  - 3.5 Members do not have any right to “a roving commission” through Council documents — mere curiosity is not sufficient.

## 4. Navigating the Hierarchy of Rights Freedom of Information Act 2000

- 4.1 In broad terms, if the information being sought by a Member is non-personal, then the Freedom of Information Act 2000 allows access to most Council documentation. The first port of call for information under the Freedom of Information Act is the Council's Publication Scheme. This is located on the Council's website and sets out most of the Council's published material. This information can be accessed and used without any further reference to the Council. The remainder of this note assumes that the information being sought by a Member is not available under the Publication Scheme.
- 4.2 In certain circumstances, access to documentation via the Freedom of Information Act may be exempt, although most of the exemptions are subject to a "public interest test". So, for example, releasing commercially sensitive information to a member of the public is not likely to be in the public interest. Whereas (subject to the usual rules of confidentiality), it is likely to be in the public interest to release such information to a Member.
- 4.3 Examples of exemptions under the Freedom of Information Act are:
- Work in progress (draft reports, for example) need not be disclosed.
  - Information subject to a data-sharing Protocol should not be released until all organisations have each agreed to disclosure. This is to ensure that crime and disorder and fraud investigations, for example, are not prejudiced.
  - Commercially sensitive information.
  - Where, in the opinion of a designated officer (the Monitoring Officer) disclosure of information would or would be likely to inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs. This exemption is also subject to the public interest test.
- 4.4 If the rights outlined above are not sufficient to provide a Member with the information he/she needs, then it is necessary to look to other provisions set out below.

## General Data Protection Regulation 2018 and the Data Protection Act 2018

- 5.1 If the information sought by a Member relates to an identified living individual, then the **General Data Protection Regulation 2018 and the Data Protection Act 2018** applies.
- 5.2 There are 2 classes of personal data — "normal" personal data and "special categories" of personal data. Special categories of personal data include:
- Racial or Ethnic Origin
  - Religious or philosophical beliefs



- Trade Union membership
  - Physical or Mental health
  - Genetic or biometric data for the purpose of uniquely identifying a natural person
  - Sexual life or orientation
  - Political opinions.
- 5.3. Where “normal” personal data is involved, the basis for processing under the GDPR should be identified. Most often this basis is Public Task. However, there are other basis’ available as necessary.
- 5.4 Members have the same rights as Council employees to access personal data and the Member must have a need to know and not just be curious.
- 5.5 The Council has a duty to ensure that personal data disclosed to Members using the above procedures is used strictly for the purposes for which it is disclosed and that Members will keep the information secure and confidential (and then disposed of in a similarly careful manner).
- 5.6 Members must observe the Code of Conduct and all the provisions of the Constitution. Officers will automatically assume that Members will treat personal information in accordance with the previous paragraph.
- 5.7 Where “special categories” of personal data is involved (see paragraph 5.2 above) then more rigorous procedures are necessary and:
- Explicit consent of the person concerned must be obtained; or
  - One of the other basis’ for processing personal data under the GDPR must be satisfied; or
  - If this is not practicable, Members must complete a form under the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002.
- 5.8 If the rights outlined above are not sufficient to provide a Member with the information s/he needs, then it is necessary to look other provisions below:

**Access to Information Provisions of the Local Government Act 1972/Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012**

- 6.1 Where a Member cannot obtain the disclosure of information under the Freedom of Information Act then the information may still become available to Members at a later date via Committee agenda, and the right to see background material associated with such an agenda. Once a matter has reached the stage where it is before a Council/Committee/Cabinet, then members of that

Council/Committee/Cabinet would have a “need to know” all relevant information; and other Members would be able to use the usual Access to Information provisions. However, the above rights do not apply to draft documents, to the advice of a political advisor or to most categories of exempt/confidential information (unless the Select Committees require such exempt/confidential information as part of actions/decisions it is scrutinising).

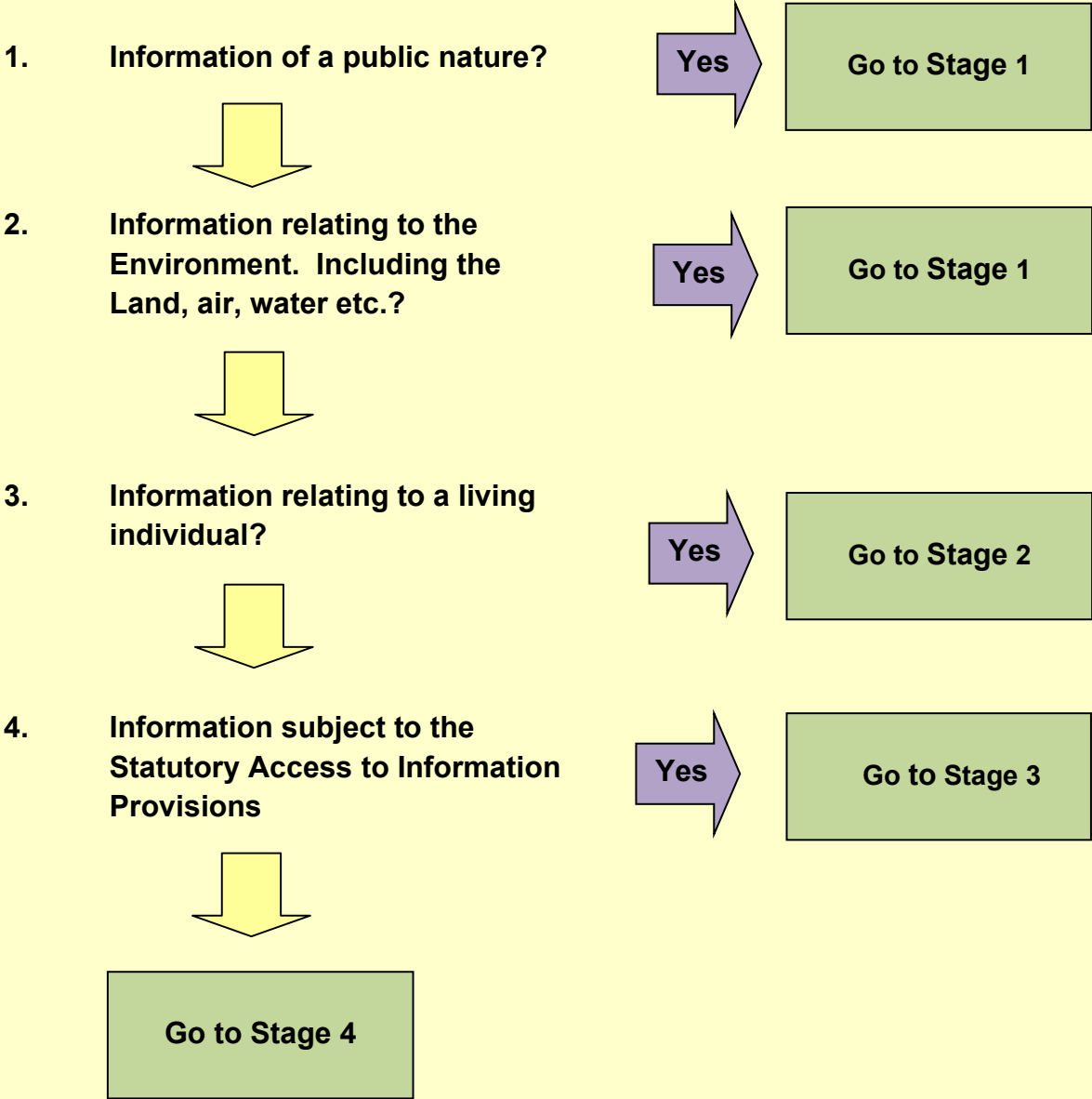
## General

- 7.1 Material from the Legal Section (where the Legal Section is providing legal advice to one of its in-house clients at the Council) may be non-disclosable due to legal professional privilege.
- 7.2 Information supplied under the **General Data Protection Regulation 2018 and the Data Protection Act 2018** must not be used or disclosed for political purposes.
- 7.3 Requests for information under the control of Officers should normally be made to the relevant Assistant Director/Executive Director.
- 7.4 Requests for information under the control of the Leader and Cabinet should normally be made to the Leader and/or the relevant Executive Lead Member.
- 7.5. Members must not put undue pressure on Officers to release information to which the Member is not entitled to have access.
- 7.6 Should an Assistant Director or Executive Director need advice as to whether information can be released to a Member s/he should contact the Principal Solicitor or Monitoring Officer.
- 7.7 The additional access to information rights given to Members are to allow them to do their jobs as Members. Confidential or exempt information should only be used in appropriate circumstances, in accordance with the proper performance of their duties as Members. Information should only be passed between Members if both Members can demonstrate a “need to know”.
- 7.8 Any complaints by a Member about the non-disclosure of information should be made in writing to the Monitoring Officer whose decision shall be final as far as the Council is concerned. However, if the Member remains dissatisfied, the Member may be able to refer the matter to the Information Commissioner.

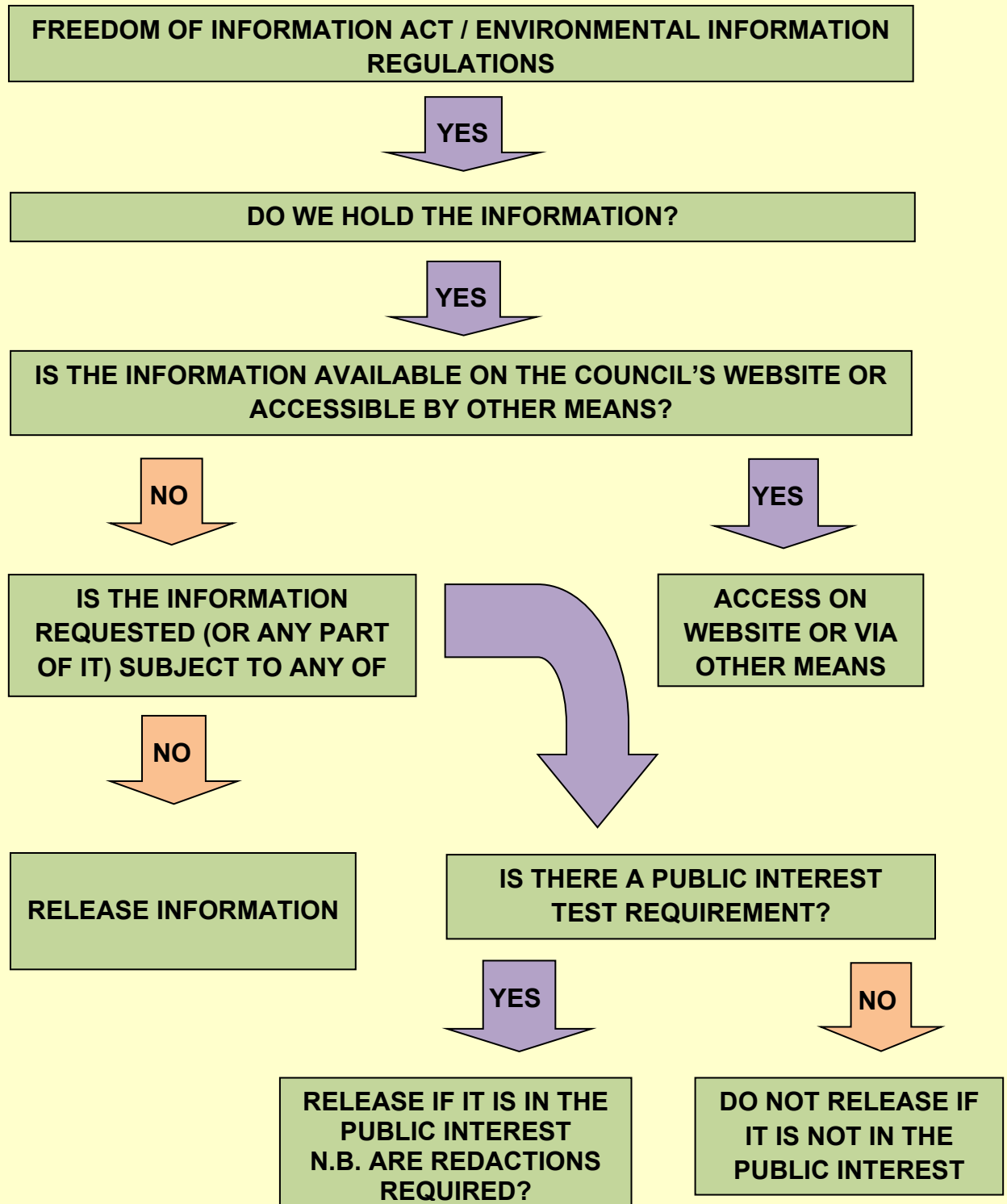
**APPENDIX D**

**Members Access to Information**

**What information are you requesting?**



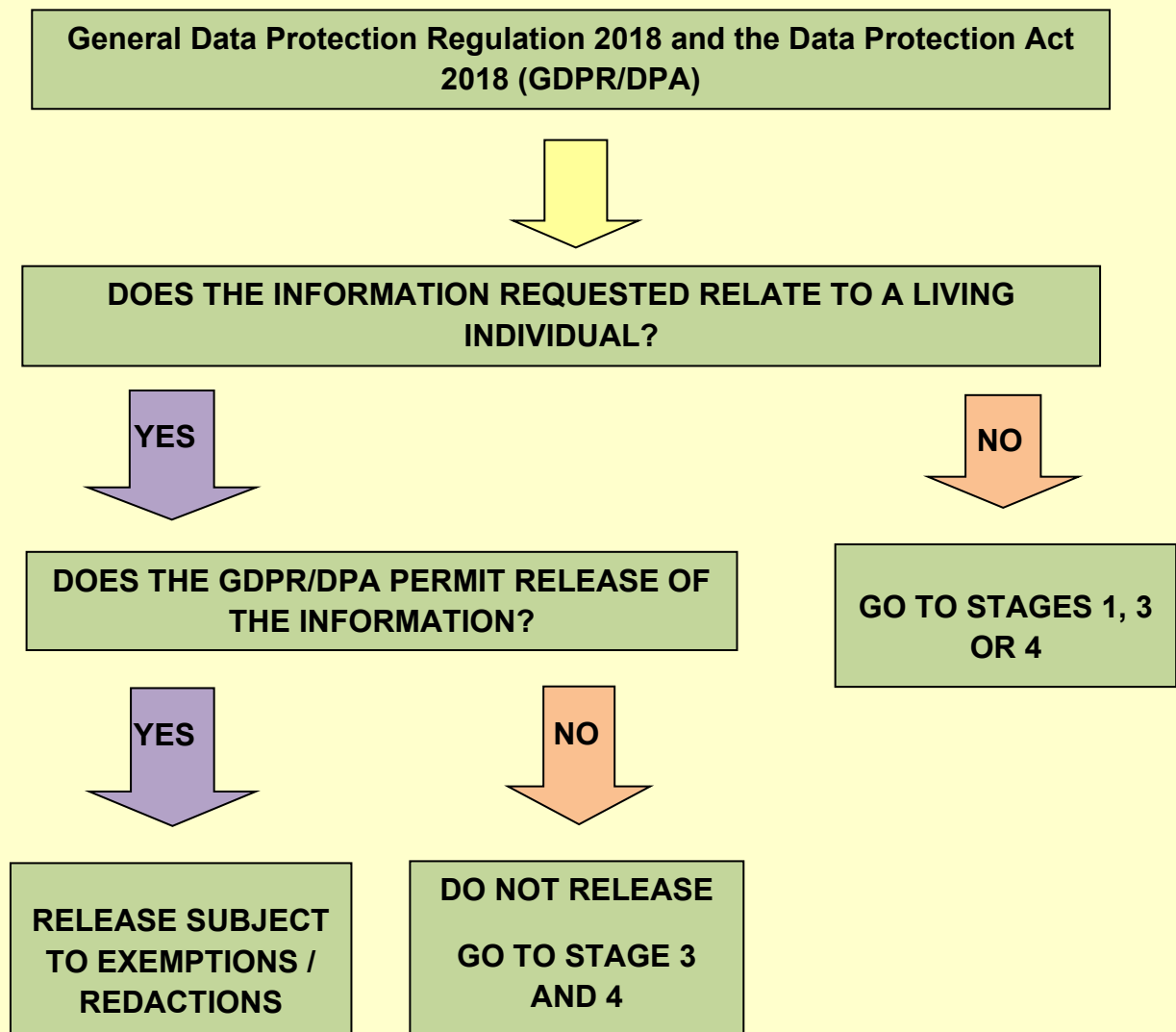
## Stage 1



### Key Exemptions (there are further exemptions)

- Defence (s26)
- The economy (s29)
- Law enforcement (s31)
- Audit Functions (s33)
- Commercial Interests (s43)
- Legal professional privilege (s42)

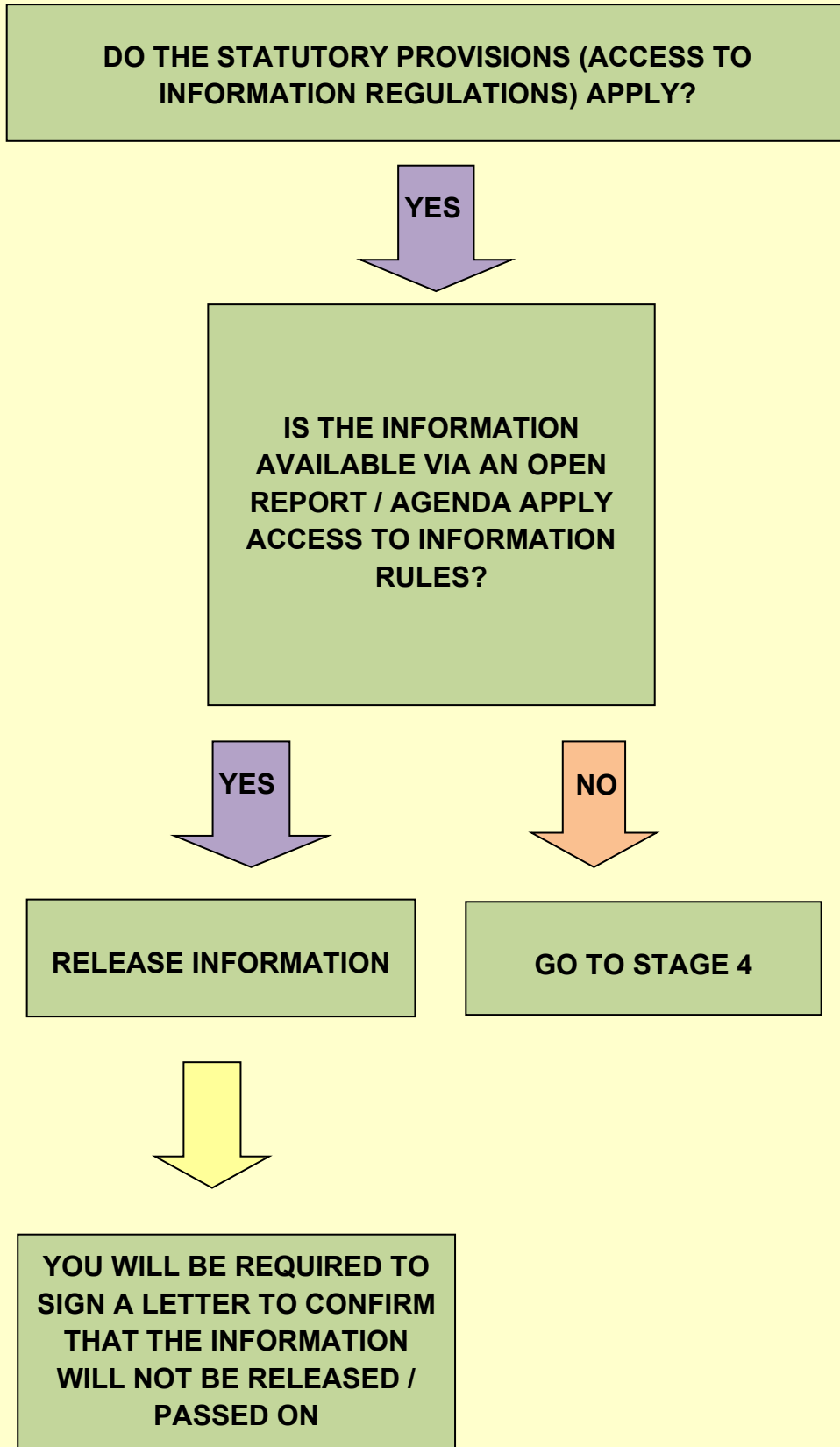
## Stage 2



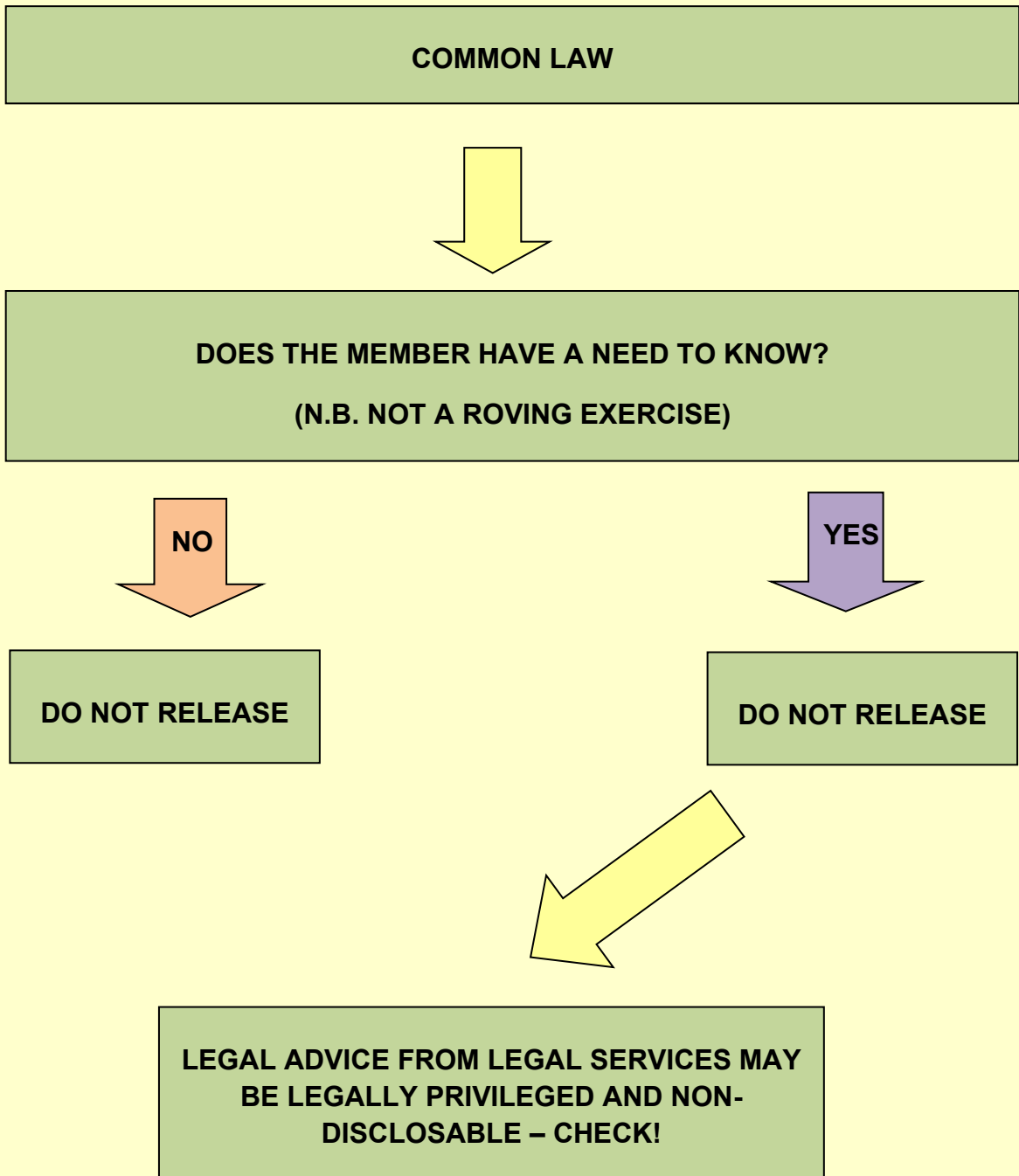
Key **GDPR/DPA** permitted reasons for disclosure include:

- Prevention of Crime and disorder
- Taxation
- Regulatory activity
- Disclosures required by law
- Legal advice and prospective proceedings

### STAGE 3



## STAGE 4



**N.B.** Members must only use information for the purpose for which it was obtained. It is provided in confidence and subject to the **General Data Protection Regulation 2018** and the **Data Protection Act 2018** provisions and therefore should not be disclosed to others.