

Notice of Meeting

Audit Committee

Date: Tuesday 12 December 2023

Time: 5.30 pm

Venue: The Annexe, Crosfield Hall, Broadwater Road, Romsey, Hampshire,
SO51 8GL

For further information or enquiries please contact:

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Legal and Democratic Service

Test Valley Borough Council,
Beech Hurst, Weyhill Road,
Andover, Hampshire,
SP10 3AJ

www.testvalley.gov.uk

The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

PUBLIC PARTICIPATION SCHEME

If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.

Membership of Audit Committee

MEMBER	WARD
Councillor C Borg-Neal (Chairman)	Andover Harroway
Councillor S Hasselmann (Vice-Chairman)	Anna
Councillor R Hughes	Andover Harroway
Councillor I Jeffrey	Mid Test
Councillor R Kohli	Romsey Cupernham
Councillor M Leech	Andover Millway

Audit Committee

Tuesday 12 December 2023

AGENDA

The order of these items may change as a result of members of the public wishing to speak

- 1 Apologies**
- 2 Public Participation**
- 3 Declarations of Interest**
- 4 Urgent Items**
- 5 Minutes of the previous meeting 5 - 7**

To approve, as a correct record, the minutes of the meeting held on 25 September 2023.
- 6 External Audit Update 8 - 16**

To present KPMG's draft Housing Benefit Subsidy Assurance report.
(Carl Whatley, Head of Finance and Revenues)
- 7 Internal Audit Progress Report 17 - 37**

To outline the work undertaken and progress against the Internal Audit Plan for 2023/24.
(Jan Balfour, Internal Audit Manager)
- 8 Annual Corporate Complaints Report - 2022-23 38 - 47**

To review complaints across all services for the period 1 April 2022 – 31 March 2023.
- 9 Report on the use of the Regulation of Investigatory Powers Act 2000 48 - 71**

To give an update as to the Council's use of its powers under the Regulation of Investigatory Powers Act 2000.
(Karen Dunn, Head of Legal and Democratic)

10 Audit Committee Away Day

To agree a time, date and venue for the Audit Committee
Away Day.

(Councillor Borg-Neal, Chairman)

ITEM 5 Minutes of the **Audit Committee**
of the **Test Valley Borough Council**
held in Conference Room 1, Beech Hurst, Weyhill Road, Andover
on Monday, 25 September 2023 at 5.30 pm

Attendance:

Councillor C Borg-Neal
(Chairman)

Councillor S Hasselmann
(Vice-Chairman)

Councillor R Hughes

Councillor I Jeffrey

Also in attendance

Councillor Z Brooks

Councillor M Flood

198

Apologies

There were no apologies for absence received.

199

Public Participation

There was no public participation.

200

Declarations of Interest

There were no declarations of interest.

201

Urgent Items

There were no urgent items to consider.

202

Minutes of the previous meeting

Councillor Hasselmann proposed and Councillor Jeffrey seconded the motion that the minutes of the previous meeting were an accurate record. Upon being put to the vote the motion was carried.

Resolved:

That the minute of the meeting held on 19 June 2023 be confirmed and signed as a correct record.

203

External Audit Update

The Statement of Accounts is an important tool for the Council to show how it has used public money and how it can demonstrate its financial management and financial health.

Kelly Gates of Ernst and Young introduced the report and advised that the 2021/22 financial statements had been signed and completed and an unqualified audit opinion had been issued. This had been presented at the 27 March 2023 Audit Committee.

Within the Value for Money section there were no risks of significant weakness identified.

Members were made aware of a national backlog in the completion of future public sector audits. This, together with a lack of clarity on the deadlines and reporting requirements, means that there is not yet a detailed plan for undertaking and completing the audit of the 2022/23 accounts.

The following recommendation was proposed by Councillor Hasselmann and seconded by Councillor Hughes and unanimously agreed by the Committee.

Resolved:

That Ernst & Young's Annual Audit Results Report, as shown in the Annex to the report, be noted.

204

Internal Audit Progress Report to 31 August 2023

The report of the Internal Audit Manager outlined the work undertaken and progress against the Internal Audit Plan for 2023/24 by Internal Audit to 31 August 2023.

As of 31 August 2023, progress on the planned 2023/24 Audit Plan is on target. However, due to staff resourcing impacts the procurement of additional external resource may be sought to support the delivery of the plan as needed.

The Internal Audit function has made good progress and of the 6 audits reported as complete, 5 were classified as substantial assurance and 1 as limited assurance. For the latter, actions agreed had been implemented.

The following recommendation was proposed by Councillor Hasselmann and seconded by Councillor Jeffrey and unanimously agreed by the Committee.

Resolved:

That the Internal Audit progress report be noted.

205

Corporate Risk Register - Update

The report of the Internal Audit Manager provided the Audit Committee with an update and summary of the key risks contained in the Council's Corporate Risk Register.

The way that risks are recorded on the Corporate Risk Register was fundamentally changed earlier this year. This involved taking a fresh look at the categories and types of risks facing a local authority at the current time and reconsidered the key strategic risks alongside and in the context of the Corporate Plan process. This rationalised the number of risks whilst bringing greater focus on the key areas. Work is continuing to identify and plan for any additional mitigations required.

Service Risk Registers are in the process of being reviewed following the revision of the Corporate Risk Register. This is to consider the Service risks in the context of the key corporate risks identified, to rationalise and better align them. The next step is to link these risks to the Corporate Plan.

The following recommendation was proposed by Councillor Hasselmann and seconded by Councillor Hughes and unanimously agreed by the Committee.

Resolved:

That the update on the Council's approach to the management of its key risks as shown in the Corporate Risk Register is noted.

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Audit Committee Work Programme

The report of the Head of Finance and Revenues set out an update to the work programme for the Audit Committee for the coming year.

The following recommendation was proposed by Councillor Hasselmann and seconded by Councillor Jeffrey and unanimously agreed by the Committee.

Resolved:

That the work programme for the Audit Committee, as set out in the Annex to the report, be approved.

(The meeting terminated at 6.24 pm)

ITEM 6

External Audit Update

Report of the Head of Finance and Revenues

Recommendation:

That the draft report of KPMG, regarding the Housing Benefit Subsidy Assurance process, be noted.

SUMMARY:

Following the completion of the 2022/23 Housing Benefit Subsidy Claim audit, KPMG have issued their draft audit report, which is presented for the Audit Committee's consideration.

1 Introduction

- 1.1 The Council is required to administer Housing Benefit (HB) claims for eligible residents.
- 1.2 Central government subsidise the HB expenditure, based on the circumstances of each claim. A subsidy claim form is submitted to the Department of Work & Pensions in respect of each financial year and this is subject to external audit for verification purposes.
- 1.3 The Council's auditor for the verification of the HB subsidy claim is KPMG. They have recently completed the audit of the 2022/23 HB subsidy claim. Their draft report is attached for the committee to note.

2 KPMG's Report

- 2.1 The report, attached as the Annex, sets out the various responsibilities of both parties; the nature of the testing that was carried out; and the findings of KPMG's testing.
- 2.2 The conclusions of KPMG's report are excellent, highlighting a very small number of errors, both in terms of percentage of the caseload and individual values.
- 2.3 To provide some context, the subsidy claim form was amended following the completion of the audit by £2. This compares to a total claim value in excess of £18.5M.

3 Risk Management

- 3.1 This report is for information and therefore the Council's risk management process does not need to be applied.

4 Conclusion and reasons for recommendation

- 4.1 The audit of the 2022/23 housing benefit subsidy claim has been concluded since the last meeting of the Audit Committee.
- 4.2 The auditor’s report is attached for the committee to consider.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1	File Ref:	N/A
(Portfolio: Finance and Resources) Councillor M Flood			
Officer:	Carl Whatley	Ext:	8540
Report to:	Audit Committee	Date:	12 December 2023



Housing Benefit Subsidy Team
House Delivery Division
DWP Business Finance & Housing Delivery Directorate
Room B120D
Warbreck House
Blackpool
Lancashire
FY2 0UZ

FAO Carl Whatley
Chief Finance Officer
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
SP10 3AJ

20 November 2023

Dear Carl

Agreed-upon Procedures Report to Test Valley Borough Council and the Department for Work and Pensions of factual findings in relation to the Housing Benefit Subsidy claim form MPF720A for the year ended 31 March 2023

Purpose of this Agreed-upon Procedures Report and Restriction on Use and Distribution

This report is produced in accordance with the terms of our engagement letter with Test Valley Borough Council dated 21 June 2022 and the standardised engagement terms in Appendix 2 of Housing Benefit (Subsidy) Assurance Process (“**HBAP**”) Module 1 FYE March 2023 issued by the Department for Work and Pensions (“**DWP**”) for the purpose of reporting to the Section 151 Officer of Test Valley Borough Council (the “**Local Authority**”) and the DWP.

Our report is prepared solely for the confidential use of the Local Authority and the DWP and solely for the purpose of facilitating the claim for Housing Benefit Subsidy on form MPF720A dated 26 April 2023.

This report should not be copied, referred to or disclosed, in whole (save as otherwise permitted by the standardised engagement terms) or in part, without our prior written consent. Without assuming or accepting any responsibility or liability in respect of this report to any party other than the Local Authority and the DWP, we acknowledge that the Local Authority and/or the DWP may be required to disclose this report to parties demonstrating a statutory right to see it.

This report is designed to meet the agreed requirements of the Local Authority and the DWP as described in the DWP HBAP reporting framework instruction FYE March 2023.

This report should not therefore be regarded as suitable to be used or relied on by any other party for any purpose or in any context. Any party other than the Local Authority and the

DWP which obtains access to this report or a copy and chooses to rely on this report (or any part of it) will do so entirely at its own risk. To the fullest extent permitted by law, we accept no responsibility or liability in respect of our work or this report to any other party and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by the reliance of anyone other than the addressees on our work or this report.

Local Authority's Responsibilities

As Section 151 Officer of the Local Authority, you have responsibilities under the Income-related Benefits (Subsidy to Authorities) Order 1998. You are also responsible for ensuring that the Local Authority maintains accounting records which disclose with reasonable accuracy, at any time, the financial position of the Local Authority. It is also the Section 151 Officer's responsibility to extract relevant financial information from the Local Authority's accounting records, obtain relevant information held by any officer of the Local Authority and complete the attached form MPF720A in accordance with the relevant framework set out by the DWP.

The Section 151 Officer of the Local Authority and the DWP have acknowledged that the agreed-upon procedures are appropriate for the purpose of the engagement.

The Section 151 Officer is responsible for the completion of the MPF720A and is the signatory on the Local Authority's certificate on claim form MPF720A.

Our Responsibilities

For the purpose of the HBAP engagement we have been provided with a signed copy of form MPF720A dated 26 April 2023 by the Section 151 Officer.

We conducted our engagement in accordance with HBAP Modules 1 and 6 2022/23 issued by the DWP, which highlight the terms under which DWP has agreed to engage with reporting accountants.

Our engagement was carried out in accordance with the DWP reporting framework instruction and in accordance with the International Standard on Related Services (ISRS) 4400 (Revised), *Agreed-upon Procedures Engagements* issued by the International Auditing and Assurance Standards Board. The purpose of the engagement is to perform the specific test requirements determined by the DWP on the defined sample basis as set out in HBAP Modules of the HBAP reporting framework instruction on the Local Authority's form MPF720A dated 26 April 2023, and to report the factual findings, which are the factual results of those procedures to the Local Authority and the DWP. We make no representation regarding the appropriateness of the agreed-upon procedures.

The results of the agreed-upon procedures are reported in Appendices A, B, C and D.

The procedures specified in DWP's HBAP reporting framework instruction do not constitute an examination made in accordance with generally accepted auditing or review standards, or an assurance engagement performed in accordance with any standards applicable to assurance, the objective of which would be the expression of assurance on the contents of the Local Authority's claim for Housing Benefit Subsidy on form MPF720A. Accordingly, we do not express such assurance. Had we performed additional procedures, or had we performed an audit or review of the Local Authority's claim for Housing Benefit Subsidy on form MPF720A in accordance with generally accepted auditing or review standards or an assurance engagement performed in accordance with any standards applicable to assurance, other matters might have come to our attention that would have been reported to

you. This report relates only to the Local Authority's form MPF720A and does not extend to any financial statements of the Local Authority, taken as a whole.

This engagement will not be treated as having any effect on our separate duties and responsibilities as the external auditor of the Local Authority's financial statements. Our audit work on the financial statements of the Local Authority is carried out in accordance with our statutory obligations and is subject to separate terms and conditions. Our audit report on the Local Authority's financial statements is made solely to the Local Authority's members, as a body, in accordance with Part 5 of the Local Audit and Accountability Act 2014. Our audit work was undertaken so that we might state to the Local Authority's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Local Authority and the Local Authority's members, as a body, for our audit work, for our reports, or for the opinions we have formed in respect of that audit.

Professional Ethics and Quality Control

We have complied with the ethical requirements in the ICAEW Code of Ethics issued by the Institute of Chartered Accountants in England and Wales. For the purpose of this engagement, there are no independence requirements with which we are obliged to comply.

The firm applies International Standard on Quality Management 1 *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements* which requires the firm to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Summary of HBAP report

Summary of Initial Testing

In accordance with the HBAP modules, an initial sample of 20 cases was completed for all general expenditure cells. The outcomes of the testing undertaken are summarised below:

Cell 011: Non HRA: Our initial testing identified:

- 1 case where the authority has incorrectly assessed claimant earnings resulting in an overpayment of housing benefit. Further details can be found in Appendix C.

Cell 094: Rent Allowance: Our initial testing identified:

- 1 case where the authority has incorrectly assessed claimant eligible rent in cell 102 resulting in an underpayment of housing benefit. Further details can be found in Appendix B.

Cell 214/225: Modified Schemes: No errors identified.

Completion of Modules

The Specific Test Requirements set out in Module 1 Appendix 3 have been completed, including testing required by Modules 2 and 5 as detailed below.

Completion of Module 2

We have completed testing of the Module 2 and no issues were identified.

Completion of Module 5

We have completed the questionnaire for the appropriate software supplier and no issues were identified.

Summary of testing arising from Cumulative Assurance Knowledge and Experience

In line with the requirements of HBAP Modules we have undertaken CAKE testing based upon the preceding HBAP report. Where appropriate the Local Authority has completed testing of the sub-populations for:

- Non-HRA - Cell 011: Assessment of Service Charge.
- Cell 214/225: Modified Schemes – Incorrect war pension assessment.

We have reperformed a sample of the Authorities testing and confirm the tests we have carried out concur with the Authorities results. These results are outlined in the appropriate appendix.

For the form MPF720A dated 26 April 2023 for the year ended 31 March 2023 we have completed the specific test requirements detailed in the DWP reporting framework instruction HBAP and have identified the results set out in Appendices A, B, C and D.

Firm of accountants: KPMG LLP
Office: 15 Canada Square, London. E14 5GL.
Contact: Hannah Andrews, Director, 07880 053 138
Hannah.Andrews@kpmg.co.uk

Yours faithfully

KPMG LLP
Chartered Accountants

Name for enquiries: Hannah Andrews

Attachments:

Appendix A Exceptions/errors found
Appendix B Observations
Appendix C Amendments
Appendix D Other Matters

Appendix A Exceptions/errors found

No exceptions/errors were found.

Appendix B Observations**HBAP Module 1 – test 9**

We have been unable to obtain prime documentation showing that the Authority's local modified discretionary scheme has been agreed by full Council, owing to the significant time lapse since this scheme was originally approved. In accordance with the guidance on page 569 of the HBAP 2022- 23 Helpfile, the s151 officer at the Authority has however provided a signed representation from the s151 officer saying that policy is available to council members and previously been approved.

Cell 102: Rent Allowance – Assessment of Eligible Rent – Cell 102**Cell Total: £15,043,032****Cell Population: 2,840****Headline Cell: £15,043,032**

Our initial testing of a random sample of 20 cases selected from cell 094 identified:

- 1 case (total error value £17.68) where the authority has incorrectly assessed claimant eligible rent in cell 102 resulting in an underpayment of benefit.

Given the nature of the population, an additional sample of 40 cases were selected from cases in Cell 102 to confirm whether the assessment made is correct. This additional testing identified no further errors.

Underpaid Benefit

As there is no eligibility to subsidy for benefit which has not been paid, the claim identified as underpaid or as not affecting subsidy has not been classified as an error for subsidy purposes.

This is the first year that this error has been identified in a HBAP Accountants Report

Appendix C Amendments**Cell 011: Non HRA Total Expenditure – Assessment of Service Charge****Cell Total: £322,788****Cell Population: 89****Headline Cell: £322,788**

In our 2021/22 HBAP Accountants report we identified that the Local Authority had incorrectly assessed claimant service charge. Given the nature of the population and the errors reported in the 2021/22 HBAP Accountants report, the Authority identified all of the remaining cases in Cell 011 (71 additional cases) and tested all of them to confirm whether the assessment made is correct. The additional testing identified:

- 1 case (total error value £0.45) where the incorrect daily rent rate was used resulting in an understatement of housing benefit.
- 1 case (total error value £1.10) where the authority used the incorrect water and laundry rates in the benefits assessment resulting in an overpayment of housing benefit. The impact of the error is to overstate cell 012 by £0.96 and overstate cell 027 by £0.14. There is a corresponding understatement of cell 026 by £1.10.

Our initial random sample of 20 cases selected from Cell 011 identified no related errors.

Total Impact

The total impact of errors is summarised in the table below.

Cell	Total impact
Cell 012	£0.96 overstated
Cell 027	£0.14 overstated
Cell 026	£1.10 understated

The above cells have been amended on Form **MPF720A dated XXX.**

This is the second year that this error has been identified in a HBAP Accountants Report.

Cell 214/225: Modified Schemes – Incorrect war pension

Cell Total: £30,824

Cell Population: 12

Headline Cell: £30,824

In our 2021/22 HBAP Accountants report we identified that the Local Authority had miscalculated claimants war pension income. Given the nature of the population and the errors reported in the 2021/22 HBAP Accountants report, the Authority identified all cases in Cell 214/225 and has tested each claim to confirm that war pension income has been correctly calculated. This additional, 100% testing identified:

- 1 case where benefit expenditure has been misclassified as a result of the incorrect assessment of war pension income (total error value £7.64). The impact of the error is to understate cells 214 and 225, with a corresponding overstatement of cells 094 and 102.
- 1 case where benefit expenditure has been misclassified as a result of the incorrect assessment of war pension income (total error value £0.46). The impact of the error is to overstate Cells 214 and 225 by £0.46, with a corresponding understatement of cells 094 and 102. There is no impact on cell 094.

Total Impact

The total impact of errors is summarised in the table below.

Cell	Total impact
Cell 214 and 225	£7.18 understated
Cells 094 and 103	£7.18 overstated

The above cells have been amended on Form MPF720A dated **XXX.**

This is the second year that this error has been identified in a HBAP Accountants Report.

Cell 011: Non HRA Total Expenditure – Assessment of Earned Income**Cell Total: £322,788****Cell Population: 89****Sub Population Total: £ 26,152****Sub Population: 10****Headline Cell: £322,788**

Our initial testing of a random sample of 20 cases selected from cell 011 identified:

- 1 case where the authority had incorrectly input claimant earnings resulting in an overpayment of housing benefits by £0.10. The impact of the error is to overstate cell 013 with a corresponding understatement of cell 026. There is no impact on cell 011.

Given the nature of the population, the Authority identified all cases in Cell 011 with earned income and has tested each claim to confirm that earned income has been correctly calculated. This additional testing identified no further errors.

Total Impact

The total impact of errors is summarised in the table below.

Cell	Total impact
Cell 013	£0.10 overstated
Cell 026	£0.10 understated

The above cells have been amended on Form MPF720A dated **XXX**.

This is the first year that this error has been identified in a HBAP Accountants Report

Appendix D Other Matters

No additional issues.

ITEM 7 Internal Audit Progress Report

Report of the Internal Audit Manager

Recommended:

That the Internal Audit progress report be noted.

SUMMARY:

This report sets out the Internal Audit coverage, findings, and performance for 2023/24 to 20 November 2023 and summary risk profiles for those areas reviewed.

1 Introduction

- 1.1 The Annual Audit Plan for 2023/24 was approved by the Audit Committee on 27 March 2023.
- 1.2 The scope of audits included in the plan enable a continuing assurance opinion to be provided on the adequacy and effectiveness of the Council's internal control framework and reflects the Council's key priorities and objectives.
- 1.3 A risk assessment has ensured that the Corporate and Service risk registers, in consultation with all Heads of Service and Senior Management, inform the plan and that the audit resource required is matched against available resources.

2 Independence and Objectivity

- 2.1 The Internal Audit Team's independence and objectivity has been maintained in accordance with the Public Sector Internal Audit Standards (PSIAS).

3 Performance against the Audit Plan

- 3.1 Since 1 April 2023, the Internal Audit function has made good progress against the Annual Audit Plan 2023/24 as summarised in the Internal Audit Progress Report in the Annex.
- 3.2 Of the 6 audits reported as complete in the Annex, 3 were classified as substantial assurance and 3 as limited assurance. The executive summary detail, assurance opinion and risk profiling definitions are detailed in the Annex.
- 3.3 All actions arising from audit reviews to date have been accepted by management and programmed for implementation. A follow up review of all actions arising from audits which were due for implementation is undertaken 6 monthly. A summary of the position as of 31 October 2023 is provided in section 10.0 of the Internal Audit Progress Report in the Annex.

- 3.4 The Council is required to take part in the Cabinet Office's National Fraud Initiative (NFI) data matching exercise and Council Tax Single Person exercise for 2022/23. The matches for the 2022/23 exercise were published on 23 January 2023 and the Council Tax Single Person Discount exercise on 3 February 2023. Review of these is underway. A summary of progress as at 31 October is provided in section 11 of the Annex.

4 Corporate Objectives and Priorities

- 4.1 The work of the Internal Audit function supports the Council's five strategic priorities to work in a way that recognises the varying needs of the borough communities, working collaboratively, to deliver high quality services that support all communities in Test Valley to thrive.

5 Consultations/Communications

- 5.1 The Council's external auditors were consulted on internal audit's planned coverage for 2023/24.
- 5.2 The Internal Audit Plan for 2023/24 has involved full consultation with senior management, service heads, external audit, and has been approved by the Audit Committee at its previous meeting.

6 Risk Management

- 6.1 The annual audit plan 2023/24 is based on the Council's risk registers and Internal Audit contributes towards the overall corporate governance framework of assurance.

7 Resource Implications

- 7.1 The Internal Audit Team was fully resourced for the period from 1 April 2023 to 18 September. Following the resignation of the Senior Auditor, there is a shortfall in resources pending a new appointment.
- 7.2 A recent recruitment exercise proved to be unsuccessful. Consideration is currently being given to the timing and method of a further recruitment process.
- 7.3 External resource will be sought, as needed, to support the coverage of the remaining audits in the 2023/24 Audit Plan. Two audits have been deferred to the 2024/25 planned as agreed at the September Audit Committee.
- 7.4 This will be managed within the existing resources of the Finance and Revenues Service.

8 Equality Issues

- 8.1 The report is for information purposes, so the Council's EQIA process does not need to be applied.

9 Conclusion

- 9.1 This report outlines the work undertaken and progress against the Internal Audit Plan for 2023/24 by Internal Audit to 20 November 2023.
- 9.2 As of 20 November 2023, progress on the planned 2023/24 Audit Plan is on target with external resources available to support the delivery of the plan.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1		
Author:	Jan Balfour	Ext:	8234
File Ref:	N/A		
Report to:	Audit Committee	Date:	12 December 2023



Internal Audit Progress Report as of 12th December 2023

Jan Balfour – Internal Audit Manager

1.0 INTRODUCTION

Internal Audit is a statutory function for all local authorities.

The requirement for an Internal Audit function in local government is detailed within the Accounts and Audit (England) Regulations 2015 as to:

“Undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards and guidance.”

The standards for “proper practices” are laid down in the Public Sector Internal Audit Standards (PSIAS) (the standards – updated 2016).

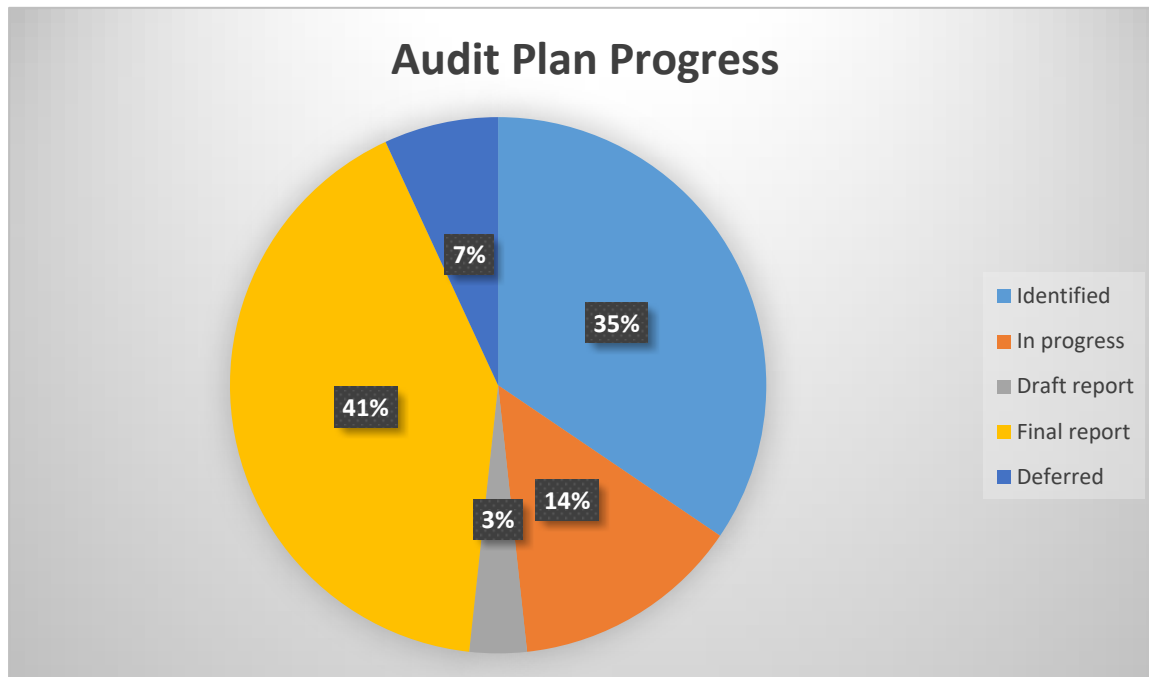
Internal Auditing is an independent, objective and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

This report includes the status against the 2023/24 internal audit plan.

2.0 AUDIT PLAN 2023/24 PROGRESS AS AT 20th NOVEMBER 2023

There are 27 full audits and 2 follow up reviews totalling 29 reviews in the 2023/24 Audit Plan. These include the “core” financial audits which are compulsory and take place on an annual basis, cross cutting/corporate audits, and service specific reviews. Also included are 2 reserve audits to be undertaken if capacity allows and 2 audits commissioned by the S151 Officer.

To date 12 (41%) have been completed, 1 (3%) is at draft report stage and 4 (14%) are in progress.



3.0 ONGOING ACTIVITIES

Internal Audit has provided advice and assurance in the following areas:

Adhoc advice and assurance.

National Fraud Initiative (NFI) to facilitate national data matching carried out by the Cabinet Office.

Audit Planning and consultation.

Oversight of Corporate Risk Management and fundamental review of the way the Corporate Risk Register is presented and updated.

Work is underway to develop and promote Fraud Awareness and carry out a risk assessment of the Council's Anti-Fraud and Corruption processes and procedures.

Project Assurance role on 6 projects.

4.0 CONTINGENCIES

1 special investigation has been concluded.

2 pieces of work have been undertaken under provision of requests from the S151 Officer, these include a probity review of Community Grants and post assurance review of Housing Support Grants issued.

5.0 AUDIT PLAN CHANGES

Due to a reduction in staff resource availability (Senior Auditor vacancy) 2 audits have been deferred to the 2024/25 Audit Plan. These include Risk Management and Grants. This will also enable revisions to the risk management arrangements to become fully embedded and specific grants have been reviewed on a probity basis elsewhere in the 2023/24 plan.

An additional 20 days has been added to the 2023/24 Audit Plan to provide project assurance support to the Regeneration programme as agreed at the September Audit Committee.

6.0 ASSURANCE LEVEL/OPINION

Internal Audit Reviews culminate in an opinion on the assurance that can be placed on the effectiveness of the framework of risk management, control and governance designed to support the achievement of management objectives for the area under review.

Assurance Level/Opinion:	Description:
Full	There is a sound system of control designed to achieve the system objectives.
Substantial	While basically there is a sound system there are weaknesses which put some of the control objectives at risk.
Limited	Weaknesses in the system of controls are such as to put the system objectives at risk.
No	Control is generally weak leaving the system open to significant error or abuse.

The opinion is formed with reference to the Council's Corporate risk matrix. Each control weakness identified during an audit review is scored according to this matrix. Where * shown this opinion is qualified when selected.

Likelihood

7.0 CONTROL WEAKNESS – RISK RANKING

A Very High	Substantial or Limited*	Limited	No Assurance	No Assurance
B High	Substantial	Limited*	Limited Or No Assurance*	No Assurance
C Significant	Substantial	Substantial or Limited*	Limited	Limited Or No Assurance*
D Moderate	Substantial or Full*	Substantial	Substantial or Limited*	Limited
E Low	Full	Substantial or Full*	Substantial**	Limited
F Very Low	Full	Full	Substantial	Substantial or Limited*
	IV Negligible	III Significant	II Critical	I Catastrophic

Impact

Priority Level:	Description:
High	Major issues for the attention of Senior Management. Action needs to be taken within a reasonable timescale to address significant control weaknesses and to ensure that the controls can be relied upon for the effective performance of the Service or function.
Medium	Issues for middle management action. These include control weaknesses that may expose the system function or process to a key risk but the likelihood of it occurring is significant rather than high.
Low	Minor matters. Low risk exceptions or improvements which help to improve service effectiveness and efficiency.

8.0 EXECUTIVE SUMMARIES

The following summaries relate to Audits from the 2023/24 Audit Plan not previously reported to the Audit Committee.

1.

Control Weaknesses Identified:		
High	Medium	Low
0	5	1

**VALLEY HOUSING
2023/24**

Overall Assurance Opinion:
Substantial Assurance
Agreed action is scheduled to be implemented by 31/03/24

Scope:	Control Weakness:	Control improvement upon implementation:
<p>This review covered the operation of the company (Valley Housing Ltd) and included the following areas regarding the Council's interests only:</p> <ul style="list-style-type: none"> • Governance arrangements including the company structure, roles, and responsibilities. • Business Planning and approval • Risk management • Retention of company documents • Appointment of company directors and secretary • Accounting arrangements and appointment of auditors • Funding • Insurance • Property acquisitions and leases • Business Continuity 	<ul style="list-style-type: none"> • Valley Housing documentation (signed and sealed versions as appropriate) is not retained securely in one location i.e., the strong room. • In respect of those Council officers replacing the original postholders in the roles of Company Directors there has been no form of appointment letter/letter of comfort explaining the additional responsibilities and liabilities and that the posts are not remunerated. • Training has not been offered/provided to those Council officers replacing the original postholders undertaking the roles of Company Director. • Competitive quotations are not periodically sought by Valley Housing for Agency Management to demonstrate transparency and provide assurance to the Council that value for money is being obtained. • Leases to VH currently refer to an annual uplift of 2% above base rate which has not been applied to any of the properties. This is linked to issues around the regularisation of the majority of the leases. • 7 properties had been overcharged for the 2022/23 insurance premiums as the Council's insurers did not update the property values post re-valuation. 	<ul style="list-style-type: none"> • Improved security of company documents. • Increased awareness of director responsibilities and liabilities. • Assurance that value for money is obtained in respect of company procurement. • Lease rentals are charged in accordance with the lease or rent review. • Insurance premiums are correctly charged.

2.

Control Weaknesses Identified:		
High	Medium	Low
0	6	1

IT VIRTUALISATION 2023/24

Overall Assurance Opinion:
Substantial Assurance
Agreed action is scheduled to be implemented by 30/04/24

Scope:	Control Weakness:	Control improvement upon implementation:
<ul style="list-style-type: none"> The virtual environment is securely managed, administered, and configured. Resilience against failure of the environment is built in through configuration and contingency measures. The performance and data storage capacity of the virtual environment is monitored, action is taken to address incidents, or the root cause of problems is identified and fixed. 	<ul style="list-style-type: none"> Although high level admin account groups are monitored, and all secure groups have alerting management review is not undertaken on a regular and routine basis to ensure these remain appropriate. The password policy for high privileged accounts on the VM portal is set at 20 characters but this is not enforced in practice and the minimum password is set to 8 characters. There are no documented procedures for hardening of the hypervisors and assurance is not sought from 3rd party that they are applying best practice. There is no documented procedure in place for patch management and picking up change vulnerability alerting to ensure all "relevant" alerts are considered. Alerts are currently emailed to individual officers rather than centrally to the Operations Team. 	<ul style="list-style-type: none"> Admin accounts remain appropriately restricted. Best practice is robustly applied. All relevant alerts are considered and applied. Management review of memory utilisation is fully informed. The consequences of replication failing is fully considered and mitigated.

	<ul style="list-style-type: none"> • Regular management reports are not run on CPU and memory utilisation – the latest reports provided were for November 2022. • Service tickets relating to capacity were not in all cases promptly closed to indicate the time taken to address the issue. • The risks of replication failing during a business continuity event are not currently reflected in the Corporate Risk Register including the mitigations in place to enable up to 50 staff to access Citrix via laptops. 	
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3.

Control Weaknesses Identified:		
High	Medium	Low
0	2	2

MOBILE DEVICES

Overall Assurance Opinion:
Limited Assurance
Agreed action is scheduled to be implemented by 31/03/24

Scope:	Control Weakness:	Control improvement upon implementation:
<ul style="list-style-type: none"> • Appropriate policies and procedures are in place for Mobile Devices. • All Mobile Devices are recorded accurately, and the asset data is up to date. • Mobile Devices are up to date and securely managed. • Management reports are produced and reviewed on mobile usage. 	<ul style="list-style-type: none"> • The Use of IT & Social Media policy does not state that when working remotely, devices should be connected to Wi-Fi where possible to ensure that mobile data is not being used, the TVBC and WCC policies are not aligned with each other. • At the time of the audit a Mobile Devices project was in progress. During this time asset records were maintained on 	<ul style="list-style-type: none"> • User expectations regarding the management of data usage are clear. • All equipment is accounted for and secured. • Charges for pooled mobile data are effectively managed.

	<p>spreadsheets pending entry into asset explorer. Asset records are not fully maintained and subject to routine checks. Testing found:</p> <ul style="list-style-type: none"> - Of a random sample of 6 mobile devices (identified from interview with officers), all had asset tags on, however 2 were not recorded on the spreadsheets. - Of 71 iPads recorded on the spreadsheet 15 were not assigned to a user and 21 had no asset tag. - Of 173 Mobile phones recorded on the spreadsheets 12 had no asset tags. • There are no regular reconciliations completed of physical assets to asset records to ensure their accuracy and all assets accounted for. • The Council has a monthly pooled data allowance of 100GB across all mobile devices. A report run for a three-month period of 01/05/23 – 31/07/23 found that of the 300GB allowance across 3 months 945.9GB had been used resulting in incurred costs. • Although Services check their individual monthly charges for reasonableness; Managers and staff are not aware of best practice in managing their data usage. 	<ul style="list-style-type: none"> • Users with high usage are made aware of and educated on correct use.
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4.

Control Weaknesses Identified:		
High	Medium	Low
0	5	0

**FUEL USAGE
2023/24**

Overall Assurance Opinion:
Limited Assurance
Agreed action is scheduled to be implemented by 31/03/24.

Scope:	Control Weakness:	Control improvement upon implementation:
<ul style="list-style-type: none"> • Issue and use of fuel cards. • Fuel issues from depot tanks. • Site security (preventative measures against fuel thefts). 	<ul style="list-style-type: none"> • One officer has sole access to the fuel card issues spreadsheet, where PINs and card numbers are recorded. • Card acceptance declarations are not signed by the cardholder upon receipt of a replacement card. • A record of receipt is not provided to the cardholder (and copy retained) upon returning a card. • Regular analysis of fuel card usage is not undertaken by supervisors: <ul style="list-style-type: none"> - Unused cards are not identified and closed. - Checks to assess the reasonableness of fuel purchases are not carried out prior to payment of invoices. - The reasonableness of fuel purchases made by drivers with access to a Council owned vehicle out of hours and assigned a fuel card are not undertaken. • There is no process in place to investigate anomalies in fuel usage data (fuel tank). 	<ul style="list-style-type: none"> • Minimised risk of card misuse and ability to determine accountability for fuel cards and any unauthorised use. • Contingency cover in place to manage fuel cards. • Measures in place to determine exceptional or unusual usage and to minimise the risk of misappropriation of fuel.

5.

Control Weaknesses Identified:		
High	Medium	Low
0	2	1

HOUSING SUPPORT SCHEMES 2023/24

Overall Assurance Opinion:

Substantial assurance

Agreed action is scheduled to be implemented by 31/12/23

Scope:	Control Weakness:	Control improvement upon implementation:
<p>Post assurance checks for the following schemes: -</p> <ul style="list-style-type: none"> £150 Rebate – Discretionary Fund Council Tax Support Fund Energy Bill Support Schemes (Overview of process only) Household Support Fund 	<ul style="list-style-type: none"> There is a bug within the NEC System which prevents reconciliations for the Council Tax Support Fund. This has been raised and followed up with NEC. Evidence of system testing of the modules provided by NEC, which identified eligible accounts and posted the payments for the Council Tax Support Fund was not available for audit. In respect of the Household Support Scheme, there is nothing in writing to confirm the postage cost increase (£110.04 in total) for phase 3, as this was agreed verbally. 	<ul style="list-style-type: none"> Reconciliations can be accurately calculated to support grant reimbursement claims. Assurance that payments only made to eligible persons. Variations to contracted rates are formally agreed.

6.

Control Weaknesses Identified:		
High	Medium	Low
0	4	1

**COMMUNITY GRANTS
2023/24**

Overall Assurance Opinion:
Limited assurance
Agreed action is scheduled to be implemented by 31/01/24

Scope:	Control Weakness:	Control improvement upon implementation:
<ul style="list-style-type: none"> • Policies and Procedures • Application Process • Awards and Authorisation • Payments of Grants • Budget Monitoring 	<ul style="list-style-type: none"> • Risk assessments (where appropriate) were not provided and followed up for coronation grants despite it being a condition of the grant. • There is no evidence of approval of Coronation Grant applications by the Head of Community & Leisure. • Although a standard scoring methodology is used to evaluate grant applications, the grant award (panel decisions) for Community Grants is not consistently applied due to the weighting applied to each section. • Site visits are not undertaken, and evidence of project completion is not requested or obtained before payment of the grant. 	<ul style="list-style-type: none"> • Public health and safety is protected. • Grant payments are approved in accordance with delegated authority. • Decisions are consistently applied. • Confirmation is obtained that grant is spent on purpose for which it was awarded.

	<ul style="list-style-type: none"> There are limitations to the file sizes for applicants to upload supporting documents on the Flexi-Grant system. 	
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9.0 CONTROL WEAKNESSES

Of the 6 audits completed, where an opinion has been given 30 exceptions have been raised:

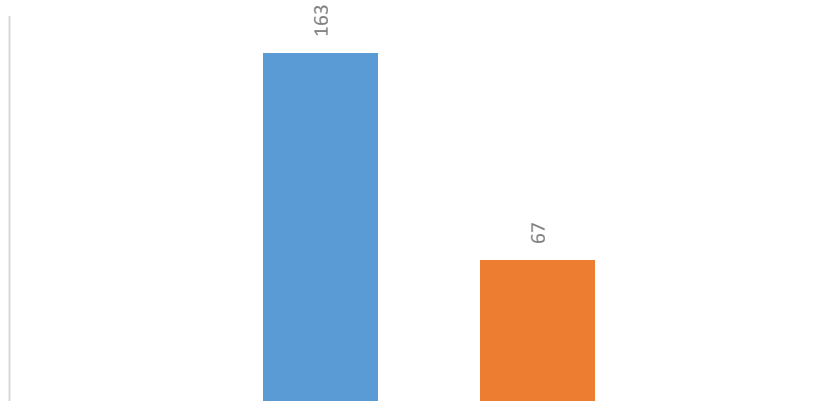
Risk:	No. of exceptions (actions):
High	0
Medium	24
Low	6

10.0 RISK EXCEPTIONS – FOLLOW UP AS AT 31/10/23.

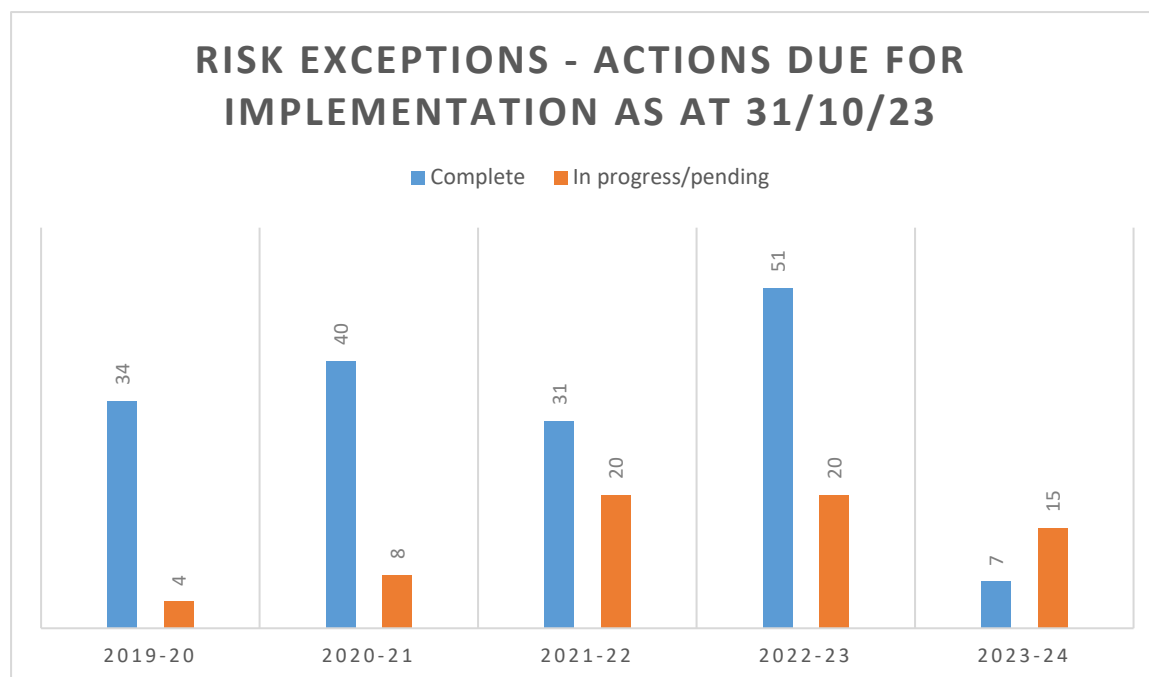
The number of actions which have reached or passed their original target date for implementation as at 31/10/23 is summarised in the table below. This shows that 7 (32%) of actions raised during 2023/24 have been closed with 15 (68%) remaining open, pending or in progress. An analysis of the total live actions for 2023/24 and previous years shows 163 (71%) having been closed and 67 (29%) remaining open. While progress implementing actions is maintained there are areas where actions have not been fully implemented at the point of follow-up. This position will continue to be monitored with Service managers.

RISK EXCEPTIONS - ACTIONS

■ Completed ■ In progress/pending



Total Actions 2019/20 to 2023/24 (inclusive)	
■ Completed	163
■ In progress/pending	67



11.0 NATIONAL FRAUD INITIATIVE (NFI)

It is a requirement for the Council to take part in the Cabinet Office's NFI data matching and Council Tax Single Person Discount (CTSPD) exercises for 2022/23. Fair processing notices were publicised to ensure that TVBC customers are aware that their data may be used in the matching exercise. Following the submission of the data for the 2022/23 National exercise the Cabinet Office published the first set of matches on 26th January 2023.

Internal Audit acts as the key contact for the NFI and has been involved in the data submissions process in compliance with the Code of Data Matching Practice and meeting the required deadlines. The Key Contact monitors progress with the relevant officers, provides advice and undertakes administrative duties regarding access to the NFI website.

The Council has taken a view to review as a minimum those matches identified as “high risk” a summary of which is shown in table 1 below. From those reviewed to date 21 errors have been found but no potential frauds. A further report will be provided to the Audit Committee in June 2024.

Table 1: High Risk Matches:

2022/23:	Total High-Risk Matches identified
Council Tax Reduction Scheme	170
Creditors (History & Standing)	0
Housing Benefit Claimants	20
Housing Waiting List	77
Payroll	6
VAT & Procurement	0
Total	243

A summary of the 2022/23 Council Tax Single Person exercise is provided in Table 2 below. This matches Council Tax and Electoral Registration information and highlights any household members reaching 18 years of age. These matches were released on 03/02/2023 and are in the process of being reviewed. As of 14/11/2023, 30 matches have been processed with 10 errors having been identified.

Table 2: 2022/23 Council Tax Single Person Discount exercise:

	Total Matches	Total Matches Processed	Fraud	Errors
Council Tax (Single Person Discount)	2,324	30	0	10

ITEM 8 Annual Corporate Complaints Report – 2022-23

Report of the Head of Strategy and Innovation

Recommended:

That the complaints report be reviewed and endorsed ahead of publication.

SUMMARY:

The Committee is requested to consider and discuss background and learning from complaints across all services for the period 1 April 2022 – 31 March 2023.

1 Introduction

- 1.1 Each year, the Council is required to prepare an annual summary of complaints dealt with under the formalised complaints procedure (the year runs from 1 April 2022 to 31 March 2023).

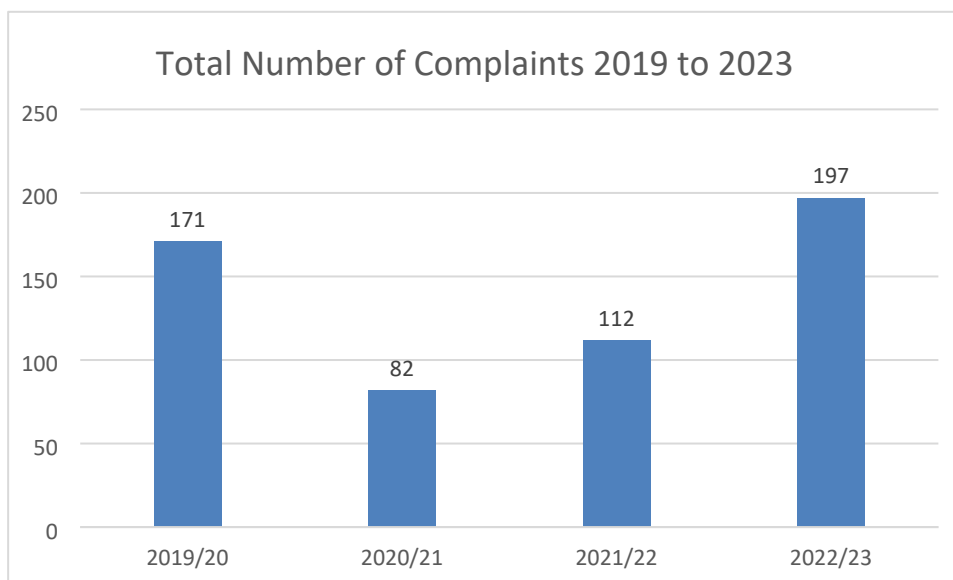
2 Background

- 2.1 A complaint is defined within the Council as: “an expression of dissatisfaction, however made, about the standard of service, action or lack of action by the Council, or its staff, affecting an individual customer or group of customers.”
- 2.2 Service level complaints are dealt with under stage one of the complaints process, with a response being sent from a relevant manager or head of service. If the complainant is dissatisfied with this response, they can escalate the complaint to stage 2 of the process, which is investigated and responded to by the Chief Executive. If complainants remain dissatisfied with the response, they are able to escalate to the Local Government and Social Care Ombudsman (LGSCO).
- 2.3 Complaints recorded under the formal procedure (and dealt with in this summary report) do not include those ‘first time’ representations which were effectively requests for a service and dealt with as such. Accordingly, a new report of a missed bin, or a broken swing, for example, would not be registered and dealt with as a complaint, but as a request for action. Of course, in the event that the Council failed to respond to the ‘request’ appropriately, then that may generate a complaint.
- 2.4 Appeals against the level of Housing Benefit or Council Tax Support awarded are not treated as complaints but are dealt with under a separate appeals route.

3 Complaints overview

3.1 In the year 2022/23 there were 197 service level complaints (those dealt with by more than one service at the same time are counted as one complaint). From these 197 complaints, 38 were escalated to the Chief Executive and eight were the subject of LGSCO enquiries, with two being investigated.

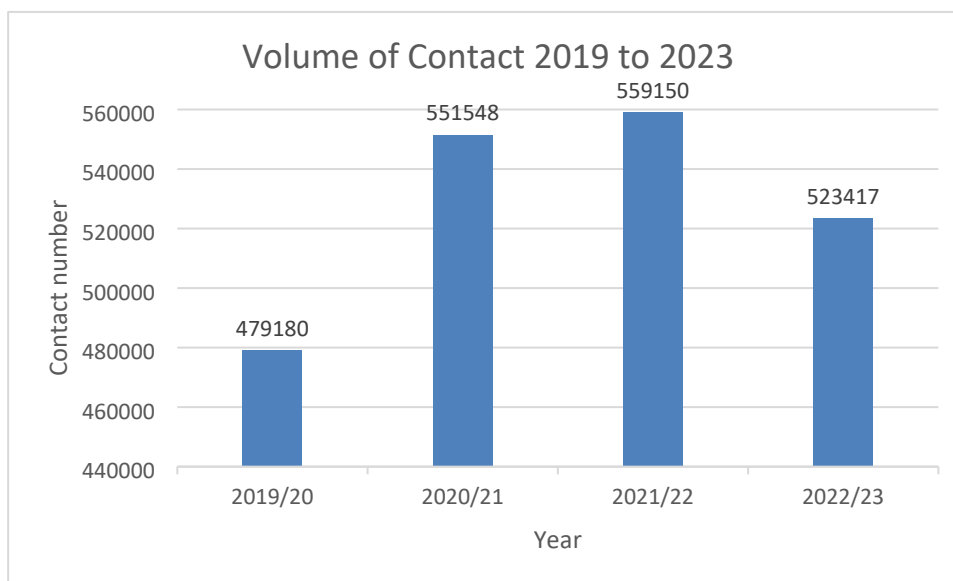
3.2 This year sees an increase of 85 complaints against the number received in the previous year (112 in 2021/22).



3.3 The number of complaints has increased this year, following an increase in the previous year and a significant decrease in the year prior, which has been attributed to the Covid-19 pandemic. Whilst all complaint types have increased this year, there is a significantly larger increase in those complaints identified as 'unhappy with decision / action taken'. When placed in context with a population of around 136,000, the 197 complaints represent a very small number of the population who have raised a complaint.

3.4 Customer Service Unit figures for the year indicate that they received 65,387 telephone calls, which has decreased from 79,625 (a decrease of almost 18%) against the previous year. The number of face-to-face contacts for the year was 6,468, a significant increase from the 3,357 in the previous year (and 992 in the year before that). However, it remains significantly lower than the year prior to the pandemic, where 11,671 visits were made to CSU, again, attributed to the impact of the Covid-19 pandemic and lockdowns. There was a slight decrease in email contacts, 7,062 in 2022/23, compared to 7,168 in 2021/22.

3.5 The website received 444,500 unique visitors in the year (469,360 in 2021/22) (a unique visitor is an individual that uses the website). When combined with the number of contacts via the Customer Service Unit, the number of contacts with the council has decreased by 6.4% in the year, as illustrated in the chart below.



3.6 The following table gives a breakdown of the number of complaints received. At seminars arranged by the LGSCO, representatives of the Institute of Customer Service have previously advised on the Customer Satisfaction Index and accepted customer service industry standards. The number of complaints account for less than 0.1% of overall transactions and this falls well within these industry standards.

Stage of complaints process	Number of complaints
Service level (Stage One)	197
Chief Executive escalations (Stage Two)	38 (from the 197 above)
Local Government and Social Care Ombudsman	8 (the LGSCO went on to investigate two of these)

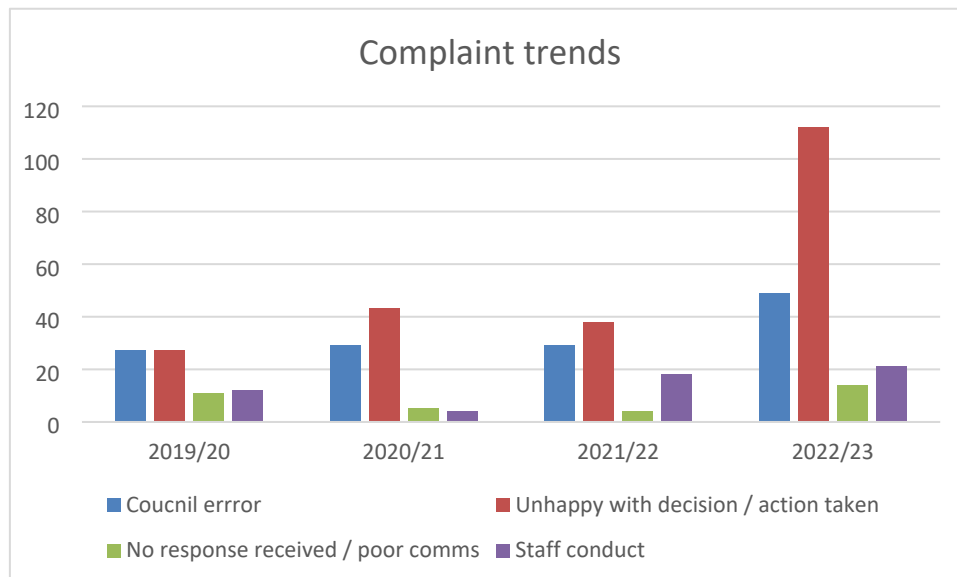
3.7 The annual complaints logs contain personal information that should not be published. This corresponds with the Ombudsman’s view that it is neither necessary, nor desirable, for the Council to make such details public. As a result, the information provided in this report is largely statistical in nature. Councillors should refer to the Policy Manager if they require more details about a specific case. Full details of all the complaints are available and these can be provided to committee members on request. However, this information is strictly confidential.

3.8 The number of complaints received can be broken down by service as follows:

Service	Number of complaints	As a % overall
Environmental Services	57	28.9
Planning and Building	51	25.9
Finance & Revenues	30	15.2
Community and Leisure	23	11.7
Housing and Environmental Health	20	10.2
Property and Asset Management	4	2
Legal and Democratic	3	1.5
Strategy and Innovation	1	0.5
Planning Policy & Economic Development	1	0.5
IT	0	0
Multi service	7	3.6
Chief Executive escalations from the 197 service level complaints	38	19.3

- 3.9 The number of complaints for each service does not, of course, necessarily provide a direct correlation with the standard of customer service provided, and these overall results cannot be treated in isolation. Each of these service results are heavily influenced by the type of business transacted by that service, for example, the number of customers facing transactions carried out, the public profile of the actions carried out by that service, and whether the customer has alternative formal routes for redress or appeal.
- 3.10 In addition, the council also receives positive feedback from residents and the mechanism for capturing and reporting on these is being developed for inclusion in future reports. Environmental Services received 72 positive comments in the year, and other services receive positive feedback and are putting in place measures to record this feedback. The volume of compliments or positive feedback received is often linked to the visibility of the service being provided, and some services are less visible to the public and therefore less likely to receive positive feedback, but this has no reflection on the standard of service being provided.

- 3.11 Environmental Services receives the highest number of complaints, but these are very low when considering the number of interactions, it has with the public. For example, in 2022/23, Environmental Services provided waste and recycling collections to around 58,000 properties within Test Valley each week. This totals around 3 million collections a year. Using this example, the number of complaints received equates to just 0.002 per cent of collections alone.
- 3.12 In 2022/23, the Planning and Building Service dealt with 3,985 planning related matters, comprising of 1,736 planning applications, 410 pre-app enquiries, 597 condition discharge applications, 688 tree applications and 554 planning enforcement cases. Against this background, the figures show that the number of complaints received against the volume of work undertaken by the Planning and Building Service equates only to approximately 1.3% of the work carried out.
- 3.13 An analysis of the root cause of complaints received has shown that the majority of complaints can be categorised into four main types below (council error, unhappy with a decision of the council, no response or poor communications and staff conduct). Staff conduct is often listed by the complainant as the issue, but when undertaking an investigation, the cause of the complaint might be more aligned with the complainant being dissatisfied with a decision made by the council, and therefore being unhappy with a council action rather than staff misconduct.



4 Learning points

- 4.1 The Council treats every complaint as an opportunity to identify learning outcomes and improve service provision. Complaints are valuable not only in identifying service improvements but in improving public perception and satisfaction with the Council as a whole. Each complaint can be an opportunity to make changes or service improvements on a small or greater scale.

4.2 Examples of some of the learning points and improvements made as a result of complaints during 2022/23 include:

- Ensuring continuity in communication for ongoing complaints and keeping the complainant informed on updates.
- Speaking directly to customers to outline any potential delays in dealing with their request, whatever the reason might be.
- Ensuring that all relevant parties are kept informed of progress on planning applications.
- Supporting staff to raise awareness of how to handle sensitive and confidential matters.
- Seeking to understand the wider context relating to a customer's situation.
- Raising staff awareness of appropriate communication and behaviours when dealing with members of the public

5 Time taken to respond.

5.1 The Council's service standard is to respond in full to a complaint within 10 working days of receipt, or if this is not possible within that time (for example, because of the complexity of the complaint, the number of third parties involved or awaiting additional information), a holding response is sent to the customer. This standard was met in 62% of service complaints at Stage One (122 complaints), processed in the year 2022/23.

5.2 When a complaint is escalated to Stage Two, the Chief Executive has 15 working days to respond. This standard was met in 100% of escalated complaints. Where it is not possible to respond within this time frame, the complainants are made aware that there will be a delay.

6 Unreasonable or unreasonably persistent complainants

6.1 There are currently no complainants determined as vexatious.

7 The Local Government and Social Care Ombudsman

7.1 The number of complaints or enquiries received by the LGSCO does not necessarily match with the number of complaints progressed to the LGSCO by the Council. This is because in some cases, complainants approaching the LGSCO directly may be given advice or be referred to another organisation and the Council may not be aware of this. The LGSCO will also refer a complainant back to the Council if the complaint has not completed the local authority's complaints procedure and in some cases, the complainant may choose not to come back to the Council.

7.2 During the year 2022/23 the Council received eight initial complaint enquiries from the LGSCO, of which the LGSCO opted to investigate two.

Investigated			
Date	Details of Complaint	Action Taken	LGSCO Outcome
09/08/2022	Councillor complaints process	LGSCO decision was that the council was not biased or discriminatory and that the council followed due process. However, the LGSCO found that the process took too long and that action should be taken to review the reasons for the delay and identify what improvements can be implemented.	Upheld. At fault and injustice
07/04/2022	Housing register application	LGSCO decision stated that the Council has now added the complainant to the housing register and backdated their registration date. As such, they discontinued their investigation as they were unlikely to achieve anything further.	Not upheld

Not investigated			
Date	Details of Complaint	Action Taken	LGSCO Outcome
07/07/2022	Dissatisfied with refusal of Right to Move request	A subsequent review of the decision led to the complainant being accepted onto the Housing Register. On this basis, the LGSCO discontinued their investigation.	No investigation
17/08/2022	Complainant sought to join the housing register following eviction. Homeless application was declined.	Coinciding with the LGSCO complaint, housing were able to obtain further information from external organisations which meant that the complainant was eligible for a homelessness duty. On the basis the complainant was placed on the Housing Register, the LGSCO discontinued their investigation.	No investigation

Not investigated			
Date	Details of Complaint	Action Taken	LGSCO Outcome
20/01/2023	Dissatisfied with decision on Discretionary Rate Relief	LGSCO did not investigate as there was not enough evidence of fault by the Council causing the complainant injustice.	No investigation
01/03/2023	Funding stopped for Ukrainian guests staying at property. Dissatisfied with how Housing managed statutory duties	LGSCO did not investigate as funding was the responsibility of an external organisation. Additionally they could not say the Council's actions have caused a significant injustice.	No investigation
09/03/2023	Unhappy with how TVBC have handled C-Tax arrears, believes the council should be providing more financial support.	LGSCO did not investigate as some matters complained about are late and there are no good reasons to exercise discretion to consider the late complaint. In addition, there is insufficient evidence of fault to justify an investigation.	No investigation
01/12/2022	How the Council dealt with a breach of planning control and its decision not to take enforcement action.	The LGSCO did not investigate as the complainant is complaining on behalf of a parish council and not as a member of the public.	No investigation

- 7.3 The LGSCO publishes the statistics for all local authorities each year. This enables a comparison to be made between comparable authorities based on the CIPFA (Chartered Institute of Public Finance and Accountancy) 'Nearest Neighbours Model'. The model provides a "family group" of local authorities that are comparable for bench-marking purposes. However, it is important to note that this is not an exact comparison due to the unique nature of each authority and the services they provide,
- 7.4 as well as the geographical area and related issues. It can therefore only be used for ascertaining an approximate and informal benchmark.
- 7.5 The LGSCO has published the total number of complaints assessed for each authority, as illustrated below:

Authority name	Total complaints assessed	Decision: Complaint not upheld	Not Investigated	Decision: Complaint upheld
Test Valley Borough Council	10	1	8	1
Ashford Borough Council	16	1	15	0
East Hampshire District Council	18	2	15	1
South Oxfordshire District Council	11	2	8	1
Vale of White Horse District Council	14	1	12	1

8 Other matters

- 8.1 The reporting of complaints is embedded in the Council's performance management process, giving further opportunity for issues to be raised throughout the year, and for wider corporate trends to be identified should they arise.

9 Corporate Objectives and Priorities

- 9.1 A robust and effective complaints process ensures we are able to meet our vision, working collaboratively to deliver high quality services that support all communities in Test Valley to thrive.
- 9.2 Reviewing and learning from complaints ensures we are committed to delivering our values. Delivering high standards in everything we do which shapes behaviours and builds trust with our residents.

10 Communications

- 10.1 The complaints report will be published on the TVBC website.

11 Resource implications

- 11.1 None

12 Conclusion

- 12.1 Complaints at service level remain low, particularly when compared to the overall volume of interactions the council has had with the public in the same period. An increase in recent years demonstrates that volumes of complaints have returned to 'pre-covid' levels.

- 12.2 The consistency of complaints reporting suggests that the complaints process continues to work effectively, and that the public are able to make a complaint with ease. Where necessary, trends are identified and managed by individual services. The Policy Manager will continue to work closely with Services to identify ways to effectively manage and resolve complaints.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	None		
Author:	Hollie French	Ext:	8123
File Ref:	N/A		
Report to:	Audit committee	Date:	12 December 2023

ITEM 9 Report on the use of the Regulation of Investigatory Powers Act 2000

Report of the Head of Legal and Democratic Services

Recommended:

That Audit Committee receives the report of the Head of Legal and Democratic Services on the Council's use of its powers under the Regulation of Investigatory Powers Act 2000.

SUMMARY:

This report updates members as to the Council's use of its powers under the Regulation of Investigatory Powers Act 2000.

1 Introduction

- 1.1 The Home Office Covert Surveillance and Property Interference Code of Practice recommends regular reporting to elected members of a local authority's powers under the Regulation of Investigatory Powers Act 2000.
- 1.2 This report provides members with such an update.

2 Background

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a legal basis for certain authorities to carry out certain invasive investigations.
- 2.2 Insofar as Local Authorities are concerned, this includes carrying out "directed surveillance" or use of "covert human intelligence sources" (CHIS) for authorised purposes.
- 2.3 Directed surveillance or use of CHIS may only be authorised where prescribed criteria are met; namely in relation to investigations relating to an offence punishable by a maximum term of six months' imprisonment or more, or relating to the sale of alcohol, tobacco or nicotine products to minors.
- 2.4 'Directed surveillance' is covert, cannot be 'intrusive' (see below), is undertaken for the purposes of a specific investigation or a specific operation, is carried out in a manner which is likely to result in obtaining private information about a person and is planned (it cannot be an immediate response to events or circumstances).
- 2.5 'Intrusive' surveillance cannot be carried out in any circumstances by a Local Authority. Intrusive surveillance includes the presence of an officer or use of a surveillance device in a residence or private vehicle, or use of a device (e.g. a long lens camera) which would provide information of the same quality as would be obtained from a person or device in a residence or private vehicle.

- 2.6 Use of a 'covert human intelligence source' (CHIS) occurs where a person establishes or maintains a relationship with a person:
- a. for the covert purpose of using that relationship to obtain information or to provide access to any information to another person or
 - b. to covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.
- 2.7 Certain Officers have authority to authorise directed surveillance or use of CHIS *however* that authorisation must be approved by a Justice of the Peace in order to become effective. The Council's Legal Service will advise and assist in obtaining authorisation.
- 2.8 Before authorising surveillance/CHIS the authorising officer must be satisfied that the authorisation is:
- a. necessary for the purpose of preventing or detecting crime or preventing disorder; and
 - b. proportionate (for example, the action will not be proportionate if the objective could be achieved by less intrusive means).
- 2.9 The authorising officer must also consider the risk of any collateral intrusion i.e. the intrusion into the privacy of persons who are not the subject of the investigation.
- 2.10 An additional layer of assurance is required where the personal information to be obtained is 'confidential information'. Confidential information for these purposes is information subject to legal privilege or information held in confidence concerning an individual (living or dead) who can be identified from it and the material relates to the person's physical or mental health or to 'spiritual counselling'. In these cases, authority (which still must be approved by a Justice of the Peace) can only be given by the Chief Executive or in his absence the Deputy Chief Executive. The Council's Corporate Surveillance Policy is attached as an Annex.
- 2.11 Authority does not take effect and the surveillance or use of CHIS cannot take place until it has been approved by a Justice of the Peace.
- 2.12 Authorisation may be renewed if necessary.
- 2.13 An authorisation for directed surveillance will last for three months from the date of Justice of the Peace approval and an adult CHIS authorisation for twelve months unless renewed or cancelled.
- 2.14 The Home Office Covert Surveillance and Property Interference Code of Practice recommends that elected members of a Local Authority should consider internal reports on the use of the 2000 Act on a regular basis.
- 2.15 The objective of this document is to provide such a report.

- 2.16 Local Authority use of RIPA powers is infrequent. Members are asked to note that Test Valley Borough Council has not utilised its powers under the 2000 Act since 2018 and so this is a 'nil return' report, but members are nonetheless requested to note the position.

3 Corporate Objectives and Priorities

- 3.1 Having procedures in place to enable surveillance and/or use of covert human intelligence sources in appropriate cases supports the Council's corporate objectives of growing the potential of the Borough's town centres, communities, people and the local environment.

4 Risk Management

- 4.1 No risks arise as a result of this report.

5 Resource Implications

- 5.1 There are no resource implications of this report.

6 Legal Implications

- 6.1 There are no legal implications of this report.

7 Equality Issues

- 7.1 No equality issues arise out of this report. Equality considerations will be taken into account on a case-by-case basis as and when authorisations are considered.

8 Conclusion and reasons for recommendation

- 8.1 Members are requested to receive this report and note its content.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Home Office Covert Surveillance and Property Interference Code of Practice			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1		
Author:	Karen Dunn	Ext:	8401
File Ref:	N/A		
Report to:	Audit Committee	Date:	12 December 2023

CORPORATE SURVEILLANCE POLICY



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1 BACKGROUND

1.1 The Human Rights Act 1998 makes fundamental rights and freedoms contained in the European Convention on Human Rights enforceable in UK Courts and Tribunals.

1.2 Section 6 of the Human Rights Act 1998 states that:

“It is unlawful for a public authority to act in a way which is incompatible with a convention right.”

1.3 Article 8 of the Convention on Human Rights provides that everyone has the right to respect for his private and family life, home and correspondence.

1.4 Council investigating officers may engage in covert surveillance from time to time, which interferes with a person’s right under Article 8 of the Convention Rights to respect for a person’s private and family life, home and correspondence.

1.5 Under the Convention of Human Rights a local authority may carry out this surveillance if it does so in accordance with the law and it is for the prevention or detection of crime or the prevention of disorder. In the case of the Council the powers are most frequently used to obtain evidence in relation to matters such as proposed serious fraud prosecutions and fly tipping. In addition authorisation may only be granted if the conditions set out in paragraphs (2) and (3) of Article 7A of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 as amended are met:

(2) The first condition is that the authorisation under section 28 is for the purpose of preventing or detecting conduct which—

- (a) constitutes one or more criminal offences, or
- (b) is, or corresponds to, any conduct which, if it all took place in England and Wales, would constitute one or more criminal offences.

(3) The second condition is that the criminal offence or one of the criminal offences referred to in the first condition is or would be—

- (a) an offence which is punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment, or
- (b) an offence under—
 - (i) section 146 of the Licensing Act 2003(a) (sale of alcohol to children);
 - (ii) section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
 - (iii) section 147A of the Licensing Act 2003(b) (persistently selling alcohol to children);

(iv) section 7 of the Children and Young Persons Act 1933(c)
(sale of tobacco etc. to persons under eighteen)”

1.5.1 The Regulation of Investigatory Powers Act 2000 (RIPA) (“the Act”) establishes a regulatory framework by setting up an authorisation procedure in respect of covert surveillance. It imposes duties on public bodies, including local authorities, when carrying out investigations that involve covert surveillance and the conduct and use of covert human intelligence sources.

1.6 A policy has been prepared to set out the relevant responsibilities and to ensure that any covert surveillance or the conduct and use of covert human intelligence sources is conducted by officers in a manner that will comply with the safeguards embodied in the Human Rights Act 1998 and RIPA. Pursuance of this policy will assist the Council if it is required at any time to demonstrate that it has acted lawfully.

1.7 Appendix A outlines the procedure which should be followed.

2 DEFINITIONS:

Surveillance

2.1 Surveillance includes:

- monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
- recording anything monitored, observed or listened to in the course of surveillance; and
- surveillance by or with the assistance of a surveillance device.

2.2 All static observations that are covert (see below) count as either surveillance or the gathering of photographic intelligence and require proper application and authorisation under the rules.

2.3 **CCTV** surveillance :

2.3.1 **does not** require authorisation **if**:

- overt CCTV is being used; **and**
- special requests have not been made about the direction that it points.

2.3.2 **does** require authorisation **if**:

- overt CCTV is being used; and
- it is focussed on one or more targets.

This is the responsibility of the investigation manager.

Covert Surveillance

2.4 Covert surveillance is surveillance carried out in a manner calculated to ensure that subjects of it are unaware that it is or may be taking place. Covert surveillance involves the systematic surveillance of an individual. The everyday functions of law enforcement will not usually involve covert surveillance. This policy applies only to covert surveillance.

Directed Surveillance

2.5 Directed surveillance is the type of surveillance with which Council officers may be involved.

Directed surveillance is:

- covert **and**
- not intrusive (see below) **and**
- undertaken for the purposes of a specific investigation or a specific operation **and**
- carried out in such a manner which is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation) **and**
- planned.

It cannot be an immediate response to events or circumstances the nature of which are such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

Intrusive Surveillance

2.6 Intrusive surveillance involves the presence of an officer in a residence where activities are being investigated or in a private vehicle, or use of a surveillance device in such residence or vehicle, where the surveillance device, e.g. camera with a long lens or directional microphone, consistently provides information of the same quality and detail as would expect to be obtained from a device in the residence or vehicle.

2.7 Council Officers **do not and cannot legally** engage in intrusive surveillance. There is no power under RIPA for this Council's officers to engage in intrusive surveillance.

The Conduct and Use of Covert Human Intelligence Sources ("CHIS")

2.8 The conduct and use of covert human intelligence sources occurs when a person establishes or maintains a personal or other relationship with a person:

1. for the covert purpose of using the relationship to obtain information or to provide access to any information to another person **or**
2. to covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

2.9 "Use" includes inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.

2.10 Officers of the Council may on rare occasions engage in the conduct and use of covert human intelligence sources.

- 2.11 Where a covert human intelligence source is used his or her safety and welfare must be taken into account. This will require a risk assessment to be carried out and a record to be kept that gives details of matters such as his or her identity, the person having general oversight of him or her, how he or she was recruited, etc.
- 2.12 Proper arrangements must be established for the oversight and management of a CHIS.
- 2.12.1 In accordance with the Act both a “handler” and a “controller” must be appointed for each CHIS.
- 2.12.2 The “handler” will have day to day responsibility for dealing with the CHIS on behalf of the Council; including directing their day to day activities and recording the information they provide. The “handler” will have day to day responsibility for the CHIS’s security and welfare. Generally, a “handler” will be of a rank or position below the Authorising Officer.
- 2.12.3 The “controller” will be responsible for the management and supervision of the “handler” and general oversight of the use made of the CHIS.
- 2.12.4 The handler is responsible for bringing to the attention of the controller any concerns about the personal circumstances of the CHIS that may affect the validity of the current risk assessment, the conduct of the CHIS and/or the health and safety of the CHIS.
- 2.12.5 As described above, the safety and welfare of the CHIS must be taken into account and the Authorising Officer must carry out a Risk Assessment prior to authorisation. The Assessment must be updated to take account of any developments during the course of deployment and post-deployment. This includes consideration of and mitigation against any risk of the identity of the CHIS being revealed both in the short and long-term e.g. in future court proceedings. The Council should attempt to protect the identity of the CHIS by all lawful means.
- 2.12.6 Extreme care must be taken to safeguard information obtained by a CHIS. This information should be retained for no longer than is necessary and in any event in accordance with the Council’s Retention Policies and then confidentially destroyed. Material identifying a specific CHIS should be handled as highly sensitive and the minimum number of persons possible should have access to it. Copying of material obtained via CHIS (or any part of it) should be minimised to the barest extent necessary. Physical material must be stored so as to prevent unauthorised access to it and material stored on IT systems should similarly be stored to avoid unauthorised access.
- 2.12.7 The Regulation of Investigatory Powers (Source Records) Regulations 2000 set out a list of matters which **must** be included in the records relating to each CHIS which comprise:
- a) the identity of the CHIS;
 - b) the identity, where known, used by the CHIS;
 - c) details of any relevant investigating authority other than the Council;

- d) the means by which the CHIS is referred to within each relevant investigating authority;
- e) any other significant information connected with the security and welfare of the source;
- f) any confirmation made by the authorising (including authorisation on review) officer that the information in d) above has been considered and that any identified risks for the security and welfare of the CHIS have been properly explained to and understood by the CHIS
- g) the date when, and the circumstances in which the CHIS was recruited;
- h) the identities of the persons appointed as “handler”, “ controller” and the person responsible for maintaining a record of the use made of the CHIS;
- i) the periods during which those persons have discharged those responsibilities;
- j) the tasks given to the CHIS and the demands made of hi or her in relation to his activities as a source;
- k) all contacts or communications between the CHIS and the Council (or anyone acting for the Council) or any other investigating authority;
- l) the information obtained by the Council and any other investigating authority via the CHIS;
- m) any sharing of the information by the Council of the information obtained by the CHIS; and
- n) every payment, benefit, reward or offer of payment, benefit or reward made by the Council or any other investigating authority in respect of the CHIS’s activities.

2.12.8 This information should be retained in accordance with the Council’s retention policy (currently current year plus 6 for adult CHIS).

2.12.9 Where an officer is considering the use of a covert human intelligence source he or she must consult with the Head of Legal & Democratic Services or one of her staff beforehand.

Collateral Intrusion

2.13 Collateral intrusion is where there is a risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation. All applications for authorisation should include an assessment of the risk of collateral intrusion to enable the Authorising Officer to take account of it in his/her proportionality assessment of the overall actions proposed. Measures should be taken to limit collateral intrusion.

Confidential information

- 2.14 Confidential information consists of matters subject to legal privilege, confidential or spiritual personal information, or confidential journalistic material, eg information held at premises used by lawyers or for any form of medical or professional counselling or therapy.

Communications Data

- 2.16 Whilst not governed by the RIPA authorisation process it is considered appropriate to include reference to the acquisition of communications data in this policy. Communications data means for telecommunications, the subscriber's detail, the names addresses and numbers of those contacted and web addresses visited and, for postal communications, anything written on the outside of the items. It does not include the content of any such communication.
- 2.17 Occasionally Council Officers may need to obtain such data in connection with investigations in relation to preventing or detecting crime or preventing disorder or some examples would be fly tipping by a lorry with a telephone number on its side or an allegation that a benefit claimant is carrying out hairdressing and has a card in the local newsagent with a telephone number on. The Council may be able to find out the name and address of the person in whose name the telephone is registered.

3 AUTHORISATIONS

- 3.1 It is the Council's position that authorisation is required for the use of directed surveillance and for the conduct and use of covert human intelligence sources where the criteria for applying for authorisation are met (i.e. relating to an offence punishable by a maximum term of six months' imprisonment or more or relating the sale of alcohol, tobacco or nicotine products to minors). In the case of a CHIS, authority should be sought for both (a) the use of a CHIS and (b) the task which they are to carry out.

Authorisation

- 3.2 Each officer who undertakes investigations on behalf of the Council **must** seek authorisation in **writing** for any directed surveillance or for the conduct and use of any covert human intelligence sources from an Authorising Officer which must be then approved by a Justice of the Peace to become effective.

Duration

- 3.3 An adult CHIS authorisation will last for twelve months from the date of Magistrate approval unless renewed or cancelled.
- 3.4 An authorisation for Directed Surveillance will last for three months from the date of Magistrate approval.

Renewal

- 3.5 An authorisation may be renewed (more than once if necessary and proportionate) **before** it ceases to have effect if an authorising officer considers it necessary for the authorisation to continue. The renewal must be approved by a Justice of the Peace before it can take effect in the same way as an original authorisation must be. The renewal takes effect at the time at which the authorisation would have ceased to have effect. If necessary and proportionate a renewal can be made more than once provided a review of the authorisation has been carried out and the criteria for authorisation continue to be met.

The Authorising Officer

- 3.6 Surveillance under RIPA, which is **not** likely to result in the acquisition of confidential information requires authorisation from **1 authorising officer** listed in Appendix B
- 3.7 If the surveillance is likely to result in the acquisition of **confidential information or relates to juvenile or vulnerable CHIS** authorisation must be obtained from **1 authorising officer** listed in Appendix B, namely the Chief Executive or in his absence the person authorised to act as Chief Executive in his place.
- 3.8 The power to authorise surveillance under RIPA cannot be delegated to anyone else.

Judicial Authority

- 3.9 Once the authorising officer has authorised the directed surveillance or CHIS an application must be made to a Justice of the Peace for judicial approval. The authority does not take effect and the surveillance or use of a CHIS cannot be undertaken until it has been approved by a Justice of the Peace.
- 3.10 All applications for judicial authority will be made by the Head of Legal & Democratic Services or a lawyer within her Service. It will be the responsibility of the officer wishing to carry out the surveillance to provide the Head of Legal & Democratic Services with such information and statements as is necessary to make the application.

4. STANDARD FORMS

- 4.1 The authorisation must be sought using the Part II standard forms which can be found in the RIPA part of the Legal section under Business Support on the Council's Intranet.
- 4.2 Applications to the Court will be completed using the relevant application forms and draft order appended to the Home Office guidance: "Protection from Freedoms Act 2012- changes to provisions under the Regulation of Investigatory Powers Act 2000 (RIPA)" October 2012.

5. USE OF THE INTERNET AND SOCIAL NETWORKING SITES FOR INVESTIGATIONS OR INFORMATION GATHERING

- 5.1 With the ever-increasing and wide ranging amount of information available on-line and in particular social networking sites, the Council will often have recourse to the internet in the course of investigations. Much of the on-line information can be accessed without concern.
- 5.2 However, individuals' legitimate expectations of privacy will depend on the circumstances. Someone who posts on a social media site in the full knowledge that it can be seen by the world is of course less likely to have a reasonable expectation of privacy however that does not mean that no authorisation is required. The rationale being that whilst such a person can reasonably expect the world at large to be able to view content, their intention when making that information available was not for it to be used for covert investigative activity.
- 5.3 In his annual report, the Chief Surveillance Commissioner says "*Perhaps more than ever, public authorities now make use of the wide availability of details about individuals, groups and locations that are provided on social networking sites and a myriad of other means of open communication between people using the internet and their mobile communication devices. I repeat my view that just because this material is out in the open, it does not render it fair game. The Surveillance Commissioners have provided guidance that certain activities will require authorisation under RIPA and this includes repetitive viewing of what are deemed to be "open source" sites for the purpose of intelligence gathering and data collection*".
- 5.4 Simply taking an initial look at those open-source sites is unlikely to engage privacy concerns but where repeated or persistent viewing of the sites take place and/or where information from the site is recorded or collected then we are in the territory where an application for directed surveillance may be necessary. Please seek advice from the legal department.
- 5.5 There is no formal definition of what is "persistent" or "repeated" and it will vary on a case by case basis. Viewing a profile or site as few as three or four times may be sufficient. Individuals' legitimate expectation of privacy may also depend to a degree on application of any privacy settings. You must seek advice from Legal Services before proceeding if repeated or systematic viewing and/or recording of information from or monitoring of social media sites is contemplated and obtain advice on whether an application for authorisation is possible and/or necessary and how to proceed generally.
- 5.6 The situation may arise whereby a person acting for the Council may use social media platforms to interact with third parties.
- 5.7 Where a person acting on behalf of the Council intends to engage with others on line without disclosing their identity or under an assumed identity, a CHIS authorisation is likely to be needed (provided the other criteria are met). It is expected that the need for this type of activity – where there is a degree of interaction with the subject - will only be required or appropriate in exceptional circumstances and advice must be sought from Legal Services before

commencing it. The Authorising Officer must satisfy themselves that they have full and effective oversight of the on-line surveillance from preparation to post-completion.

- 5.8 In such circumstances if it is intended that more than one individual or officer will share the same on-line persona, each officer should be clearly identifiable within the authorisation for that particular operation specifying the requirements of each officer and carrying out a risk assessment for each individual or officer.
- 5.9 Any assumed identities should be listed in a register prepared for the purpose and centrally recorded.

6. ROLE OF THE AUTHORISING OFFICER

- 6.1 The authorising officer must satisfy themselves that authorisation is necessary and proportionate. The authorising officer must consider the relevant Code of Practice. These can be found in the RIPA part of the Legal section under Business Support on the Council's Intranet

Necessary

- 6.2 An authorisation under RIPA may be granted by an authorising officer if he believes that the authorisation is **necessary** for the purpose of preventing or detecting crime or of preventing disorder (subject to the caveat below). Authorisation cannot be given for any other reason. As set out in paragraph 1.5 above, authorisation may only be granted in relation to crimes which are punishable (whether on summary conviction or indictment) by a maximum term of at least six months imprisonment or are related to the underage sale of alcohol, tobacco or nicotine inhaling products. An authorisation may only be granted in relation to prevention of disorder if it involves conduct constituting a criminal offence or offences punishable by a maximum term of at least six months imprisonment. Disorder falling short of this criteria does not fall within the scope of RIPA authorisation.

In the case of a CHIS, authorisation must not be granted unless the authorising officer believes that arrangements are in place ensuring that there is at all times a person appointed with responsibility for maintaining a record of the use made of the CHIS.

Proportionate

- 6.3 If the surveillance activities are necessary on the above grounds (see 5.2) the authorising officer must also believe that the surveillance activities are "proportionate" to what is sought to be achieved by carrying them out. The activities will not be proportionate if the activities are excessive in the circumstances of the case or if the information could be obtained by a less intrusive means.
- 6.4 Paragraph 3.6 of the 2010 Home Office Code of Practice for Covert Surveillance and Property Interference provides:

3.6 The following elements of proportionality should therefore be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- Considering whether the activity is an appropriate use of the legislation and reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- Evidencing, as far as reasonably practicable what other methods had been considered and why they were not implemented.

Risk of Collateral Intrusion

- 6.5 Collateral intrusion is where there is a risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation.
- 6.6 The authorising officer must consider the risk of collateral intrusion and describe in the authorisation form what will be done for any that is considered likely.
- 6.7 The person carrying out the surveillance must inform the authorising officer if the investigation or operation unexpectedly interferes with the privacy of individuals not covered by the authorisation. The authorising officer must then consider whether the authorisation should continue.

Confidential Material

- 6.8 “Confidential information” for the purposes of RIPA consists of:
- (a) matters subject to legal privilege; and
 - (b) confidential *personal* information is information held in confidence (whether expressly or implied) concerning an individual (living or dead) who can be identified from it and the material relates to the person’s physical or mental health or to spiritual counselling.
- 6.9 If the directed surveillance or the conduct and use of any covert human intelligence sources is likely to result in the acquisition of confidential material the authorising officer, when considering the application, must assess how likely it is that confidential material will be acquired.
- 6.10 Applications in which the directed surveillance is likely to result in the acquisition of confidential material will only be considered in **exceptional and compelling circumstances** with full regard to the proportionality issues this raises.
- 6.11 Where the likely consequence of the directed surveillance would be for any person to acquire knowledge of confidential material, the authorising officer must be the Chief Executive or in his absence, the person authorised to act in his place.

- 6.12 The authorising officer must give the fullest consideration to any cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance in his or her home.
- 6.13 The Code of Practice issued under the Act must be taken into account and is reflected in this policy.

7. ACTIVITIES BY OTHER PUBLIC AUTHORITIES

The application officer must make enquiries of other public authorities whether they are carrying out similar activities if he considers that there is such a possibility in order to ensure that there is no conflict between the activities of this Council and those other public authorities.

8. DATA PROTECTION

Authorising officers must ensure that there is compliance with the appropriate data protection requirements and the Council's policies and practices in the handling and storage of material.

9. DESTRUCTION OF WHOLLY UNRELATED MATERIAL

- 9.1 Where material is obtained by directed surveillance which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, it must be destroyed immediately, but not if civil or criminal proceedings are contemplated. Where court proceedings are contemplated, all material is potentially relevant and must be retained and will be disclosed in the usual way.
- 9.2 The applicant officer must, if appropriate, seek authority to destroy any wholly unrelated material where there will be no court proceedings.

10. DESTRUCTION AND RETENTION OF CONFIDENTIAL MATERIAL

- 10.1 Investigating officers must be alert to anything that may be confidential material. Where there is doubt, advice must be sought from the Head of Legal & Democratic Services before further dissemination of the material takes place.
- 10.2 Confidential material must not be retained or copied unless it is necessary for a specified purpose. Details of any that is retained or copied must be given to the Monitoring Officer who will make a note only for the central record
- 10.3 Confidential material must only be disseminated where an appropriate officer (having sought advice from the Head of Legal & Democratic Services) is satisfied that it is necessary for a specific purpose.
- 10.4 A clear warning stating that the information is confidential in nature must accompany the confidential information, which is retained or disseminated. Reasonable steps must be taken to prevent the material from becoming available, or its contents being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.

- 10.5 Confidential material must be destroyed as soon as it is no longer necessary to retain if for a specified purpose.

11. TRAINING

Authorising officers and an investigating Council officer must undertake appropriate training before carrying out any investigation under RIPA. This is to ensure that investigations and operations that he/she carries out will be conducted lawfully. The training will be carried out by Officers from within Legal Services or external providers.

12. REVIEWS

- 12.1 Regular reviews of authorisations must be undertaken to assess the need for surveillance to continue. The results of the review must be recorded on the central record of authorisations.
- 12.2 The authorising officer shall determine how often a review should take place. However frequent reviews should take place where surveillance results in collateral intrusion or access to confidential information.
- 12.3 This review will take into account any subsequent action by the Council arising from the produce of the surveillance, which may be in the form of the issue of notices, orders, or determinations by the Council, or the bringing of criminal or civil proceedings, or any other action.

13. CANCELLATIONS

- 13.1 An authorising officer who granted or last renewed the authorisation must cancel the authorisation if the grounds for granting the authorisation no longer apply e.g. the aims have been met; risks have changed and authorisation is no longer appropriate.
- 13.2 The authorising officer must inform those involved in the surveillance to stop all surveillance of the subject(s).

14. ACQUISITION OF COMMUNICATIONS DATA

- 14.1 Authorisation is required for obtaining communications data and it can only be obtained through an authorised Single Point of Contact (SPOC).
- 14.2 The Council subscribes to the National Anti-Fraud Network (NAFN) which acts as the channel through which any applications for communications data are made.

Application Procedure

- 14.3 Each officer wishing to obtain communications data must complete the required form that can be found online on the NAFN website.
- 14.4 NAFN will then notify the Council's SPOC.

14.5 NAFN will then review the application and either authorise or reject it or may suggest a re-work. If authorised, the NAFN will follow its processes and obtain the information from the service provider in question.

15. RECORD OF DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE AUTHORISATIONS

15.1 The written records shall be confidential and shall be kept accurately and conveniently. Each authorisation must be allocated its own Unique Reference Number (“URN”) which should be used throughout the life of the authorisation and applied to documentation associated with it.

Central Record of All Authorisations

15.2 A central record of all authorised surveillance will be kept by the Head of Legal & Democratic Services. The central record must be readily available for inspection on request by the Office of Surveillance Commissioners.

Other Records

15.3 The following documents need not form part of the centrally retrievable record. Each service must keep a written record of each of the authorisations made by an authorising officer for the service:

1. a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of approval given by the authorising officer;
2. a record of the period over which the surveillance has taken place
3. the frequency of the reviews prescribed by the authorising officer
4. a record of the result of each review
5. a copy of any renewal of an authorisation and any supporting documentation submitted when the renewal was requested
6. the date and time any instruction was given by the authorising officer, including cancellation of such authorisation

16 DISCLOSURE

The information obtained during the course of an investigation that might be relevant to that or another investigation or pending or future civil or criminal proceedings must not be destroyed.

17 SENIOR RESPONSIBLE OFFICER

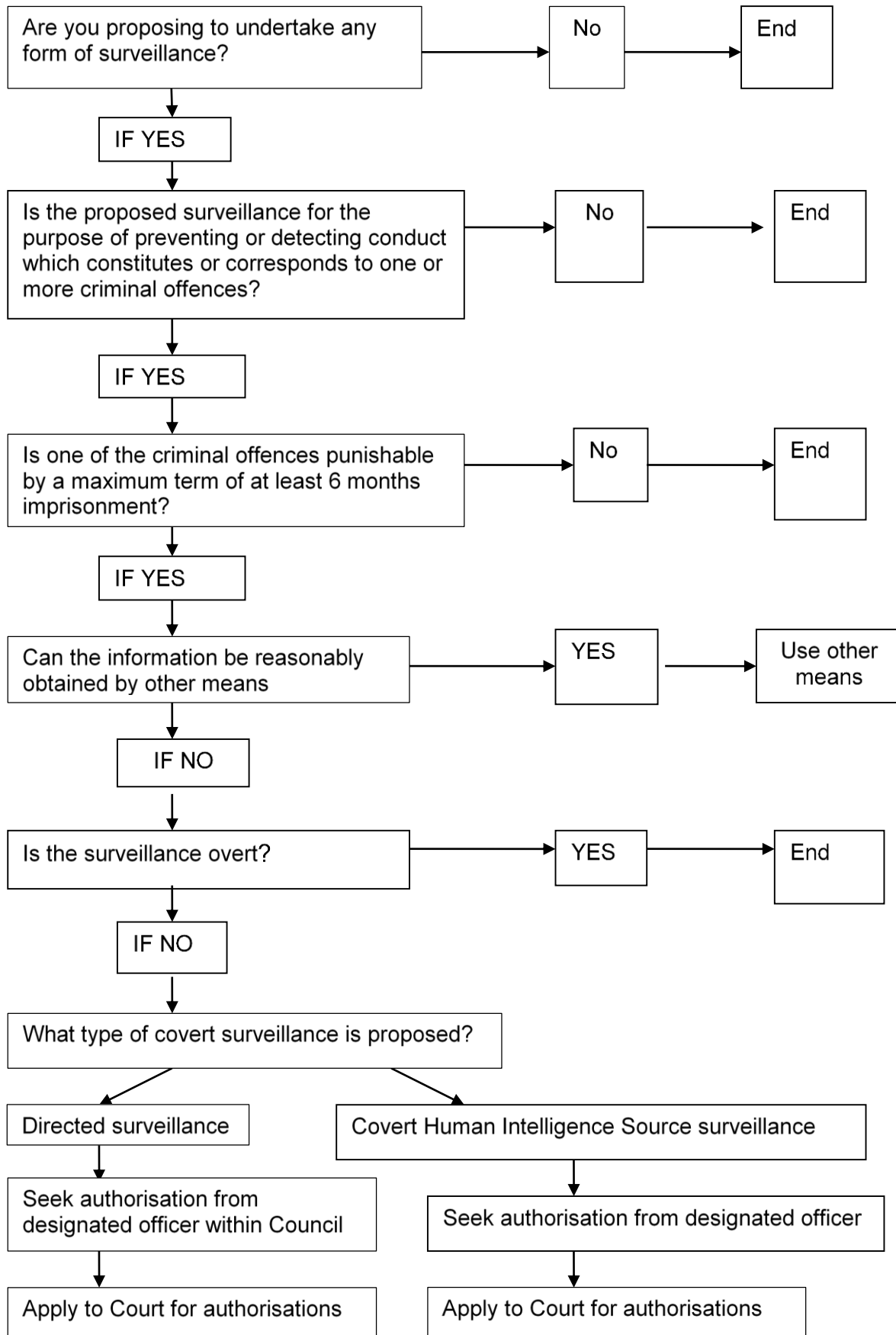
17.1 The Council’s Senior Responsible Officer (“SRO”) is shown in Appendix B.

17.2 The SRO is responsible for:

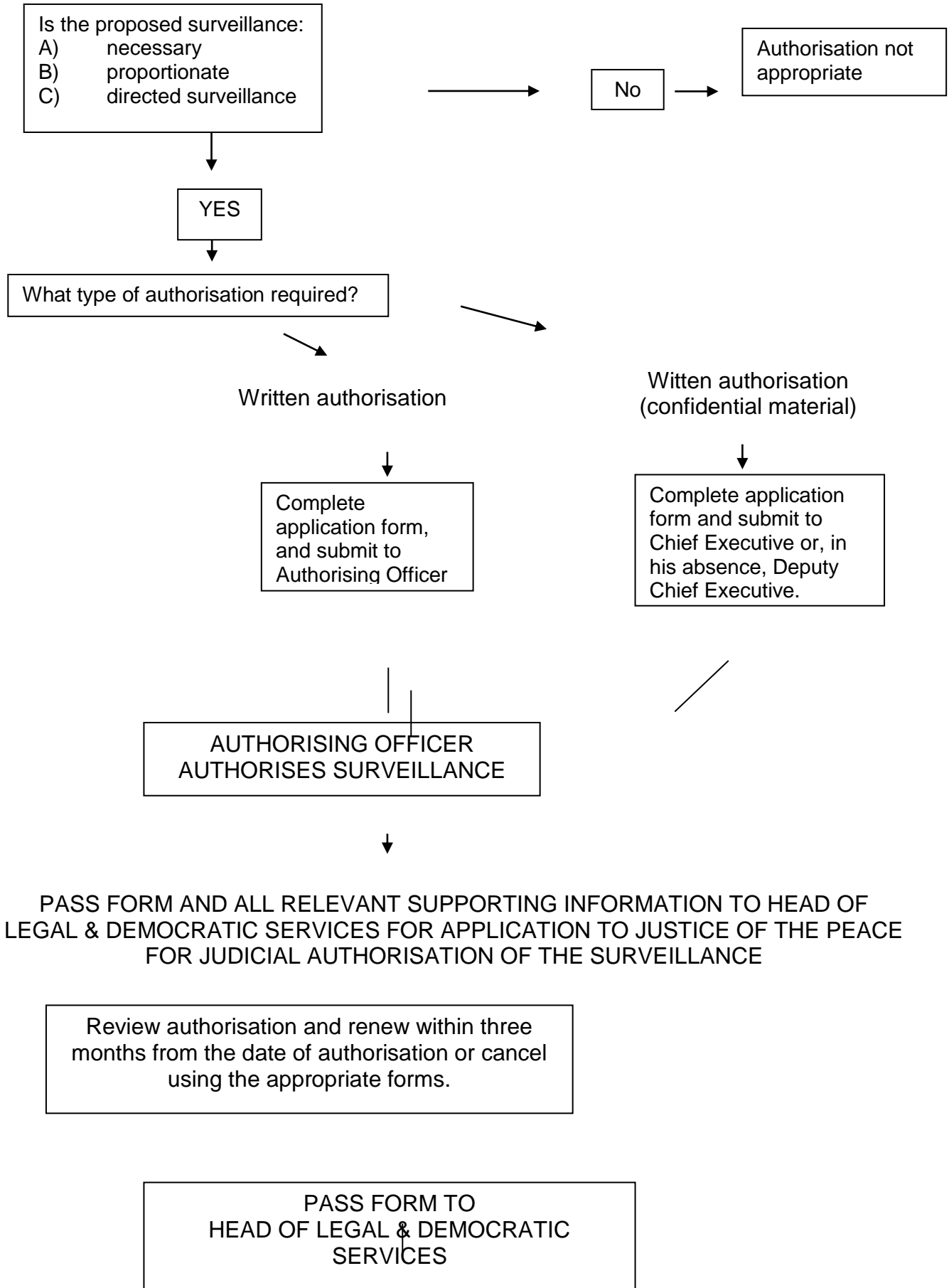
- The integrity of the process in place within the public authority for the management of Directed Surveillance and CHIS
- Compliance with Part 2 of the Act and the Codes of Practice
- Oversight of the reporting of errors to the relevant Oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors.
- Engagement with the Office of Surveillance Commissioners Inspectors when they conduct their inspections, where applicable and
- Where necessary, oversight of the implementation of post-inspections plans approved by the relevant Oversight Commissioner

PROCESS DECISION MAP FOR COVERT SURVEILLANCE

ANNEX



AUTHORISATION OF DIRECTED SURVEILLANCE PROCESS MAP ANNEX



APPENDIX B

REGULATION OF INVESTIGATORY POWERS ACT 2000
List of Authorised Posts, Designated Persons and Single Point of Contact

Authorised Posts

List of persons empowered to authorise surveillance which is not likely to result in the acquisition of confidential information for the purpose of obtaining communications data

Surveillance, which is not likely to result in the acquisition of confidential information, requires an authorised officer to grant the authorisation.

NAME	POST	SERVICE	EXTN
Phil Turner	Head of Housing Health & Communities	Housing Health & Communities	8601
Carl Whatley	Head of Finance and Revenues Services	Finance & Revenues	8540
Paul Wykes	Head of Environmental Services	Environmental Services	8351

NB. The power to authorise surveillance under RIPA cannot be delegated to anyone else.

List of persons empowered to authorise surveillance which is likely to result in the acquisition of confidential information

Surveillance which is likely to result in the acquisition of confidential information or which authorises use of a juvenile or vulnerable CHIS requires authorisation from:

Authorised Post	Name
Chief Executive	Andrew Ferrier

or in his absence

Deputy Chief Executive	Salena Mulhere
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NB. The power to authorise surveillance under RIPA cannot be delegated to anyone else.

Designated Persons

List of persons empowered to authorise the council's Single Point of Contact to apply to the National Anti-Fraud Network for Communications Details.

NAME	POST	SERVICE	EXTN
Sam Hall	Head of Housing Health & Communities	Housing Health & Communities	8544
Carl Whatley	Head of Finance and Revenues Services	Finance & Revenues	8540
Simon Finch	Head of Planning & Building	Planning & Building	8186
Paul Wykes	Head of Environmental Services	Environmental Services	8351

Senior Responsible Officer

Deputy Chief Executive	Salena Mulhere
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