

Performance and Audit Scrutiny Committee



Title	Agenda											
Date	Thursday 30 September 2021											
Time	5.00 pm											
Venue	Conference Chamber, West Suffolk House, Western Way, Bury St Edmunds, IP33 3YU **For the health and safety for all persons present and in order to reduce the risk of spread of coronavirus, appropriate mitigation measures will be applied**											
Full Members	<p style="text-align: center;">Chair Ian Houlder Vice Chair Karen Richardson</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Conservative Group (8)</td> <td style="width: 33%;">John Augustine Nick Clarke Ian Houlder James Lay</td> <td style="width: 33%;">Elaine McManus Robert Nobbs Karen Richardson Peter Thompson</td> </tr> <tr> <td>The Independent Group (4)</td> <td>Victor Lukaniuk Andy Neal</td> <td>Phil Wittam Vacancy</td> </tr> <tr> <td>Labour Group (1)</td> <td colspan="2">Cliff Waterman</td> </tr> </table>			Conservative Group (8)	John Augustine Nick Clarke Ian Houlder James Lay	Elaine McManus Robert Nobbs Karen Richardson Peter Thompson	The Independent Group (4)	Victor Lukaniuk Andy Neal	Phil Wittam Vacancy	Labour Group (1)	Cliff Waterman	
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Labour Group (1)	Cliff Waterman											
Substitutes	<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Conservative Group (3)</td> <td style="width: 33%;">Stephen Frost Marion Rushbrook</td> <td style="width: 33%;">Clive Springett</td> </tr> <tr> <td>The Independent Group (2)</td> <td>David Palmer</td> <td>Mick Bradshaw</td> </tr> <tr> <td>Labour Group (1)</td> <td colspan="2">Pat Hanlon</td> </tr> </table>			Conservative Group (3)	Stephen Frost Marion Rushbrook	Clive Springett	The Independent Group (2)	David Palmer	Mick Bradshaw	Labour Group (1)	Pat Hanlon	
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The Independent Group (2)	David Palmer	Mick Bradshaw										
Labour Group (1)	Pat Hanlon											
By invitation	Sarah Broughton	Portfolio Holder for Resources and Performance										
Interests – declaration and restriction on participation	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non-pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.											
Quorum	Six Members											
Committee administrator	Christine Brain Democratic Services Officer (Scrutiny) Telephone 01638 719729 Email christine.brain@westsuffolk.gov.uk											

Venue	Conference Chamber, West Suffolk House, Western Way, Bury St Edmunds, IP33 3YU
Contact information	Telephone: 01638 719729 Email: democratic.services@westsuffolk.gov.uk Website: www.westsuffolk.gov.uk
Access to agenda and reports before the meeting	The agenda and reports will be available to view at least five clear days before the meeting on our website.
Attendance at meetings	This meeting is being held in person in order to comply with the Local Government Act 1972. Measures have been applied to ensure the health and safety for all persons present at meetings. We may also be required to restrict the number of members of the public able to attend in accordance with the room capacity. If you consider it is necessary for you to attend, please let Democratic Services know in advance of the meeting so they can endeavour to accommodate you and advise you of the necessary health and safety precautions that apply to the meeting.
Public participation	<p>Members of the public who live or work in the district are welcome to speak and may ask one question or make a statement of not more than three minutes duration relating to items to be discussed in Part 1 of the agenda only. If a question is asked and answered within three minutes, the person who asked the question may ask a supplementary question that arises from the reply.</p> <p>The Constitution allows that a person who wishes to speak must register at least 15 minutes before the time the meeting is scheduled to start. In accordance with government guidance, the Council has developed general protocols on operating buildings safely in order to reduce the risk of the spread of coronavirus. We would therefore strongly urge anyone who wishes to register to speak to notify Democratic Services by 9am on the day of the meeting so that advice can be given on the arrangements in place.</p> <p>There is an overall time limit of 15 minutes for public speaking, which may be extended at the Chair's discretion</p>
Accessibility	If you have any difficulties in accessing the meeting, the agenda and accompanying reports, including for reasons of a disability or a protected characteristic, please contact Democratic Services at the earliest opportunity using the contact details provided above in order that we may assist you.
Recording of meetings	The Council may record this meeting and permits members of the public and media to record or broadcast it as well (when the media and public are not lawfully excluded).

	<p>Any member of the public who attends a meeting and objects to being filmed should advise the Committee Administrator who will instruct that they are not included in the filming.</p>
Personal Information	<p>Any personal information processed by West Suffolk Council arising from a request to speak at a public meeting under the Localism Act 2011, will be protected in accordance with the Data Protection Act 2018. For more information on how we do this and your rights in regards to your personal information and how to access it, visit our website: https://www.westsuffolk.gov.uk/Council/Data_and_information/howweuseinformation.cfm or call Customer Services: 01284 763233 and ask to speak to the Information Governance Officer.</p>

Agenda

Procedural matters

1. Substitutes

Any member who is substituting for another member should so indicate, together with the name of the relevant absent member.

2. Apologies for absence

3. Minutes

1 - 8

To confirm the minutes of the meeting held on 29 July 2021 (copy attached.)

4. Declarations of interest

Members are reminded of their responsibility to declare any pecuniary or local non pecuniary interest which they have in any item of business on the agenda **no later than when that item is reached** and, when appropriate, to leave the meeting prior to discussion and voting on the item.

Part 1 – public

5. Public participation

Members of the public who live or work in the district are welcome to speak and may ask one question or make a statement of not more than three minutes duration relating to items to be discussed in Part 1 of the agenda only. If a question is asked and answered within three minutes, the person who asked the question may ask a supplementary question that arises from the reply.

In accordance with government guidance, the Council has developed general protocols on operating buildings safely in order to reduce the risk of the spread of coronavirus and will apply to members of the public registered to speak. **We would therefore strongly urge anyone who wishes to register to speak to notify Democratic Services by 9am on the day of the meeting so that advice can be given on the arrangements in place.** There is an overall limit of 15 minutes for public speaking, which may be extended at the Chair's discretion.

6. Local Government and Social Care Ombudsman: Annual Report 2020 - 2021

9 - 22

Report number: **PAS/WS/21/014**

- | | | |
|-----------|------------------------------------------------------------------------------------------------|----------------|
| 7. | Regulation of Investigatory Powers Act 2000 - Annual Report and Review of RIPA Guidance | 23 - 76 |
| | Report number: PAS/WS/21/015 | |
| 8. | Delivering a Sustainable Medium-Term Budget | 77 - 84 |
| | Report number: PAS/WS/21/016 | |
| 9. | Work programme update | 85 - 88 |
| | Report number: PAS/WS/21/017 | |

Part 2 – exempt

None

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Performance and Audit Scrutiny Committee



Minutes of a meeting of the **Performance and Audit Scrutiny Committee** held on **Thursday 29 July 2021** at **5.00 pm** in the **Conference Chamber, West Suffolk House**, Western Way, Bury St Edmunds IP33 3YU

Present

Councillors

Chair Ian Houlder

Vice Chair Karen Richardson

Nick Clarke

James Lay

Victor Lukaniuk

Elaine McManus

Andy Neal

Robert Nobbs

Peter Thompson

Phil Wittam

Substitutes attending for a full member

Pat Hanlon

In attendance

Sarah Broughton, Cabinet Member for Resources and Performance

59. **Substitutes**

The following substitution was declared:

Councillor Pat Hanlon substituting for Councillor Cliff Waterman.

60. **Apologies for absence**

Apologies for absence were received from Councillors John Augustine and Cliff Waterman.

61. **Minutes**

The minutes of the meeting held on 27 May 2021 were confirmed as a correct record and signed by the Chair.

62. **Formal decision making on 'minded to' decisions**

Taking into account the 'minded to' decisions made during the non-decision-making virtual meeting of the Performance and Audit Scrutiny Committee held on 27 May 2021, the Committee was required to formally resolve the following matters:

1. Minutes of the meeting held on 28 January 2021.
2. Outline Internal Audit Plan 2021-2022

3. Appointments to the Financial Resilience Sub-Committee and the Health and Safety Sub-Committee:

a. Financial Resilience Sub-Committee:

Councillor Ian Houlder (Conservative Group)
Councillor Elaine McManus (Conservative Group)
Councillor Victor Lukaniuk (The Independent Group)

Councillor Robert Nobbs (Conservative Group – Substitute)

b. Health and Safety Sub-Committee:

Councillor Nick Clarke (Conservative Group)
Councillor Ian Houlder (Conservative Group)
Councillor Elaine McManus (Conservative Group)
Councillor Robert Nobbs (Conservative Group)
Councillor Andy Neal (The Independent Group)
Councillor Cliff Waterman (Labour Group)

Councillor James Lay (Conservative Group – Substitute)
Councillor Phil Wittam (The Independent Group – Substitute)

It was then proposed by Councillor Elaine McManus, seconded by Councillor Robert Nobbs, and with the vote being unanimous it was:

RESOLVED:

That:

- 1) The minutes of the meeting held on 28 January 2021, be confirmed as a correct record, and signed by the chair.
- 2) The Outline Internal Audit Plan 2021-2022 be approved.
- 3) The appointments to the Financial Resilience Sub-Committee and the Health and Safety Sub-Committee, be approved.

63. **Declarations of interest**

Members' declarations of interest are recorded under the item to which the declaration relates.

64. **Public participation**

There were no members of the public in attendance on this occasion.

65. **2021-2022 Performance Report (Quarter 1)**

The Service Manager (Resources and Performance) presented report number: PAS/WS/21/012, which set out the impact of Covid-19 and the Quarter 1 performance and forecast year-end financial position for 2021 to 2022.

The Service Manager (Resources and Performance) referred to page 13 of the report, setting out the key headlines for the current revenue outturn position, which showed a balanced forecast year end position. This position took into account the £2m provision for the effects of Covid-19 in the 2021 to 2022 approved budget, based on £1.1m anticipated pressures and utilisation of the £0.9m local authority Covid-19 support grant.

Whilst the overall level of the council's General Fund and reserve would be reassessed in light of the pandemic, a small amount of the General Fund (£3,000) was proposed to be utilised in order to fund the remaining forecast deficit. The council's financial position and ability to reduce the impact where possible had been helped by previous financial planning and the creation of the West Suffolk Council as well as quick and effective action to reduce costs as guidance and infection rates changed.

The Service Manager (Resources and Performance) then referred to page 14 of the report, which set out a graphical representation on how Covid-19 had impacted the council over the year. The first graph showed the financial impact of Covid-19 and the second graph showed how the impact had been mitigated.

Attached to the Quarter 1 performance report were a number of appendices which set out the performance and financial position for 2021-2022, as follows:

- Appendix A: Performance Indicators – Commentary
- Appendix B: Performance Indicators – Growth
- Appendix C: Performance Indicators – Families and Communities
- Appendix D: Performance Indicators – Housing
- Appendix E: Performance Indicators – Day to Day
- Appendix F: Income and Expenditure Report
- Appendix G: Capital Programme
- Appendix H: Earmarked Reserves
- Appendix I: Strategic Risk Register

The Service Manager (Resources and Performance) then referred to page 19 of the report, which set out the financial summary and the key performance indicators which showed pressure in finding temporary accommodation. There was also an impact on the council's income drivers, for example on car parking income and the Apex, and the debt position was still over 90 days, which related to small number of historic property related debts. However, there were green indicators relating to income from trade waste and street scene services.

Members considered the report in detail and asked questions to which responses were provided.

In particular discussions were held on the following:

- Total amount of debt over 90 days – Officers explained that the bad debt provision for 2021-2022 had increased by £100k. Out of the £903,803 debt over 90 days, £650k related to previous years debt.

- Appendix E (Performance Indicators – day-to-day) - “Percentage of collection of business rates” and the National Health Service (NHS) trusts claim for charitable rate relief. Officers explained the NHS trusts had lodged an appeal with the High Court, which had now been withdrawn and was no longer a risk to the council;
- Appendix G (Capital Programme) - “High Street, Haverhill improvements” - Members sought assurances around what was meant by the “fund being reviewed”;
- Appendix G (Capital Programme) – Brandon Leisure Centre - Officers confirmed that the project was on track and on budget.
- Whether the Apex was now back to full capacity – Officers confirmed the council was monitoring the up-take on ticket sales; and
- How well the council was positioned financially if there was another Covid-19 lockdown.

In response to a question raised relating to historical debt, members were informed that there were a small number of properties with large debts. This includes a number of national firms who were refusing to pay nationally. Steps were being taken to address this and some progress was being made. The Government had extended the moratorium on commercial evictions to March 2022.

At the conclusion of the discussions, and there being no decision required, the Committee **noted** the:

- Impact of Covid-19 on the Council’s current financial year 2021 to 2022.
- Forecast for the 2021 to 2022 Revenue and Capital positions as detailed in the report and appendices.

66. **Annual Treasury Management and Financial Resilience Report (2020 to 2021)**

The Committee received Report No: FRS/WS/21/003, which had been considered by the Financial Resilience Sub-Committee on 12 July 2021. The Service Manager (Finance and Performance) provided a verbal update on the Sub-Committee’s consideration of the report, which summarised the Annual Treasury Management and Financial Resilience Report (2020 to 2021).

The report included tables which summarised the interest earned, and the average rate of return achieved; treasury management investment activity during the year; investments held as at 31 March 2021; capital borrowing budget 2020 to 2021; borrowings and temporary loans.

The budget for investments income in 2020 - 2021 was £131,000 which was based on a 0.65% target average rate of return on investments. At the end of March 2021 interest actually earned during the financial year totalled £96,767 (average rate of return of 0.354%), against a budget for the year of £131,000, a budgetary deficit of £34,233. The deficit related to the

continued low interest rates as a result of the Covid-19 pandemic which started in mid-March 2020. The deficit formed part of the financial outturn report presented to the Committee on 27 May 2021 (report number: PAS/WS/21/008).

The report also included assumptions on borrowing costs for the capital projects included within it and was based around four main projects:

- West Suffolk Operational Hub;
- Mildenhall Hub;
- West Suffolk Operational Hub; and
- Investing in our Growth Fund.

During the financial year there had been no requirement to borrow externally, due to the Authority's cash balances, over and above the long-standing £4m loan relating to the Newmarket Leisure Centre. Therefore, the only interest payable for the year was £169,600 relating to this loan. The total borrowing (expressed as the Authority's capital financing requirements) between both internal and external (£4m) total £49.4m at 31 March 2021.

The report also included at Appendix A the CIPFA Financial Resilience Index 2021. The index showed a Council's position on a range of measures associated with financial risk. The graphs showed West Suffolk Council within the context of neighbouring Councils within Suffolk.

The Sub-Committee had scrutinised the Annual Treasury Management and Financial Resilience Report (2020 to 2021), and asked questions to which responses were provided. Discussions were held on the Councils asset base and rental income; and the merits of currently borrowing internally verses externally to fund capital projects.

The Performance and Audit Scrutiny Committee considered the report and asked questions to which responses were provided. In particular discussions were held on external borrowing, low interest rates and the true cost of borrowing internally verses forgone interest.

In response to a question raised asking why the council had not yet borrowed externally whilst the interest rates were low to fund large projects, officers explained the council was in constant contact with its treasury advisors, Arlingclose about future borrowing. At present, there was no immediate urgency to borrow externally as internal cash balances were available and the advisors felt current rates available would continue for some time, but the situation was actively being monitored.

Officers further explained that all capital projects had been evaluated on external borrowing costs, with contingencies being built into each projects business case.

Members did not raise any issues at this time to be brought to the attention of Cabinet.

It was then proposed by Councillor Victor Lukaniuk, seconded by Councillor Robert Nobbs, and with the vote being unanimous, it was:

RECOMMENDED:

That subject to the approval of Cabinet and Council the Annual Treasury Management and Financial Resilience Report (2020 to 2021), being Report No: FRS/WS/21/003, be approved.

67. Financial Resilience Report (June 2021)

The Committee received Report No: FRS/WS/21/004, which had been considered by the Financial Resilience Sub-Committee on 12 July 2021. The Service Manager (Finance and Performance) provided a verbal update on the Sub-Committee's consideration of the report, which provided a summary of investment activity for the first three months of the 2021-2022 financial year.

The 2020-2021 Annual Treasury Management and Investment Strategy sets out the Council's projections for the current financial year. The budget for investment income for 2021 to 2022 was £45,000, which was based on a 0.25% target interest rate of return on investments.

At the end of June 2021, interest earned during the first quarter of the financial year amounted to £16,517 against a profiled budget for the period of £11,250, a budget surplus of £5,267.

External borrowing as at 30 June 2021 remained at £4m with the council's level of internal borrowing increasing slightly to £46,712,000 as at 30 June 2021. Overall borrowing, both external and internal was expected to increase over the full financial year, but not by as much as was originally budget for.

Attached at Appendix 1 to the report was Arlingclose economic and interest rate forecast.

The Service Manager (Finance and Performance) referred the committee to a graph set out in paragraph 5.3 of the report, which showed historic Public Works Loan Board (PWLB) interest rates over the previous two years for different durations based on borrowing using the annuity method. The PWLB rates fluctuated on a daily basis as they were linked to the UK Gilt rates. Currently PWLB rates were at 1% above the relevant UK Gilt rate.

The council, along with Arlingclose, the council's treasury advisor would continue to explore alternative sources of borrowing to ensure the council would be ready to borrow externally in the most advantageous way when it needed to.

The Sub-Committee had scrutinised the investment activity for 1 April 2021 to 30 June 2021, and asked questions to which responses were provided

The Performance and Audit Scrutiny Committee considered the report and asked questions to which responses were provided. In particular discussions were held on external borrowing and the historically low interest rates and the borrowing strategy for the Western Way Development.

In response to a question raised as to what the external borrowing trigger was for the council, officers explained that Arlingclose had offered a trigger of

£70m. The council was currently holding back on borrowing externally as it had a cash balance of over £30m in the bank. Whilst interest rates remained low in the short to medium term, and the Council held significant cash balances, Arlingclose's advice was to continue to use cash reserves and short-term borrowing where necessary. The council was currently developing a business case on a number of options with Arlingclose on external borrowing for the Cabinet Member (Resources and Performance) consideration, which would provide certainty. For example, the Western Way Development would have a fixed interest rate to provide certainty when borrowing was necessary for that project.

Members did not raise any issues at this time to be brought to the attention of Cabinet.

It was then proposed by Councillor Phil Wittam, seconded by Councillor Andy Neal, and with the vote being unanimous, it was:

RECOMMENDED:

That subject to the approval of Cabinet and Council the Financial Resilience Report (June 2021), being Report No: FRS/WS/21/004, be approved.

68. Work programme update 2021 - 2022

[Councillor Andy Neal left the meeting at 6.10pm during the consideration of this item.]

The Committee received report number: PAS/WS/21/013, which updated members on the current status of its rolling work programme of items for scrutiny during 2020-2021 (Appendix 1).

The Director (Resources and Property) informed the Committee that the council had issued the Draft Statement of Accounts (2020 to 2021) prior to the deadline of 31 July 2021. The Draft Statement of Accounts (2020 to 2021) were currently scheduled to be considered by the Committee at its November 2021 meeting. The Chair of the Committee would be kept up to date on the audit process of the Accounts by Ernst and Young.

There being no decision required, the Committee **noted** the update.

The meeting concluded at 6.14 pm

Signed by:

Chair

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Local Government and Social Care Ombudsman: Annual Report 2020-2021

Report number:	PAS/WS/21/014	
Report to and date(s):	Performance and Audit Scrutiny	30 September 2021
Cabinet member:	Councillor Carol Bull Portfolio Holder for Governance Email: carol.bull@westsuffolk.gov.uk	
Lead officer:	Teresa Halliday Monitoring Officer Tel: 01284 757144 Email: teresa.halliday@westsuffolk.gov.uk	

Decisions Plan: This item is not included in the decisions plan.

Wards impacted: No specific wards are impacted by this report

Recommendation: It is recommended that the Performance and Audit Scrutiny Committee notes the content of this report.

1. Context to this report

- 1.1 The Local Government and Social Care Ombudsman (LGSCO) is appointed by the Government to resolve complaints which cannot be resolved by the Council itself. Each year, it considers thousands of complaints from members of the public about the way that councils operate and seeks to independently and fairly adjudicate on them, reaching a final conclusion.
- 1.2 Before the LGSCO will consider a complaint, the complainant must first seek to exhaust the Council's own complaints process. The intention being to resolve complaints before they escalate and consider any learning across services throughout the process. At West Suffolk, this will mean that the complainant must go through two stages:
- a) Stage 1: The service will review the complaint and respond accordingly. The response will usually be from the Service Manager or Director.
 - b) Stage 2: If the complainant is dissatisfied, the Council's legal service will undertake a review of the complaint. The complainant will be informed that if they are still unhappy, they may refer the matter to the LGSCO.
- 1.3 As such, the LGSCO will only consider the small number of cases where the complainant feels it necessary, having exhausted the Council's own procedures (even where the complaint has been upheld), to progress the matter further. By their nature, such cases can be very complicated, and have arisen over a long period of time.
- 1.4 Each year, the Local Government Ombudsman (LGO) issues an annual report on its activity, which maps the volume and nature of complaints it has received across the Country. This is available on the LGO's website. Each Council is also issued with its own performance report.
- 1.5 This report to the Performance and Audit Scrutiny Committee seeks to inform members of the outcome of the complaints considered by the LGSCO about West Suffolk Council for the period 2020-2021.

2. Number of Complaints raised

2.1 Internal Investigations; Overview of Stage 2 Complaints

The table below outlines the number of Stage 2 complaints investigated across the Council over the last 5 years, which presents a generally consistent picture in terms of volume.

On reviewing the data below, it is worth noting that there was a change to the internal complaints policy in November 2018 that outlined that a complaint will no longer be considered under Stage 2 unless the complainant has new information that has not previously been investigated under the Stage 1 process;

Year	Volume
21/22 as at 7 Sept	5
20/21	16
19/20	22
18/19	14
17/18	23
16/17	25

2.2 External Investigations; Stage 2 complaints subsequently submitted to the LGSCO 21/22

Of the 16 Stage 2 complaints that were considered by West Suffolk Council in 21/22, 10 were taken to the LGSCO. The number raised against West Suffolk Council are categorised by service area:

Corporate & Other Services	3
Environmental Services & Public Protection and Regulation	2
Planning & Development	2
Highways & Transport	1
Housing	2
Total	10

3. Outcome of complaints considered by LGSCO

- 3.1 When the LGSCO receives a complaint, they will first assess it against their criteria to ensure that it is valid, that the complainant has exhausted the Council's own complaints process and that there is public interest in investigating the matter further.

- 3.2 If the LGSCO decides to investigate a complaint further, they will either uphold the complaint or not uphold it. They may agree with any remedial action taken by the Council or ask the Council to undertake further actions. The LGSCO’s annual report sets out the decisions made against complaints made against West Suffolk Council:

(Please note the table below includes those complaints received in 2019-2020 but decided in 2020-2021, hence why there are outcomes for 12 complaints shown below).

Advice given	1
Referred back for local resolution	3
Closed after initial enquiries	6
Not upheld	1
Upheld	1
Total	12

- 3.3 Of the 12 complaints considered by the LGSCO only 1 was upheld. This complaint related to the Council’s handling of a parking appeal. The LGSCO found the Council to be at fault because it did not consider the appeal against the parking charge properly but found that this had not caused the complainant any injustice.

- 3.4 Upheld complaints and any other recommendations made by the LGSCO are always reviewed to determine whether a service change is required and the LGSCO’s annual review will form part of the forthcoming wider work about how complaints are handled by local authorities.

4. Risks

- 4.1 No specific risks arise from this report.

5. Implications arising from the proposals

- 5.2 Legal Compliance – the Monitoring Officer is required to report to Council where the LGSCO makes a significant adverse finding (public interest report). No such cases have arisen in the period 2020-2021.

6. Appendices referenced in this report

- 6.1 Appendix 1: The LGSCO annual review letter 2021
- 6.2 Appendix 2: The complaint statistics for West Suffolk Council

7. Background documents associated with this report

- 7.1 Further details together with an interactive map can be found at [Your council's performance \(lgo.org.uk\)](https://lgo.org.uk)

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Local Government &
Social Care
OMBUDSMAN

21 July 2021

By email

Mr Gallin
Chief Executive
West Suffolk Council

Dear Mr Gallin

Annual Review letter 2021

I write to you with our annual summary of statistics on the decisions made by the Local Government and Social Care Ombudsman about your authority for the year ending 31 March 2021. At the end of a challenging year, we maintain that good public administration is more important than ever and I hope this feedback provides you with both the opportunity to reflect on your Council's performance and plan for the future.

You will be aware that, at the end of March 2020 we took the unprecedented step of temporarily stopping our casework, in the wider public interest, to allow authorities to concentrate efforts on vital frontline services during the first wave of the Covid-19 outbreak. We restarted casework in late June 2020, after a three month pause.

We listened to your feedback and decided it was unnecessary to pause our casework again during further waves of the pandemic. Instead, we have encouraged authorities to talk to us on an individual basis about difficulties responding to any stage of an investigation, including implementing our recommendations. We continue this approach and urge you to maintain clear communication with us.

Complaint statistics

This year, we continue to focus on the outcomes of complaints and what can be learned from them. We want to provide you with the most insightful information we can and have focused statistics on three key areas:

Complaints upheld - We uphold complaints when we find some form of fault in an authority's actions, including where the authority accepted fault before we investigated.

Compliance with recommendations - We recommend ways for authorities to put things right when faults have caused injustice and monitor their compliance with our recommendations. Failure to comply is rare and a compliance rate below 100% is a cause for concern.

Satisfactory remedy provided by the authority - In these cases, the authority upheld the complaint and we agreed with how it offered to put things right. We encourage the early resolution of complaints and credit authorities that accept fault and find appropriate ways to put things right.

Finally, we compare the three key annual statistics for your authority with similar types of authorities to work out an average level of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data will be uploaded to our interactive map, [Your council's performance](#), along with a copy of this letter on 28 July 2021. This useful tool places all our data and information about councils in one place. You can find the decisions we have made about your Council, public reports we have issued, and the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

I would encourage you to share the resource with colleagues and elected members; the information can provide valuable insights into service areas, early warning signs of problems and is a key source of information for governance, audit, risk and scrutiny functions.

As you would expect, data has been impacted by the pause to casework in the first quarter of the year. This should be considered when making comparisons with previous year's data.

Supporting complaint and service improvement

I am increasingly concerned about the evidence I see of the erosion of effective complaint functions in local authorities. While no doubt the result of considerable and prolonged budget and demand pressures, the Covid-19 pandemic appears to have amplified the problems and my concerns. With much greater frequency, we find poor local complaint handling practices when investigating substantive service issues and see evidence of reductions in the overall capacity, status and visibility of local redress systems.

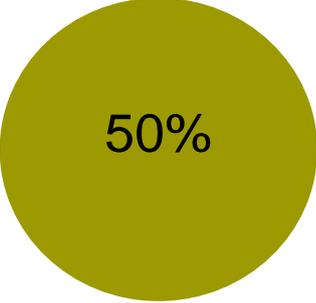
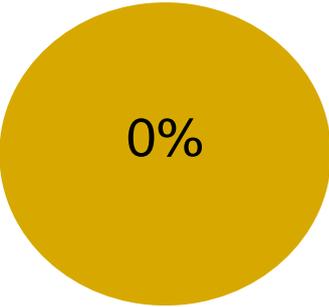
With this context in mind, we are developing a new programme of work that will utilise complaints to drive improvements in both local complaint systems and services. We want to use the rich evidence of our casework to better identify authorities that need support to improve their complaint handling and target specific support to them. We are at the start of this ambitious work and there will be opportunities for local authorities to shape it over the coming months and years.

An already established tool we have for supporting improvements in local complaint handling is our successful training programme. During the year, we successfully adapted our face-to-face courses for online delivery. We provided 79 online workshops during the year, reaching more than 1,100 people. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Complaints upheld		
	<p>50% of complaints we investigated were upheld.</p> <p>This compares to an average of 53% in similar authorities.</p>	<p>1 upheld decision</p> <p>Statistics are based on a total of 2 detailed investigations for the period between 1 April 2020 to 31 March 2021</p>
Compliance with Ombudsman recommendations		
<p>No recommendations were due for compliance in this period</p>		
Satisfactory remedy provided by the authority		
	<p>In 0% of upheld cases we found the authority had provided a satisfactory remedy before the complaint reached the Ombudsman.</p> <p>This compares to an average of 16% in similar authorities.</p>	<p>0 satisfactory remedy decisions</p> <p>Statistics are based on a total of 2 detailed investigations for the period between 1 April 2020 to 31 March 2021</p>

NOTE: To allow authorities to respond to the Covid-19 pandemic, we did not accept new complaints and stopped investigating existing cases between March and June 2020. This reduced the number of complaints we received and decided in the 20-21 year. Please consider this when comparing data from previous years.

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Reference	Authority	Category	Received
20000737	West Suffolk Council	Corporate and Other Services	01 Jul 2020
20001160	West Suffolk Council	Environmental Services and Public Protection and Regulation	07 Jul 2020
20002192	West Suffolk Council	Highways and Transport	23 Jul 2020
20004160	West Suffolk Council	Planning and Development	01 Sep 2020
20004258	West Suffolk Council	Corporate and Other Services	02 Sep 2020
20004858	West Suffolk Council	Housing	14 Sep 2020
20006251	West Suffolk Council	Environmental Services and Public Protection and Regulation	12 Oct 2020
20006850	West Suffolk Council	Corporate and Other Services	22 Oct 2020
20012322	West Suffolk Council	Housing	16 Feb 2021
20013265	West Suffolk Council	Planning and Development	05 Mar 2021

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Reference	Authority	Category	Decided	Decision	Decision Reason
19013582	West Suffolk Council	Highways and Transport	18 Aug 2020	Upheld	mal no inj
19015054	West Suffolk Council	Housing	21 Apr 2020	Advice given	Previously considered and decided
19015428	West Suffolk Council	Planning and Development	28 Jan 2021	Not Upheld	no mal
20000737	West Suffolk Council	Corporate and Other Services	06 Jul 2020	Closed after initial enquiries	S26(1) Not an admin function of authority
20001160	West Suffolk Council	Environmental Services and Public Protection and Regulation	10 Aug 2020	Referred back for local resolution	Premature Decision - referred to BinJ
20002192	West Suffolk Council	Highways and Transport	24 Aug 2020	Closed after initial enquiries	Not warranted by alleged injustice
20004160	West Suffolk Council	Planning and Development	08 Oct 2020	Closed after initial enquiries	Not warranted by alleged mal/service failure
20004258	West Suffolk Council	Corporate and Other Services	14 Oct 2020	Closed after initial enquiries	26(6)(b) appeal to Minister
20004858	West Suffolk Council	Housing	14 Sep 2020	Referred back for local resolution	Premature Decision - advice given
20006251	West Suffolk Council	Environmental Services and Public Protection and Regulation	16 Dec 2020	Closed after initial enquiries	26B(2) not made in 12 months
20006850	West Suffolk Council	Corporate and Other Services	10 Dec 2020	Closed after initial enquiries	Not warranted by alleged mal/service failure
20012322	West Suffolk Council	Housing	16 Feb 2021	Referred back for local resolution	Premature Decision - advice given

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Regulation of Investigatory Powers Act 2000 – Annual Report and Review of the RIPA Guidance

Report number:	PAS/WS/21/015	
Report to and date(s):	Performance and Audit Scrutiny	30 September 2021
Cabinet member:	Councillor Carol Bull Portfolio Holder for Governance Email: carol.bull@westsuffolk.gov.uk	
Lead officer:	Jennifer Eves Director HR, Governance and Regulatory Services Tel: 01284 757015 Email: jennifer.eves@westsuffolk.gov.uk	

Decisions Plan: This item is not included in the Decisions Plan.

Wards impacted: No specific wards are impacted by this report.

Recommendation: It is recommended that the Performance and Audit Scrutiny Committee -

i) Note the update on the use of RIPA and other associated matters, including the findings of the Investigatory Powers Commissioner’s Office (IPCO) following a recent RIPA inspection, and

ii) Approves the Council’s RIPA Guidance, taking into account the recommendations of the IPCO.

1. Context to this report

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework to ensure investigatory techniques are used in a way that is compatible with the Article 8 right to respect for private and family life enshrined in the European Convention on Human Rights. RIPA ensures that these techniques are used in a regulated way and provides safeguards against the abuse of such methods. Use of these covert techniques will only be authorised if considered legal, necessary and proportionate.
- 1.2 The Covert Surveillance and Property Interference Code of Practice (Code of Practice) provides guidance on the use by public authorities of Part II of RIPA.
- 1.3 RIPA and the Code of Practice require councillors to have regular oversight of activities authorised under RIPA. The Code of Practice also requires councillors to review the Council's RIPA Guidance (an appendix to the Council's Enforcement Policy) at least once a year.
- 1.4 On 21 June 2021 the Council was, also, the subject of an annual inspection by one of IPCO's Inspectors.

2. RIPA activity at West Suffolk Council

- 2.1 The overwhelming majority of surveillance undertaken by the Council will be done overtly, meaning there will be nothing secretive or hidden about the way it is conducted. 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 (e.g. where a noisemaker is warned that noise will be recorded if it continues).
- 2.2 The Council's RIPA Guidance makes sure that when we do use covert techniques (for example, persons subject to the surveillance are unaware that it is or may be taking place) to help prevent or detect crime or disorder, we do so in compliance with RIPA.
- 2.3 Officers will only carry out covert surveillance where such action is justified and proportionate and we have a small pool of senior officers who are trained to authorise such applications which must then be granted by a Magistrate.
- 2.4 Authorisations are regularly reviewed by an authorising officer, and a confidential register, detailing all covert surveillance authorisations, is held by the legal service.

- 2.5 While we do not widely use these powers across the Authority, two authorisations for the use of a Covert Human Intelligence Source (CHIS) have been granted by Magistrates to help prevent and detect crime over the last two years. This was commended by the IPCO Inspector.

3. RIPA Guidance

- 3.1 The RIPA Guidance is currently fit for purpose, but an action plan is in place to make revisions to the Guidance in accordance with recommendations made by the IPCO Inspector.
- 3.2 A revision has already been made to clause 8 of the RIPA guidance in respect of the use of Communications Data. This was advised by the IPCO Inspector who, also, provided the revised wording. These revisions can be seen as tracked changes to the Guidance in Appendix 1.

4. Outcome of the inspection by IPCO

- 4.1 Overall, the inspection was very positive and the IPCO Inspector was assured that our Guidance is fit for purpose, effectively covers our RIPA Activity and staff are aware of and abiding by the Guidance.
- 4.2 The IPCO Inspector has suggested some development areas and officers have prepared an action plan in response (Appendix 2). The development areas mainly fall under training (last provided in 2018) and recommended that refresher training be provided every three years. The Inspector, also, recommended exploring the use of social media across the Council to be satisfied that it does not amount to any form of covert surveillance, as well as looking at how the Council retains, reviews and destroys material collected under RIPA.

5. Risks

- 5.1 There are no significant residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

6. Implications arising from the proposals

- 6.1 Legal Compliance – as a public authority, the Council must ensure it is fully compliant with all relevant legislation. RIPA ensures that covert surveillance, or the use of a CHIS is properly authorised, necessary and proportionate.

7. Appendices referenced in this report

- 7.1 Appendix 1: RIPA Guidance (incorporates a link to the Code of Practice)
- 7.2 Appendix 2: IPCO Inspection report and Action Plan

**Appendix to the
West Suffolk Enforcement Policy**

**Regulation of Investigatory
Powers Act 2000
Guidance**

Contents

1. Introduction
 2. What does RIPA do?
 3. Judicial approval and the serious crime threshold
 4. Principal responsibilities
 5. Covert surveillance
 6. Surveillance operations not regulated by RIPA
 7. Covert Human Intelligence Sources
 8. Accessing communications data
 9. Complaints
 10. Further information
- Appendix A: Authorised officers
- Appendix B: Guidance on completing application
- Appendix C: RIPA flow charts

1. Introduction

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is designed to ensure that public bodies respect the privacy of members of the public when carrying out investigations and that privacy is only interfered with where the law permits and there is a clear public interest justification.
- 1.2 The essence of these provisions is to give effect to the provisions in the Human Rights Act 1988 (HRA) which are designed to protect the privacy of members of the public, but subject to the right of public authorities to infringe that human right where necessary in a democratic society for the prevention of crime. If applied correctly, RIPA also protects the council and its officers.
- 1.3 This policy and guidance is intended as a practical reference guide for council officers/investigators who may be involved in covert operations. Officers involved in covert operations must familiarise themselves with the Home Office Codes of Practice on Covert Surveillance and Property Interference, Covert Human Intelligence Sources and Acquisition and Disclosure of Communications Data, together with the Home Office guidance on the judicial approval process and crime threshold for directed surveillance, in order to ensure that they fully understand their responsibilities. The Home Office codes and guidance are available from www.gov.uk/government/collections/ripa-codes. In addition, it is suggested that officers may wish to look at the latest policy and guidance issued by the Office of Surveillance Commissioners (OSC).
- 1.4 The right to respect for one's private and family life is enshrined in Article 8 of the European Court on Human Rights (ECHR), as adopted in the HRA, which renders it unlawful for a public authority to act in a way which is incompatible with any of the Convention rights. As with many of the rights in the HRA, the right to privacy is not an absolute right and is subject to certain qualifications. RIPA and regulations provide an exemption from the right to privacy in certain circumstances and allow public bodies to interfere with the individual's right to privacy in circumstances which amount to covert surveillance.
- 1.5 The council is committed to implementing the provisions of RIPA to ensure that any covert surveillance carried out during the course of investigations is undertaken properly and that the surveillance is necessary and proportionate to the alleged offence(s). The council seeks to ensure that this guidance remains consistent with the council's objectives.
- 1.6 This guidance ensures that:
 - proper procedures are in place in order to carry out covert surveillance
 - an individual's right to privacy is not breached without justification

- the potential invasion of privacy caused by using techniques regulated by RIPA are properly justified in a clear, concise paper/electronic trail
- proper authorisation and judicial approval is obtained for covert surveillance
- covert surveillance is considered as a last resort, having exhausted all other avenues
- the seriousness of the offence is considered, in addition to the requirement to weigh up the benefits to the investigation, when considering whether to authorise covert techniques under RIPA
- an officer is designated as the Senior Responsible Officer (SRO) for ensuring that all authorising officers meet the standards required by the Investigatory Powers Commissioner's Office
- the Overview and Scrutiny Committee has a strategic oversight role in/of the council's RIPA process.

1.7 Definitions

<p>Communications data</p>	<p>This term embraces the 'who', 'when' and 'where' of a communication but not the content and not what was said or written. It includes the manner in which and by what method a person or machine communicates with another person or machine. It excludes what they say or what data they pass on within that communication.</p> <p>Communications data is generated, held or obtained in the provision, delivery or maintenance of communication services, being both postal and telecommunication services. A postal service consists of any service which is involved in the collection, sorting, conveyance, distribution and delivery of postal items and is offered or provided as a service, the main purpose of which is to transmit postal items from place to place. Any service which consists of the provision of access to and making use of any telecommunication system (whether or not provided by the person providing the service), the purpose of which is to transmit communications using electric or electro magnetic energy.</p>
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Covert	Concealed, done secretly.
Covert human intelligence source (CHIS)	<p>Use of a covert human intelligence source means establishing or maintaining a relationship with a person for the purpose of covertly obtaining or disclosing information. In practice, this is likely to cover the use of an informer or council officer to strike up a relationship with someone as part of an investigation to obtain information 'under cover'. Recent examples have involved investigations using social media.</p> <p>Someone who volunteers information to the council, either as a complainant or out of civic duty, is unlikely to be a covert human intelligence source. If someone is keeping a record, say, of neighbour nuisance, this will not amount by itself to use of a covert human intelligence source, because they will not have obtained the information in the course of, or as a consequence of, the existence of a personal or other relationship. However, if the council is relying on an individual to ask questions with a view to gathering evidence, then this may amount to use of a covert human intelligence source. The test to apply is not whether there is a task to perform but whether it is to be done by the use of a personal or other relationship (which could include commercial, professional, managerial or employment contracts). If and when it becomes apparent that a repeat informant is obtaining his information in this way, then he is, in reality, a CHIS to whom a potential duty of care is owed if the information is acted upon. Advice should be sought from the Shared Legal Service before acting on information supplied by such a source.</p>

Covert surveillance	Surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place. If activities are not hidden from the subjects of the investigation, it is not covert.
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Directed surveillance	<p>Directed surveillance is defined in RIPA as surveillance which is covert, but not intrusive, and undertaken for the purposes of a specific investigation or operation.</p> <p>Directed surveillance is conducted where it involves the observation of a person or persons with the likelihood of gathering private information to produce a detailed picture of a person's life, activities and associations. For the purposes of the definition, private information in relation to a person can include information relating to their business and professional activities as well as their private or family life.</p> <p>Directed surveillance does not include any type of covert surveillance in residential premises or in private vehicles. Such activity is defined as 'intrusive surveillance' which the council cannot carry out. Any covert surveillance which is likely to intrude upon anyone's privacy to more than a marginal extent should be treated as directed surveillance. This may include covert CCTV surveillance.</p> <p>If any service is unsure, advice should be taken from the Shared Legal Service. Directed surveillance must be properly authorised and judicially approved in accordance with the procedure set out in section 6 of these guidance notes.</p>
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<p>Intrusive surveillance</p>	<p>Covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle, or is carried out by means of a surveillance device. If a device is not on the premises or in a vehicle but provides consistent information of the same quality and detail as if it were on the premises or in a vehicle, this will be considered intrusive.</p> <p>Surveillance devices designed or adopted principally for the purpose of providing information about the location of a vehicle are not considered intrusive.</p>
	<p>Residential premises includes hotel or prison accommodation, if being used for living accommodation, plus houses, boats, barracks etc, but not any common area to which a person is allowed access in connection with his or her occupation of any accommodation. Private vehicles include those for domestic, family and leisure use. It includes any vessel, aircraft or hovercraft.</p>

Service use information	<p>This is data relating to the use made by any person of a postal or telecommunication service, or any part of it, and falls within Section 21(4)(b) of RIPA.</p> <p>Examples of data within this definition include:</p> <ul style="list-style-type: none"> • itemised telephone call records (numbers called) • itemised records of connections to Internet services • itemised timing and duration of service usage (calls and all connections) • information about amount of data downloaded and/or uploaded • information about the connection, disconnection and reconnection of services • information about provision and use of forwarding/redirection services by postal and telecommunications service providers • information about provision of conference calling, call messaging, call waiting and call barring telecommunications services • information about selection of preferential numbers or discount calls • records of postal items such as records of registered, recorded or special delivery postal items • records of parcel confinement, delivery and collection.
Subscriber information	<p>This relates to information held or obtained by a communication service provider about persons to whom the communication service provider has provided or provides a</p>

	<p>communication service. Those persons would include people who are subscribers to a communication service without necessarily using that service and persons who use a communications service without necessarily subscribing to it. Examples of this include:</p> <ul style="list-style-type: none"> • subscriber checks, such as who is the subscriber of phone number or account holder of an email account • subscribers' or account holders' information including payment methods and any services to which the subscriber or account holder is allocated or has subscribed • addresses for installation and billing • information provided by a subscriber or account holder to a communication service provider such as demographic information or sign up data (to the extent that information such as a password giving access to the content of the communication is not disclosed).
Surveillance	<p>This includes monitoring, observing or listening to persons, their movements, their conversations or their activities or communication. It also includes the recording of anything monitored, observed or listened to. Surveillance can be done with or without the assistance of a surveillance device.</p>

Traffic data	<p>This is data that is comprised in or attached to communication for the purpose of transmitting the communication and in relation to the communication which:</p> <ul style="list-style-type: none"> • identifies or appears to identify any person, equipment or location to or from which a communication is or may be received • identifies or selects transmission equipment • comprises signals activate equipment used for transmission of communication • identifies data as data comprised in or attached to a communication • identifies a computer file or a computer programme to which access has been
	<p>obtained or which has been run by means of a communication, but only to the extent that the file or programme is identified by reference to the apparatus in which the final programme is stored (that is, traffic data)</p> <ul style="list-style-type: none"> • may identify a server, but not a website or page.

2. What does RIPA do?

- 2.1 RIPA places controls on the use of certain methods of investigation. In particular, it regulates the use of surveillance, covert human intelligence sources ~~and the acquisition and disclosure of communications data~~. This guidance covers these aspects of RIPA.
- 2.2 RIPA's main implications for the council are in respect of covert surveillance by council officers and the use of covert human intelligence sources. [This Guidance](#) ~~It~~ also covers the council's ~~limited~~ dealings with the acquisition and disclosure of communications data.
- 2.3 Surveillance is covered in sections 5 and 6 of this guidance. The use of covert human intelligence sources is covered in Section 7. Communications data is dealt with in Section 8.

3. Judicial approval and the serious crime threshold

- 3.1 From 1 November 2012 local authorities have been required to obtain judicial approval prior to using covert techniques. Local authority

authorisations and notices under RIPA will only be given effect once an order has been granted by a Justice of the Peace (JP).

- 3.2 Additionally, local authority use of directed surveillance under RIPA is now limited to the investigation of crimes which attract a six month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco. This threshold does **not** apply to the use of CHIS, ~~or to the acquisition and disclosure of communications data.~~
- 3.3 The Home Office has published guidance for local authorities and magistrates, which is available at <https://www.gov.uk/government/collections/ripa-forms--2>
- 3.4 Local authority officers will need to be formally designated to appear before the court for the purpose of seeking judicial approval.

4. Principal responsibilities

The Senior Responsible Officer

- 4.1 The Codes of Practice on Covert Surveillance, CHIS and Communications Data set out the responsibilities of the Senior Responsible Officer, which are broadly the same. The following is a composite list.
- 4.2 The Senior Responsible Officer (SRO) is responsible for:
 - the integrity of the process in place within the local authority to authorise directed and intrusive surveillance and interference with property or wireless telegraphy, for the management of CHIS and the acquisition of communications data
 - compliance with Parts I and II of RIPA and with the codes
 - oversight of the reporting of errors to the Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors
 - engagement with the Commissioner/inspectors when they conduct their inspections
 - where necessary, oversight of the implementation of post-inspection action plans recommended or approved by the Commissioner
 - ensuring that all authorising officers are of an appropriate standard, addressing any recommendations and concerns in the inspection reports prepared by the Commissioner.
- 4.3 Also, in relation to covert surveillance and CHIS, the SRO is responsible for:
 - ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the IPCO

- where an inspection report highlights concerns about the standards of authorising officers, ensuring the concerns are addressed.

4.4 The [Assistant Director, HR, Governance Planning](#) and Regulatory Services, has been nominated as the SRO for the council for directed surveillance, CHIS and communications data.

5. Covert surveillance

Introduction

- 5.1 RIPA is designed to regulate the use of covert surveillance, which is surveillance carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place. If activities are not hidden from the subjects of the investigation, it is not covert.
- 5.2 Two types are regulated by RIPA - directed and intrusive surveillance. These terms are defined in paragraph 1.7 and also below:

Directed surveillance is defined in RIPA as surveillance which is covert, but not intrusive and undertaken for the purposes of a specific investigation or operation. It involves the observation of a person or persons with the likelihood of gathering private information to produce a detailed picture of a person's life, activities and associations. Private information about a person can include information relating to their business and professional activities as well as their private or family life. Any covert surveillance which is likely to intrude upon anyone's privacy to more than a marginal extent should be treated as directed surveillance. This may include covert CCTV surveillance.

Intrusive surveillance is covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle, or is carried out by means of a surveillance device. If a device is not on the premises or in a vehicle but provides information of the same quality and detail as if it were, this will be considered intrusive. Surveillance devices designed or adopted principally for the purpose of providing information about the location of a vehicle are not considered intrusive. Residential premises include hotel or prison accommodation if being used for living accommodation, plus houses, boats, barracks, etc, but not any common area to which a person is allowed access in connection with his or her occupation of any accommodation. Private vehicles include those for domestic, family and leisure use. It includes any vessel, aircraft or hovercraft. RIPA provides for the authorisation of covert surveillance provided it is necessary and proportionate.

- 5.3 General observation forms part of the duties of some council officers. Where an incident occurs during an officer's normal duties, which is unforeseen and an officer has to respond immediately to the situation, what the officer

does will not require an authority. This unforeseen activity, where an officer was merely reacting to events, does not need to be covered by the procedures in these guidance notes.

- 5.4 Generally, the provisions of RIPA do not include the use of overt CCTV surveillance systems. Members of the public are aware that such systems are in use, for their own protection and to prevent crime. However, where CCTV systems are used for covert surveillance, RIPA will apply.

Application to the council

- 5.5 The council cannot carry out intrusive surveillance. These powers are reserved to bodies such as the Police and HM Revenue and Customs. If a council officer is asked by another agency to cooperate with intrusive surveillance, advice should immediately be obtained from the Shared Legal Service, who will give advice as to possible risks to and concerns for officers and equipment. Similarly, the council cannot conduct entry on, or interference with, property or with wireless telegraphy (known as property interference).
- 5.6 The council may, however, authorise directed surveillance.
- 5.7 The council may be asked to carry out directed surveillance for another agency, or may ask others to carry out surveillance on its behalf. It is for the lead agency to apply for an authorisation. When acting with another body, the operation can be covered by that authority's authorisation. However, all involved must ensure they are familiar with the terms of the authorisation.

Authorising directed surveillance and obtaining judicial approval: the rules

- 5.8 It is crucial that all directed surveillance is properly authorised and judicially approved. No officer may commence any form of directed surveillance operation unless it is authorised and approved in accordance with this guidance. Failure to secure proper authorisation/approval and to comply with this procedure could lead to evidence being excluded by the courts and to complaints against the council. The council is subject to audit and inspection by the Investigatory Powers Commissioner's Office and it is important that we can demonstrate compliance with RIPA.

Who can authorise directed surveillance?

- 5.9 Regulations made under RIPA say that the most junior level at which authorisations can be given is by what it refers to as Director, Head of Service, Service Manager or equivalent. However, authorisations should be given by those officers set out in Appendix A. Officers named on this

designated list should have full training in respect of RIPA and the considerations that must be made before granting authorisation.

- 5.10 If anyone authorised is not available, anyone holding a senior position [i.e. a Director, Head of Service, Service manager or equivalent](#)) can be delegated to authorise. Advice can also be sought from anyone senior to an authorising officer in difficult or sensitive cases and also from the Shared Legal Service.
- 5.11 Where practicable, the authorising officer should not be directly involved in the case giving rise to the request for authorisation. Where it is not practicable for authorisation to be given by an officer who is not directly involved, this should be noted with reasons on the authorisation form.

On what grounds can directed surveillance be authorised?

- 5.12 In the case of local authorities, directed surveillance can only be authorised if it is necessary for the purpose of preventing or detecting crime and the offence(s) under investigation attracts a maximum custodial sentence of six months or more or relate to the underage sale of alcohol or tobacco.
- 5.13 It is very important to consider whether the surveillance is necessary. If the objective can be achieved by less intrusive means, which do not involve directed surveillance, these should be used.
- 5.14 If there are no other means, this should be stated on the authorisation form.
- 5.15 The crime under investigation should be fully detailed.

Is the proposed surveillance proportionate?

- 5.16 Authority should not be given unless the person authorising the request is satisfied that the surveillance is proportionate.
- 5.17 The authorising officer should make sure that any interference with the privacy of an individual is justified by the end being sought. If the benefit to be obtained from surveillance is marginal, the person authorising should think very carefully about whether the use of surveillance is proportionate. Activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. Suggested areas to consider include prevalence of offence and other means by which the information can be obtained.
- 5.18 In addition, activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

5.19 The authorisation must detail all methods that have been considered and why they have not been implemented, in order to demonstrate that full attention has been given to the proportionality of the proposed surveillance.

5.20 Further guidance on proportionality can be found in part 9 of Appendix B.

Is the proposed surveillance discriminatory?

5.21 The council is under a legal obligation to avoid either direct or indirect discrimination in carrying out its functions. As surveillance can interfere with rights contained in the European Convention on Human Rights, discrimination can also amount to a breach of the HRA. Services need to be sensitive to this issue and ensure that they apply similar standards to seeking or authorising surveillance regardless of ethnic origin, sex or sexual orientation, disability, age and so on. They should be alert to any assumptions about people from different backgrounds which may not even be consciously held.

Will the surveillance involve collateral intrusion?

5.22 In other words, will the surveillance intrude upon the privacy of people other than those who are the subject of the investigation? Those authorising the surveillance should be sensitive to the privacy rights of third parties and consider very carefully whether the intrusion into their privacy is justified by the benefits of undertaking the surveillance. If there is considered to be a risk of collateral intrusion, consideration must be given to minimising this risk.

What is legally privileged information, personal confidential information or confidential journalistic material?

5.23 Confidential material is described by RIPA as being:

- matters subject to legal privilege
- confidential constituent information between the MP and a constituent in respect of constituency matters
- confidential personal information
- confidential journalistic material.

5.24 Authorisations in respect of confidential material can only be granted by the Head of Paid Service (the Chief Executive Officer) and, in his absence, by his substitute.

5.25 A substantial proportion of communications between a lawyer and client may be subject to legal privilege. Matters subject to legal privilege must be kept separate from enforcement investigations or criminal prosecutions as they will not be admissible in court. In the very rare circumstances where legally privileged information may be acquired and retained, the matter must be reported to the Authorising Officer by means of a review. The

Authorising Officer will decide whether the authorisation should continue. The attention of the Commissioner should be drawn to legally privileged information, during the IPCO inspection and the material made available to the inspector if requested.

- 5.26 Oral and written communications are held in confidence if subject to an express or implied undertaking to hold the communications in confidence or where such communications are subject to a restriction on disclosure or an obligation of confidentiality contained in legislation, for example consultations between a health professional and a patient, information from a patient's records or information relating to the spiritual counselling of a person.
- 5.27 Confidential journalistic material includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to an undertaking. The attention of the Commissioner should be drawn to confidential journalistic material during the IPCO inspection and the material made available to the inspector if requested.
- 5.28 Acquiring material in the manner referred to above is likely to be rare for the council.

Activities/operations involving directed surveillance

- 5.29 It is safest to assume that any operation that involves planned covert surveillance of a specific person or persons (including council employees) likely to obtain private information, of however short a duration, falls within the definition of directed surveillance and will, therefore, be subject to authorisation under RIPA.
- 5.30 The consequence of not obtaining an authorisation may render the surveillance action unlawful under the HRA, or any evidence obtained may be inadmissible in court proceedings.
- 5.31 It is strongly recommended that council officers seek an authorisation where the surveillance is likely to interfere with a person's Article 8 rights to privacy. Obtaining an authorisation will ensure that the surveillance action is carried out in accordance with the law and is subject to stringent safeguards against abuse.
- 5.32 Proper authorisation of directed surveillance should also ensure the admissibility of evidence under the common law, the Police and Criminal Evidence Act (PACE) and the HRA.
- 5.33 Directed surveillance might be used, for example:

- for fraud or similar offences, where there is a need to observe premises in order to establish who the owner/occupier is, to find out who the occupier has associations with, or to establish whether or to what extent they are being used as business premises
- where the council directs another person/organisation to act as its agent for the purposes of obtaining private information, for example where council officers specifically ask residents to maintain diary notes of nuisance, anti-social behaviour, fly-tipping or licensing conditions.
- by placing a stationary mobile or video camera outside a building or the use by officers of covert recording equipment to record suspected illegal activity, such as fly tipping.

5.34 It will not be necessary to obtain authorisation for directed surveillance when using surveillance devices such as standard video cameras, still cameras or binoculars which are utilised on an overt basis.

Activities/operations not involving directed surveillance

5.35 Directed surveillance is conducted where it involves the observation of a person or persons with the intention of gathering private information to produce a detailed picture of a person's life, activities and associations. Private information includes any information relating to the person's private or family life.

5.36 However, it does not include general observation which is part of an enforcement officer's normal work.

5.37 General observation duties of the council's enforcement officers, whether overt or covert, frequently form part of their day to day activities and the council's legislative core functions. Such activities will not normally require a directed surveillance authorisation as the obtaining of private information is highly unlikely.

5.38 Examples of activities/operations which are unlikely to involve directed surveillance are:

- a one-off identification/confirmation of the existence of a premises address by officer observation
- anything which constitutes an immediate response – for example, a council officer with regulatory responsibilities may by chance be present when an individual is potentially infringing the law and it is necessary to observe, follow or engage in other surveillance tactics as an instant response to the situation to gather further information or evidence. Once this immediacy has passed, however, any further directed surveillance of the individual must be subject to a RIPA authorisation.

5.39 In circumstances where such activities/operations are considered to fall outside the scope of RIPA, it is good practice to record the reasons for this decision.

Online covert activity, including covert surveillance of social networking sites (SNS)

5.40 Wherever possible, officers should continue to adopt overt methods in seeking to achieve business compliance. However, as a result of the scale of online trading, the need to make online test purchases and investigation checks is inevitably increasing. It is therefore recognised that, from time to time, covert methods will need to be employed. Whenever it is intended to carry out covert activity online, officers must first consider whether the proposed activity is likely to interfere with a person's Article 8 rights, including the effect of any collateral intrusion. General test purchases from an open Internet site or marketplace (such as Ebay) is unlikely to require RIPA authorisation. However, any covert activity likely to interfere with an individual's Article 8 rights should only be carried out when it is necessary and proportionate to meet the objectives of a specific case. Where it is considered that private information is likely to be obtained, a directed surveillance authorisation must always be sought, as set out elsewhere in this guidance.

Social networking sites (SNS)

5.41 A directed surveillance application will often be required where an investigator wishes to communicate covertly online via SNS. 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. In order to determine whether a directed surveillance authorisation should be sought for accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

- whether the investigation or research is directed towards an individual or organisation
- whether it is likely to result in obtaining private information about a person or group of people

- whether it is likely to involve visiting Internet sites to build up an intelligence picture or profile
- whether the information obtained will be recorded and retained
- whether the information is likely to provide an observer with a pattern of lifestyle
- whether the information is being combined with other sources of information or intelligence which amounts to information relating to a person's private life
- whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s)
- whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.

5.42 An authorisation for the use and conduct of a CHIS will also be necessary if a relationship is established or maintained by an officer or by a person acting on their behalf (that is, where activity is more than mere reading of the site's content).

5.43 It is not unlawful for officers to utilise a false identity as part of online investigations, but it is inadvisable to do so for a covert purpose without RIPA authorisation. Using photographs of other persons without their permission to support the false identity infringes other laws. Officers must also not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation and without the consent of the person whose identity is used and without considering the protection of that person. The consent must be explicit (the person from whom consent is sought must agree (preferably in writing) what is and is not to be done).

Authorising directed surveillance: the procedure for applying for authorisation

5.44 Applications for authorisation must be made in writing on the correct form. The form to seek authorisation can be found at <https://www.gov.uk/government/collections/ripa-forms--2>. A written authorisation is normally completed as far as possible by the investigating officer before being submitted to the authorising officer for approval.

5.45 A written application for authorisation for directed surveillance should describe in detail any conduct to be authorised and the purpose of the investigation or operation. The application should also include:

- the reasons why the authorisation is necessary in the particular case and the grounds (for the purpose of preventing or detecting crime) stated in Section 28(3) of RIPA; the offence under investigation should be fully detailed
- the reasons why the surveillance is considered proportionate to what it seeks to achieve
- the nature of the surveillance
- the identities, where known, of those to be the subject of the surveillance (although there is no requirement to know the identity of those who are to be the subject of the surveillance)
- the approximate cost of the surveillance
- the results of consultation with other enforcement agencies or community leaders
- an explanation of the information which it is desired to obtain as a result of the surveillance
- the details of any potential collateral intrusion and why the intrusion is justified
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance
- the level of authority required (or recommended where that is different) for the surveillance
- a subsequent record of whether authority was given or refused, by whom and the time and date. If the authorising officer has not granted the authorisation in full and has amended the terms of the application, this must be recorded on the application form and reasons given for the decision.

5.46 Each application must be given a Unique Reference Number, which will then be used to locate the application on the Central Register.

5.47 Guidance on completing an application for authority for directed surveillance can be found in Appendix B.

5.48 When an authorisation has been granted, the terms of the authorisation must be followed exactly. Any deviation might lead to the authorisation being considered invalid. If, as a result of initial observations, the investigating officer wishes to deviate from the terms of the authorisation, either a fresh authorisation or renewal requesting revised authority must be made.

5.49 If the surveillance involves juveniles or vulnerable adults, special consideration should be given to the following:

- If possible, authorisation should be at the highest level. If considering use of a juvenile or vulnerable adult as a CHIS, authorisation should not be granted unless a risk assessment has been considered covering physical dangers and psychological aspects. Use of an appropriate adult should be considered.
- No authorisation can be granted to use a source under the age of 16 years to give information against his/her parents).

The judicial approval process

5.50 Once an application has been authorised by an authorising officer, it will not take effect until it has been approved by a Justice of the Peace (JP).

5.51 The process for seeking judicial approval is as follows:

- The local authority must contact HMCTS to arrange a hearing.
- The JP should be provided with a copy of the authorisation/notice, all supporting documentation and a partially completed judicial approval/order form. (The original authorisation/notice should be shown to the JP at the hearing.)
- A hearing will take place in private, usually attended by the case investigator, who will be best placed to answer the JP's questions about the investigation. However, in some cases, for example where there are sensitive issues, it may be appropriate for the authorising officer to attend to answer questions.
- The JP will consider the application and record his/her decision on the order section of the application/order form.

5.52 The JP may decide to:

- approve the grant or renewal of the authorisation/notice
- refuse to approve the grant or renewal of the authorisation/notice
- refuse to approve the grant or renewal and quash the authorisation/notice.

5.53 The form for seeking judicial approval is incorporated into the application forms available at: <https://www.gov.uk/government/collections/ripa-forms-2>

Duration of authorisations

- 5.54 A written authorisation granted by an authorising officer 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. An authorisation cannot be granted for a period of less than three months. However, it should be noted that all authorisations must be cancelled as soon as the decision is taken that directed surveillance should be discontinued.

Reviews

- 5.55 Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. Particular attention is drawn to the need to review authorisations frequently where the surveillance provides access to confidential information or involves collateral intrusion. If a minor change has occurred in the investigation, this can be dealt with by way of review. If the scope of the investigation has changed, a fresh authorisation is required.
- 5.56 In each case, authorising officers within the council should determine how often a review should take place. This should be as frequently as is considered necessary and practicable, but at no longer than monthly intervals. The review form is available here:
<https://www.gov.uk/government/publications/review-of-use-of-directedsurveillance> .

Renewals

- 5.57 If at any time before an authorisation would cease to have effect, the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, he/she may renew it in writing for a further period of three months. Renewals must also be judicially approved, following the process outlined in paragraph 5.56 above.
- 5.58 A renewal takes effect at the time at which, or day on which, the authorisation would have ceased to have effect but for the renewal. An application for renewal should not be made until shortly before the authorisation period is drawing to an end, but taking into consideration that time must be allowed for obtaining judicial approval. Any person who would be entitled to grant a new authorisation can renew an authorisation. Authorisations may be renewed more than once, provided they continue to meet the criteria for authorisation.
- 5.59 All applications for the renewal of an authorisation for directed surveillance should be made on the renewal form available on the intranet and should record:
- whether this is the first renewal or every occasion on which the authorisation has been renewed previously

- any significant changes to the information given in the original application for authorisation
- the reasons why it is necessary to continue with the directed surveillance
- the content and value to the investigation or operation of the information so far obtained by the surveillance
- whether any privileged material or confidential information was obtained as a result of activity undertaken under the authorisation, to which the safeguards in chapter 9 of the code of practice should apply
- the results of regular reviews of the investigation or operation.

5.60 Authorisations may be renewed more than once, if necessary, and the renewal should be kept/recorded as part of the central record of authorisations (see paragraphs 5.66 to 5.67).

Cancellations

5.61 The authorising officer who granted or last renewed the authorisation must cancel it if he is satisfied that the directed surveillance no longer meets the criteria upon which it was authorised. Where the authorising officer is no longer available, this duty will fall on the person who has taken over the role of authorising officer. If in doubt about who may cancel an authorisation, please consult the Shared Legal Service. Cancellations are to be effected by completion of the cancellation form available on the intranet.

5.62 It is essential that there is a completed cancellation for each authorisation once surveillance has been completed. An authorisation cannot simply be left to expire.

5.63 As soon as any decision is taken to discontinue surveillance, instruction must be given to those involved to stop all surveillance. The date and time of such an instruction must be included in the Notification of Cancellation form.

5.64 The date the authorisation was cancelled should be centrally recorded and documentation of any instruction to cease surveillance should be retained. It is also good practice to retain a record of the product obtained from the surveillance and whether or not objectives were achieved. The authorising officer should give directions on the handling, storage or destruction of the product of surveillance.

Record keeping and central record of authorisations

5.65 In all cases in which authorisation of directed surveillance is given, the individual service is responsible for ensuring that the following documentation is kept securely for a period of at least five years from the date of authorisation:

- a copy of the application and a copy of the authorisation, together with any supplementary documentation and notification of the approval given by the authorising officer
- a copy of the judicial approval application form/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
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested
- the date and time when any instruction was given by the authorising officer
- a copy of the cancellation document.

5.66 In addition, the following must be sent to the Shared Legal Service immediately upon completion:

- all completed forms authorising and approving directed surveillance
- all completed forms authorising and approving renewal of directed surveillance
- all judicial approval application forms/orders
- all completed forms cancelling directed surveillance.

5.67 These will be held securely by the Shared Legal Service and form part of a central record of authorisations. Each application will be accessible by virtue of its Unique Reference Number. The Senior Responsible Officer, assisted by the Service Manager (Shared Legal) will review the central record on a bi-monthly basis and complete a central record of authorisations in accordance with paragraph 8.1 of the Code of Practice on Covert Surveillance. The central record should be available for inspection by the Investigatory Powers Commissioner's Office upon request [and reviewed by Internal Audit as required.](#)

6. Surveillance operations not regulated by RIPA

- 6.1 The Regulation of Investigatory Powers Act 2000 (RIPA) aims to ensure that covert surveillance carried out for the purposes of a specific investigation or operation is undertaken in a manner which is human rights compliant. This is achieved through a system of self authorisation by senior officers who have to be satisfied that the surveillance is necessary and proportionate to what is sought to be achieved, followed by judicial approval.
- 6.2 Local authorities are only required to seek authorisations under RIPA for covert surveillance carried out for the purposes of preventing or detecting crime. No RIPA authorisations can be sought for covert surveillance being undertaken for other purposes, nor should they be sought for crime prevention or detection purposes if that purpose is not linked to one of the authority's regulatory functions. This was stated by the Investigatory Powers Tribunal in the case of *C v The Police and the Secretary of State for the Home Department* (14/11/2006, No: IPT/03/32/H) who held that surveillance of employees is unlikely to be for a regulatory function of the authority.
- 6.3 This means that there may be circumstances when the local authority wishes to carry out surveillance and will not be able to rely on a RIPA authorisation (for example surveillance of employees). Not being able to seek an authorisation under RIPA means there is a greater risk of a human rights challenge, as privacy rights under Article 8 are likely to be interfered with. This can be reduced by following a self authorisation process using a RIPA authorisation form as guidance. A Non-RIPA authorisation form can be found on the intranet.
- 6.4 The authorising officer should consider the same issues as if he were responding to a request under RIPA, particularly the necessity of the operation, whether it is proportionate and whether there are any other methods of obtaining the information. If there is any doubt as to the issue of a local authority regulatory role and its ordinary functions, advice should be sought from the Shared Legal Service.
- 6.5 When considering surveillance of employees, it is also important to ensure compliance with the General Data Protection Regulation and Data Protection Act 2018.

7. Covert human intelligence sources

Authorising use of covert human intelligence sources (CHIS)

- 7.1 Similar principles and procedures apply to authorising the use of covert human intelligence sources. The use of CHIS is also subject to judicial approval and the process outlined at paragraph 5.47 should be followed.

- 7.2 Officers' attention is drawn to the explanation of the nature of a covert human intelligence source in paragraph 1.7. If necessary, forms available at <https://www.gov.uk/government/collections/ripa-forms--2> can be utilised to authorise the use of a CHIS.
- 7.3 The considerations for authorising a CHIS are broadly similar to those of directed surveillance, but there are some additional matters which must be considered.
- 7.4 There are rules about the use of vulnerable adults or juveniles as sources and there are also special requirements with regard to the management, security and welfare of sources. Refer to the Covert Human Intelligence Sources Code of Practice for detailed guidance.
- 7.5 In summary:
- When deploying a source, the council should take into account the safety and welfare of that source when carrying out actions in relation to an authorisation or tasking, including the foreseeable consequences to others of that tasking.
 - Before authorising the use or conduct of a CHIS, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the source of any tasking and the likely consequences, should the role of the source become known. The ongoing security and welfare of the source, after the cancellation of the authorisation, should also be considered at the outset.
 - The person responsible for the day to day management of the source's welfare and security, for example a departmental manager, will bring to the attention of the authorising officer any concerns about the personal circumstances of the source insofar as they might affect:
 - the validity of the risk assessment
 - the conduct of the source
 - the safety and welfare of the source.
- 7.6 Where deemed appropriate, the concerns about such matters should be considered by the authorising officer and a decision taken on whether to allow the authorisation to continue.
- 7.7 In addition to the appointment of the required roles of handler and controller as part of a CHIS operation, a separate person should be appointed to oversee the use made of CHIS. The Senior Responsible Officer has assumed this role.
- 7.8 The records kept by the authority should be maintained so as to protect the confidentiality of the source and the authorising officer must ensure there is a satisfactory risk assessment in place.

Activities/operations involving CHIS

7.9 If a service is considering the use of a CHIS, advice must be sought from the SRO or the Shared Legal Service.

Activities/operations not involving CHIS

7.10 The following situations will not normally require a relationship to be established for the covert purpose of obtaining information and therefore do not involve a CHIS:

- one-off test purchase transactions carried out in the normal course of business, where enforcement officers are operating as would a member of the public and do not establish a personal or other relationship – for example, the purchase of a food item for subsequent expert examination would not require authorisation but, where the intention is to ascertain whether a trader is taking delivery of suspected unlawful supplies and a relationship is established between the trader and the officer, authorisation should be sought beforehand
- the task of ascertaining purely factual information, for example the location of vending machines or fruit machines in licensed premises
- where members of the public volunteer information to an officer as part of their normal duties
- where the public call telephone numbers set up by the council to receive information
- where members of the public are asked to keep diaries of incidents in relation to anti-social behaviour – however, such activity will be regarded as directed surveillance, requiring an authorisation.

7.11 In circumstances where such activities/operations are considered to fall outside the scope of RIPA, it is good practice to record the reasons for this decision.

8. Communications Data

8.1 Before considering submitting an application for the acquisition of communications data, all officers must first refer the matter to the senior responsible officer or the Shared Legal Service

8.2 Communications Data is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). Local authorities are not permitted to intercept the content of any person's communications.

8.3 Part 3 of the Investigatory Powers Act 2016 (IPA) replaced part 1 chapter 2 of RIPA in relation to the acquisition of Communications Data and puts local authorities on the same standing as the police and law enforcement agencies. Previously local authorities have been limited to obtaining subscriber details (known now as "entity" data) such as the registered user of a telephone number or email address. Under the IPA, local authorities can now also obtain details of in and out call data, and cell site location. This information identifies who a criminal suspect is in communication with and whereabouts the suspect was when they made or received a call, or the location from which they were using an Internet service. This additional data is defined as "events" data.

8.4 A new threshold for which communication "events" data can be sought has been introduced under the IPA as "applicable crime". Defined in section 86(2A) of the IPA 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. Further guidance can be found in paragraphs 3.3 to 3.13 of the Communications Data Code of Practice: [Communications Data Code of Practice.pdf \(publishing.service.gov.uk\)](#)

8.5 The IPA has also removed the necessity for local authorities to seek the endorsement of a Justice of the Peace when seeking to acquire Communications Data. All such applications must now be processed through NAFN and will be considered for approval by the independent Office of Communication Data Authorisation (OCDA). The transfer of applications between local authorities, NAFN and OCDA is all conducted electronically and will therefore reduce what can be a protracted process of securing an appearance before a Magistrate or District Judge (see local authority procedures set out in paragraphs 8.1 to 8.7 of the Communications Data Code of Practice).

~~8. Accessing communications data~~

~~Introduction~~

~~8.1 Since 5 January 2005, RIPA has regulated access to communications data. This is defined in paragraph 1.7. These guidance notes should be read in conjunction with the current code of practice issued under Section 71 of RIPA. Copies of the code are available at https://www.gov.uk/government/collections/ripa_codes~~

~~Application to the council~~

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~~8.2 The council is only entitled to seek the acquisition of communications data defined as service user information and subscriber information (see paragraph 1.7 for definition). The council is not authorised to acquire what is defined as traffic data (see paragraph 1.7).~~

~~**Acquisition of communications data: the interception of postal, telephone, email and other electronic communications**~~

~~8.3 It is an offence to intercept communications sent by public postal services and public telecommunications systems except in very specific circumstances. It can be an offence to intercept communications sent by private telecommunications systems.~~

~~8.4 It is unlikely that the council would wish to intercept communications of this nature, even if it could do so legally. In the very unlikely event that you are considering intercepting communications, you should take no steps to do so before seeking advice from the SRO or Shared Legal Service.~~

~~8.5 There may be circumstances in which it is appropriate and legitimate to intercept communications sent and received by employees. However, once more, great care needs to be taken, not only in respect of RIPA, but in respect of employment law and human rights issues. You should not intercept communications sent or received by employees without first seeking advice from the Assistant Director, HR Legal and Democratic Services, or the Service Manager (Human Resources).~~

~~**Authorising the acquisition and disclosure of communications data and obtaining judicial approval**~~

~~8.6 It is crucial that the acquisition of communications data is properly authorised and judicially approved. No officer may seek the acquisition of any form of communication data unless he is authorised and the application approved in accordance with this guidance. Failure to secure proper authorisation and approval and to comply with this procedure could lead to evidence being excluded by courts and complaints against the council. The council is subject to audit and inspection by the Investigatory Powers Commissioner's Office and it is important that we demonstrate compliance with RIPA.~~

~~8.7 Acquisition of communications data under RIPA involves four roles:~~

- ~~• the applicant~~
- ~~• the designated person~~
- ~~• the single point of contact (SPoC) • the Senior Responsible Officer.~~

~~8.8 RIPA provides two alternative means for acquiring communications data by way of:~~

~~• an authorisation under Section 22(3) • a notice under Section 22(4):~~

The applicant

~~8.9 The applicant is a person involved in conducting an investigation or operation who makes an application in writing or electronically for the acquisition of communications data. The applicant should complete an application form setting out for consideration by the designated person the necessity and proportionality of the specific requirement for acquiring communications data.~~

The designated person

~~8.10 The designated person is a person holding a prescribed office in the same public authority as the applicant. Authorisations and notices to acquire communications data should ordinarily be given only by those officers set out in Appendix A who are specifically designated to approve applications for the acquisition of communications data.~~

~~8.11 The designated person must consider the application and record his considerations at the time in writing or electronically. If the designated person believes it is appropriate in the specific circumstances of the case, an authorisation may be granted or a notice given. Designated persons should assure that they grant authorisations or give notice only for purposes and only in respect of types of communications data that a designated person of their office, rank or position and the relevant public authority may give or grant. Designated persons shall assess the necessity for any conduct to acquire or obtain communications data, taking account of any advice provided by the Single Point of Contact (SPoC).~~

~~8.12 Designated persons must not be responsible for granting authorisations or giving notices in relation to investigations or operations in which they are directly involved. If it appears unavoidable or it is necessary to act urgently or for security reasons, a designated person may grant an authorisation or notice in relation to an investigation in which they are directly involved, but the reason why such person was required to authorise that particular case should be noted on the application form and this must be notified to the Commissioner.~~

~~8.13 Designated persons should have undertaken some training in relation to human rights principles and have current working knowledge of the rules and requirements of RIPA and the use of this guidance.~~

The Single Point of Contact (SPoC)

~~8.14 The Single Point of Contact (SPoC) is either an accredited individual or a group of accredited individuals trained to facilitate lawful acquisition of~~

communications data and effective cooperation between a public authority and a communications service provider. To become accredited, an individual must complete a course of training appropriate for the role of a SPoC. An accredited SPoC promotes efficiency and good practice in ensuring any practical and lawful requirements for communications data are undertaken. The SPoC provides objective judgment and advice to both the applicant and the designated person. In this way, the SPoC provides a guardian and gatekeeper function, ensuring that public authorities act in an informed and lawful manner.

8.15 The council is a member of the National Anti-Fraud Network (NAFN). NAFN is a one-stop data and intelligence provider for all public bodies. As part of its portfolio it offers a comprehensive SPoC service.

The Senior Responsible Officer

8.16 The Senior Responsible Officer role is set out at paragraphs 4.1 to 4.4 above.

On what grounds can the acquisition of communications data be authorised?

Is the proposed request for the acquisition of communications data necessary?

8.17 In the case of Local authorities, acquisition and disclosure of communications data can only be authorised if it is necessary for the purpose of preventing or detecting crime or preventing disorder. It is extremely important to consider whether the acquisition of the particular communications data is necessary. If an investigation can be carried out by means which do not involve such acquisition, these should be used. If there are no other means, this should be stated on the authorisation form.

Is the proposed request for the acquisition of communications data proportionate?

8.18 Authority to acquire communications data should not be given unless the person authorising the request is satisfied that the application is proportionate. The designated person should make sure that any interference with the privacy of an individual is justified by the end being sought. If the benefit to be obtained from acquiring communications data is marginal, the person authorising should think very carefully about the use of such an investigation technique. Activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means.

8.19 Suggested areas to consider include the seriousness of the offence, the expense of the operation and other means by which the information could

be obtained. In addition, activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

Might the acquisition of communications data involve collateral intrusion?

8.20 The designated person needs to consider whether the application might intrude upon the privacy of people, other than those who are the subject of the investigation. The designated person should be sensitive to the privacy rights of third parties and consider very carefully whether the intrusion into their privacy is justified by the benefit of the investigation. If there is considered to be a risk of collateral intrusion, consideration must be given to minimising this risk during the authorisation process.

The procedure: applying for authority to acquire communications data

8.21 Applicants and designated persons (DP) must submit, approve and track applications through the central NAFN website, using the NAFN online forms. An allocated SPoC will then check for legal compliance and, where necessary, provide feedback before submitting for final authorisation from the DP.

Once an application is authorised by the DP, it must be subject to judicial approval. NAFN will provide the applicant with a court pack containing:

- final case application
- judicial application/order form
- relevant assurance(s), authorisation(s) and/or notice(s).

8.22 These documents will enable the applicant to present their application at court.

If the application is approved, all documentation must be returned to NAFN for subsequent processing via the secure online system. The NAFN SPoC administers all requests promptly to obtain the data required. Results are uploaded to the secure website for retrieval, with all aspects of administration covered by NAFN, including the tracking of reportable/recordable errors, cancellations and withdrawals.

8.23 The application should describe in detail the communications data to be acquired and the purpose of the investigation operation. The application should also include:

- the name
- the office, rank or position held by the person making the application

- ◆ the operation name to which the application relates
- ◆ a unique reference number
- ◆ the specific purpose for which the data is required
- ◆ a description of the communications required, specifying where relevant any historic or future date and, where appropriate, time periods
- ◆ an explanation as to why the acquisition of that data is considered necessary and proportionate and what is thought to be achieved by acquiring it
- ◆ consideration of any meaningful collateral intrusion and why that intrusion is justified in the circumstances
- ◆ an identification and explanation of the timescale within which the data is required
- ◆ an assessment by the SPoC
- ◆ a record of whether it was approved by a designated person, by whom and when the decision was made.

8.24 An authorisation provides for persons within a public authority to engage in specific conduct relating to a postal service or telecommunications system to obtain communications data. An authorisation may be appropriate where a communications service provider is not capable of obtaining or disclosing communications data, or a designated person believes the investigation or operation may be prejudiced if the communications service provider is required to obtain or disclose the data, or there is an agreement in place between the public authority and a communication service provider relating to appropriate mechanisms for disclosure of communications data, or a designated person considers there is a requirement to conduct a telephone subscriber check but the communications service provider as yet to be conclusively determined as the holder of the communications data. The authorisation is not served upon a communications service provider, although there may be circumstances where the provider may require or may be given assurance that conduct being undertaken is lawful. That assurance may be given by disclosing details of the authorisation itself.

Notices

8.25 The giving of a notice is appropriate where a communications service provider is able to retrieve or obtain specific data and to disclose that data unless the grant of an authorisation is more appropriate. A notice may

~~require a communications service provider to obtain any communications data if that data is not already in their possession. The decision of a designated person whether to give a notice shall be based upon information presented to them in an application. The notice should contain enough information to allow the communications service provider to comply with the requirements of the notice. A notice must:~~

- ~~• be given in writing or, if not, in the manner that produces a record of its having been granted~~
- ~~• specify the purpose for which the notice has been given~~
- ~~• describe the communications data to be obtained or disclosed under the notice, specifying, where relevant, any historic or future date and, where appropriate, time periods~~
- ~~• include an explanation that complies with the notice as a requirement of RIPA~~
- ~~• specify the office, rank or position held by the designated person; the designated person's name should also be recorded~~
- ~~• specify the manner in which the data should be disclosed; the notice should contain sufficient information to enable a communications service provider to confirm the notice is authentic and lawful~~
- ~~• record the date and, when appropriate to do so, the time when the notice was given by the designated person~~
- ~~• where appropriate, provide an indication of any urgency or time within which the communications service provider is requested to comply with the requirements of the notice. In giving notice, a designated person may only require a communications service provider to disclose the communications data to the designated person or a specified person working within the same public authority.~~

Duration of authorisations and notices

~~8.26 Relevant to all authorisations and notices is the date upon which the authorisation or notice takes effect, which is the date on which judicial approval is given. From that date when the authorisation or notice becomes valid, it has a validity of a maximum of one month. This means that the conduct authorised should have been commenced or the notice served within that month. All authorisations and notices must relate to the acquisition or disclosure of data for a specified date or period. Any periods should clearly be indicated in the authorisation or notice. A start date and end date should be given and, where a precise start and end time are relevant, these must be specified. Where an authorisation or notice relates~~

~~to the acquisition or obtaining of specific data that will or may be generated in the future, the future period is restricted to no more than one month.~~

Renewal of authorisations and notices

~~8.27 Any valid authorisation or notice may be renewed for a period of up to one month by the grant of a further authorisation or the giving of a further notice and, again, judicial approval must be obtained before the renewal can take effect. A renewed authorisation or notice takes effect upon the expiry of the authorisation or notice it is renewing. The reasoning for seeking renewal should be set up by an applicant in an addendum to the application upon which the authorisation or notice being renewed was granted or given. The designated person should give careful consideration to renewal of an authorisation or notice and should:~~

- ~~▪ consider the reasons why it is necessary and proportionate to continue with the acquisition of the data being generated~~
- ~~▪ record the date and, when appropriate to do so, the time when the authorisation or notice is renewed.~~

~~8.28 The designated person should specify the shortest period in which the objective for which the data is sought can be achieved. To do otherwise would impact on the proportionality of the authorisation or notice and impose unnecessary burden on a communications service provider.~~

Cancellations and withdrawals

~~8.29 A designated person who has given notice to a communications service provider shall cancel the notice if, at any time after giving the notice, it is no longer necessary for the communications service provider to comply with the notice or the conduct required by the notice is no longer proportionate to what is sought to be achieved. Equally, where a designated person considers an authorisation shall cease to have effect because the conduct authorised becomes unnecessary or no longer proportionate to what is sought to be achieved, the authorisation shall be withdrawn. The communications service provider should be advised of the withdrawal of an authorisation.~~

~~8.30 When cancelling a notice:~~

- ~~▪ cancellation must be undertaken in writing~~
- ~~▪ cancellation must be identified by its unique reference number, the notice being cancelled~~
- ~~▪ the date and, when appropriate to do so, the time when the notice was cancelled must be recorded~~

- ~~the office, rank or position held by the designated person cancelling the notice must be specified.~~

8.31 When withdrawing an authorisation:

- ~~withdrawal should be undertaken in writing~~
- ~~withdrawal should be identified by its unique reference number, the authorisation being withdrawn~~
- ~~the date and, when appropriate to do so, the time when the authorisation was withdrawn should be recorded~~
- ~~the name, office, rank or position held by the designated person withdrawing the authorisation should be recorded.~~

Keeping of records

~~8.32 Completed original documents must be retained centrally by the SPoC, in written or electronic form, for a period of at least three years from the date of authorisation. The documents should be classified and stored securely in accordance with the Government protected marking scheme. In addition, a record should be kept of the date and, when appropriate to do so, the time when each notice or authorisation is given or granted, renewed or cancelled. These records should be available for inspection by the Investigatory Powers Commissioner's Office upon request. (The retention of documents is a service provided by NAFN.)~~

~~8.33 On an annual basis, the SRO must send to the Investigatory Powers Commissioner's Office information as to the number of applications submitted to the designated person, the number of notices issued, number of authorisations issued and the number of times an urgent notice is given orally.~~

Errors

~~8.34 Proper application of the contents of this guidance should reduce the scope for making errors but, if an error occurs in the grant of an authorisation or the giving of a notice or as a consequence of any authorised conduct or any conduct undertaken to comply with a notice, a record should be kept and a report made to the Commissioner. (The recording and reporting of errors is a service provided by NAFN.)~~

9. Complaints

9.1 Where any person expresses their dissatisfaction with a surveillance operation carried out by the council or with a communications data issue, and they are either unwilling to accept an explanation or are dissatisfied

with the explanation offered or they wish to complain about any other aspect of the council's operations under RIPA, they must be informed of the existence of the Investigatory Powers Tribunal.

9.2 Every assistance shall be given to the person to complain to the council's Corporate Complaints Officer or to make contact with the tribunal and make their dissatisfaction known to it.

9.3 The address for the Investigatory Powers Tribunal is:

PO Box 33220

London

SW1H 9ZQ

Telephone: 0207 035 3711

Website: www.ipt-uk.com

9.4 These procedures are mutually exclusive.

Appendix A

Authorised officers

Senior Responsible Officer	Officers authorised to approve applications for directed surveillance and CHIS	SPoC services
Jennifer Eves, Director HR, Governance and Regulatory David Collinson, Assistant Director Planning and Regulatory Services	Jennifer Eves, Director HR, Governance and Regulatory Ian Gallin, Chief Executive Alex Wilson, Director David Collinson, Assistant Director Planning and Regulatory Services Ian Gallin, Chief Executive Jennifer Eves, Assistant Director HR, Legal and Democratic Services Alex Wilson, Director	NAFN

Appendix B

Guidance on completing application for authority for directed surveillance

Read this guide in conjunction with the model RIPA form. The level of detail officers need to complete the form is crucial. It is important to include as much information as is known, otherwise the application may not be authorised.

Applicants must be familiar with the contents of the full Guidance Notes.

Applicant: is officer applying for authority to carry out directed surveillance.

Unit/team: team where applicant works.

Full address: The applicant's base, either county hall or other.

Contact details: Contact details of the applicant including telephone and email.

Operation name: only if one has been assigned.

Unique reference number: to be included on every form.

Details of application

Part 1 - Level of authority

See Appendix A of Procedure Guide. In case of urgency, and a person detailed in Appendix A not being available, then seek guidance or advice from the Shared Legal Service.

Part 2 - Give an account of the investigation or operation

Details of the investigation to date. Brief clear specifics. Full details of the crime being investigated must be included.

Part 3 - Action to be authorised, including any premises or vehicles involved

What form is the surveillance to take and why? For example, will it be mobile surveillance or from an observation point or van? Description of activities planned needed. Full details of dates, times, officer numbers involved and equipment to be used must be noted as far as is possible.

Part 4 - The identities, where known, of those to be subject of the directed surveillance

Sometimes not known and identifying those involved in an activity can be the reason for surveillance. If identities are not known then it should be so stated. The premises and/or vehicles to be targeted should be identified here in detail.

Part 5 - Explanation of the information which it is desired to obtain as a result of the authorisation

What is the key objective(s) of the surveillance?

Parts 6 and 7 - Grounds on which action is necessary

The application must show that the directed covert surveillance is considered necessary in the proposed operation. All other methods of investigation not requiring covert surveillance must be detailed and reasons given for why they are not to be used. The officer must detail why covert surveillance is the only method by which the information required can be obtained.

Part 8 - Collateral intrusion

Having identified who, what and where you want to carry out surveillance, you should also consider who else might be affected. Will the private life of others be affected in some way? You must show that you have considered this and have planned how to minimise the intrusion.

Part 9 - Explain why directed surveillance is proportionate to what it seeks to achieve

The application should only be authorised if it demonstrates that activity to be carried out is proportionate to what it seeks to achieve. Full reasons must be given as to why the methods to be employed are not disproportionate (that is, not a 'sledgehammer to crack a nut'). This includes detailing not only why covert surveillance must be used rather than any other method of investigation, but also stating that the method to be used is the least intrusive way of obtaining the information. It is not enough to rely on the seriousness of the offence or the cost of employing other methods.

All forms **must** address the following points:

- The size and scope of the investigation must be weighed against the gravity and extent of the crime under investigation.
- An explanation of how and why the methods to be adopted will cause the least possible intrusion on the target and others.
- It must be shown that activity planned is the only reasonable way, having considered all others, of obtaining the necessary information.
- Details of all other methods considered and why they were not implemented.

Part 10 - Confidential material

Are you likely to come across material relating to communications between a lawyer and client, or personal information relating to physical or mental health or spiritual counselling (communication between an individual and minister of religion), or confidential journalistic material?

This should be considered and highlighted. If such material is likely then the level of authorisation required rises. If there is any doubt, advice must be sought from the Shared Legal Service.

Authorisation

Parts 12 and 13 - Authorising officer's statement

The authorising officer must give the information requested and state in writing that they are satisfied, or why they believe that activities to take place are necessary and proportionate (see previous explanations of these matters). The proportionality of activity must take into account any possibility of collateral intrusion.

All such activity subject to the authorisation must not be considered arbitrary or unfair. The authorising officer must record that they have considered these matters, and are satisfied the surveillance should still be authorised. If the authorising officer is not satisfied that enough detail has been provided, they should refuse the application. If the authorising officer disagrees with certain aspects of the proposed activity, they should mark this clearly on the form as unauthorised.

Appendix 3

Flow charts

These documents can be found on the West Suffolk intranet under How to/Service guidance and templates/Understanding and using the Regulation of Investigatory Powers Act (RIPA) 2000.

- RIPA
- Determining Directed Surveillance
- Determining CHIS

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PO Box 29105, London
SW1V 1ZU

Ian Gallin
Chief Executive
West Suffolk Council
West Suffolk House
Western Way
Bury St Edmunds
Suffolk IP33 3YU

24 June 2021

Dear Chief Executive,

IPCO Surveillance and CHIS Inspection – West Suffolk Council

Please be aware that IPCO is not a “public authority” for the purpose of the Freedom of Information Act (FOIA) and therefore falls outside the reach of the FOIA. It is appreciated that local authorities are subject to the FOIA and that they may receive requests for disclosure of our reports. In the first instance the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: info@ipco.org.uk), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.

On 21 June, your Council was the subject of a remote inspection by one of my Inspectors, Mr Ges Horne, who looked at your powers in relation to directed surveillance and CHIS. This has been facilitated through your Service Manager (Legal Services) Teresa Halliday, Jennifer Eves, Director of Human Resources and Senior Responsible Officer (SRO), and John Snell, Corporate Manager-Internal Audit and RIPA Co-Ordinating Officer (RCO) for Babergh & Mid Suffolk District Councils, who were all interviewed using video conferencing facilities and provided the supporting documentation requested by the Inspector. In view of the shared legal service arrangements between your Council and Babergh & Mid Suffolk District Councils, the inspections of all three Councils were combined and conducted concurrently.

The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection.

My Inspector has reviewed your Council's RIPA Policy which was being updated at the time of the last inspection conducted by Mr Paul Gration in September 2018. The Policy is now comprehensive and well written. The Inspector did, however, recommend a major revision to the chapters covering the acquisition of communications data to reflect legislative changes arising from the implementation of the Investigatory Powers Act 2016 (IPA). Mr Horne provided a suitable form of words.

There have been two CHIS authorisations since the last inspection. Both authorisations involved an officer from the Public Health & Housing Department engaging with landlords online to investigate abuses of the Houses in Multiple Occupation (HMO) Regulations. While the statutory considerations of necessity, proportionality and collateral intrusion were articulated well by both the applicant and authorising officer (AO), the management of the process was flawed in a number of respects:

- reviews were completed by way of email exchanges between the AO and applicant rather than using the approved Home Office review forms;
- cancellations were either late or simply allowed to expire;
- a risk assessment was not completed in accordance with paragraph 6.13 of the CHIS Code of Practice.

The Inspector has reported his detailed findings to both the SRO and the Legal Services Manager and they will share the learning points with the applicants and authorising officer cadre. I ask you to consider and to ensure that any observations from the findings of this remote inspection are promptly addressed.

The most recent refresher training for authorising officers was delivered in November 2018. The SRO has confirmed that additional training will be delivered to AOs, together with those officers who are most likely to engage the powers, within the next 12 months.

Mr Horne discussed with the SRO your organisation's approach to the monitoring of social media. The current Policy aligns with the latest guidance contained in the Codes of Practice. Notwithstanding this, there does not appear to be a procedure in place for ensuring that all online activity in connection with enforcement or investigative functions is recorded and periodically scrutinised for oversight purposes. The SRO accepted that this is an area of potential vulnerability for the Council which she will remedy, and the Inspector has provided guidance on what information needs to be captured.

In accordance with paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice, the SRO has confirmed that you provide the Elected Members with an annual report sufficient to enable them to determine that the Council's policy remains fit for purpose, together with regular reports on RIPA activity (or inactivity).

The IPCO inspectorate is currently undertaking a programme of work in relation to compliance with the safeguarding measures regarding material acquired under RIPA and the IPA; essentially how this is retained, reviewed, and ultimately destroyed (RRD). The content of my data assurance letter to all public authorities was shared with the SRO. This letter highlights six action points which, upon completion, will allow IPCO to establish a good level of confidence in the safeguarding practices of the authorities we oversee.

Accordingly, the Inspector was provided with a number of policies relating to data protection and information security. Although accurate, these documents do not contain any specific guidance in relation to the RRD of covertly acquired material, and the RIPA Policy simply repeats the record keeping paragraphs contained in the Codes of Practice. What is now required is guidance which will enable practitioners to understand fully their responsibilities and enable them to apply the safeguards in practice. This is an area of compliance which IPCO will focus on more deeply in future inspections.

I hope you share my belief that this video conferencing-based inspection has proved to be a worthwhile exercise. My Office is available to you should you have any queries following the recent inspection, or at any point in the future. Contact details are provided at the foot of this letter.

Particular thanks should be passed to Teresa Halliday, Jennifer Eves and John Snell, who provided comprehensive background reading material and made themselves available for interview at a time of unprecedented challenges faced by all public authorities.

I shall be grateful if you would acknowledge receipt of this letter within two months, and let me know your plans in relation to the observations it contains.

Yours sincerely,

A handwritten signature in black ink that reads "Brian Leveson". The signature is written in a cursive style with a long horizontal stroke at the end.

The Rt. Hon. Sir Brian Leveson
The Investigatory Powers Commissioner

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Action Plan following an IPCO Surveillance and CHIS inspection July 2021

On 21 June 2021 the Council was the subject of a remote inspection by one of IPCO’s Inspectors, Mr Ges Horne. Mr Horne looked at the Council’s powers in relation to directed surveillance and CHIS facilitated through Teresa Halliday, the Service Manager (Legal Services) Teresa Halliday and Jennifer Eves, Director of Human Resources and SRO. The officers were interviewed using video conferencing facilities and provided the supporting documentation requested by the Inspector.

IPCO – Investigatory Powers Commissioner’s Office

RIPA – Regulation of Investigatory Powers Act

CHIS – Covert Human Intelligence Source

SRO – Senior Responsible Officer

IPA – Investigatory Powers Act

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Actions	Owner	Date	Completed
<p>RIPA Guidance:</p> <ul style="list-style-type: none"> Amend the chapters covering the acquisition of communications data to reflect those changes to RIPA in 2016 (suggested wording provided by the Inspector); Amend the chapters covering CHIS applications to include a link to the CHIS Code of Practice; Align policy with IPCO action points on the retention, recovery and destruction (RRD) of material acquired under RIPA and the IPA following Strategic Enforcement Team consideration (see Data Assurance below) 	TH	End of August 2021	<p>19 August 2021</p> <p>19 August 2021</p>
<p>CHIS Process:</p> <ul style="list-style-type: none"> Ensure Home Office approved forms are used for conducting reviews (already available via a link in the Guidance); Amend process to ensure a risk assessment is conducted in accordance with paragraph 6.13 of the CHIS Code of Practice Send a briefing note to all AO’s with the learning and advising them of the necessary protocols. 	TH/JE	End of August 2021	19 August 2021

<p>Training:</p> <ul style="list-style-type: none"> • Arrange for refresher training on RIPA or all authorising officers and those officers more likely to engage RIPA powers 	TH	End of December 2021	Training booked for 08 October 2021
<p>Social Media:</p> <ul style="list-style-type: none"> • Introduce a framework that tracks open research conducted during investigations on social media sites to ensure that online activity in connection with enforcement or investigative functions is recorded and periodically scrutinised for oversight purposes 	TH/JE/Strategic Enforcement Forum	April 2022	
<p>Data Assurance:</p> <ul style="list-style-type: none"> • Consideration to be given to RRD in respect of material acquired under RIPA and IPA and create additional guidance on this subject and/or amend current data protection policies to reflect such material. In so doing, consider the following actions; <ol style="list-style-type: none"> 1) Review the safeguarding obligations in the relevant Code of Practice for any powers used by your authority. 2) Ensure that internal safeguard policies for retaining, reviewing and disposing of any relevant data are accurate and up-to-date. 3) Ensure that the authorising officer for your authority has a full understanding of any data pathways¹ used for RIPA or IPA data. 4) Ensure that all data obtained under IPA and RIPA is clearly labelled and stored on a data pathway with a known retention policy. 5) Review the wording of safeguards in any applications to obtain data under IPA and RIPA and ensure that they accurately reflect the retention and disposal processes at your authority². 	TH/JE/Strategic Enforcement Forum	April 2022	

¹ For example, directed surveillance data may be simultaneously stored on several data pathways: Pathway one – CCTV video product is transferred onto a CD and kept in a secure cabinet; Pathway two – a copy of the video is sent via email and stored on a common storage drive; Pathway three – a copy of the video is received via email and saved in an Outlook folder by a legal officer; Pathway four – a copy of the video is received via email and stored in a password protected evidential casework folder by a legal officer.

² For example, if all data will be retained for a set number of years this should be stated in your application, or the application should refer to the internal safeguards policy document.

6) Review whether data obtained under previous authorisations is being retained for longer than is necessary and, if appropriate, consider disposing of retained data.			
Reporting to elected members; <ul style="list-style-type: none"> PH Governance to be briefed and advised of our RIPA policy and action plan and update other Cabinet members. PH Governance to receive quarterly updates on action plan (or more regularly as required on an exception basis) Complete an annual report to PASC (Aim for quarter 4 meeting each year) 	TH/JE	Sept 2021 (PH/Cabinet members) Schedule into PASC (quarter 4 meeting)	
The actions below are not directly a result of the Inspection, but part of our on-going assurance of effective practice			
Review of non RIPA reporting and guidance <ul style="list-style-type: none"> To conduct a review of non RIPA guidance and forms to ensure activity is being effectively captured and documented. 	TH/JE/Strategic Enforcement Forum	April 2022	
Authorising officer: <ul style="list-style-type: none"> Appoint a further Authorising Officer and provide them with training for the role. 	TH/JE	December 2021	Appointed and booked to attend training on 08 October 2021
Communications: <ul style="list-style-type: none"> Communicate the outcome of the inspection and the changes to members of the strategic enforcement forum. 	TH/JE	September 2021	

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Delivering a Sustainable Medium-Term Budget

Report number:	PAS/WS/21/016	
Report to and date(s):	Performance and Audit Scrutiny Committee	30 September 2021
Cabinet member:	Councillor Sarah Broughton Cabinet Member for Resources and Performance Tel: 07929 305787 Email: sarah.broughton@westsuffolk.gov.uk	
Lead officer:	Rachael Mann Director (Resources and Property) Tel: 01638 719245 Email: rachael.mann@westsuffolk.gov.uk	

Decisions Plan: This item is included in the Cabinet’s Decisions Plan

Wards impacted: All wards

Recommendation: It is recommended that Performance and Audit Scrutiny Committee:

- 1. That Members consider and note the approach and timescales for the 2022/2023 budget setting process and medium-term plans to 2026.**

1. Context to the 2022 to 2023 budget process

- 1.1 This report outlines the process and approach to set the council’s budget and the principles and challenges faced in achieving this.
- 1.2 The financial impact of COVID-19 on the council’s budget is likely to be felt for many years. Therefore, the council will need to make provision in its medium-term budget plans for recovery to pre-covid levels. Any longer-term impact of COVID-19 on the council’s services will only be established in due course.
- 1.3 The 2022 to 2023 budget and medium-term plans are also being prepared in the context of significant uncertainties around Government policy in terms of:
- the Comprehensive Spending Review,
 - Local Government Finance Settlement,
 - the Fairer Funding Review, Business Rates Retention (BRR) Scheme Review,
 - commercial investment policy and
 - potential major reforms with the Resources and Waste Strategy (RAWS), Health and Social Care reforms and the Planning Reform White Paper on.
- 1.4 The economic situation is also hugely challenging, and we continue to be faced with rising demand for services in particular housing support. Suffolk is at the forefront nationally supporting its communities and businesses by working in partnership across the public, private and voluntary sectors. This brings benefits to communities and businesses alongside efficiencies and savings. However, the impact of the economic situation and added COVID recovery challenges on our partners including Suffolk County Council is uncertain at this stage. Therefore, it is unknown what indirect cost impacts may be experienced locally.
- 1.5 In the February 2021 Council meeting the Budget and Council Tax Setting: 2021 to 2022 and Medium-Term Financial Strategy 2021 to 2025 report (COU/WS/21/003), set out the financial plan to 2025. This plan set a balanced budget for 2021 to 2022 but included the following initiative budget gaps (which will be reviewed as part of this 2022 to 2023 budget process) in the subsequent years:

	2022 to 2023	2023 to 2024	2024 to 2025
Budget Gap	£1.0m	£1.6m	£2.2m

- 1.6 This Medium-Term Financial Plan was developed in the midst of the initial COVID-19 outbreak and lockdown and therefore made significant assumptions on the duration and recovery from that situation. The February 2021 budget report assumption was that recovery to pre-COVID levels would take shape from April 2022, clearly this upcoming budget process will need to stress test that assumption.

- 1.7 This report provides an update and timetable on the development of a flexible and responsive recovery plan, a financial plan that will continue to follow (and test) our agreed Strategic Priorities and six key Medium-Term Financial Strategy (MTFS) themes.
- 1.8 Further reports including updates on assumptions and anticipated savings and initiatives required to deliver a sustainable and balanced budget for 2022 to 2023 will be presented to this committee at its November 2021 and January 2022 meetings.

2. Proposals within this report – Key budget assumptions

- 2.1 The ongoing impact of COVID-19 on the financial position of the council is still developing as we monitor trends in our income and expenditure in 2021 and 2022. At this point, in the development of our 2022 to 2023 budget and medium-term plans, we need to establish some key assumptions to build the foundations of our financial projections. At the same time our approach needs to be flexible and responsive to the COVID-19 recovery. Therefore, we will constantly review these assumptions during the budget process, in response to further data and intelligence.
- 2.2 The key budget assumptions proposed in the development of the 2022 to 2023 budget and medium-term plans and the rationale behind those assumptions is as set out below.

Government funding

- 2.3 As part of the response to the COVID-19 pandemic the Government confirmed that the planned reforms to local government finance relating to the Fairer Funding Review and 75 per cent Business Rates Retention (BRR) scheme would no longer be implemented in April 2021. The Government remain committed to these reforms, although have not set out any confirmed timeframe for when they would be completed and implemented. A roll forward of the 2021 to 2022 settlement is a possibility. However, the Government is yet to rule some form of funding reset, fully or partially from April 2022.
- 2.4 For the 2022 to 2023 budget, at this stage, we are assuming the following (unchanged from the February 2021 budget report) in respect of Government funding:
 - There will be no further COVID-19 support for either costs incurred or loss of Fees and Charges income.
 - There will be no Fairer Funding Review and some form of BRR scheme resetting from April 2022 will take place. The current projections already assume a significant loss of BRR scheme growth (accumulated since the scheme was implemented in 2013) from April 2022 and this assumption remains unchanged at this stage.

- That Suffolk authorities will remain in a business rates pool for 2022 to 2023, retaining additional BRR Scheme income for Suffolk than that of individual authorities.
- It is assumed that no Revenue Support Grant or New Homes Bonus allocation (or replacement) will be rolled forward into 2022 to 2023 as it was always the Government's intention to phase out these grant streams.
- The budget estimates assume a continuation of the 10 per cent reductions in the centrally held un-ringfenced grants budget for 2021 to 2022 in line with previous Government funding reductions. This includes grants such as Housing Benefit Administration.

2.5 These Government funding assumptions will be kept under constant review as part of the budget process and following any announcements (the 2021 Spending Review announcement has been confirmed for 27 October 2021) and/or consultations from central Government. This collection of assumptions has the biggest financial impact on the council's budget given the sums involved.

2.6 In the 2021 to 2022 budget all Government grants received were retained in full within the revenue day to day budget in order to mitigate the challenges presented by COVID-19, this included New Homes Bonus. This approach may well be required again for 2022 to 2023. However, if a roll forward of the 2021 to 2022 settlement takes place (which would provide additional funds for the council to that has already been assumed) we propose to revert to retaining a proportion of these Government grants in reserves (specifically the New Homes Bonus). This is to rebuild those reserves lost during the last two years to COVID and to support incremental strategic projects and financial initiatives across our medium-term plans (through the Strategic Priorities and MTFS reserve).

Pay Inflation

2.7 In August 2020 agreement was reached between the National Employers and the National Joint Council (NJC) trade union on rates of pay applicable from 1 April 2020. The pay agreement was centred around a 2.75 per cent pay award from 1 April 2020. There is a current pay offer of 1.75% (with 2.75% for the lowest pay band) but this is yet to be agreed. The pay award assumption for 2022 to 2023 and across our medium-term plans is assumed unchanged, at two per cent and will be subject to regional negotiation. However, this assumption is in line with many of our local authority peers.

National Insurance

2.8 It has been recently announced that National Insurance will increase by 1.25 per cent from April 2022 for both employees and employers (cost to the council). This has been identified as to be used as funding for the NHS and Social Care. This increase (estimated to be around £200,000 per year) was not included in the previous medium-term plan so will therefore be an additional pressure for 2022 onwards if it is not fully compensated through our funding settlement.

Pensions

- 2.9 The last triennial review of the Suffolk Pension Scheme covered the period 2020 to 2023 and showed year on year stabilisation in the employer contribution rates. Across the three years the assumed employer rate is 32.3 per cent. The Pension Fund will have been affected by volatile world financial markets during the pandemic which could give rise to changes in the employer rates to ensure financial stability. However, the fund projections are based on a 20-year horizon and therefore the planning assumption is that the agreed employer contribution rates will not change.

Other income assumptions

- 2.10 Work is currently in progress to review the 2022 to 2023 income budget assumptions across a best, base and worst-case scenario. This will help model the impact of COVID-19 on these assumptions, to feed into development of the 2022 to 2023 budget and medium-term plans. There is expected to be a greater level of volatility in these income assumptions given the relationship between recovery and income generation for the council. This volatility will need to be closely monitored and reflected in the Section 151 report to members on the robustness of estimates and balances as part of the budget process.

Business Rates estimate for 2022 to 2023

- 2.11 It is very difficult to predict the ongoing impact of COVID-19 on businesses within the district and the impact this may have on the level of business rates income collected. In 2020 to 2021 Government announced significant retail reliefs to support business through the pandemic. They continued that support, in part, during the current year 2022 to 2023. We are yet to receive any guidance or funding allocations for the announced national £1.5 billion discretionary business rate relief fund for 2021 to 2022. For 2022 to 2023, the assumption is that the retail reliefs revert to the pre-pandemic levels.

Council Tax Collection Fund

- 2.12 West Suffolk is responsible for collecting council tax within its area on behalf of itself, Suffolk County Council and Suffolk Police (the precepting authorities). The collection of the council tax as well as the payment to the precepting authorities is managed through the collection fund which is a statutory account.
- 2.13 The amount of council tax payable from the collection fund to the precepting authorities for each financial year is fixed based on the estimated amount collectable and each authority's precept for the year. However, the actual amount of council tax collected will either be more or less than this because of changes to the debt throughout the year (property growth, changes to discounts and exemptions and the number of local council tax support claimants) as well as other factors such as collection rates and changing population.

- 2.14 As a result, there will be either a surplus or deficit on the collection fund at the end of each financial year. This balance has to be estimated in January of the year in question, and either paid to or reclaimed from the precepting authorities in the following year. The calculated surplus or deficit from the current year, to be included in the 2022 to 2023 budget, will be set out in a future update report to this committee.

Council Tax Base 2022 to 2023

- 2.15 The council tax base is the number of properties liable to pay council tax after adjusting for discounts and exemptions, local council tax support reductions, property growth and anticipated collection rate, and expressed in terms of band D properties. The tax base is usually calculated in October of the financial year preceding budget, but the statutory deadline is January of the financial year preceding budget. The tax base figure is multiplied by the band D council tax in order to determine the amount of council tax income to include in the medium-term plans.
- 2.16 Our medium-term plans currently assume that the tax base will increase by one per cent per year due to growth in the property base. The council tax base to be included in the 2022 to 2023 budget and medium-term plans will be set out in a future update report to this Committee.

3. Approach to delivering a sustainable 2022/2023 budget and beyond

- 3.1 West Suffolk Council's response to the financial challenges and opportunities will continue to follow our six key themes. Our opportunities include capturing and building on the learning and innovative ways of delivering our services experienced during this time.
- 3.2 These themes are considered to still represent an appropriate response to the ongoing financial situation:
1. Aligning resources to West Suffolk's strategic framework and essential services
 2. Sharing services and transformation of service delivery
 3. Behaving more commercially
 4. Considering new funding models
 5. Encouraging the use of digital forms for customer access
 6. Taking advantage of new forms of local government finance.
- 3.3 At its November and January meetings, the Committee will receive an update on the trends, assumptions and saving and initiatives that will be clarified through the budget process. Cost certainty will play a particular focus in this year's budget process to enable, where possible, greater certainty on the council's financial plans given the volatility of income streams.

3.4 The council is required to set a balanced budget for the forthcoming year. At this stage of the budget process and given the opportunities and approach set out above and allowing for some improvement in the finance settlement, delivery of a balanced budget for 2022 to 2023 is deemed achievable (based on what we know at this stage of the process). Having said that and given the future medium-term challenges facing the council, proposals are likely to be put forward at future meetings and as part of the February 2022 Budget and Council Tax report, to enable the council to set out its plans across the next three years and to deliver ahead of the curve, bringing forward where possible saving proposals and initiatives into 2022 to 2023. This is good financial management and will enable greater certainty for the delivery of a sustainable medium-term financial plan for West Suffolk.

3.5 The following high-level timetable is proposed for delivery and agreement of a budget and medium-term plan for West Suffolk Council for 2022-2023.

Action	Timescales
Budget preparations following agreed approach	September -October 2021
2021 Spending Review Announcement	27 October 2021
PASC – delivering a sustainable budget update report	18 November 2021
Cabinet – delivering a sustainable budget update/referral from PASC report	5 November 2021
PASC – delivering a sustainable budget update report	27 January 2022
Member Development Session(s) and briefing(s) – MTFS	January-February 2022
Cabinet – 2022-2023 Budget and Council Tax setting report	February 2022
Council - 2022-2023 Budget and Council Tax setting report	February 2022

4. Consultation and engagement undertaken

4.1 The budget assumptions set out in this report have been prepared in consultation with Leadership Team and the Portfolio Holder for Resources and Performance.

5. Risks associated with the proposals

5.1 The budget report in February 2022 will set out the key risk assumptions alongside the report from the Section 151 Officer on the robustness of estimates and balances.

6. Implications arising from the proposals

- 6.1 Financial – Contained in the main body of this report.
- 6.2 Legal Compliance – The Council has a legal requirement to set a balanced budget for the forth coming year. This report and future reports to this committee are part of the process designed to deliver on that legal requirement.
- 6.3 Personal Data Processing/Equalities/Crime and Disorder/Changes to existing policies/Environment or Sustainability/HR or Staffing/External organisations – No significant implications arising directly from this report. Implications under each of these headings will be considered as part of individual savings or initiatives as part of the budget process.

7. Background papers referenced in this report

- 7.1 Appendix 1 – [COU/WS/21/003](#) Budget and Council Tax Setting: 2021 to 2022 and Medium Term Financial Strategy 2021 to 2025
- Appendix 2 – [PAS/WS/21/012](#) 2021-2022 Performance Report (Quarter 1)



Work Programme Update 2021 - 2022

Report number:	PAS/WS/21/017	
Report to and date(s):	Performance and Audit Scrutiny Committee	30 September 2021
Cabinet Member:	Councillor Sarah Broughton Cabinet Member for Resources and Performance Telephone: 01284 703894 Email: sarah.broughton@westsuffolk.gov.uk	
Chair of the Committee:	Councillor Ian Houlder Chair of the Performance and Audit Scrutiny Committee Telephone: 07597 961069 Email: ian.houlder@westsuffolk.gov.uk	
Lead officer:	Rachael Mann Director (Resources and Property) Telephone: 01638 719245 Email: Rachael.mann@westsuffolk.gov.uk	

Decisions Plan: **This item is not included in the decisions plan.**

Wards impacted: **Not applicable.**

Recommendation: **It is recommended that the Performance and Audit Scrutiny Committee:**

- 1. Notes the current status of its Work Programme for 2021-2022, attached at Appendix 1.**

1. Context to this report

1.1 Performance and Audit Scrutiny Work Programme

1.1.1 The committee's work programme for 2021-2022 is attached at attached at **Appendix 1** to this report.

2. Proposals within this report

2.1 The committee is asked to note the current status of its work programme.

3. Alternative options that have been considered

3.1 None.

4. Consultation and engagement undertaken

4.1 None.

5. Risks associated with the proposals

5.1 None.

6. Appendices referenced in this report

7.1 Appendix 1 – Scrutiny Work Programme 2021 - 2022

7. Background documents associated with this report

8.1 None

(West Suffolk Council)

**Performance and Audit Scrutiny Committee
Work Programme (2021-2022)**

Description	Lead Officer
18 November 2021 (Time: 5.00pm)	
Venue: TBC	
Ernst and Young – 2020-2021 Annual Results Report to those charged with Governance	Director (Resources and Property)
West Suffolk Annual Governance Statement 2020-2021	Director (Resources and Property)
2020-2021 Statement of Accounts	Director (Resources and Property)
Ernst and Young – Annual Audit Letter 2020-2021	Director (Resources and Property)
Internal Audit Mid-Year Progress Report 2021-2022	Service Manager (Internal Audit)
2021-2022 Performance Report (Quarter 2)	Service Manager (Finance and Performance)
Delivering a Sustainable West Suffolk Council Budget: 2022-2023	Director (Resources and Property)
Financial Resilience Report (September 2021)	Service Manager (Finance and Performance)
Work Programme Update – 2021 - 2022	Director (Resources and Property)
27 January 2022 (Time: 5.00pm)	
Venue: TBC	
Ernst and Young – External Audit Plan and Fees 2021-2022	Director (Resources and Property)
2021 – 2022 Performance Report (Quarter 3)	Service Manager (Finance and Performance)
Financial Resilience Report – December 2021	Service Manager (Finance and Performance)
Annual Financial Resilience Management and Investment Strategy Statements 2022-2023	Service Manager (Finance and Performance)
Delivering a Sustainable West Suffolk Council Budget: 2022-2023	Director (Resources and Property)
Work Programme Update – 2022	Director (Resources and Property)

26 May 2022 (Time: 5.00pm)	
Venue: TBC	
Internal Audit Annual Report (2021-2022)	Service Manager (Internal Audit)
Outline Internal Audit Plan (2022 – 2023)	Service Manager (Internal Audit)
2021-2022 Performance Report (Quarter 4)	Service Manager (Finance and Performance)
Proposed Performance Indicators and Targets 2022-2023	Service Manager (Finance and Performance)
Annual Report from the Health and Safety Sub-Committee	Service Manager (Health and Safety)
Annual Re-Appointments to the Financial Resilience Sub-Committee and the Health and Safety Sub-Committee (2022-2023)	Service Manager (Democratic Services)
Work Programme Update – 2022	Director (Resources and Property)