

NORTH HERTFORDSHIRE DISTRICT COUNCIL



7 January 2022

Our Ref Overview and Scrutiny
Committee/18.01.22
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To: Members of the Committee: Councillor David Levett (Chair), Councillor Daniel Allen (Vice-Chair), Councillor Kate Aspinwall, Councillor Mike Hughson, Councillor Tony Hunter, Councillor Nigel Mason, Councillor Jim McNally, Councillor Ian Moody, Councillor Lisa Nash, Councillor Carol Stanier, Councillor Claire Strong and Councillor Terry Tyler

**NOTICE IS HEREBY GIVEN OF A
MEETING OF THE OVERVIEW AND SCRUTINY COMMITTEE**

to be held in the

TO BE ADVISED

On

TUESDAY, 18TH JANUARY, 2022 AT 7.30 PM

Yours sincerely,

Jeanette Thompson
Service Director – Legal and Community

****MEMBERS PLEASE ENSURE THAT YOU DOWNLOAD ALL AGENDAS AND REPORTS VIA THE MOD.GOV APPLICATION ON YOUR TABLET BEFORE ATTENDING THE MEETING****

Agenda **Part I**

Item	Page
1. WELCOME	
2. APOLOGIES FOR ABSENCE Members are required to notify any substitutions by midday on the day of the meeting. Late substitutions will not be accepted and Members attending as a substitute without having given the due notice will not be able to take part in the meeting.	
3. MINUTES - 14 DECEMBER 2021 To take as read and approve as a true record the minutes of the meeting of the Committee held on the 14 December 2021.	(Pages 5 - 14)
4. NOTIFICATION OF OTHER BUSINESS Members should notify the Chair of other business which they wish to be discussed at the end of either Part I or Part II business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency. The Chair will decide whether any item(s) raised will be considered.	
5. CHAIR'S ANNOUNCEMENTS Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chair of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest, wishing to exercise a 'Councillor Speaking Right', must declare this at the same time as the interest, move to the public area before speaking to the item and then must leave the room before the debate and vote.	
6. PUBLIC PARTICIPATION To receive petitions, comments and questions from the public.	
7. URGENT AND GENERAL EXCEPTION ITEMS The Chair to report on any urgent or general exception items which required their agreement. At the time of printing the agenda, the Chair had not agreed any urgent or general exception items.	

8. CALLED-IN ITEMS

To consider any matters referred to the Committee for a decision in relation to a call-in of decision. At the time of printing the agenda, no items of business had been called-in.

9. CRIME AND DISORDER MATTERS

To receive a verbal presentation from Stevenage Against Domestic Abuse and for Members to discuss possible future presentations under this topic.

10. RESOLUTIONS OF THE OVERVIEW AND SCRUTINY COMMITTEE (Pages
REPORT OF THE COMMITTEE, MEMBER AND SCRUTINY MANAGER 15 - 16)

To consider the outcome of Overview and Scrutiny Committee resolutions.

11. OVERVIEW AND SCRUTINY COMMITTEE WORK PROGRAMME (Pages
REPORT OF THE COMMITTEE, MEMBER AND SCRUTINY MANAGER 17 - 28)

To consider the issues that the Overview and Scrutiny Committee plans to review at future meetings and the activities of its sub-groups.

12. ANNUAL RIPA REPORT (Pages
REPORT OF THE LEGAL REGULATORY TEAM MANAGER AND DEPUTY 29 - 60)
MONITORING OFFICER

This Report updates on the Council's current use of RIPA and reports on the annual policy review

13. MEMBERS' QUESTIONS

To receive and respond to any questions from Members either set out in the agenda or tabled at the meeting.

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Public Document Pack Agenda Item 3

NORTH HERTFORDSHIRE DISTRICT COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

MEETING HELD IN THE COUNCIL CHAMBER, DISTRICT COUNCIL OFFICES, GERON ROAD, LETCHWORTH GARDEN CITY
ON TUESDAY, 14TH DECEMBER, 2021 AT 7.30 PM

MINUTES

Present: *Councillors: David Levett (Chair), Ruth Brown, Morgan Derbyshire, Terry Hone, Mike Hughson, Tony Hunter, Nigel Mason, Carol Stanier and Claire Strong*

In Attendance: *Rachel Cooper (Controls, Risk and Performance Manager), Steve Crowley (Service Director - Commercial), Melanie Stimpson (Democratic Services Manager), James Lovegrove (Committee, Member and Scrutiny Officer), Chloe Gray (Commercial Manager), Chris Jeffery (Interim Customer Service Manager) and Christopher Robson (Senior Estates Surveyor)*

Also Present: *At the commencement of the meeting there were no members of the public or registered speakers present.*

47 WELCOME

The Chair welcomed everyone to the Overview and Scrutiny Committee meeting that was being held in the Council Chamber and advised that the meeting was being streamed live on the Council's YouTube channel and some Officers were joining online.

The Chair invited the Committee, Member and Scrutiny Officer to explain how proceedings would work.

The Committee, Member and Scrutiny Officer undertook a roll call of those officers joining the meeting online to ensure that they could hear and be heard and gave advice regarding the following:

- Rules of Debate;
- Voting; and
- Covid Risk Assessment Measures.

The Chair of the Overview and Scrutiny Committee, Councillor David Levett started the meeting proper.

48 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Daniel Allen, Kate Aspinwall, Jim McNally, Ian Moody and Terry Tyler.

Having given due notice, Councillor Morgan Derbyshire substituted for Councillor Ian Moody, Councillor Terry Hone substituted for Councillor Jim McNally and Councillor Ruth Brown substituted for Councillor Terry Tyler.

49 MINUTES - 14 SEPTEMBER 2021

Councillor David Levett, as Chair, proposed and Councillor Claire Strong seconded and, following a vote, it was:

RESOLVED: That the Minutes of the Meeting of the Committee held on 14 September 2021 be approved as a true record of the proceedings and be signed by the Chair.

50 NOTIFICATION OF OTHER BUSINESS

There was no other business notified.

51 CHAIR'S ANNOUNCEMENTS

- (1) The Chair advised that following the death of Cllr Paul Clark a minutes silence would be held.
- (2) The Chair advised Members that the meeting would be audio and video recorded in line with Council policy.
- (3) The Chair reminded Members that interests should be declared prior to an item and the detailed explanation of this was included on the agenda.
- (4) The Chair advised that there was a Part 2 Item on the agenda for this meeting and notified members of the public that the room would be emptied and the live stream would be stopped at this point.
- (5) The Chair notified Members of a change of order and Items 16 and 17, 'Exclusion of Press and Public' and 'Commercial Update Part 2', would come before Item 15, 'Commercial Update Part 1'.

52 PUBLIC PARTICIPATION

There was no public participation.

53 URGENT AND GENERAL EXCEPTION ITEMS

No urgent or general exception items were received.

54 CALLED-IN ITEMS

Since the last meeting, no decisions had been called-in by the Overview and Scrutiny Committee.

55 RESOLUTIONS OF THE OVERVIEW AND SCRUTINY COMMITTEE

Councillor Claire Strong raised a Point of Order to question why the use of the acronym NHC for North Herts Council was being used within Officer reports, when advice in recent Insight magazine said this acronym should not be used publicly due to possible confusion with North Herts College.

At this point of the meeting (19.37) Councillor Carol Stanier entered the Council Chamber.

The Democratic Services Manager advised that the question would be passed onto the Communications Team and Members subsequently informed.

The Democratic Services Manager presented the report entitled Resolutions of the Overview and Scrutiny Committee.

At this point of the meeting (19.39) Councillor Ruth Brown entered the Council Chamber.

The following Members asked questions:

- Councillor Claire Strong

In response to questions, Councillor David Levett advised:

- When the Task and Finish Group was initially conceived it was not expected that the Covid pandemic would last as long as it has. There would be a need to speak with Officers to find a different approach to move this work on.
- There was a possibility that the work proposed for the Task and Finish Group could be assigned to an Executive Member to progress the work.
- Would need to check the legal status of the Task and Finish Group in light of work from home advice but without changes to legislation to allow for remote decisions to be made.

RESOLVED: That the report entitled 'Resolutions of the Overview and Scrutiny Committee' be noted.

REASON FOR DECISION: To enable the Overview and Scrutiny Committee to review and comment on actions and feedback received regarding resolutions previously made.

56 OVERVIEW AND SCRUTINY COMMITTEE WORK PROGRAMME

The Democratic Services Manager presented the report entitled Overview and Scrutiny Committee Work Programme and drew attention to the following:

- Crime and Disorder Matters item was due before the Committee in January and requested that Members advise of topics under this remit, so invites can be sent to relevant partners.
- A supplementary document was added on 13 December 2021 and this was the most up to date version of the Forward Plan.
- Advised that the publication date of the Forward Plans had been changed to the beginning of the month, rather than the end.

In response to a question from Councillor David Levett, the Democratic Services Manager believed that the Waste Infrastructure item on the Forward Plan was still due to Cabinet at the December 2021 meeting.

Councillor David Levett suggested that a possible topic for the Crime and Disorder Matters item could be cybercrime and cyber-bullying.

Councillor Terry Hone suggested that the topics of Domestic Abuse and E-Scooters could be discussed under the Crime and Disorder Matters.

Councillor David Levett advised that these proposals could be put to the police to see what could be provided to the Committee on these topics.

Councillor David Levett, as Chair, proposed and Councillor Claire Strong seconded and, following a vote, it was:

RESOLVED:

- (1) That the Committee prioritises proposed topics for inclusion in the work programme attached as Appendix A and, where appropriate, determines the high level form and timing of scrutiny input.
- (2) That the Committee, having considered the Forward Plan attached as Appendix B, suggests a list of items to be considered at its meeting on 18 January 2022 and beyond

and will notify the Committee, Member and Scrutiny Manager of these, specifically relating to Crime and Disorder.

- (3) That the Corporate Peer Challenge Action Plan Extract, as attached as Appendix C, be considered.

REASON FOR DECISION: To allow the Committee to set a work programme which provides focussed Member oversight, encourages open debate and seeks to achieve service improvement through effective policy development and meaningful policy and service change.

57 INTEGRATED PERFORMANCE MANAGEMENT

The Controls, Risk and Performance Manager presented the report entitled 'Integrated Performance, Project Monitoring and Risk' including:

- Outlined the changes to the processes which were included within the report.
- This proposal was to change the way project monitoring and risk was presented to the Committee with an integrated approach to monitoring Performance Indicators and the Council Plan.
- This Integrated Report would be provided to the Finance, Audit and Risk Committee and Cabinet, as well as this Committee.
- This should help to ensure both Committees receive the full picture and make the information published online more relevant to the public.
- Monitoring of the Council Plan will be done quarterly by Overview & Scrutiny and can be referred onto Cabinet, strengthening the role of the Committee.
- Finance, Audit and Risk would no longer receive updates on particular risk, but would have a view of the overall performance of Risk Management, which is hoped will remove overlap between the two Committees.
- A slight change to the Constitution would be required to extend the role of Overview & Scrutiny in risk monitoring, outlined in the report.
- The proposals would allow better alignment to the Council Plan, better Cabinet and Overview & Scrutiny oversight and will make information more accessible to Councillors, Officers and members of the public.
- An informal consultation had taken place with the Chairs of both Finance, Audit and Risk Committee and Overview & Scrutiny and the Finance, Audit and Risk Committee would also receive this report for commenting.
- The first report in the new format will be the Q1 reporting at the Committee meeting in September 2022.

The following Members asked questions:

- Councillor Terry Hone

In response to questions the Controls, Risk and Performance Manager advised:

- Consideration of resources (staff and financial) would be considered when drawing up the list of projects to be included in the delivery plan, as takes place during the budget setting process.
- Confirmed that it was proposed for the Chair of Overview & Scrutiny and Finance, Audit and Risk attend the Risk Management Group, but processes would need to be determined, agreed and put in place to manage this.

The Chair commented that it was positive to see that the reports would be linked up which would allow the Committees to monitor risk and performance as a whole and he welcomed the move.

Councillor David Levett, as Chair, proposed and Councillor Morgan Derbyshire seconded and, following a vote, it was:

RESOLVED: That the proposals set out in the report were approved, which relate to the creation and monitoring of an Integrated Council Delivery Plan.

RECOMMENDED TO COUNCIL: To approve the changes to the Constitution as detailed in Section 9.

REASON FOR DECISION: To improve the current processes that are in place which do not seem to be well integrated with each other or the Council Plan.

58 Q2 PERFORMANCE INDICATORS 2021-22

The Controls, Risk and Performance Manager presented the report entitled 'Quarter 2 PI Data' including:

- This report showed the data for 21 Indicators to the end of September 2021 and there were four green, two amber and three red Indicators. The remaining indicators were for information only and did not have targets.
- Sales Ledger collection was up on last year and improving month on month, but was still down on target.
- Payment collections from businesses were still facing issues with fewer court dates available to reclaim owed monies and payment deadlines being pushed back to February or March 2022.
- North Herts is performing well against other Herts authorities regarding Homeless Prevention and Relief, but down on performance from last year.
- Visits to leisure centres are continuing to perform well against the recovery plan.
- Residual Household Waste indicator was red and this was down primarily to food waste in residual bins, but public messaging was going out to target this.
- Outlined the other Waste Indicators and noted that recycling was improving on last year.

The following Members asked questions:

- Councillor David Levett
- Councillor Terry Hone
- Councillor Claire Strong

The Senior Estates Surveyor advised that the government moratorium on rent had been extended to 25 March 2022, but could be further extended.

In response to questions the Controls, Risk and Performance Manager advised:

- Generally sales ledger invoices were low value, therefore a few high value outstanding invoices have a big impact on collection levels.
- Communications on social media had been made to encourage residents to reduce food waste in residual bins.
- They were unsure of the breakdown of the 21 households in temporary accommodation and would look to provide Members with details of this following the meeting.

In response to questions the Deputy Executive Member for Recycling and Waste Management advised:

- Messages addressing food waste had been included in previous Outlook magazines.
- When food waste collections have had to be suspended, due to staffing shortages and the pandemic, the issue tended to get worse.

- A previous composition waste analysis had been completed at the beginning of 2022, but it was difficult to monitor and repeat due to the scale of the project.
- Council messages had been clear on this, but this had been confused by different messages locally.
- The message had been consistently that food waste could go in the residual waste bin if no other alternative and while this was not ideal it was deemed a necessary short term measure.

Councillor Terry Hone advised that it would not be legal for the Council to tell residents to put food waste in their charged garden waste bin.

Councillor David Levett commented that the advice given relating to this may need a refresh to ensure the best information is being provided.

Councillor Terry Hone requested that Officers and Executive Members seek advice from other authorities regarding their actions on food waste and missed collections to explore other options and ensure best practice is followed. Councillor Carol Stanier advised that she would request the Executive Member raise this with the Hertfordshire Waste Partnership group.

Councillor Claire Strong proposed and Councillor Terry Hone seconded and, following a vote, it was:

RESOLVED: That the report entitled 'Q2 Performance Indicators 2021-22' be noted.

RECOMMENDED TO CABINET: To consider further messaging and communications, not exclusive to social media, to clarify the process for residents regarding food waste and the missed collection protocol.

REASONS FOR DECISIONS: To update the Committee on the performance indicators as well as other indicators that officers have updated and activated on Pentana Risk.

59 PROGRESS AGAINST PROJECTS TO SUPPORT THE COUNCIL PLAN

The Controls, Risk and Performance Manager presented the report entitled '2ND Quarter Monitoring Report on Key Projects 2021-22' and drew attention to the following:

- The Status Report showed 10 projects with a green status, 3 with amber and 1 red.
- The equipment at Howard Park play area had been delivered and the final works were due for completion by 17 December 2021 and publicity would follow announcing the reopening.
- Crematorium project had ceased following the report to Cabinet on 21 September 2021 and Officers from Commercial and Green Space teams will explore alternative options for the site. Any alternatives identified would be reported to Cabinet by March 2022 and no further reports would come to Overview & Scrutiny.
- An enquiry regarding progress on the Local Plan had been on 10 November and this an the response had been published online. There was still no date given for the receipt of the report.

Councillor David Levett noted that it was positive to see the work progressing on the Howard Park play area after the delays experienced.

The following Members asked questions:

- Councillor Claire Strong

In response to questions Cllr Carol Stanier advised that, although 10,000 people had not signed up to the Tree Giveaway, of the people and groups who had signed up there were a

significant number who requested more than one. While numbers were limited initially, if there are leftover trees they will be offered to those who had already received trees.

Councillor Ruth Brown advised that 300 trees had been collected from Royston without having made a prior request.

Councillor Terry Hone commented that he had collected a tree and was very impressed with the level of service offered upon collection and noted that the operatives involved should be commended.

Councillor David Levett agreed that the Officers who carried out the work should be thanked for a successful project, which could hopefully be repeated in the future.

Councillor Terry Hone proposed and Councillor Nigel Mason seconded and, following a vote, it was:

RESOLVED: That the report entitled '2nd Quarter Monitoring Report on Key Projects for 2021-22' be noted.

REASON FOR DECISION: To enable achievements against the key projects for 2021-22 to be considered.

60 COMMENTS, COMPLIMENTS AND COMPLAINTS HALF YEAR REPORT

The Leader of the Council confirmed that there had been articles published in the last issue of the Outlook magazine on reducing food waste.

The Leader of the Council presented the report entitled 'Half Year Update on Comments, Compliments and Complaints (3C's)' and highlighted the following:

- There had been an error with the logging of 'Service Requests' as 'Comments' from Urbaser staff and this explains the large growth in Comments to the Waste team and this issue has now been resolved.
- The number of complaints surrounding Garden Waste Subscription was lower this year than previous years.
- Compliments were received most for Carline and Green Space teams.
- Complaints solved within 10 day target period was 2% down, but this was primarily due to the staffing shortages and given wider context this 2% drop is not too bad.
- 20 complaints had been escalated to Stage 2 – 15 of these were deemed not justified and one was sent to the Local Government Ombudsman, but was found to be outside of their remit.
- Service providers should be commended for the work they've continued to do in difficult circumstances.

The following Members asked questions:

- Councillor David Levett
- Councillor Claire Strong

In response to questions, the Leader of the Council advised:

- A Service Request would be logged if a resident initially raises a missed bin collection, if this is then not done after the request was made it would become a complaint.
- Comments can be difficult to identify and the Leader advised she would rather these be mis-recorded than not recorded at all.

- If a comment is clearly framed as a complaint, it would be recorded as such even if it was the first time contact over a missed bin collection.
- Some service requests following a missed bin collection do not automatically include a complaint as there is no explicit dissatisfaction.
- Missed bin collections had always been logged as a service request, unless there was an explicit expression of complaint.

Councillor Mike Hughson proposed and Councillor Claire Strong seconded and, following a vote, it was:

RESOLVED: That the Information Note entitled 'Half Year Update on Comments, Compliments and Complaints (3C's)' be noted.

REASON FOR DECISION: To update the Committee on the first six months performance of 2021/22 regarding the Comments, Compliments and Complaints (3C's) received for the Council and the contractors that provide services on the Council's behalf.

61 EXCLUSION OF PRESS AND PUBLIC

Councillor David Levett, as Chair, proposed and Councillor Morgan Derbyshire seconded and, following a vote, it was:

RESOLVED: That under Section 100A of the Local Government Act 1972 the Press and Public be excluded from the meeting on the grounds that the following report will involve the disclosure of exempt information as defined in Paragraph 3 of Part 1 Schedule 12A of Said Act (as amended).

62 COMMERCIAL UPDATE - PART 2

The Service Director – Commercial presented the report entitled 'An update of the Commercial Directorate's progress and future work programme – PART 2'.

The following Members asked questions:

- Councillor Claire Strong
- Councillor David Levett
- Councillor Tony Hunter
- Councillor Carol Stanier
- Councillor Ruth Brown

The Service Director – Commercial, Senior Estates Surveyor and Executive Member for Finance and IT responded to questions and gave advice.

Councillor David Levett, as Chair, proposed and Councillor Claire Strong seconded and, following a vote, it was:

RESOLVED: That the report entitled 'An update of the Commercial Directorate's progress and future work programme' be noted.

RECOMMENDED TO CABINET: To review the Harkness Court project in light of Overview and Scrutiny comments and concerns in relation to the climate emergency (greener solutions instead of the proposed gas installation), whether there are more commercially viable options to the leasing of the flats, as is currently proposed, to generate a better financial return, and if the approach taken remains the most suitable or if other options should be explored. The Overview and Scrutiny Committee request that the Cabinet report back to the Committee.

REASONS FOR DECISION: The report is following the request of the Committee for an update on the progress of the Commercial Directorate work programme and is for information only.

63 COMMERCIAL UPDATE

Councillor David Levett, as Chair, proposed and Councillor Claire Strong seconded and, following a vote, it was:

RESOLVED: That the report entitled 'An update of the Commercial Directorate's progress and future work programme' be noted.

RECOMMENDED TO CABINET: To review the Harkness Court project in light of Overview and Scrutiny comments and concerns in relation to the climate emergency (greener solutions instead of the proposed gas installation), whether there are more commercially viable options to the leasing of the flats, as is currently proposed, to generate a better financial return, and if the approach taken remains the most suitable or if other options should be explored. The Overview and Scrutiny Committee request that the Cabinet report back to the Committee.

REASONS FOR DECISION: The report is following the request of the Committee for an update on the progress of the Commercial Directorate work programme and is for information only.

64 MEMBERS' QUESTIONS

No questions had been submitted.

The meeting closed at 9.32 pm

Chair

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RESOLUTIONS OF THE OVERVIEW AND SCRUTINY COMMITTEE

COMMITTEE RESOLUTIONS

REF	RESOLUTION	RESPONSE/OUTCOME	STATUS
	Task and Finish Group on Community Engagement		
June 20 Min 9 (3)	That the scope of the proposed Task and Finish Group on communication in relation to the Waste Contract be widened to encompass Communication and Engagement generally.	<p>This Task and Finish Group was due take place once social distancing and other pressures in regard to the Covid Pandemic had eased.</p> <p>When the Task and Finish Group was initially conceived it was not expected that the Covid pandemic would last as long as it has. Officers are investigating alternative avenues to progress this work including but not limited to assignment of the topic to an Executive Member</p> <p>The legal status of Task and Finish Groups in light of the requirement to work from home and without changes in remote meeting legislation is an unresolved issue.</p>	In progress/under review.
Page 15	Integrated Performance Management		
Dec 21 Min 57 (2)	Recommended to Council that the proposed changes to the Constitution as set out in Section 9 of the report be approved to improve the current processes that are in place for Performance Management and review which do not seem to be well integrated with each other or the Council Plan.	This recommendation was also made by Cabinet and will proceed to Council in January 2022.	In Progress
	Q2 Performance Indicators 2021-22 – Communications around Waste		
Dec 21 Min 58 (2)	Recommended to Cabinet to consider further messaging and communications, not exclusive to social media, to clarify the process for residents regarding food waste and the missed collection protocol.	This recommendation will be put to the Cabinet in January 2022.	In progress
	Harkness Court Project		
Dec 21 Min 62 (2)	Recommended to Cabinet to review the Harkness Court project in light of Overview and Scrutiny comments and concerns in relation to the climate emergency (greener	This recommendation will be put to Cabinet in January 2022.	In progress

REF	RESOLUTION	RESPONSE/OUTCOME	STATUS
	<p>solutions instead of the proposed gas installation), whether there are more commercially viable options to the leasing of the flats, as is currently proposed, to generate a better financial return, and if the approach taken remains the most suitable or if other options should be explored. The Overview and Scrutiny Committee request that the Cabinet report back to the Committee.</p>	<p>The Business Case for the let of Harkness Court was approved by the Cabinet Sub-Committee (Local Authority Trading Companies Shareholder) on 24 November 21. The issue cannot be revisited for 6 months from the date it was taken.</p> <p>The main avenue of exploration available is around the Climate Change Strategy and any environmental impact assessment made for the project.</p> <p>As the majority of discussions regarding this item are commercially sensitive they take place in Part 2. The recommendation will be put to Cabinet in January 2022 to allow for the required statutory notices to be made.</p>	
<p>Pass</p>	<p>LOCAL PLAN IMPLEMENTATION</p>		
<p>Mar 21 Min 93 Pass</p>	<p>Recommended to Cabinet: That a Member working group be arranged to discuss the Design and Sustainability SPDs prior to consideration of these by Cabinet</p>	<p>This recommendation was agreed by Cabinet The Strategic Planning Team will organise this when appropriate to do so</p>	<p>In Progress</p>

**OVERVIEW AND SCRUTINY COMMITTEE
18 JANUARY 2021**

***PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: OVERVIEW AND SCRUTINY COMMITTEE WORK PROGRAMME
FOR 2021/22**

REPORT OF THE COMMITTEE, MEMBER AND SCRUTINY MANAGER

EXECUTIVE MEMBER: NOT APPLICABLE

COUNCIL PRIORITY: PEOPLE FIRST / SUSTAINABILITY / A BRIGHTER FUTURE
TOGETHER

1. EXECUTIVE SUMMARY

- 1.1 This report highlights items scheduled in the Overview and Scrutiny Committee's work programme and items that may be considered in 2021/22. It includes details of those items that have yet to be assigned to a specific meeting.
- 1.2 The work programme includes both items previously agreed by the Committee and those that the Committee is required by the Constitution to consider.

2. RECOMMENDATIONS

- 2.1 That the Committee prioritises proposed topics for inclusion in the work programme attached as Appendix A and, where appropriate, determines the high level form and timing of scrutiny input.
- 2.2 That the Committee, having considered the most recent iteration of the Forward Plan suggests a list of items to be considered at its meeting on 15 March 2022 and beyond.
- 2.3 That the Corporate Peer Challenge Action Plan Extract as attached as Appendix B be considered.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To allow the Committee to set a work programme which provides focussed Member oversight, encourages open debate and seeks to achieve service improvement through effective policy development and meaningful policy and service change.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Committee has varied its approach to overview and scrutiny activity over recent years. Currently it seeks to enter the process of policy development at an early stage and consequently may consider items associated with service action plans.
- 4.2 The need to observe Constitutional requirements and monitor the Forward Plan for appropriate items to scrutinise remains a key aspect of work programming.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Each Committee meeting includes the opportunity for Members to comment on and input to the Committee's work programme.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.
- 6.2 The Committee is asked to review the Forward Plan at each regular meeting to identify potential issues for inclusion in the work programme. Identification of a focus for the Committee's future activity should be identified at this stage wherever possible.

7. BACKGROUND

- 7.1 In line with the recommendation of the Corporate Peer Challenge 2020 Executive Members are invited to present reports that fall under their remit and to make presentations on specific issues that the Committee wish to consider.
- 7.2 The Committee now considers a wide range of issues, where appropriate, commencing its reviews early in the policy development process. By doing this it seeks to ensure assumptions are challenged at an early stage, mistakes are avoided and eventual outcomes provide optimal benefit to the community.
- 7.3 The Committee seeks to ensure that consideration of agenda items minimises additional burdens on staff resources. Wherever possible, requests are made for the presentation of documents already in existence rather than the production of new documents specifically for the Committee.

8. RELEVANT CONSIDERATIONS

Work Programme

- 8.1 The Committee's work programme for the year requires reviewing at each meeting and direction is sought from the Committee on the items they wish adding. Appendix A contains the work programme for 2021/22
- 8.2 When considering additional topics, their risk assessment and prioritisation will ensure that the most appropriate items are taken forward to the work programme.

Forward Plan

- 8.3 The Forward Plan for January will be circulated as a supplementary agenda shortly. Members can view currently published forward plans here: [Browse plans - Cabinet, 2022 - North Hertfordshire District Council \(north-herts.gov.uk\)](https://www.north-herts.gov.uk/cabinet/2022-23/forward-plans)
- 8.5 Members are advised that the publication schedule of the Forward Plan has changed slightly and plans will now be published close to the start of each month rather than at the end of the month.

Corporate Peer Challenge

- 8.6 The Committee agreed at the meeting held on 14 July 2020 that the actions regarding the Overview and Scrutiny Committee included in the Corporate Peer Challenge Action Plan be appended to all future reports in order to:
- Act as an aide memoire when considering the work programme;
 - Consider any actions that need further work;
 - Asses the effectiveness of changes made.
- 8.7 The Committee is asked to consider the Action Plan and any updates provided at Appendix B.
- 8.8 In respect of line 56 regarding formal training for Members of the Overview and Scrutiny Committee training options are being explored for provision in the new Civic Year.
- 8.9 Members are asked to contact the Committee, Member and Scrutiny Manager if they have any particular suggestions regarding this proposed training.

9. LEGAL IMPLICATIONS

- 9.1 Under Section 6.2.5 of the Constitution, the Committee is responsible for setting its own work programme. However, it must ensure it retains sufficient capacity within the programme to meet its statutory obligations.
- 9.2 Section 6.2.7 (u) of the Constitution allows the Committee “to appoint time limited task and finish Topic Groups to undertake detailed scrutiny work and report back to the Overview and Scrutiny Committee to make recommendations to the Cabinet.”

10. FINANCIAL IMPLICATIONS

- 10.1 Dependent on how they are applied in practice, the scope of the options presented in Sections 7 and 8 have the potential to be wide reaching. As detailed Section 14, Human Resource Implications, the wider the reach, the more significant the impact on officer time in terms of report writing, data analysis and committee meeting attendance. Given recent funding pressures and the consequent reduction in officer numbers, significant requests to support scrutiny work will limit officer time available to spend on activities

such as identifying and delivering cost reductions, income generation and project management.

- 10.2 Although not significant, a committee attendance allowance of £25.17 per officer per evening meeting is payable to officers in attendance. This is in addition to providing time off in lieu, or overtime as an alternative.

11. RISK IMPLICATIONS

- 11.1 Effective overview and scrutiny of policy, administrative, service delivery and expenditure decisions helps reduce the risk of an inappropriate decision being made. The scope and time frame for scrutiny interventions should be considered in the light of the potential impact of inappropriate scrutiny leading to decisions not being made, inappropriately made or not made at the right time.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 There are no direct equality implications arising from the report. Effective scrutiny is an essential part of ensuring that local government remains transparent, accountable and open which ensures that the delivery of public services benefits all aspects of the community, where practical.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The widening of the reach of scrutiny reviews has the potential to significantly impact on officer time in terms of the reprioritisation of already agreed projects, their scope or timetabling and resources. There is also the potential for additional resource requirements in relation to report writing, information collection and analysis and committee attendance. Delivery of service plans to achieve the Council’s agreed Corporate Plan objectives might, therefore, be potentially negatively impacted.

15. APPENDICES

- 15.1 Appendix A – Work Programme for future Committee meetings
- 15.3 Appendix B – Corporate Peer Challenge Action Plan in regard to the Overview and Scrutiny Committee

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17. **BACKGROUND PAPERS**

17.1. Previous reports to the Overview and Scrutiny Committee and forward plans.

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PROGRAMME FOR FUTURE COMMITTEE MEETINGS 2021-22

<p>13 July 2021</p>	<p>Presentation by Settle (To be confirmed) Resolutions Report Work Programme 3Cs End of Year report Council Plan and Objectives 2021/23 Housing Delivery Test Action Plan Developer Contributions SDP Community Revenue Grants Criteria Review</p>
<p>14 September 2021</p>	<p>Resolutions Report Work Programme 1st Quarter Performance against PIs 1st Quarter Key Projects Discussion on the recovery of the Town Centres following the pandemic Customer Service Strategy</p>
<p>14 December 2021</p>	<p>Resolutions Report Work Programme Annual review of Safeguarding Commercial Update 3Cs Half Year Report</p>
<p>18 January 2022</p>	<p>Crime and Disorder Matters Resolutions Report Work Programme Priorities for the District – Key Projects Half Year Monitoring 2nd Quarter Performance against PIs</p>
<p>15 March 2022</p>	<p>Resolutions Report Work Programme Annual Report Commercial Update New PIs for 2021/22 Priorities For The District – Key Projects 2021/22 3rd Quarter PIs 3rd Quarter Key projects</p>
	<p>To be Scheduled. Invitation to: LEP Devolution & Recovery White Paper Update (Once White Paper is published)</p>

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EXTRACT OF ITEMS ON THE CORPORATE PEER CHALLENGE ACTION PLAN THAT RELATE TO THE OVERVIEW AND SCRUTINY COMMITTEE

		Recommendation	Action	Led by	Timescale	Update
ONGOING ACTIONS						
28	Organisational Leadership and Governance	Peers understand that the full performance report is sent to councillors one month before O&S to provide the opportunity for requesting the appropriate lead executive member and officer to attend O&S to be accountable for questioning. This opportunity has never been requested and should be used in order to strengthen the debate and challenge at O&S.	Agreed. Chair of Overview and Scrutiny to remind committee members of this opportunity	Members of Overview and Scrutiny Committee Controls, Risk and Performance Manager	Ongoing	Members receive the Performance Indicator report one month before the meeting. Members are reminded to contact the Controls, Risk and Performance Manager at least 2 weeks prior to the meeting date if they wish a particular indicator to be considered in more detail
54	Overview and Scrutiny Committee	Future meetings would benefit from taking a longer-term view of the key issues for the district (not just focussing on the next immediate meeting), fewer, more targeted agenda items, and be focused on key areas informed by performance reports and a forward work plan. Fewer agenda items will support more allocated time for meaningful scrutiny and related debate.	Agreed. To be taken forward as part of the training for the committee members	Chair and vice chair of O+S Scrutiny support	Ongoing	The Committee to bear this in mind when considering the work programme

56	Overview and Scrutiny Committee	It is recommended that all O&S members undertake formal training to ensure a robust base of skills and expertise can be deployed in the O&S environment.	Formal scrutiny training has previously been provided to the Committee, but given changes to committee membership agree it makes sense to put in place further training and ensure that any new members receive training in the future	Chair and Vice Chair of O+S Scrutiny support Member training champions	Pending	Various training options are being explored for provision in the new Civic Year.
57	Overview and Scrutiny Committee	Use the task and finish programme to support early engagement and involvement with policy making.	Agreed. To be taken forward by the Leader (on behalf of Cabinet) and Chair and vice chair of Overview and Scrutiny, to discuss work programme	Leader Chair and Vice Chair of O+S Scrutiny support	Ongoing	The Chair and Vice-Chair have met with the Leader. The Chair to provide an update
58	Overview and Scrutiny Committee	It is recommended that finish times should be agreed in the constitution and meetings end promptly at those times. There was a concern around individual personal effectiveness, accessibility, external public perception and health & safety / personal welfare of both members and officers from such excessively long and late meetings.	Moving meeting times is not supported politically at the current time due to concerns it may dissuade people with caring responsibilities from standing to be Councillors. Alternative of allowing officers to attend meetings virtually from home to be explored A 'guillotine' provision on committee meetings is not supported politically at the current time due to concerns it might stifle debate. It is proposed that this is considered once the other recommendations have been	Service Director Legal and Community Member training champions	Pending	

			<p>implemented regarding work programme, training and chairing of meetings to establish whether it remains an issue or has been resolved by other action.</p> <p>Training is provided to Chairs and Vice Chairs, but this could be reviewed to ensure that Chairs and Vice Chairs are able to confidently manage meetings to ensure they proceed in a timely manner</p>			
59	Overview and Scrutiny Committee	Peers recommend clarification of the governance arrangements between O&S and cabinet panels.	Proposal to Full Council to clarify relationship	Group Leaders Monitoring Officer	Annual Council (May/June 2020)	
60	Overview and Scrutiny Committee	Ensure the O&S forward work plan includes scrutiny of external partners and contractors as a contribution to the leadership of 'place'.	Agreed as recommendation	Chair and Vice Chair of O+S Scrutiny support	Immediate & Ongoing	The Committee have identified two partner organisations. Further work is needed to consider the format and timing.

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**OVERVIEW & SCRUTINY
18 JANUARY 2021**

PART 1 – PUBLIC DOCUMENT

**TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT ('RIPA')
ANNUAL REVIEW**

REPORT OF: LEGAL REGULATORY TEAM MANAGER & DEPUTY MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR ELIZABETH DENNIS-HARBURG

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES

1. EXECUTIVE SUMMARY

This Report updates on the Council's current use of RIPA and reports on the annual policy review.

2. RECOMMENDATIONS

2.1. That the content of the report be noted by Committee.

3. REASONS FOR RECOMMENDATIONS

3.1. To comply with best practice guidance and the Committee's terms of reference.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

None.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

7.1. RIPA regulates the use of certain surveillance powers by public authorities, including: –

- Directed Surveillance (covert surveillance conducted as part of a specific investigation likely to result in obtaining private information about an individual), –
 - Use of Covert Human Intelligence Sources (CHIS), and
 - Access to communications data (e.g. details of subscribers to telephone numbers or email accounts)
- 7.2. The Council is a very rare user of these powers. However, it is important that it has sufficient oversight of its activities to ensure that any considered use is compliant with the subject's human rights.
- 7.3. The Council is required to have arrangements and a RIPA Policy in place. The current one was last approved by Cabinet in June 2020 (updated together with the Social Media in Investigations Policy).
- 7.4. The Social Media in Investigations Policy was slightly updated at the time to reflect the use of open (not covert) enforcement Facebook pages. Only one page being partially implemented for the Community Safety team. The account is not live as yet and will only be live once compliant with data protection requirements
- 7.5. External Inspections are carried out from time-to-time by the Investigatory Powers Commissioner's Office ('IPCO'), so it is important that all documentation is properly completed and (where relevant) authorised to confirm that it is carried out on a lawful basis. The last inspection was held in April 2020. It will be due for a further review on or around 2023 dependent on the IPCO's inspection scheduling requirements.
- 7.6. Members should note the Council has not used surveillance powers or accessed communications data for some time, lastly noted in **2011**.
- 7.7. The Shared Anti-Fraud Service ('SAFs') does, however, utilise such powers and these are regulated through Herts County Council's processes. An officer(s) of Nafn (National Anti-Fraud Network) attend our quarterly corporate enforcement forum meetings and keep our enforcement officers and authorising officers up to date. External training has been provided to officers from ActNow in January 2020, by Nafn to the Corporate Enforcement Forum (the internal enforcement / legal officer group) in August 2020. Internal training was provided to the new Service Director for Customers in February 2021 for said officers. The Service Director for Legal & Community (the Senior Responsible Officer) has undertaken training twice this year through the internal Public Law Partnership and external solicitors and arrangements will be made later in the year for refresher training for enforcement officers (if possible) through Nafn.
- 7.8. Members will also note that in accordance with good practice guidelines Members receive quarterly updates on the use of any powers via the Member Information Service.

8. RELEVANT CONSIDERATIONS

- 8.1. There are no ongoing authorisations.
- 8.2. The Home Office publishes national Codes of Practice on the use of RIPA powers by public authorities. These help public authorities assess and understand whether and in what circumstances it is appropriate to use covert techniques. The codes also provide guidance on what procedures need to be followed in each case. The Council must have

regard to the relevant Code of Practice whenever exercising powers covered by RIPA. The Investigatory Powers Commissioner (IPC) conducts regular inspections of all public authorities to ensure compliance with RIPA, and the Codes of Practice.

- 8.3. The [Covert Human Intelligence Sources \(Criminal Conduct\) Act 2021](#) (CHIS(CC)A) received Royal Assent on 1 March 2021 and went live for the police on 15 September 2021
- 8.4. CHIS(CC)A amends the Regulation of Investigatory Powers Act 2000 and provides an express power to authorise a CHIS to participate in conduct which would otherwise constitute a criminal offence. This power is known as a Criminal Conduct Authorisation (CCA).
- 8.5. This power is known as a Criminal Conduct Authorisation (CCA).
- 8.6. Any CCA for otherwise criminal conduct must be necessary and proportionate and compatible with obligations under the European Convention on Human Rights. In assessing proportionality the relevant authorising body must have regard to whether the conduct to be authorised is part of an effort to prevent more serious criminal conduct and must also consider whether there are no other reasonable or practicable means by which the outcome may be achieved.
- 8.7. The Act requires the IPC to keep under review public authorities' use of the power and to include limited information on criminal conduct authorisations in their annual report.
- 8.8. The public authorities able to authorise the use of a CHIS are the intelligence agencies, police, HMRC, HM Forces, the SFO, the Environment Agency, the FCA, the Food Standards Agency, the Gambling Commission, the Home Office, the Ministry of Justice, the Department of Health and Social Care, the National Crime Agency and the Competition and Market Authority. It is important to note that local authorities have not been given these powers.
- 8.9. Legal oversight of the use of a CHIS to engage in criminal conduct will continue to vest in the Investigatory Powers Tribunal which will have jurisdiction to investigate and determine complaints against public authorities use of the power.
- 8.10. Legal oversight of the use of a CHIS to engage in criminal conduct will continue to vest in the Investigatory Powers Tribunal which will have jurisdiction to investigate and determine complaints against public authorities use of the power.

9. LEGAL IMPLICATIONS

- 9.1. The Regulation of Investigatory Powers Act 2000 ("RIPA") enables local authorities to carry out certain types of surveillance activity, as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings providing RIPA is complied with. The Investigatory Powers Act 2016 ("IPA") is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can also be relied upon in court proceedings providing IPA is complied with. Full details of the RIPA requirements and compliance are set out in the Policy, with relevant documents and

guidance document available to relevant officers via the intranet should they consider it necessary to use these powers.

- 9.2. The Overview and Scrutiny Committee's Terms of Reference in the Council's Constitution at paragraph 6.2.7(r) states that it shall be entitled to consider reports relating to the authority's use of the Regulation of Investigatory Powers Act (2000) (RIPA).

10. FINANCIAL IMPLICATIONS

- 10.1. There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

- 11.1. It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans.

16. APPENDICES

- 16.1

<https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=133&MId=2401&Ver=4>

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1 Policy documents referred to above and previous Cabinet report.

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NORTH HERTFORDSHIRE DISTRICT COUNCIL
REGULATION OF INVESTIGATORY POWERS ACT
2000 (RIPA)
POLICY & PROCEDURES



www.north-herts.gov.uk

POWERS ACT 2000
POLICY AND PROCEDURES
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1 INTRODUCTION & BACKGROUND

1.1 This Policy is the framework on which the Council applies the provisions of The Regulation of Investigatory Powers Act 2000 (RIPA) as it relates to covert surveillance. It must be read in conjunction with the statutory codes of practice issued by the Secretary of State and any additional guidance provided by Investigatory Powers Commissioner's Office (IPCO) and individual Directorates to deal with the specific issues of their service.

1.2 For the avoidance of doubt, all references to the Home Office Codes of Practice relate to the latest versions which were issued in relation to covert surveillance and covert human intelligence sources; and in relation to the acquisition and disclosure of Communications Data. References to the Code of Practice and other relevant Guidance document relate to the latest version which was issued¹.

1.3 The Human Rights Act 2000 requires the Council to have respect for the private and family life of citizens. However, in rare cases, it may be lawful, necessary and proportionate for the Council to act covertly in ways that may interfere with an individual's rights.

1.4 The rights conferred by Article 8 of the Human Rights Act are qualified, so it is still possible for a public authority to infringe those rights providing the following criteria are satisfied;

1.4.1 It is done in accordance with the law

1.4.2 **It is necessary:** Necessity means that in the particular circumstances of each enquiry there is no reasonably available overt method of obtaining the information that is being sought. This test will have to be applied to each case on its own merits but if there is a reasonable alternative to covert surveillance then the necessity test will probably not be satisfied.

1.4.3 **It is proportionate:** Judging proportionality will probably involve three considerations.

- Is the proposed method of surveillance excessive in relation to the seriousness of the matter that is being investigated? Is it proportional to the mischief under investigation?
- Is there a reasonable available alternative method of investigation that would be less intrusive of privacy rights? i.e. It is the only option, other overt means having been considered and discounted.

¹ Home Office – Communications Data Code of Practice 2018

- Can collateral intrusion be avoided, and is the surveillance proportional to the degree of anticipated intrusion on the target and others? In addition to the subject there may be a possibility that the privacy rights of a third party may be infringed during surveillance.
- 1.5 It is possible that unauthorised surveillance will be a breach of a person's right to privacy under Article 8. Even if surveillance without due authorisation in a particular instance is not illegal, if authorisation is not obtained, the surveillance carried out will not have the protection that RIPA affords.
- 1.6 If the correct procedures are not followed:
- The authorisation will not take effect as it will not be approved by the Magistrates Court if there are not reasonable grounds
 - Court proceedings that rely upon the information obtained by surveillance may be undermined
 - A complaint of maladministration may be made to the Ombudsman
 - The Council could be the subject of an adverse report by the Investigatory Powers Commissioner's Office
 - A claim could be made leading to the payment of compensation by the Council
- 1.7 Through the application of authorisation procedures and Magistrates Court approval RIPA ensures that a balance is maintained between the public interest and the human rights of individuals.
- 1.8 RIPA does not;
- Make unlawful anything that is otherwise lawful
 - Impose any new statutory duties (N.B. but see paragraphs 1.5 –1.7 on the possible consequences of non compliance)
 - Prejudice or disapply any existing powers available to the Council to obtain information by any means not involving conduct that is governed by RIPA. (For example, it does not affect the Council's current powers to obtain information from the DVLA or the Land Registry).
- 1.9 If the RIPA procedures are followed correctly the conduct of an investigation will be deemed lawful for all purposes (section 27 RIPA). This protection extends to criminal and civil proceedings, and a complaint to either the Local Government Ombudsman or the Investigatory Powers Tribunal. It therefore provides protection both for the Council and any officer who may have been involved in an investigation.
- 1.10 It is important to note that the legislation does not only affect directly employed Council staff. Where external agencies are working for North Hertfordshire District Council, carrying out the Authority's statutory functions, the Authority remains liable for compliance with its duties. It is essential that all external agencies comply with the regulations, as they are contractually obliged to do so. Therefore, work carried out by agencies on the Council's behalf should be properly authorised by one of the Council's designated Authorising Officers and requires Magistrates Court approval for applications

and renewals. Authorisation for surveillance should not be sought on behalf of another statutory or other organisation or agency. The advice of the Senior Responsible Officer ('SRO') should be sought in the event of uncertainty.

- 1.11 Applications to the Magistrates' Court for approval of an authorisation must be made in accordance with the requirements of the Court.
- 1.12 The use of the powers conferred by RIPA is subject to scrutiny by the Investigatory Powers Commissioner's Office, which carries out periodic inspections of the Council's practices and procedures. Furthermore, RIPA also provides for the establishment of a Tribunal to determine complaints about the use of RIPA powers. It is therefore essential that surveillance is always carried out in compliance with RIPA, the policies and codes of practice referred to in this document and any advice or guidance that may be issued from time to time by the Service Director: Legal and Community.
- 1.13 RIPA provides a means of authorising certain acts of covert surveillance for a variety of purposes. To fully understand the effects of RIPA, it is essential to understand the various types of activity that are covered, and those that are not permitted, and the purposes that will justify surveillance.
- 1.14 The provisions of RIPA that apply to Local Authorities provide a regulatory framework that permits;
 - **The use of Directed Surveillance (Part 3)**
 - **The Use of Covert Human Intelligence Sources (Part 4)**
 - **The Acquisition and Disclosure of Communications Data (Part 5)**

2. SURVEILLANCE

- 2.1 Local Authorities and the Police are permitted under RIPA to carry out covert directed surveillance and to use covert human intelligence sources the definitions for each being as follows;
- 2.2 "**Surveillance**" includes:
 - Monitoring, observing, listening to persons, watching or following their movements, listening to 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, which will include cameras, video, and listening or recording devices.

Surveillance can be either **overt** or **covert**.

2.3 Overt Surveillance

- 2.3.1 Most of the surveillance undertaken by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases officers will be going about Council business openly (e.g. a routine inspection by an Environmental Health Officer) or will have notified the subject of the

investigation that they are likely to be under surveillance. In the latter case officers need to be particularly alert to the possibility that the proposed surveillance may entail collateral intrusion into the lives and activities of persons other than the subject of the investigation (e.g. a visitor to premises). If there is the slightest possibility of collateral intrusion a RIPA authorisation should be obtained before any surveillance is carried out.

- 2.3.2 Surveillance will be overt if the subject has been told it will happen. This will be the case where a noisemaker is warned that recordings will be made if the noise continues; or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice or without identifying themselves to the owner/proprietor to check that the conditions are being met. Such warnings should be given to the person concerned in writing.
- 2.3.3 Overt surveillance does not require any authorisation under RIPA. Neither does low-level surveillance consisting of general observations in the course of law enforcement (for example, an officer visiting a site to check whether a criminal offence had been committed). Repeated visits may amount to systematic surveillance however, and require authorisation: if in doubt, advice should be sought from the RIPA Monitoring Officer or the Senior Responsible Officer
- 2.3.4 Home Office guidance also suggests that the use of equipment such as binoculars or cameras, to reinforce normal sensory perception by enforcement officers as part of general observation does not need to be regulated by RIPA, if the systematic surveillance of an individual is not involved. However, if binoculars or cameras are used in relation to anything taking place on any residential premises, or in any private vehicle, the surveillance can be intrusive even if the use is only fleeting. Any such surveillance will be intrusive “if it consistently provides information of the same quality as might be expected to be obtained from a device actually present on the premises or in the vehicle”. The quality of the image obtained rather than the duration of the observation is what is determinative. It should be remembered that the council is not permitted to undertake intrusive surveillance.
- 2.3.5 Use of body worn cameras should be overt. Badges should be worn by officers stating body cameras are in use and it should be announced that recording is taking place. In addition, cameras should only be switched on when recording is necessary – for example, when issuing parking tickets.

2.4 Covert Surveillance

Covert surveillance is covert where it is ‘carried out in a manner **calculated** to ensure that the person or persons subject to the surveillance are unaware that it is or may be taking place’.

RIPA requires the authorisation of two types of covert surveillance (directed surveillance and intrusive surveillance) plus the use of covert human intelligence sources (CHIS) or acquisition of Communications Data.

2.5 Covert Human Intelligence Source (CHIS)

- 2.5.1 A person is a covert human intelligence source if that person ‘establishes or maintains a personal or other relationship with a person for the covert

purpose of obtaining information or providing access to any information to another person, or they covertly disclose information obtained by the use of such a relationship'. Covert in this context means that it is calculated that the subject should be unaware of the purpose of the relationship.

A member of the public who volunteers information to the Council is not a covert human intelligence source.

2.5.2 The conduct or use of CHIS must be authorised in accordance with RIPA.

Conduct of a CHIS. This is establishing or maintaining a personal or other relationship with a person for the covert purpose of (or is incidental to) obtaining or passing on information.

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

The use of a juvenile CHIS may only be authorised for four months at a time.

2.5.3 Members of the public who report allegations of anti social behaviour and are asked to keep a note of incidents will not normally be CHIS as they are not usually required to establish or maintain a covert relationship.

2.5.4 Noise

Persons who complain about excessive noise, and are asked to keep a noise diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (e.g. the decibel level) will not normally capture private information (if non-verbal noise such as music, machinery or an alarm), and therefore does not require authorisation. Recording sound with a DAT recorder or similar, could constitute covert surveillance, although if it can be heard from the street outside, may (as per the Code of Practice²) be regarded as having forfeited any claim to privacy. The easiest option is for this to be under taken overtly – for example it will be possible to record sound if the noisemaker is warned that this will occur if the level of noise continues.

2.5.5 Test Purchases

Carrying out test purchases will not normally require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information, and therefore the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter). By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product e.g. illegally imported wild meat, or using covert recording equipment is likely to require authorisation as a CHIS. Similarly, using hidden recording devices to record what is going on in the shop (e.g. a hidden CCTV Camera) may require authorisation as directed surveillance. A combined authorisation can be provided if a CHIS is carrying out directed surveillance.

2.5.6 **Note 251 of the OSC's 2016 Procedures & Guidance document states:**

² 3.40

251. A local authority may prefer to seek the assistance of the police or another public authority to manage its CHIS. In such a case a written protocol between the parties should be produced in order to ensure that an identified CHIS is properly managed (see CHIS Code of Practice 6.12). In the absence of such an agreement the local authority must be capable of fulfilling its statutory responsibilities.

2.5.7 Note [Covert Human Intelligence Sources \(Criminal Conduct\) Act 2021](#) (CHIS(CC)A) received Royal Assent on 1 March 2021 and went live for the police on 15 September 2021. CHIS(CC)A amends the Regulation of Investigatory Powers Act 2000 and provides an express power to authorise a CHIS to participate in conduct which would otherwise constitute a criminal offence. This power is known as a Criminal Conduct Authorisation (CCA). It is important to note that local authorities have not been given these powers.

2.6 Directed surveillance

Directed Surveillance is surveillance that is:

- covert but not intrusive surveillance; (see paragraph 3.2)
- undertaken for the purpose of a specific investigation or operation carried out in such a manner as is likely to result in the obtaining of private information about a person (whether one specifically identified for the purposes of the investigation or operation) and
- not carried out as an immediate response to events which would otherwise make seeking authorisation under RIPA unreasonable (e.g. spotting something suspicious and continuing to observe it).

2.7 Surveillance by way of an immediate response to events or circumstances where it would not be 'reasonably practicable' for an authorisation to be sought is not included within the provisions of RIPA.

2.8 Private Information

This phrase is defined in RIPA section 26(10) as including any information relating to a person's private or family life. The European Court of Human Rights has considered this definition and has found that private life is a broad term not susceptible to exhaustive definition. Aspects such as gender identification, name, sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. The Article also protects a right to identity and personal development and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is therefore a zone of interaction of a person with others even in a public context, which may fall within the scope of "private life".

The fact that covert surveillance occurs in a public place or on business premises does not necessarily mean that it cannot result in the acquisition of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about them and others that they come into contact with or with whom they associate. Similarly, although the overt use of CCTV cameras does not normally require authorisation, if the camera is used for a particular purpose

that involves the prolonged surveillance of a particular person, a RIPA authorisation will be required.

3 EXCLUSIONS

3.1 There are some instances where surveillance is not permissible in any circumstances:

3.2 Intrusive Surveillance

RIPA provides that the Council **cannot** authorise intrusive surveillance. This is covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle, whether by way of a person or device.

It will also be intrusive surveillance where a device placed outside consistently provides information of the same or equivalent quality and detail, as might be expected if it were in the premises or vehicle

Residential premises are any part of premises occupied for residential purposes or living accommodation, including hotel rooms or prison cells. However, it does not include common areas in blocks of flats and similar premises.

Private vehicle is a vehicle used primarily for private purposes by the owner or person entitled to use it.

Only the police or other law enforcement agencies are permitted to employ intrusive surveillance. Likewise, the council has no statutory powers to interfere with private property.

3.3 Use of Children to gather information about parent/ guardian

Authorisation may not be granted for the conduct or use of a source under the age of sixteen where it is intended that the purpose is to obtain information about their parent or any person who has parental responsibility for them.

3.4 Vulnerable Individuals

A vulnerable individual is a person who is, or may be, in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation. Where it is known or suspected that an individual may be vulnerable they will only be authorised as a CHIS in the most exceptional of circumstances.

4 GROUNDS FOR SURVEILLANCE

4.1 Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 ("the 2010 Order") mean that a local authority can now only grant an authorisation under RIPA for the use of Directed Surveillance where the local authority is investigating criminal offences which attract a custodial sentence of a maximum term of at least 6 months' imprisonment, or criminal offences relating to the underage sale of alcohol or tobacco under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933.

- 4.2 Even if the person granting the authorisation believes that the authorisation is necessary, they must also be satisfied that the authorised activity is proportionate to what is sought to be achieved by it. This requires the Authorising Officer to balance the need for surveillance with the level of intrusion into any person's privacy.
- 4.3 Consideration should be given to collateral intrusion, which is interference with the privacy of persons other than the subject(s) of the surveillance. Such collateral intrusion or interference would be a matter of greater concern in cases where there are special sensitivities, for example in cases of premises used by lawyers or for any form of medical or professional counselling or therapy.
- 4.4 Confidential information

Careful consideration is also needed when there is a risk of obtaining confidential information.

The Covert Surveillance and Property Interference³ defines this as:

“information held in confidence concerning an individual (whether living or dead) who can be identified from it, and the material in question relates to his or her physical or mental health or to spiritual counselling. Such information can include both oral and written communications. Such information as described above is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or any legal obligation of confidentiality. For example, confidential personal information might include consultations between a health professional and a patient, or information from a patient's medical records”.

In cases where it is likely that confidential information will be acquired the authorisation must be granted by the Head of the Paid⁴ Service (or in their absence by an authorised Chief Officer).

- 4.5 An application for an authorisation must include a full assessment of the risk of any collateral intrusion or interference so that the Authorising Officer can consider this.
- 4.6 Authorising Officers must always consider the need for surveillance or CHIS and balance this against an individual's right to privacy under the Human Rights Act 1998. An officer seeking an authorisation should always be able to justify why it is necessary and why other, less intrusive, forms of investigation are unsuitable or have previously been tried without success and thus the matter has escalated to the requirement for covert surveillance.

5 ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

- 5.1. The Investigatory Powers Act 2016 ('IPA') provided an updated framework for lawful acquisition of Communications Data, include the who, where, what, when and how a Local Authority can obtain communications and Communications Data. The IPA sets out the three powers, under sections

³ 2018 @ para 9.29.

⁴ Where any relevant legislation and or codes of practice refers to the Chief Executive, for interpretation purposes this is deemed to be the person who holds the role of Head of Paid Service or their Deputy.

60A, 61 and 61A, which can be used to authorise the acquisition of Communications Data (CD), dependent on the statutory purpose and urgency. Only section 60A is relevant to local authorities, although a number of new offences would also apply in terms of unlawful acquisition and disclosure of Communications Data⁵.

5.2. Public Authorities can only apply if this is for ‘the applicable crime purpose’. This means the data has to be wholly or partly Events data, the purpose of preventing or detecting serious crime; or in any other case, the purpose of preventing or detecting crime or of preventing disorder.

5.3. The types of Communications Data that Local Authorities’ can access are Entity and Events Data, which are defined as:

- **Entity Data:** means any data which is about —
 - (a) (i) an entity, (ii) an association between a telecommunications service and an entity, or (iii) an association between any part of a telecommunication system and an entity,
 - (b) consists of, or includes, data which identifies or describes the entity (whether or not by reference to the entity's location) and is not events data.
- **Events Data:** any data which identifies or describes an event (whether or not by reference to its location) on, in or by means of a telecommunication system where the event consists of one or more entities engaging in a specific activity at a specific time. Where the purpose of the acquisition is to prevent or detect crime, and the data required is events data, the offence or conduct of the offence being investigated must meet at least one of the definitions of serious crime⁶.

5.4. The IPA has also removed the necessity for local authorities to seek Magistrates or Justice of the Peace approval to acquire Communications Data. All such applications must now be processed through the National Anti-Fraud Network (NAFN), who will consider the application prior to submitting this for approval to the Office for Communications Data Authorisations (‘OCDA’). All applications must be approved before Communications Data is acquired. The Investigatory Powers Commissioner oversees the use of the powers (who with Judicial Commissioners have a role to approve authorisations to identify or confirm the identity of a journalist’s source). The application process has otherwise been made more efficient through the ability to submit these electronically⁷.

6. PROCEDURE TO OBTAIN A RIPA AUTHORISATION

6.1 Directed surveillance, the use of CHIS must be lawfully carried out in strict accordance with the terms of the relevant authorisation and Magistrates Court approval.

6.2 The Council will only very occasionally make use of CHIS so the applicant officer should consult the Senior Responsible Officer before making an

⁵ Sections 11 & 82 IPA 2016

⁶ Section 86(2A) of the Act this means: an offence for which an adult is capable of being sentenced to one year or more in prison; any offence involving violence, resulting in substantial financial gain or involving conduct by a large group of persons in pursuit of a common goal; any offence committed by a body corporate; any offence which involves the sending of a communication or a breach of privacy; or an offence which involves, as an integral part of it, or the sending of a communication or breach of a person’s privacy

⁷ See local authority procedures set out in paragraphs 8.1 to 8.7 of the Communications Data Code of Practice.

application for a CHIS authorisation in order to ensure that the current statutory requirements and best practice are being observed.

6.3 Applications for Communications Data is as indicated above via NAFN.

6.4 All applications for authorisation must be sought and granted *before* any surveillance activity takes place. The decision whether or not to authorise an application must not be taken with the benefit of hindsight. This should be borne in mind when submitting an application to the Magistrates' Court under Paragraph 7 below.

6.5 Making the Application

Before making an application for an authorisation the requesting officer must;

- read this policy document
- determine whether the activity that they are proposing to conduct involves directed surveillance or the use of a CHIS
- assess whether the activity will be in accordance with the law – is it governed by RIPA
- assess whether the activity is necessary and why
- assess whether the activity is proportionate.

If the activity could be conducted overtly or if a less intrusive option is available and practical use that option in preference to a RIPA authorisation.

6.6 The application form once completed by the applicant officer, must be submitted to an Authorising Officer, together with a health and safety risk assessment that should cover any potential risks to Council officers, or third parties, including members of the public.

6.7 The persons entitled to grant authorisations are designated in the Schedule of Authorising Officers, which is kept by the Senior Responsible Officer and is accessible on the Council's Intranet

6.8 The Authorising Officer should note:

- the date and time of grant or refusal;
- the reasons for that decision;
- the exact date on which the authorisation will be reviewed.

6.9 An application must describe:

- any conduct to be authorised;
- the purpose of the investigation and how long the situation has existed;
- why it is necessary;
- why it is proportionate;
- the intended subjects, if known;
- the intended product that the surveillance will provide;
- any potential collateral intrusion and the justification for this;
- details of any confidential information that may be obtained;

6.10 The Application Forms

- 6.10.1 The Home Office has published standard forms for the use by local authorities. These have been adopted by the Council and can be accessed through the Intranet under *Corporate – Forms - RIPA*. Every box in the application form must be completed or marked n/a where it is not appropriate.
- 6.10.2 Each operation/ investigation must be allocated a unique reference number (URN). This will be the next number in sequence taken from the Central RIPA Log, as identified by the Authorising Officer and should be entered on the form.

7. MAGISTRATES' COURT APPROVAL

- 7.1 All RIPA authorisations (other than Communications Data) will require Magistrates' Court approval in the form of an order to take effect. The court must be satisfied that reasonable grounds exist in relation to the authorisation. The Home Office issued guidance to all Magistrates' Courts in England and Wales for a local authority application seeking an order approving the grant or renewal of a RIPA authorisation or notice⁸.
- 7.2 Legal Services must be consulted on the form and content of the application to the Magistrates' Court for approval.
- 7.3 The types of offences for which RIPA authorisation can be obtained by the Council are outlined under section 4 above.

8 DURATION OF AUTHORISATIONS

- 8.1 It is no longer possible for urgent authorisations to be given orally. However, a Magistrate may consider an authorisation out of hours in exceptional circumstances.
- 8.2 Directed surveillance authorisations will cease to have effect (unless renewed) at the end of a period of three months beginning with the day on which it took effect. 8.3 Three months' is deemed for the purpose of this guidance to mean three calendar months/twelve weeks from the date of approval by the magistrate.
- 8.4 Authorisations for the conduct or the use of covert human intelligence sources will last for up to 12 months, beginning with the day on which the grant or renewal takes effect.
- 8.5 Authorisations relating to Communications Data last 1 month.
- 8.6 **Review**
- 8.6.1 The Authorising Officer must review Directed Surveillance authorisations frequently, at least monthly. The frequency of mid term reviews should be risk assessed based on the nature of the operation. If this is a CHIS authorisation, then ordinarily this would be every 3-4 months⁹;

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118174/magistrates-courts-eng-wales.pdf

⁹ IPCO inspection 2020.

8.6.2 RIPA application forms must be reviewed on or before the expiry date of the authorisation which will be the date stated in the application form. When a RIPA authorisation is reviewed the appropriate form should be completed and record:

- the date and time of that review
- confirmation as to whether the surveillance is to continue or not
- the reasons for that decision

8.7 **Renewal**

8.7.1 If at any time before an authorisation would cease to have effect, it is necessary for the authorisation to continue for the purpose for which it was given, it may be renewed in writing for a further period of 3 calendar months, beginning with the day when the original authorisation would have expired. Magistrates Court approval is required before a renewal takes effect.

8.7.2 The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred.

8.7.3 Authorisations may be renewed more than once, provided they continue to meet the criteria for authorisation and are approved by the Magistrates' Court.

8.7.4 Prior to renewal of an authorisation for the use or conduct of a covert human intelligence source, there must be a full review of the use made of that source, the tasks given to that source and the information so obtained.

8.8 **Cancellation**

8.8.1 The Authorising Officer must cancel an authorisation if they become satisfied that the surveillance is no longer required or appropriate.

8.8.2 Authorisations should not be allowed simply to lapse. The matter should be referred to an Authorising Officer via the same process as for the initial application and a form of cancellation must be completed:

- if the necessary evidence has been obtained; or
- it is decided at any time that the surveillance is unlikely to produce the evidence sought, then.

8.8.3 The Authorising Officer must then cancel the Application without delay. When cancelling the authorisation, the Authorising Officer is required to consider whether the surveillance was effective, necessary and met its objectives. Cancellations must be made using the cancellation form and should briefly detail what product(s) resulted from the surveillance.

8.8.4 When cancelling an authorisation, the Authorising Officer must ascertain what recorded material has been obtained using directed surveillance. The Authorising Officer should comment on the recorded material and how it is to be managed or used thereafter. If the matter is not proceeding to a prosecution, the Authorising Officer must be satisfied that any recorded material has been securely destroyed.

9 **AUTHORISING OFFICERS**

- 9.1 Authorisations may only be given by the Authorising Officers listed in Appendix B. Only the Head of Paid Service can authorise the use of a CHIS, or the acquisition of confidential information.
- 9.2 Applications for the acquisition of Communications Data can only be issued by a Home Office accredited single point of contact (SPoC). The Council has two SPoCs, Service Director: Customers and the Investigations Manager.
- 9.3 NAFN provides a SPoC service to local authorities. Local authorities using the NAFN SPoC service will still be responsible for scrutinising the application for Communications Data prior to contacting NAFN.

9.4 **Determining an Application**

The applicant officer must complete the application form in its entirety.

Authorisation under RIPA is quite separate from delegated authority to act under the Council's Scheme of Delegation. **RIPA authorisations are for specific investigations only and must be cancelled or renewed once the specific surveillance is complete, or about to expire.**

The Authorising Officer should not just "sign off" an authorisation, they must give **personal consideration** to the necessity and proportionality of the proposed action prior to applying to the Magistrates Court for approval and must personally ensure that the surveillance is reviewed and cancelled.

Any rejected applications must be entered into the RIPA log held by the Service Director: Legal and Community.

- 9.5 In the case of applications for authority to carry out **directed surveillance** the Authorising Officer should:

- consider the relevant Codes of Practice
- consider whether the specific operation or investigation has been adequately described
- be satisfied as to the reasons for the application¹⁰ (see 4.1 for grounds).
- be satisfied that the directed surveillance is **necessary** in the circumstances of the particular case.
- be satisfied that the surveillance is **proportionate** to the stated purpose and objectives
- be satisfied that the possibility of collateral intrusion has been avoided or minimised
- consider the likelihood of confidential information being acquired
- check that an appropriate review period has been listed on the application form.

¹⁰ S.I. 2010/521, see article 7A

If there is an alternative practicable means of carrying out the surveillance, which is less intrusive, then the surveillance is neither necessary nor proportionate and should not be authorised. The least intrusive method should be used

Additional Factors when Authorising a CHIS

In addition, when authorising the conduct or use of a CHIS the Authorising Officer must

- be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved.
- be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS.
- consider the likely degree of intrusion of all those potentially effected.
- consider any adverse impact on community confidence that may result from the use or conduct, or the information obtained.
- ensure **records** contain statutory particulars and are not available except on a need to know basis.
- ensure that authorisations relating to the use of a juvenile CHIS are only for four months at a time.
- be satisfied that a full risk assessment has been undertaken.

9.6 The role of Senior Responsible Officer (SRO) is undertaken by the Service Director: Legal and Community. The role of RIPA Co-ordinating Officer is undertaken by the Service Director's PA.

The SRO is responsible for:

- the integrity of the process in place within the public authority for the management of CHIS and Directed Surveillance;
- compliance with Part 2 of the Act and with the Codes;
- 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 IPCO inspectors when they conduct their inspections, where applicable; and
- where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner.

9.7 The role of CHIS Handler will be allocated to either one of the Service Director: Place, Service Director: Customers, or Service Director: Regulatory, depending which directorate is using the CHIS. The CHIS Controller will be allocated to one of the other two heads of service by the Head of Paid Service.

The CHIS Handler is responsible for:

- dealing with the CHIS on behalf of the Council;
- directing the day to day activities of the CHIS;
- recording the information supplied by the CHIS; and
- monitoring the CHIS's security and welfare.

The CHIS Controller is responsible for management and supervision of the CHIS Handler, and general oversight of the use of CHIS.

10. WORKING WITH / THROUGH OTHER AGENCIES

- 10.1 The Council may work in conjunction with other agencies to carry out covert surveillance and to use CHIS's, eg police, DWP, Inland Revenue (but does not include RSLs). It is not necessary for each party to complete its own form of authorisation, and the Council can rely upon a duly authorised form completed by another agency providing that the Authorising Officer is made aware and it has been approved by the Magistrates' Court if required. If another agency chooses to rely on a RIPA authorisation from this Council the Authorising Officer must be made aware.
- 10.2 A copy of another agency's authorisation should be obtained, and copies kept in the same manner as an authorisation granted by the Council. Officers should also ensure that review and renewal dates are noted and that copies of the appropriate forms are also obtained and kept appropriately.
- 10.3 In the event that a member of staff has concerns that an authorisation, Magistrates' Court approval, review, or renewal completed by a partner agency does not comply with the law, codes of practice, or agreed arrangements for surveillance, they should refer the matter to an Authorising Officer of the Council for further action as necessary.
- 10.4 When another agency (e.g. the Police, Inland Revenue etc), wish to use the Council's premises or facilities (other than CCTV) for their own RIPA action, officers should normally co-operate unless there are good operational or management reasons as to why the Council's facilities should not be used for the agency's activities. Suitable insurance or other indemnities may be sought from the agency in return for the Council's co-operation. In such cases the Council's RIPA forms should not be used if it is merely assisting and is not actually involved in the RIPA activity.

11. RECORD MANAGEMENT

- 11.1 The Council must keep a detailed record of all authorisations, Magistrates' Court approvals, reviews, renewals, and cancellations. Copies of all authorisations, Magistrates' Court approvals, records of oral authorisations, reviews, renewals, cancellations and refusals must be kept in a central register held by an Authorised Officer. In addition, all original authorisations, records of oral authorisations, Magistrates' Court approvals, reviews, renewals, cancellations, refusals and other relevant documents must be sent to the RIPA Co-ordinating Officer, who maintains the central RIPA log (record of authorisations and rejections).

11.2 All information obtained during directed surveillance should be recorded in a surveillance log. This should be in a format that gives an accurate and suitably detailed account of the events observed and conversations heard at particular times.

11.3 Copies of all authorisations, records of oral authorisations, Magistrates' Court approvals, reviews, renewals, cancellations and refusals should be kept for a period of 6 years after the conclusion of any Court proceedings arising for which the surveillance or use of the CHIS was relevant. If it is believed that the records could be relevant to pending or future criminal proceedings, the officer in charge of the investigation shall confirm that they should be retained for a suitable further period, subject to any subsequent review, prior to the expiry of the five-year period. This decision must be notified to the Service Director: Legal and Community.

11.4 Records maintained in the Directorates and Centrally

11.4.1 Generally, all material (in whatever media) produced or obtained during the course of investigations subject to RIPA authorisation (whether authorised or not), should be processed, stored and destroyed in accordance with the requirements of the Data Protection Act 2018, General Data Protection Regulation (GDPR) (EU) 2016/679, the Freedom of Information Act 2000 and any other legal requirements, including those of confidentiality and the Council's policies and procedures regarding document retention. The following paragraphs give guidance on some specific situations, but advice should be sought from the Service Director: Legal and Community, or the Data Protection and Freedom of Information Officer where appropriate. All documents must be retained securely, and electronic copies of documents must be password protected.

11.4.2 Copies of the following documents must be retained securely in the departments. Original documents must be sent to the Senior Responsible Officer within 5 working days. They should be submitted in a sealed envelope marked "Confidential RIPA forms".

- The application and the authorisation together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- The application to the Magistrates' Court and any relevant approval/court order;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by the Authorising Officer;
- A record of the result of each review of the authorisation;
- Any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested and Magistrates' Court approval;
- The date and time when any instruction was given by the Authorising Officer.
- An electronic log is maintained centrally on a restricted public folder within G/drive. The Log is kept in a password-protected Excel spreadsheet, located in drive G/RIPA 2000/ RIPA Log. Only Authorising Officers can view it.

- The Council shall retain records for a period of at least 6 years from the ending of the authorisation. The Investigatory Powers Commissioner's Office (IPCO) can review the Council's policies and procedures and individual authorisations. The IPCO usually provide notice before an inspection but can arrive unannounced.

Copies of authorisations, renewals and cancellations are discoverable in legal proceedings. If proper records are not maintained, evidence gathered may be inadmissible.

11.5 Records Relating to the CHIS

- 11.5.1 All information obtained by the CHIS and by the officer responsible for recording the use of the CHIS should be recorded by means of a daily log. This should be in a format that gives an accurate and suitably detailed account of the events observed and conversations heard at particular times.
- 11.5.2 All information recorded in respect of authorisations, surveillance or the use of CHIS must only be disclosed for the purposes for which it was gathered at the time or for use in any future civil or criminal proceedings brought by or against the Council.
- 11.5.3 Records which reveal the name(s) of the CHIS should only be disclosed to persons to the extent that there is a need for access to them; if legally necessary; or if ordered by any Court.
- 11.5.4 When it is intended to employ a CHIS a record must be kept that records all the detail specified in Appendix 2. The officer in charge of maintaining a record of the use of each CHIS should record all these details. The way these records are kept is designed to try to keep the CHIS safe from discovery by the subjects and safe from any harm which could result from their disclosure and also to keep in the open any money or other benefits paid to a CHIS who is not an employee officer of an authorising body.

12. RECORDED MATERIAL OBTAINED DURING INVESTIGATIONS

- 12.1 Where recorded material (in any form or media) is obtained during the course of an investigation which might be relevant to that investigation, or another investigation, or to pending or future civil or criminal proceedings, then it should **not** be destroyed, but retained in accordance with the requirements of the Data Protection Act 2018, General Data Protection Regulation (GDPR) (EU) 2016/679, the Freedom of Information Act 2000, and any other legal requirements, including those of confidentiality, and the Council's policies and procedures regarding document retention. Advice should be sought from the Senior Responsible Officer or the Information and Records Manager.
- 12.2 Where recorded material is obtained, which is not related to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to suspect that it will be relevant to any future civil or criminal proceedings, it should be destroyed immediately.
- 12.3 Recorded Material obtained in the course of an investigation may be used in connection with investigations other than the one that the relevant authorisation was issued for. However, the use or disclosure of such material outside the Council, unless directed by any court order, should only be considered in exceptional circumstances and in accordance with advice from the Senior Responsible Officer.

12.4 Where recorded material obtained is of a confidential nature, then the following additional precautions should be taken:

- Confidential recorded material should not be retained or copied unless it is necessary for a specified purpose;
- Confidential recorded material should only be disseminated in accordance with legal advice that it is necessary to do so for a specific purpose;
- Confidential recorded material which is retained should be marked with a warning of its confidential nature. Safeguards should be put in place to ensure that such recorded material does not come into the possession of any person where to do so might prejudice the outcome of any civil or criminal proceedings;
- Confidential recorded material should be destroyed as soon possible after it is used for the specified purpose.
- Confidential recorded material should be made available for the IPCO at the time of any Inspection.

12.5 If there is any doubt as to whether material is of a confidential nature, advice should be sought from the Senior Responsible Officer.

12.6 The Authorising Officer must ascertain what material has been obtained by the use of directed surveillance. The Authorising Officer should comment on the material and how it is to be managed or used thereafter. If the matter is not proceeding to a prosecution, the Authorising Officer must be satisfied that any material has been securely destroyed.

13. SOCIAL NETWORKING SITES

13.1 Where privacy settings are available but not applied the data available on Social Networking Sites may be considered 'open source' and an authorisation is not usually required.

13.2 Repeat viewing of 'open source' sites, however, may constitute directed surveillance on a case by case basis and this should be borne in mind e.g. if someone is being monitored through, for example, their Facebook profile for a period of time and a record of the information is kept for later analysis, this is likely to require a RIPA authorisation for directed surveillance.

13.3 To avoid the potential for inadvertent or inappropriate use of social network sites in investigative and enforcement roles, Council Officers should be mindful of any relevant guidance and the Council's separate policy regarding the use of Social Networking Sites: Conduct of Investigations.

13.4 The Home Office Revised Code of Practice on Covert Surveillance and Property Interference, published in August 2018, provides the following guidance in relation to online covert activity:

'The growth of the internet, and the extent of the information that is now available online, presents new opportunities for public authorities to view or gather information which may assist them in preventing or detecting crime or carrying out other statutory functions, as well as in understanding and engaging with the public they serve. It is important that public authorities are able to make full and lawful use of this information for their statutory purposes. Much of it can be accessed without the need for RIPA

authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. But if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered. The following guidance is intended to assist public authorities in identifying when such authorisations may be appropriate.

The internet may be used for intelligence gathering and/or as a surveillance tool. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be considered, as set out elsewhere in this code. Where a person acting on behalf of a public authority is intending to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed (paragraphs 4.10 to 4.16 of the Covert Human Intelligence Sources code of practice provide detail on where a CHIS authorisation may be available for online activity).

In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if no further steps are taken to conceal the activity. Conversely, where a public authority has taken reasonable steps to inform the public or particular individuals that the surveillance is or may be taking place, the activity may be regarded as overt and a directed surveillance authorisation will not normally be available.

As set out below, depending on the nature of the online platform, there may be a reduced expectation of privacy where information relating to a person or group of people is made openly available within the public domain, however in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.

Where information about an individual is placed on a publicly accessible database, for example the telephone directory or Companies House, which is commonly used and known to be accessible to all, they are unlikely to have any reasonable expectation of privacy over the monitoring by public authorities of that information. Individuals who post information on social media networks and other websites whose purpose is to communicate messages to a wide audience are also less likely to hold a reasonable expectation of privacy in relation to that information.

Whether a public authority interferes with a person's private life includes a consideration of the nature of the public authority's activity in relation to that information. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation

should be considered. These considerations apply regardless of when the information was shared online.'

14. TRAINING

- 14.1 Training on RIPA and the procedures set out in this policy document will be given or authorised by the Service Director: Legal and Community. Any officer who wishes to undertake surveillance or employ a CHIS and all Authorising Officers must receive and maintain suitable training before signing any RIPA authorisations.
- 14.2 A Central Register of all officers who have received training on RIPA will be maintained by the Service Director: Legal and Community.
- 14.3 As part of the periodic review of this Policy and Procedures the Senior Responsible Officer will determine any ongoing training needs both for Authorising Officers and applicant officers. Refresher courses will be held as necessary.
- 14.4 The responsibility for ensuring that staff receive appropriate training in connection with RIPA lies with Service Directors.
- 14.5 The purpose of the training will be to ensure that both applicant and Authorising Officers are not only familiar with the law governing RIPA regulated activities, but also receive practical advice on the making and consideration of applications. In particular the training will be aimed at familiarising officers with the evidence that is needed to show that a covert operation is necessary, proportionate and likely to be conducted in a manner that will minimise collateral intrusion.
- 14.6 The training will also emphasise the need for Authorising Officers to state clearly the nature of the covert activity that they are authorising and the parameters of that activity i.e. what, where, when, how and against whom.
- 14.7 The importance of setting and observing review, cancellations and renewal dates will form part of the training.
- 14.8 The Senior Responsible Officer will invite pertinent officers to a biannual forum to discuss RIPA and issues relating to enforcement. The forum should aim to benchmark best practice.

15. ELECTED MEMBER INVOLVEMENT

- 15.1 Two new Codes of Practice came into effect on 6 April 2010:
- Regulation of Investigatory Powers (Covert Human Intelligence Source: Code of Practice) Order 2010
 - Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2010
- 15.2 The Codes of Practice state that elected members should:
- Set the RIPA policy at least once a year
 - Review the local authority's use of RIPA
 - Consider internal reports on the use of RIPA on at least a quarterly basis

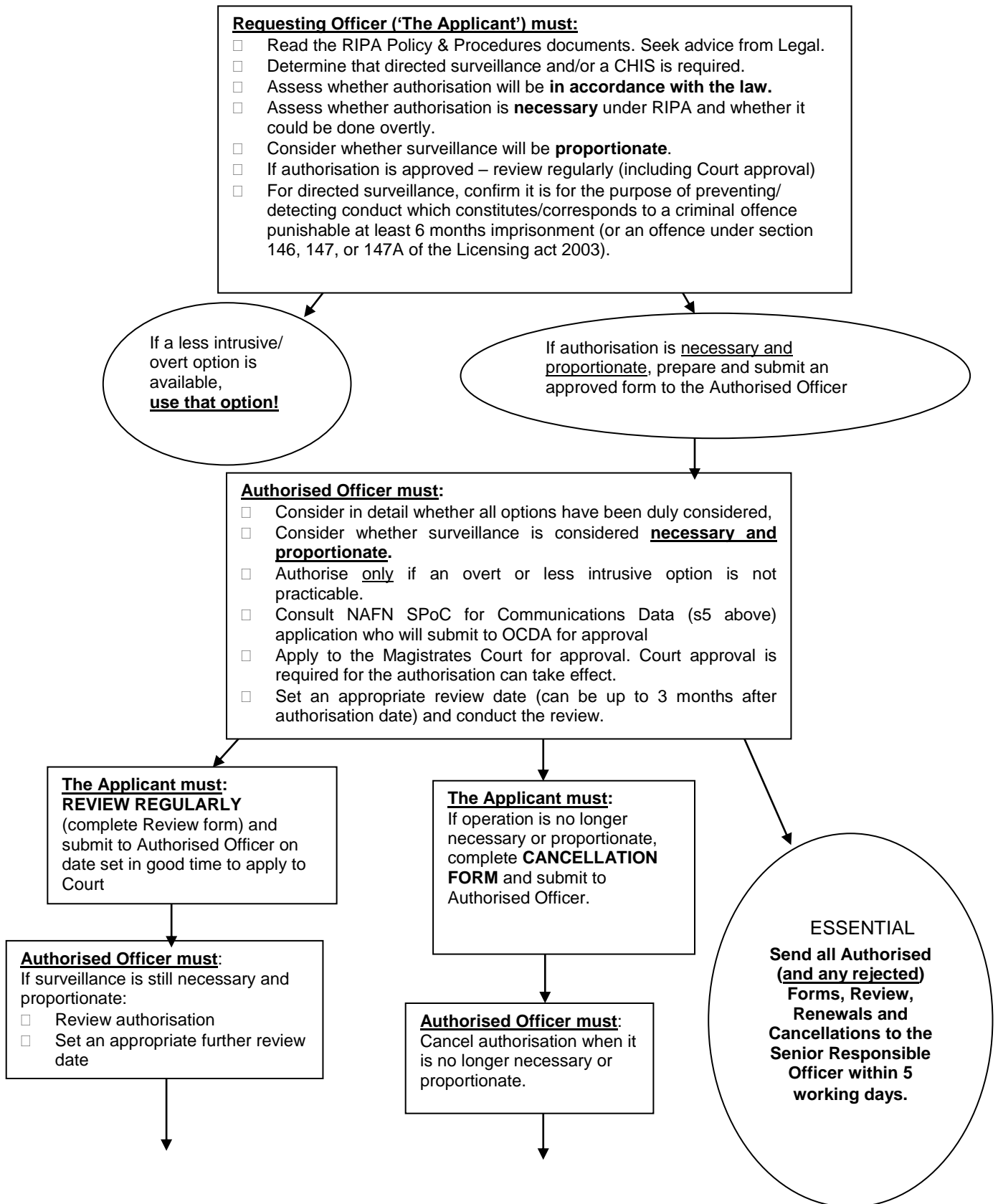
- 15.3 The Terms of Reference for Cabinet in the Council's Constitution state that Cabinet is:

“To prepare and agree to implement policies and strategies other than those reserved to Council.”

The setting of the RIPA policy annually is therefore a role for Cabinet. The Partnerships Scrutiny Sub Committee will consider the Policy annually and make recommendations to Cabinet.

- 15.4 The requirement for members to review the local authority's use of RIPA and consider internal reports on the use of RIPA on at least a quarterly basis is to be undertaken by the Overview and Scrutiny Committee in accordance with the terms of reference for that Committee contained in the Council's constitution.

FLOW CHART OF RIPA PROCESS



- Send all Quarterly Returns to the Service Director: Legal and Community's PA.
- The Codes of Practice state that elected members should:
 - Set the RIPA policy at least once a year
 - Review the local authority's use of RIPA
 - Consider internal reports on the use of RIPA on at least a quarterly basis (these are covered by in a Member Information Note or other appropriate notification).

APPENDIX B

AUTHORISING OFFICERS AND RESPONSIBLE OFFICERS

RIPA Authorising Officers	Head of Paid Service, or in their absence someone acting as a Deputy Service Director: Place, Service Director: Customers, Service Director: Regulatory
Authorising operations where confidential information may be obtained	Head of Paid Service only
CHIS Authorising Officer	Head of Paid Service only
CHIS Controller/Handler	Service Director: Place Service Director: Customers Service Director: Regulatory
Senior Responsible Officer	Service Director: Legal and Community and Monitoring Officer
RIPA Co-ordinating Officer	PA to Service Director: Legal and Community

Please note:

- Where use of a CHIS is authorised, the head of the directorate carrying out the activity shall usually act as the CHIS Handler, with the CHIS Controller role being allocated by the Head of Paid Service.
- Authorising Officers must be “an assistant chief officer or investigations manager” or above.
- The Authorising Officers should not be directly involved in the investigation.