

AUDIT AND GOVERNANCE COMMITTEE

AGENDA

**Meeting to be held in the Civic Centre (Committee Room No. 1) on
Friday 26 April 2019 at 1.30pm**

ITEM		PAGE
1.	Receipt of Declarations of Interest (if any)	
2.	Apologies	
3.	Minutes of the Meeting of the Committee held on 8 February 2019 (Copy attached.)	1
4.	Annual Governance Review 2018/2019 (including Annual Governance Statement) Report of the Executive Director of Corporate Services (copy attached).	7
5.	Review of Internal Audit 2018/2019 Report of the Executive Director of Corporate Services (copy attached).	33
6.	Risk and Assurance Map 2019/2020 Report of the Head of Internal Audit (copy attached).	45
7.	Regulation of Investigatory Powers Act Joint report of the Director of People, Communications and Partnerships and the Assistant Director of Law and Governance (copy attached).	63

For further information and assistance, please contact:

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ELAINE WAUGH
Head of Law and Governance

Civic Centre
Sunderland

16 April 2019

AUDIT AND GOVERNANCE COMMITTEE
Friday 8 February 2019

Present:

Mr G N Cook

Councillors Trueman and P Wood together with Mr M Knowles.

In Attendance:

Jon Ritchie (Executive Director of Corporate Services) Paul Davies (Head of Assurance, Procurement and Performance Management), Chris Nevin (Principal Accountant), Cameron Waddell (Mazars), Diane Harold (Mazars) and Gillian Kelly (Principal Governance Services Officer)

Declarations of Interest

There were no declarations of interest.

Apologies for Absence

Apologies for absence were received from Councillors O'Neil, Scullion and Stewart.

Minutes

21. RESOLVED that the minutes of the meeting of the Committee held on 14 December 2018 be confirmed as a correct record.

Councillor Wood referred to his query regarding the risk associated with investment in the SSTC programme and the Head of Assurance, Procurement and Performance Management advised that this would be picked up within the next Risk and Assurance Map update at the meeting of the committee taking place in April 2019.

Member Training and Development

The Executive Director of Corporate Services submitted a report which provided members of the Committee with the opportunity to identify areas for which they require any further training, refresher or awareness sessions to be arranged.

It was suggested that Members receive an update on the new City Plan and structural changes and developments at the July committee meeting in the context of the Council's priorities for the future.

The unaudited statement of accounts would be forwarded to Members by 31 May 2019 and it was proposed that a briefing session be arranged so that the Committee could be made aware of any key issues in relation to the accounts, prior to their consideration at the July committee meeting.

Members were asked to consider any areas for which they would like to receive training or awareness sessions during the forthcoming year. The Chair said that he would welcome an update on Brexit and how this would impact on the city council.

22. RESOLVED that: -

- (i) an update be received on the City Plan and structural changes within the Council at the Committee meeting in July;
- (ii) a briefing be received regarding the 2018/2019 statement of accounts; and
- (iii) consideration be given to any further areas to be the subject of training and awareness sessions.

Treasury Management Strategy and Policy for 2019/2020 including Treasury Management Prudential Indicators for 2019/2020 to 2022/2023

The Executive Director of Corporate Services submitted a report informing the Committee of the Treasury Management Policy and Strategy (including both borrowing and investment strategies) proposed for 2019/2020. The Committee were asked to note the Prudential 'Treasury Management' Indicators for 2019/2020 to 2022/2023 and to provide comments to Council on the proposed policy and indicators where appropriate.

The Committee were made aware of the statutory requirement for the Council to set Prudential Indicators, including specific Treasury Management Indicators, for a minimum period of three years to ensure that the Council's capital investment plans were affordable, prudent and sustainable. The Prudential Indicators were set out in Appendix 1 of the report and these reflected the commitments in the Authority's current plans and ensured compliance so that proposed spending remained affordable.

The Council was also required to adopt a Treasury Management Policy Statement and to set out its Treasury Management Strategy comprising the Council's strategy for borrowing and the Council's policies for managing its investments, and giving priority to the security and liquidity of those investments. The Executive Director of Corporate Services advised that the MHCLG 'Statutory Guidance on Local Government Investments' had been updated in February 2018 and CIPFA had updated its Treasury Management in the Public Services Code of Practice in December 2017. The Council was required to have regard to this advice when

setting its Treasury Management Policy Statement and Treasury Management Strategy.

The Treasury Management Policy Statement was shown at Appendix 2 and the Treasury Management Strategy at Appendix 3 to the report. Members of the Committee were directed to the Council's potential borrowing requirement set out within the Treasury Management Strategy and it was highlighted that borrowing would be phased depending on capital spend. The Treasury Management team continued to closely monitor rates to determine whether to take out borrowing when rates were sufficiently advantageous. Rates had recently dropped and £20m of borrowing had been taken out and this financing had been included within the Medium Term Financial Strategy.

Appendix 4 of the report set out interest rate forecasts based on a range of intelligence sources. The Lending List Criteria and Approved Lending List were shown at Appendix 5 and 6 of the report.

The Chair referred to the Council's performance in relation to the average rate of borrowing at 3.13% being low in comparison with other local authorities. The rate earned on investments was 0.92%, higher than the benchmark rate of 0.49% and the Chair commented that this demonstrated how competent the Treasury Management team was. The Executive Director of Corporate Services noted that if borrowing could be taken out at a lower rate, then this was better for the Council's investments.

Councillor Wood highlighted the Authorised Limit for External Debt and noted that there was a big increase in this between 2018/2019 and 2019/2020. The Executive Director of Corporate Services stated that it was in relation to the profiling of the Capital Programme and the Principal Accountant also noted that one year would include potential borrowing for the following two years to allow the Council to borrow early if interest rates were advantageous.

The Chair asked if there were any upcoming capital issues for the Committee to be aware of and the Executive Director of Corporate Services advised that the new Capital Programme had a value of between £140m to £150m. This programme included the Centre of Excellence in Sustained Advanced Manufacturing (CESAM) at the IAMP, the impact of the new building on the Vaux site and further road investments; some of these projects would be funded through external sources.

Councillor Trueman commented that the IAMP had been envisaged as a location to support advanced manufacturing for the motor industry and asked how confident the local authority could be about the park, especially in relation to Brexit. The Executive Director of Corporate Services highlighted that Nissan had a seven-year contract cycle, as did some of its supply chain. The first building was currently being constructed on the IAMP and CESAM would be looking at electric vehicle technology, future proofing the development and acting as a hub and spoke model for the rest of the UK. There was an eye to the future with IAMP as well as short term investments from the motor industry and it was to the benefit of Sunderland and the wider region that if technology was developed at the IAMP, then business would also locate there.

Councillor Wood supported the importance of using as broad a definition of 'advanced manufacturing' as possible and that recent events and announcements had led to uncertainty within the city.

Mr Knowles asked if independent assurance would be received on the treasury management arrangements and the Head of Assurance, Procurement and Performance Management stated that he would add that in to the work programme for Internal Audit for the forthcoming year.

Having noted the prudent approach and positive performance of the Treasury Management function, the Committee: -

23. RESOLVED that: -

- (i) the proposed Annual Treasury Management Policy and Strategy for 2019/2020 (including specifically the Annual Borrowing and Investment Strategies) and the Prudential 'Treasury Management' Indicators to 2019/2020 to 2022/2023 be noted; and
- (ii) the Council be advised that the Committee were satisfied that the arrangements for Treasury Management were in an excellent position for the next and future years.

Audit Strategy Memorandum

Mazars, the Council's external auditors, had submitted their Audit Strategy Memorandum for the year ending 31 March 2019.

The Audit Strategy Memorandum summarised the audit approach, highlighted significant audit risks and areas of key judgement and provided details of the audit team. Cameron Waddell, Engagement Lead with Mazars advised that Sunderland City Council was classed as a 'public interest entity' and as such would have additional acceptance and engagement considerations, enhanced quality control requirements and additional enhanced audit report requirements.

Diane Harold, Senior Manager, Mazars stated that the audit approach had been slightly tweaked to reflect the enhanced requirements, but the process was essentially the same. In relation to the group audit approach, the auditors had assessed that there were two significant components of the group, namely Together for Children and Sunderland Lifestyle Partnership and their financial statements would be required to be set out in detail within the group accounts.

The materiality thresholds had been adjusted for the 2018/2019 audit with overall materiality for the group being £14.776m and £14.077m for the Council itself. These thresholds were provisional and would be subject to the actual accounts. The triviality level had been set at £443,000 and errors above this would be reported to the Audit and Governance Committee.

Diane advised that the significant risks would be familiar to the Committee and noted that these included the management override of controls, risk of fraud in revenue

recognition, property, plant and equipment and investment property valuations and defined benefit liability valuation. There were two enhanced risks in relation to unquoted equity investment valuation and impairment of debtors' allowance. The accounting standards in relation to these had changed, therefore they had been assessed as enhanced risks.

In relation to the Value for Money Conclusion, there were two significant risks; responding to financial pressures and the Ofsted inspection of Children's Services. The Council had previously received an 'except for' qualification and this situation would remain until there was a judgement which identified sufficient improvements to issue an unqualified opinion. Diane noted that a letter had been issued the previous day highlighting positive progress and areas for improvement in Children's Services.

It was highlighted that the audit fees for 2018/2019 would be £104,546, a reduction of 23% from £135,774 in 2017/2018.

Councillor Wood commented that, in relation to the group audit approach, auditors for two of the components had yet to be appointed. Diane stated that the information had not been available at the time of writing the report but the auditors for all components had now been confirmed.

Following consideration of the report, it was: -

24. RESOLVED that the Audit Strategy Memorandum be noted.

External Auditor Progress Report

Mazars, the Council's external auditors, had submitted their regular Audit Progress Report covering the period up to February 2019.

Diane Harold stated that the auditors were in the process of undertaking walk throughs and testing controls during February to April and the detail of the work had been included within the Audit Strategy Memorandum considered earlier in the meeting.

The report highlighted the publication and update of the following documents: -

- Local auditor reporting in England 2018, NAO, January 2019
- Local authorities – governance, NAO, January 2019
- NHS financial sustainability, NAO, January 2019
- A review of the role and costs of clinical commissioning groups, NAO, December 2018
- Local Audit Quality Forum, Public Sector Audit Appointments, December 2018
- Oversight of audit quality, quarterly compliance reports 2017/2018, Public Sector Audit Appointments Ltd
- Scrutinising Public Accounts: A Guide to Government Finances, CIPFA, November 2018
- CIPFA Fraud and Corruption Tracker 2017/2018, CIPFA, October 2018
- Summary of NHS long-term plan, Mazars, January 2019

Diane made particular reference to the NAO publication on local auditor reporting and how central Government picked up on this. She also highlighted that the Guide to Government Finances included a section on key questions for elected Members to ask in relation to the accounts.

Accordingly, the Committee: -

25. RESOLVED that the Audit Progress Report be noted.

(Signed) G N COOK
Chair

AUDIT AND GOVERNANCE COMMITTEE

26 April 2019

ANNUAL GOVERNANCE REVIEW / STATEMENT 2018/2019

Report of the Executive Director of Corporate Services

1. Purpose of Report

- 1.1 This report provides details of the 2018/19 Annual Governance Review, the Risk and Assurance Map at the end of the year and the Internal Audit opinion on the adequacy of the overall system of internal control. An updated Local Code of Corporate Governance, draft Annual Governance Statement and an improvement plan for the year ahead are included.

2. Description of Decision

- 2.1 The Audit and Governance Committee are asked to consider the report and agree:
- the updated Local Code of Corporate Governance,
 - draft Annual Governance Statement, and
 - Improvement Plan.

3. Background

- 3.1 In March 2018 the Committee approved the proposed Risk and Assurance Map for 2018/19 and the plans of work for Internal Audit and the Risk & Assurance team.
- 3.2 A key feature of the Council's Integrated Risk and Assurance Framework is to co-ordinate assurance that could be provided by other sources within the Council and external sources. The results of this assurance work are used to review the Council's corporate governance arrangements on an annual basis.
- 3.3 The Local Code of Corporate Governance is reviewed annually to ensure that it is up to date and effective. Minor amendments have been made to the Local Code to reflect the development of a new City Plan and is attached at Appendix 1. The Council is also required to publish an Annual Governance Statement (AGS) with its Statement of Accounts which must be supported by a comprehensive assurance gathering process.

4. Annual Governance Review 2018/19

- 4.1 The review was undertaken by gathering assurance throughout the year from several sources via the Integrated Risk and Assurance Framework.

4.2 The review has considered assurance provided from:

- Heads of Service
- Executive and Corporate Directors
- Specialist functions with an oversight of governance arrangements
- Risk and Assurance Team
- Internal and External Audit
- Other external agencies such as OFSTED

Risk and Assurance Map

4.3 The assurances gathered are shown in the Risk and Assurance Map which is updated and reviewed on a quarterly basis and presented to the Chief Officers Group and the Audit and Governance Committee throughout the year. The Audit and Governance Committee have monitored the assurances provided, received progress updates regarding specific issues and considered the performance of the Internal Audit team. The Risk and Assurance Map as at 31st March 2019 is shown at Appendix 2.

Strategic Risk Areas

4.4 The top section of the Map relates to the risks identified in the Strategic Risk Profile, which is based on the Council's Corporate Plan. Progress against each of the planned actions to mitigate the risks has been assessed with the lead officers and assurance levels determined for all areas.

Assurance from Internal Audit

4.5 The Map shows the opinion of Internal Audit from work undertaken within 2018/19 and the preceding three years.

4.6 The red rating from Internal Audit in relation to the risk area Protecting Vulnerable Adults relates to an audit regarding the Council's Social Care Personal Budgets arrangements. This has been previously reported to the Committee. Good progress has been made in implementing the agreed actions and the Assistant Director of Adult Services will attend the committee to provide a further update.

Assurance from Risk and Assurance Team

4.7 Much of the work of the team is ongoing over a period of time due to the nature of their role, however, where ongoing assurance can be provided from their work this is shown on the Map. Assurance work that has been on-going in 2018/19 includes:

- Assurance in relation to regeneration activity, including major schemes such as SSTC phase 3, enterprise zones, development of the Vaux site and the International Advanced Manufacturing Park.
- Delivery of key events such as the Tall Ships and the Airshow.

- Key ICT developments, including moving to the Microsoft Cloud and implementation of Office 365.
- Update of key SAP systems and optimising their use to deliver efficiency savings.
- Project regarding the move to the new City Hall.
- Development of assurance arrangements in relation to the Council's statutory health and safety and premises management requirements.

Assurance from others within the Council

- 4.8 Assurance provided from others within the Council is shown in the Risk and Assurance Map. This predominantly shows substantial assurance against the risk areas.
- 4.9 Financial pressures continue with regard to the funding of Together for Children Ltd, however the financial management arrangements within the Company have significantly improved.

Assurance from Management

- 4.10 Arrangements have been developed to obtain assurance from service management in a number of areas. Members will note that the majority of risk areas are shown as having substantial assurance.

Assurance from External Sources

- 4.11 The Map includes feedback received following the OFSTED inspection and the external auditor. The opinions rated "limited" are as a result of the Ofsted inspection of Children's Safeguarding Services as previously reported.

Overall

- 4.12 The overall level of assurance for all risk areas has not changed from the update report last presented to the Audit and Governance Committee.

Internal Audit Performance

- 4.13 All of the targets set for Internal Audit were achieved apart from the implementation of significant recommendations which currently stands at 92% against a target of 100%, this relates to the audit of Social Care Personal Budgets, and medium risk recommendations which stands at 88% against a target of 90%.

- 4.14 From the original 51 audits included within the Council's audit plan 5 were not completed as follows:
- One grant audit was no longer required.
 - Three audits were related to the implementation of the upgraded SAP system. The implementation of some of the elements of this project has been delayed therefore the audits will be covered in the Benefits Realisation audit in 2019/10.
 - The audit of the Liquid Logic system in adult services has been delayed as the directorate are undertaking a review of its operation. In the meantime, support is being provided to this review and the audit will be rescheduled during 2019/20.
- 4.15 This means that 92% of the planned audits were completed, and an additional two unplanned audits were also completed during the year. Therefore, it is considered that sufficient internal audit work has been undertaken along with other assurances gathered to provide an internal audit opinion on the Council's overall system of control.
- 4.16 It is confirmed that the internal auditors undertaking the work continue to remain independent of the areas audited.

Counter Fraud / Error Work

- 4.17 Planned counter fraud / error work was undertaken in the following areas during the year:
- Building Maintenance Financial Management;
 - Revenue Procurement;
 - Use of Agency Contract;
 - Payroll compliance testing;
 - BACS;
 - Accounts Payable;
 - Cash Receipting;
 - Accounts Receivable/Periodic Income;
 - Derwent Hill;
 - Refuse Collection.
- 4.18 In addition, audit work was also undertaken on the information published by schools on their website.
- 4.19 The work carried out did not highlight any significant issues however some opportunities for improvements to the control environment were identified, which have been reported upon.

Corporate Governance Improvement Plan

- 4.20 The corporate governance improvement plan for 2018/19 included six actions. A review of progress on these actions and found that five are complete and one is ongoing which is in relation to the implementation of the agreed actions arising from the internal audit of Corporate Asset Management arrangements. This will continue to be followed up by Internal Audit.
- 4.21 As a result of this review a small number of improvements have been identified to strengthen the arrangements and these are detailed at Annex 1 of the Annual Governance Statement. The Improvement Plan includes a small number of areas that the Council is already addressing but inclusion in the plan will facilitate monitoring to ensure that the planned actions are delivered within a reasonable timeframe bearing in mind the importance / nature of the actions.

Compliance with the Public Sector Internal Audit Standards

- 4.22 Internal Audit continues to comply with the Public Sector Internal Audit Standards (PSIAS) through the standards being built into audit working practices. This was confirmed during an independent review of the service by the council's external auditors Mazars in December 2018, which concluded:

'We conclude that the IA is compliant with the requirements of the PSIAS and the CIPFA Application Note.'

The full report by Mazars in being presented to the Audit and Governance Committee on 26th April 2019.

5. Draft Annual Governance Statement

- 5.1 The Annual Governance Statement has been drafted taking into account the findings of the annual governance review and is attached at Appendix 3.

6. Conclusion / Opinion

- 6.1 This report sets out the assurance provided in the Risk and Assurance Map, work undertaken by the Internal Audit team and performance for Internal Audit for 2018/19.
- 6.2 The opinion of the head of internal audit has been reported to the Audit and Governance Committee throughout the year. This opinion continues to be that the Council has an adequate system of internal control.
- 6.3 The Council continues to have robust and effective corporate governance arrangements in place, with improvements to Children's Safeguarding being overseen by the Chief Executive and Operational Commissioning Group. The views elicited during the review from senior managers across the Council, and

all Chief Officers, demonstrate that the principles of good governance continue to be embedded Council-wide.

7. Recommendations

7.1 The Audit and Governance Committee are asked to:

- note the report and Risk and Assurance Map at Appendix 2,
- consider and agree the Improvement Plan included at Annex 1 to the Annual Governance Statement, and
- consider and agree the draft Annual Governance Statement at Appendix 3.

LOCAL CODE OF CORPORATE GOVERNANCE

Introduction

The Council has a corporate governance framework in place which is aimed at ensuring that it is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner. The corporate governance framework comprises the systems, processes, cultures and values through which the Council directs and controls its functions, and through which it accounts to, engages with and, where appropriate leads communities.

The Council's corporate governance framework is based upon guidance jointly issued by the Society of Local Authority Chief Executives (SOLACE) and the Chartered Institute of Public Finance and Accountancy (CIPFA) and recommended as best practice.

The framework is based upon the following seven core principles:

- Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of the law;
- Ensuring openness and comprehensive stakeholder engagement;
- Defining outcomes in terms of sustainable, economic, social and environmental benefits;
- Determining the interventions necessary to optimise the achievement of the intended outcomes;
- Developing the entity's capacity, including the capability of its leadership and the individuals within it;
- Managing risk and performance through robust internal control and strong public financial management;
- Implementing good practices in transparency, reporting and audit to deliver effective accountability.

Each of these seven core principles have supporting principles with associated requirements and the Code sets out how the Council aims to meet these requirements.

The framework is summarised in a table at Annex 1.

Core Principle A – Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of the law.

All Council Members and staff are required to act in accordance with codes of conduct and high standards are promoted across the Council. The Council will:

- ensure members and officers behave with integrity and lead a culture where acting in the public interest is visibly and consistently demonstrated thereby protecting its reputation
- ensure members take the lead in establishing specific standard operating principles or values for the Council and its staff and that they are communicated and understood. These build on the Seven Principles of Public Life (the Nolan Principles)
- lead by example and use the above principle and values as a framework for decision making and other actions
- demonstrate, communicate and embed the above principle and values through appropriate policies/processes which are reviewed on a regular basis to ensure they are operating effectively
- seek to establish, monitor and maintain its ethical standards and performance
- underpin personal behaviour with ethical values and ensure they permeate all aspects of its culture and operation
- develop and maintain robust policies and procedures which place emphasis on agreed ethical values
- ensure that external providers of services on its behalf are required to act with integrity and in compliance with expected ethical standards
- ensure members and staff demonstrate a strong commitment to the rule of the law as well as adhering to relevant laws and regulations
- create the conditions to ensure that the statutory officers, other key post holders and members, are able to fulfil their responsibilities in accordance with legislative and regulatory requirements
- strive to optimise the use of full powers available for the benefit of citizens, communities and other stakeholders
- dealing with breaches of legal and regulatory provisions effectively
- ensure corruption and misuse of power are dealt with effectively.

Core Principle B – Ensuring openness and comprehensive stakeholder engagement.

The Council has a consultation framework aimed at ensuring the community is given the opportunity to be involved in, and influence, policy-making, service delivery and evaluation in order to continually improve services. Key to our success as a council is the way we engage our local communities through Community Leadership. The Council will:

- ensure an open culture through demonstrating, documenting and communicating our commitment to openness
- make decisions that are open about actions, plans, resource use, forecasts, outputs and outcomes. The presumption is for openness. If that is not the case, a justification for the reasoning for keeping a decision confidential should be provided
- provide clear reasoning and evidence for decisions in both public records and explanations to stakeholders and being explicit about the criteria, rationale and considerations used. In due course, ensuring that the impact and consequences of those decisions are clear
- use formal and informal consultation and engagement to determine the most appropriate and effective interventions/courses of action
- effectively engage with institutional stakeholders to ensure that the purpose, objectives and intended outcomes for each stakeholder relationship are clear so that the outcomes are achieved successfully and sustainably
- develop formal and informal partnerships to allow for resources to be used more efficiently and outcomes achieved more effectively
- ensure that partnerships are based on trust, a shared commitment to change, a culture that promotes and accepts challenge among partners and that the added value of partnership working is explicit
- establish a clear policy on the type of issues that we will meaningfully consult with or involve communities, individual citizens, service users and other stakeholders to ensure that service (or other) provision is contributing towards the achievement of intended outcomes
- ensure that communication methods are effective, and that members and officers are clear about their roles with regard to community engagement
- encourage, collect and evaluate the views and experiences of communities, citizens, service users and organisations of different backgrounds including reference to future needs
- implement effective feedback mechanisms in order to demonstrate how views have been taken into account
- balance feedback from more active stakeholder groups with other stakeholder groups to ensure inclusivity

- take account of the impact of decisions on future generations of tax payers and service users.

Core Principle C: Defining outcomes in terms of sustainable, economic, social and environmental benefits.

The Council's development of a City Plan sets out the vision for the City until 2030. The intentions of the vision are set out as part of a Dynamic, Healthy and Vibrant City. The City Plan sets out explicitly the Council's planned key actions and performance targets for the future. Community leadership runs through all the council's work and shapes how we work with our communities. The Council will:

- have a clear vision, which is in an agreed formal statement of our purpose and intended outcomes containing appropriate performance indicators, which provide the basis for our overall strategy, planning and other decisions
- specify the intended impact on, or changes for, stakeholders including citizens and service users. This could be immediately or over the course of a year or longer
- deliver defined outcomes on a sustainable basis within the resources available
- identify and manage risks to the achievement of outcomes
- manage service users' expectations effectively with regard to determining priorities and making the best use of the resources available
- consider and balance the combined economic, social and environmental impact of policies and plans when taking decisions about service provision
- take a longer-term view with regard to decision making, taking account of risk and acting transparently where there are potential conflicts between our intended outcomes and short-term factors such as the political cycle or financial constraints
- determine the wider public interest associated with balancing conflicting interests between achieving the various economic, social and environmental benefits, through consultation where possible, in order to ensure appropriate trade-offs
- ensure fair access to services.

Core Principle D: Determining the interventions necessary to optimise the achievement of the intended outcomes.

The Council has a Corporate Planning and Performance Management Framework which helps us to deliver the best outcomes and services in relation to our priorities and statutory responsibilities within available resources, and to create an 'early warning system' where this is not the case. The Council will:

- ensure decision makers receive objective and rigorous analysis of a variety of options indicating how intended outcomes would be achieved and associated risks. Therefore, ensuring best value is achieved however services are provided
- consider feedback from citizens and service users when making decisions about service improvements or where services are no longer required in order to prioritise competing demands within limited resources available including people, skills, land and assets and bearing in mind future impacts
- establish and implement robust planning and control cycles that cover strategic and operational plans, priorities and targets
- engage with internal and external stakeholders in determining how services and other courses of action should be planned and delivered
- consider and monitor risks facing each partner when working collaboratively, including shared risks
- ensure arrangements are flexible and agile so that the mechanisms for delivering goods and services can be adapted to changing circumstances
- establish appropriate key performance indicators as part of the planning process in order to identify how the performance of services and projects is to be measured
- ensure capacity exists to generate the information required to review service quality regularly
- prepare budgets in accordance with objectives, strategies and the medium term financial plan
- inform medium and long-term resource planning by drawing up realistic estimates of revenue and capital expenditure aimed at developing a sustainable funding strategy
- ensure the medium term financial strategy integrates and balances service priorities, affordability and other resource constraints
- ensure the budgeting process is all-inclusive, taking into account the full cost of operations over the medium and longer term

- ensure the medium term financial strategy sets the context for ongoing decisions on significant delivery issues or responses to changes in the external environment that may arise during the budgetary period in order for outcomes to be achieved while optimising resource usage
- ensure the achievement of 'social value' through service planning and commissioning.

Core Principle E: Developing the entity's capacity including the capability of its leadership and the individuals within it.

The Council recognises the importance of having highly skilled and motivated Members and staff to deliver its priorities and to sustain public confidence in its services. The Council is committed to the development of Members and staff skills, knowledge and performance through programmes of induction, training and development. The Council will:

- review operations, performance and use of assets on a regular basis to ensure their continuing effectiveness
- improve resource use through appropriate application of techniques such as benchmarking and other options in order to determine how resources are allocated so that defined outcomes are achieved effectively and efficiently
- recognise the benefits of partnerships and collaborative working where added value can be achieved
- develop protocols to ensure that elected and appointed leaders negotiate with each other regarding their respective roles early on in the relationship and that a shared understanding of roles and objectives is maintained
- publish a statement that specifies the types of decisions that are delegated and those reserved for the collective decision making of the governing body
- ensure the Leader and Chief Executive have clearly defined and distinctive leadership roles within a structure whereby the Chief Executive leads in implementing strategy and managing the delivery of services and other outputs set by members and each provides a check and a balance for each other's authority
- develop the capabilities of members and senior management to achieve effective leadership and to enable the organisation to respond successfully to changing legal and policy demands as well as economic, political and environmental changes and risks
- ensure that there are structures in place to encourage public participation
- taking steps to consider the leadership's own effectiveness and ensuring leaders are open to constructive feedback from peer review and inspections

- hold staff to account through regular performance reviews which take account of training or development needs
- ensure arrangements are in place to maintain the health and wellbeing of the workforce and support individuals in maintaining their own physical and mental wellbeing.

Core Principle F: Managing risk and performance through robust internal control and strong public financial management.

All Council members and key officer roles and functions are set out in the Council's Constitution, there is a protocol on member / employee relations and an agreed set of organisational values underpinning all of the Council's work. The Council will:

- recognise that risk management is an integral part of all activities and must be considered in all aspects of decision making
- implement robust and integrated risk management arrangements and ensure that they are working effectively
- ensure that responsibilities for managing individual risks are clearly allocated
- monitor service delivery effectively including planning, specification, execution and independent post implementation review
- make decisions based on relevant, clear objective analysis and advice pointing out the implications and risks inherent in the our financial, social and environmental position and outlook
- ensure an effective scrutiny or oversight function is in place which provides constructive challenge and debate on policies and objectives before, during and after decisions are made thereby enhancing our performance and that of any organisation for which we are responsible
- encourage effective and constructive challenge and debate on policies and objectives to support balanced and effective decision making
- provide members and senior management with regular reports on service delivery plans and on progress towards outcome achievement
- ensure there is consistency between specification stages (such as budgets) and post implementation reporting (e.g. financial statements)
- align the risk management strategy and policies on internal control with achieving objectives
- evaluate and monitor risk management and internal control on a regular basis
- ensure effective counter fraud and anti-corruption arrangements are in place
- ensure additional assurance on the overall adequacy and effectiveness of the framework of governance, risk management and control are provided by internal audit

- ensure an audit committee provides a further source of effective assurance regarding arrangements for managing risk and maintaining an effective control environment and its recommendations are listened to and acted upon
- ensure effective arrangements are in place for the safe collection, storage, use and sharing of data, including processes to safeguard personal data
- ensure effective arrangements are in place and operating effectively when sharing data with other bodies
- review and audit regularly the quality and accuracy of data used in decision making and performance monitoring
- ensure financial management supports both long term achievement of outcomes and short-term financial and operational performance
- ensure well-developed financial management is integrated at all levels of planning and control, including management of financial risks and controls.

Core Principle G: Implementing good practices in transparency, reporting and audit to deliver effective accountability.

The Council conducts all business in an open and transparent manner and has formal processes for declaring relationships or interests to ensure that decision-making is transparent and objective. There is a robust system of scrutiny and effective arrangements for managing risks. The Council will:

- write and communicate reports for the public and other stakeholders in a fair, balanced and understandable style appropriate to the intended audience and ensure that they are easy to access and interrogate
- strike a balance between providing the right amount of information to satisfy transparency demands and enhance public scrutiny while not being too onerous to provide and for users to understand
- report at least annually on performance, value for money and stewardship of resources to stakeholders in a timely and understandable way
- ensure members and senior management own the results reported
- ensure robust arrangements for assessing the extent to which governance principles have been applied and publishing the results on this assessment, including an action plan for improvement and evidence to demonstrate good governance (the annual governance statement)
- ensure that these governance principles are applied to jointly managed or shared service organisations as appropriate
- ensure the performance information that accompanies the financial statements is prepared on a consistent and timely basis and the statements allow for comparison with other, similar organisations
- ensure that recommendations for corrective action made by external audit are acted upon

- ensure an effective internal audit service with direct access to members is in place, providing assurance with regard to governance arrangements and that recommendations are acted upon
- welcome peer challenge, reviews and inspections from regulatory bodies and implement recommendations
- gain assurance on risks associated with delivering services through third parties and that this is evidenced in the annual governance statement
- ensure that when working in partnership, arrangements for accountability are clear and the need for wider public accountability has been recognised and met.

Annual Governance Review

The Council will conduct, at least annually, a review of the effectiveness of the corporate governance framework including the system of internal control.

The review will be informed by the Council's Integrated Risk and Assurance Framework which is designed to gather assurance on an ongoing basis from all relevant sources across the Council.

A report on the findings and recommendations arising from the review will be presented to the Council's Chief Officers Group, Audit and Governance Committee and Cabinet.

April 2019

Annex 1 – Governance Framework

Values	Engagement	Defining Outcomes	Achieving Outcomes
Capacity and Capability	Managing Risk & Performance		Accountability
The corporate governance framework comprises the systems, processes, cultures and values through which the Council directs and controls its functions, and through which it accounts to, engages with and, where appropriate leads communities.			



Key Documents Produced / Reviewed Annually	Key Documents Produced / Reviewed As Required	Supporting Processes, Monitoring and Regulation
Annual Statement of Accounts City Plan Corporate Risk Profile Strategic Risk Profile Council tax leaflet Medium Term Financial Strategy Members Allowances Scheme Service Plans Treasury Management Strategy / Annual Review	Anti Fraud and Corruption Policy Business Continuity Management Arrangements Complaints Procedure Constitution Consultation and Involvement Toolkit Corporate Health and Safety Statement of Intent Corporate Complaints Policy Procurement Strategy Delegated Decision Records Directorate Delegation Schemes Employees' Code of Conduct Member / Employee Relations Protocol Member Training and Development Programme Members' Code of Conduct Monitoring Officer Protocol Partnership Agreements Partnerships Code of Practice Sunderland Leadership Programme Vision and Values Whistle Blowing Policy and Arrangements	Area Committees / Frameworks Annual Governance Review and Statement Audit and Governance Committee Budget Management Framework Committee Management Information System Consultation Arrangements Corporate Appraisal Process Risk and Assurance Map Employee Declarations of Interest External Audit (Annual Audit Letter) Financial Procedure Rules Inspectorate Reports Integrated Risk and Assurance Framework Internal Audit Job profiles Joint Consultative Arrangements Monitoring Officer role Procurement Procedure Rules Register of Member's Interests Scrutiny Arrangements Section 151 Officer Standards Committee Website and Intranet

Risk and Assurance Map

31st March 2019

Strategic and Corporate Risk Areas		
	Current Risk Score	Cumulative Assurance Position
Strategic Risk Areas		
Growing the Economy		
Promoting Better Living & Working		
Maximising the Cultural Offer		
Improving Education and Skills		
Improving Health and Wellbeing		
Protecting Vulnerable Children		
Protecting Vulnerable Adults		
Building Resilient Communities		
Corporate Risk Areas		
Commissioning		
Strategic Planning		
Service/Business Planning		
Service Delivery Arrangements		
Performance Management		
Partnership/Integrated Working		
Procurement		
Relationship/Contract Management		
Legality		
Risk Management		
Performance Reporting		
Strategic Financial Management		
Financial Reporting		
Financial Management		
Income Collection		
Capital Programme Management		
HR Management		
Health and Safety		
ICT Infrastructure		
Cyber Security		
Information Governance/Security		
Business Continuity Management		
Programme and Project Management		
Asset Management		
Anti-Fraud and Corruption		
Council Owned Companies		
Sunderland Care and Support Ltd.		
Together for Children Sunderland Ltd.		
Sunderland Homes Ltd.		

	2018/19											
1st Line	2nd Line										3rd Line	
Management Assurance	Other Internal Assurance Activity										Internal Audit	External Assurance
	Law & Governance	Financial Resources	Programmes & Projects	Performance	ICT	HR &OD	Health & Safety	Business Continuity	Risk & Assurance			

Key: X=activity planned, White=no coverage, Green=full / substantial assurance, Amber=moderate assurance, Red=limited / no assurance

2018/19 Annual Governance Statement

1. SCOPE OF RESPONSIBILITY

The Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively. We also have a duty to continually review and improve the way in which functions are exercised.

We have put in place a local Code of Corporate Governance and a framework intended to make sure we do the right things, in the right way, for the right people. The Code is in line with the 2016 Framework issued by CIPFA and has been recently updated. This Statement explains how the Council has complied with its Code in 2018/19.

2. THE PURPOSE OF THE GOVERNANCE FRAMEWORK

The governance framework comprises the systems and processes, culture and values that direct and control our activities and through which we account to, engage with, and lead the community. The framework enables us to monitor the achievement of strategic objectives and priorities and to consider whether they have led to the achievement of appropriate, cost-effective outcomes.

The system of internal control is a significant part of that framework and is designed to manage risk to a reasonable level. It cannot eliminate all risk of failure to achieve policies and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness.

The governance framework has been in place at the Council for the year ended 31st March 2019 and up to the date of approval of the Statement of Accounts.

3. THE GOVERNANCE FRAMEWORK

- 3.1 The [Corporate Plan](#) set out our priorities which has shaped the activity of our various services and how we focused our resources. The development of a new City Plan will set out the vision for the City until 2030. The intentions of the vision are set out as part of a Dynamic, Healthy and Vibrant City. The City Plan will set out explicitly the Council's planned key actions and performance targets for the future.
- 3.2 The annual strategic planning process, engagement and participation with residents, needs analysis and demographic information ensure the authority's vision remains relevant and meets the needs of local communities. There are annual reviews of the local Code of Corporate Governance to ensure that it is up to date and effective.

- 3.3 Arrangements are in place to measure the quality of services, to ensure they are delivered in line with our objectives and priorities and for ensuring that they provide value for money. There are performance management arrangements in place including a monthly corporate performance clinic with the Chief Officer's Group. Services are delivered by suitably qualified / trained / experienced staff and all posts have detailed job profiles / descriptions.
- 3.4 The roles and responsibilities of Council members and employees are clearly documented. The Council's [Constitution](#) sets out how the Council operates. It incorporates a delegation scheme, indicates responsibilities for functions and sets out how decisions are made.
- 3.5 The Constitution includes Rules of Procedure and a scheme of delegation which clearly define how decisions are taken and we have various Codes and Protocols that set out standards of behaviour for members and staff. Directorates have established delegation schemes, although these require regular updating to reflect ongoing organisational changes.
- 3.6 During the year a system of scrutiny was in place allowing the scrutiny function to:
- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
 - make reports and/or recommendations to the full Council and/or the executive and/or any joint or area committee in connection with the discharge of any functions;
 - consider any matter affecting the area or its inhabitants;
 - exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the executive and/or area committees;
 - consider Local Petitions and Councillor Calls for Action for matters within their terms of reference; and
 - consider regular reports on the Council's performance against the Corporate Plan.
- 3.7 A range of financial and HR policies and procedures are in place. Appropriate project management standards and Business Continuity Plans are in place, which are subject to ongoing review. There are comprehensive budgeting systems in place and a robust system of budgetary control, including formal quarterly and annual financial reports, which indicate financial performance against forecasts. There are clearly defined capital expenditure guidelines in place and procedures are in place to ensure that the Dedicated Schools Grant is properly allocated to and used by schools in line with the terms of grant given by the Secretary of State under section 14 of the Education Act 2002.
- 3.8 The authority's financial management arrangements conform to the governance requirements of the CIPFA Statement on the Role of the Chief Financial Officer in Local Government (2010). The Executive Director of Corporate Services is designated Chief Finance Officer and fulfils this role through the following:

- Attendance at meetings of the Chief Officer's Group, helping it to develop and implement strategy and to resource and deliver the Council's strategic objectives sustainably and in the public interest;
- Involvement in all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered;
- Alignment of medium term business and financial planning processes;
- Leading the promotion and delivery of good financial management by the whole organisation so that public money is safeguarded and used appropriately, economically, efficiently and effectively;
- Ensuring that the finance function is resourced to be fit for purpose.

3.9 The Council has an Audit and Governance Committee which, as well as approving the Authority's Statement of Accounts, undertakes an assurance and advisory role to:

- consider the effectiveness of the authority's corporate governance arrangements, risk management arrangements, the control environment and associated anti-fraud and corruption arrangements and seek assurance that action is being taken on risk-related issues identified by auditors and inspectors;
- be satisfied that the authority's assurance statements, including the Annual Governance Statement, properly reflect the risk environment and any actions required to improve it;
- receive and consider (but not direct) internal audit's strategy, plan and monitor performance;
- receive and consider the external audit plan;
- review a summary of internal audits, the main issues arising, and seek assurance that action has been taken where necessary;
- receive and consider the annual report of internal audit;
- consider the reports of external audit and inspection agencies, including the Annual Audit Letter;
- ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted;
- review the external auditor's opinions and reports to members, and monitor management action in response to the issues raised by external audit;
- review the adequacy of and compliance with, the Council's Treasury Management Policy; and
- make recommendations to Cabinet or Council as appropriate.

3.10 We have arrangements to ensure compliance with relevant laws, regulations, internal policies and procedures, and that expenditure is lawful. The Head of Law and Governance is the Council's designated Monitoring Officer and a protocol is in place with all Chief Officers, to safeguard the legality of all Council activities. All Cabinet Reports are considered for legal issues before submission to members.

- 3.11 Arrangements for whistle-blowing and for receiving and investigating complaints from the public are well publicised and subject to periodic review. We are committed to maintaining these arrangements to ensure that, where any individual has concerns regarding the conduct of any aspect of the Council's business, they can easily report their concerns. Monitoring records held by the Head of Law and Governance show that the whistle blowing arrangements are being used by both staff and the public, and that the Council is responding appropriately. The whistle blowing arrangements have assisted with the maintenance of a strong regime of internal control.
- 3.12 We have arrangements to identify the development needs of members and senior officers in relation to their strategic roles. The Council recognises that managing the performance of all of employees is key to ensuring that the organisation meets the needs of the community. This includes assessing ability against requirements of the role focusing on strengths and highlighting areas of weakness, job related training, and ongoing evaluation of the extent to which employees understand and support the values of the Council.
- 3.13 Channels of communication have been established with the community to promote accountability and encourage open consultation. We are committed to listening to, and acting upon, the views of the local community and carry out consultation in order to make sure that services meet the needs of local people.
- 3.14 The Council's Code of Practice for Partnerships and supporting arrangements have been in place throughout the year.
- 3.15 Contractual arrangements with Together for Children Sunderland Ltd. clearly set out challenging targets around use of resources and improved outcomes for children and young people.

4. REVIEW OF EFFECTIVENESS

- 4.1 The Council has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework including the system of internal control. The review of the effectiveness is carried out over the course of the year through the Integrated Risk and Assurance Framework. The review is informed by the Risk and Assurance Map which summarises assurances gathered from all available sources in relation to the Council and its wholly owned companies, and in particular:
- Assurances from Heads of Service who have carried out self-assessments relating to their areas of responsibility;
 - assurances from Chief Officers through completion of controls assurance statements;
 - assurances from senior officers responsible for relevant specialist areas;
 - internal audit planning processes which include consultation with all Chief Officers, and the results of audit activity as summarised in the Annual Governance Review report;

- the external auditors (Mazars) Annual Audit Letter for 2017/18 concludes that in all significant respects, the Council has put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2018, 'except for' the areas that were assessed as inadequate in Ofsted's re-inspection report on children's safeguarding services in July 2018.
- 4.2 The Head of Assurance, Procurement and Performance Management as the Council's head of internal audit has directed, co-ordinated and overseen the review and its findings and proposed improvements have been reported to the Chief Officer's Group for their consideration and approval of the Annual Governance Statement.
- 4.3 The findings of the review have been reported to the Audit and Governance Committee and under their Terms of Reference the Committee has satisfied themselves that the Annual Governance Statement properly reflects the risk environment and any actions required to improve it before formal approval of the Statement of Accounts.
- 4.4 The outcome of the review of effectiveness provided the necessary assurance and that no significant issues across the Council or its wholly owned companies were identified, with the exception of the need to continue to improve Children's Safeguarding services.
- 4.5 We have been advised of the outcome of the review of the effectiveness of the governance framework, and that the overall arrangements continue to be regarded as fit for purpose in accordance with the governance framework. A small number of improvement actions have been set out in an agreed improvement plan.
- 4.6 We propose over the coming year to take steps to implement the improvement plan to further enhance the Council's governance arrangements. We are satisfied that these steps will address the need for improvements that were identified in the review and we will monitor their implementation and operation as part of the next annual review.

Councillor Graeme Miller
Leader of the Council

Patrick Melia
Chief Executive

Jon Ritchie
Executive Director of Corporate
Services

Dated

Annual Governance Review - Improvement Plan for 2019/20

Ref	Action	COG Lead	Timescale
1.	Ensure appropriate performance management arrangements are in place to monitor achievement of the priorities in the City Plan.	Executive Director of Corporate Services	July 2019
2.	Review partnership arrangements to ensure that they are strong to support the delivery of the City Plan.	Director of People, Communications and Partnerships	July 2019
3.	Ensure that Directorate Delegation Schemes are reviewed and updated following the senior management reorganisation.	All Chief Officers	May 2019
4.	Ensure that appropriate assurance is provided to demonstrate compliance with the General Data Protection Regulations.	Director of People, Communications and Partnerships	July 2019
5.	Implementation of the agreed action plan arising from the LGA Corporate Peer Challenge	Director of People, Communications and Partnerships	March 2020
6.	Continue to work collaboratively with TFC to maintain the improvement of services to vulnerable children.	Executive Director of Corporate Services / Chief Executive TFC	March 2020

AUDIT AND GOVERNANCE COMMITTEE

26 April 2019

REVIEW OF INTERNAL AUDIT 2018/19

Report of the Executive Director of Corporate Services

1. Purpose of Report

- 1.1 The purpose of this report is to inform the Committee of the results of the review of Internal Audit undertaken by the External Auditor, Mazars.

2. Background

- 2.1 The Public Sector Internal Audit Standards (PSIAS) and CIPFA Application Note require that every local government internal audit service is subject to an external assessment of its work against the standards, at least once every five years. The External Auditor, Mazars, has undertaken a review of the Internal Audit service against these standards in December 2018.

3. Findings of the Review

- 3.1 The findings of the review are attached in the External Auditor's report. The approach used was to conduct a review of Internal Audit's self assessment against the standards and a detailed review of a sample of Internal Audit files to assess how well the standards are complied with.
- 3.2 The External Auditor's review concluded that:

'We conclude that the IA is compliant with the requirements of the PSIAS and the CIPFA Application Note.'

- 3.3 The review highlighted areas of good practice, specifically in relation to the:

- Integrated Assurance Framework.
- Audit Manual and MKI e-audit system.
- Proficiency of the internal auditors.

- 3.4 A small number of areas for continuous improvement have been identified which have been agreed and will be addressed.

4. Recommendations

- 4.1 The Committee is asked to note the positive opinion provided.

Public Sector Internal Audit Standards Compliance

Sunderland City Council

December 2018





CONTENTS

1. Introduction
2. Approach
3. Summary assessment
4. Detailed findings

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1. INTRODUCTION

An effective, objective and independent internal audit service is the cornerstone of good governance in all public sector bodies. Internal audit plays a pivotal role in providing assurance to officers and members that the system of internal control within their organisation is operating effectively and to recommend how that system of internal control can be strengthened. This is a fundamental requirement enshrined in the Accounts and Audit (England) Regulations 2011.

Public Sector Internal Audit Standards

In April 2013, a new set of internal audit standards for the public sector, the 'Public Sector Internal Audit Standards' (PSIAS) became effective. The standards were updated in 2017 to incorporate new and revised international standards. The PSIAS adopt the principle requirements of the Institute of Internal Auditors Professional Practices Framework and adapt these to ensure they are relevant and appropriate for the UK public sector and are mandatory.

The overall objective of the PSIAS is to provide a high level overarching framework applicable to all of the public sector. In summary, they:

- define the nature of internal auditing within the UK public sector;
- set basic principles for carrying out internal audit in the UK public sector;
- establish a framework for providing internal audit services, which add value to the organisation, leading to improved organisational processes and operations; and
- establish the basis for the evaluation of internal audit performance and to drive improvement planning.¹

Local Government Application Note and 'proper practices'

The Chartered Institute of Public Finance and Accountancy (CIPFA) recognised the potential significance of the changes resulting from the adoption of the PSIAS and has provided guidance to internal auditors in the form of an Application Note. The Application Note and PSIAS combined constitute 'proper practices' in internal control as set out in the Accounts and Audit Regulations.

External assessment

The PSIAS and Application Note require that every local government internal audit service is subject to an external assessment of its work against the requirements of the standards, regardless of whether the service is provided by an in-house or external team. This external assessment is required to be carried out at least once every five years, and this report sets out our assessment of the Internal Audit (IA) service provided to Sunderland City Council.

¹ Public Sector Internal Audit Standards

2. APPROACH

Methodology

Our assessment has been wide-ranging and we have considered evidence to inform our conclusions and recommendations from a number of sources. The main phases of our methodology are set out below.

Review of self-assessment

The CIPFA Application Note provides a framework within which every internal audit service is expected to carry out a self-assessment against the requirements of the PSIAS. The Council's IA carried out this self-assessment and we critically evaluated the findings, sought evidence to support the results and reached our own judgement as to whether the self-assessment was accurate.

File reviews

To inform our review of the self-assessment we carried out a detailed review of a sample of IA files. Each file reviewed was considered against the requirements of the PSIAS and the CIPFA Application Note.

Professional standards for Internal Audit are contained in the PSIAS and cover the following key areas:

Standard	Commentary
Purpose, authority and responsibility	Defines the 'IA charter' including setting out the nature of the IA function, reporting lines and other key areas.
Independence and objectivity	Including reporting and management arrangements to ensure the head of internal audit remains independent of audited activity.
Proficiency and due professional care	Cross-references to the CIPFA Statement of the Role of the Head of Internal Audit.
Quality Assurance and Improvement Programme	Includes both internal and external assessments. Non-conformance with standards must be reported to the board or equivalent (i.e. for the Council, the Audit and Governance Committee). Progress against prior improvement plans must be reported in the head of IA annual report, including any instances of non-conformance.
Managing the Internal Audit activity	Mandated risk-based plan, including partnership working.
Nature of work	IA activity should contribute to improvement, including governance, risk management and internal control.
Engagement planning	Preparation of audit briefs, including, where appropriate, consideration of VfM criteria.
Performing the engagement	Underlines how management retains ultimate responsibility for prevention and detection of fraud, but IA expected to be alert to the possibility of fraud.
Communicating results	Head of internal audit must provide an overall annual opinion to the Audit and Governance Committee.
Monitoring progress	Including the follow-up of audit recommendations.
Communicating the acceptance of risks	Communication required where the head of internal audit considers management has accepted a level of risk that may be unacceptable to the organisation.

3. SUMMARY ASSESSMENT

Overall conclusion

We conclude that IA is **compliant** with the requirements of the PSIAS and the CIPFA Application Note.

Areas of strengths

Our review noted areas where IA is demonstrating good practice in the way it carries out its functions.

- **Integrated Assurance Framework (IAF).** The IAF is used to amalgamate all sources of assurance against the Strategic and Corporate Risk Profiles and allows effective targeting of IA work. This ensures the efficient use of IA resources and minimises duplication of effort. This process is embedded in the Council's approach to assurance.
- **Audit Manual and MKI e-audit (MKI) system.** A detailed Audit Manual, which mirrors the PSIAS, sets the framework within which all internal audit assignments are delivered. PSIAS compliance is driven by adherence to procedures set out in the Manual and MKI (the e-software used by IA). In particular:
 - standard documentation and the need for a thorough review are Audit Manual requirements that are followed in practice.
 - risks, controls, testing and evaluation of results are all clearly recorded within MKI;
 - the Audit Manual is based on a systematic, disciplined, risk-based approach to IA work. Our file reviews demonstrated overall compliance with the documented approach.
 - MKI is used to automatically feed narrative into reports which are set out in a standard format; and
 - target implementation dates for actions arising from recommendations are recorded in MKI for future follow-up.
- **Internal auditors.** The IA service employs proficient staff. All internal auditors have attained at least one relevant qualification and have significant appropriate experience. All internal auditors receive regular, appropriate training. Training needs are informed by the completion of a staff performance statement at the end of each piece of work. Overall, work was completed to a good standard and our file reviews demonstrated compliance with PSIAS and Audit Manual requirements.

Areas for continued improvement

We have identified a small number of areas for continued improvement which are summarised below, against the relevant standard.

- **Independence and objectivity:** ensuring there is a formal annual confirmation of independence by IA (e.g. in the Annual IA Report).
- **Independence and objectivity:** ensuring there is a mechanism for the Audit and Governance Committee Chair to formally feed into the annual appraisal of the Head of Assurance, Procurement and Performance Management (HAPPM), noting there are already informal feedback mechanisms in place.
- **Quality and Improvement Assurance Programme:** ensure evidence is retained of the annual quality assurance review carried out by IA itself, noting this review is in addition to existing on-going quality assurance mechanisms in place.
- **Communicating the acceptance of risks:** minor amendment to the wording of the Audit Manual in respect of the acceptance of risks.

In addition, some minor improvements points were identified during our detailed file reviews and these have been discussed with the Assistant Head of Assurance.

4. DETAILED FINDINGS

Review of compliance with the PSIAS and CIPFA Application Note

Our detailed findings in respect of compliance with the PSIAS and the CIPFA Application Note are provided below. These are based on our review of both the IA self-assessment and a sample of internal audit files. Our detailed findings are summarised against the attribute and performance standards contained in the PSIAS.

The five 2018/19 files selected for review were:

- performance reporting – data quality;
- Seaburn Dene Primary School;
- Use of the agency contracts;
- BACS; and
- refuse collection.

In addition to the activities above we also considered our detailed knowledge of IA gathered from our experience as the Council's external auditor for a number of years.

Purpose, authority and responsibility

The HAPPM is responsible for delivery of the Council's IA function. It is delivered by the Audit, Risk and Assurance Section which is headed by the Assistant Head of Assurance (AHA).

A revised Audit Charter was approved by the Audit and Governance Committee (AGC) on 28 September 2018, which sets out the purpose, authority and responsibility of IA. The Charter specifies that, for the Council, the 'Board' is defined as the AGC and 'senior management' is all Chief Officers. The Audit Charter was presented to the Executive Director of Corporate Services prior to AGC approval. PSIAS state that the Mission of Internal Audit and the mandatory elements of the International Professional Practices Framework should also be discussed with senior management; this is achieved via the HAPPM's attendance at quarterly chief officer meetings.

In order to discharge its role, IA has access to all officers, buildings, information, explanations and documentation required. Access rights are included in written agreements with organisations that receive grant funding from the Council, have been awarded service contracts, and partner organisation where the Council acts as Lead or Accountable Body.

The Audit Charter includes a requirement that the HAPPM is to be notified of all suspected or detected fraud, corruption or financial impropriety.

Independence and objectivity

The Audit Charter sets the standard for IA's independence:

- it specifies that IA will not have any responsibilities for operations other than providing recommendations and advice to management on risks and controls; and
- the head of internal audit reports directly to the Executive Director of Corporate Services and has the freedom to report to the Chief Executive, the AGC and Members.

The Audit Manual clearly sets out the reporting lines of IA and confirms the independence of the HAPPM.

4. DETAILED FINDINGS

Where IA work is carried out relating to functions for which the HAPPM has overall management responsibility, the AHA is free to determine the frequency and scope of audit work and reports their findings directly to the Executive Director of Corporate Services. The reporting arrangement was found to be working as described in our file review of the 'Performance reporting – data quality' audit.

We have assurance as to the organisational independence of IA. The HAPPM should confirm, at least annually, to the AGC that this is the case.

Performance of the HAPPM is monitored directly by the Chief Executive, with an annual performance agreement and regular meetings between them to discuss progress. The performance appraisal process could be enhanced by formally seeking the views of the Chair of the AGC.

Internal auditors are required to sign an annual declaration detailing any issues that may affect auditor independence. We found that all IA staff had completed a declaration in 2018 and appropriate action had been recorded, with officers not carrying out internal audit work in the areas affected. The Audit Manual includes guidance on potential conflicts, including where officers have had recent responsibility for the operation of systems.

The Audit Manual includes guidance that an assignment should not be undertaken by the same individual more than twice in succession. However, it is acknowledged that there will be exceptions to this where there are capacity issues or cases where the audit requires specialist skills and/or knowledge. Robust review procedures are in place to mitigate any perceived threats to independence.

Proficiency and due professional care

The HAPPM and AHA are both qualified accountants with many years of experience in a management role. All internal audit staff have significant relevant experience and have attained a relevant professional qualification.

IA staff that are members of a professional institute are required to comply with their institute's continuing professional development scheme. All internal auditors receive regular, appropriate training. Training needs are informed by the completion of a staff performance statement at the end of each piece of work.

IA has appropriate procedures in place to ensure due professional care. The Audit Manual contains guidance on professional standards and ethics. The review process also provides assurance that due professional care is applied throughout IA work, with a comprehensive file review carried out on each audit, assisted by the completion of a standard checklist.

Our file reviews demonstrated that, in their work, internal auditors:

- consider and evaluate the risk of fraud and how it is managed;
- demonstrate knowledge of key information technology risks and controls;
- are aware of significant risks that might affect objectives, operations or resources;
- consider the expectations and needs of clients; and
- consider the extent of work needed to achieve the audit's objectives.

Spreadsheets are used for data analysis. IA is looking to expand the use of technology-based techniques and has recently had a demonstration from IDEA. The use of Power BI, which the Council already uses for large scale analysis, is currently being tested.

Each report has a 'Strictly Private and Confidential' footer, which highlights that contents are not for reproduction, publication or disclosure to unauthorised persons without prior agreement.

Quality Assurance and Improvement Programme

Internal auditors are subject to an annual Council appraisal where performance is formally assessed. This, together with staff performance statements, completed for each audit, inform training needs.

4. DETAILED FINDINGS (CONTINUED)

All internal auditors have attained a professional qualification and those continuing their institute's membership are required to comply with continuing professional development requirements. Internal auditors receive training where a need has been highlighted.

Each audit is staffed by an appropriate skills mix and the level of supervision takes account of the experience of the auditor.

In addition to the embedded review process for each audit, there is an additional quality check on audits. The latest check was in September 2018, which covered all audits since April 2017. *However, there was no formal record of this. Officers stated that it was intended to carry out quality checks annually in future. IA should ensure that the detail of the process is recorded.*

Monitoring of the audit plan is carried out throughout the year within IA and with regular reporting to both the Executive Director of Corporate Services and the AGC.

IA has developed a suite of performance indicators, which are regularly reported to the AGC. The most recent data shows that IA is meeting its targets, except for the implementation of recommendations which is slightly below targeted performance. Benchmarking data shows that the cost of the internal audit service is £417 per £m turnover, compared to an average of £569.

IA continues to score highly in client post-audit questionnaires, with an average of 1.1 to date in 2018/19 (1 = good, 4 = poor). The return rate for questionnaires is 50%. In order to enhance the breadth of feedback, the HAPPM is considering a survey of senior managers and the AGC.

Managing the internal audit activity

The Audit Manual sets out in detail how a rolling Strategic Audit Plan and Annual Operational Plan are produced.

The IA work programme is derived from the IAF. The Council's Strategic and Corporate Risk Profiles are assessed and the Risk and Assurance Map records work that has been completed or is planned against the risks identified. This is carried out in consultation with key senior Council officers and consideration is given to the views of the AGC on potential areas of work. The HAPPM is aware of inspectors' views through his role in the annual governance review, which also feeds into Risk and Assurance Map. The approach ensures duplication of effort is minimised.

The HAPPM seeks to develop good working relationships with all relevant parties.

The external auditor meets regularly with the HAPPM and AHA and has an effective working relationship with IA.

Monitoring of the IA Operational Plan is carried out throughout the year within IA and with regular reporting to both the Executive Director of Corporate Services and the Audit and Governance Committee.

Nature of work

IA has an Audit Manual based on a systematic, disciplined, risk-based approach to its work programme. Our file reviews demonstrated overall compliance with the documented approach.

In line with PSIAS, IA evaluates risk exposures relating to the organisation's governance, operations and information systems regarding the achievement of the Council's strategic objectives, reliability and integrity of financial and operational information, effectiveness and efficiency of operations and programmes, safeguarding of assets, and compliance with laws, regulations, policies, procedures and contracts.

A fraud risk assessment is in place, with anti-fraud work included in the Annual Operational Plan.

IA assists the Council in maintaining an effective control environment and in promoting continuous improvement.

4. DETAILED FINDINGS (CONTINUED)

Engagement planning

The Audit Manual requires that for each audit, the objectives, scope, allocation of resources and budget are clearly set out. Audit work considers the strategies and objectives of the client, and significant risks are identified. Work programmes are developed by auditors and approved by the Audit Manager.

Our file reviews demonstrated compliance with the above approach, as set out in the Audit Manual.

Performing the engagement

Standard documentation and the need for a thorough review are Audit Manual requirements that are followed in practice. Risks, controls, testing and evaluation of results are all clearly recorded within MKI.

The sample of audit files tested provided sufficient information to enable an understanding of the work carried out and why conclusions were reached. Findings and conclusions were supported by appropriate evidence.

There were some minor points arising from our file reviews, which have been shared with the HAPPM and AHA.

Communicating results

The Audit Manual contains guidance on report writing. MKI is used to automatically feed narrative into reports set out in a standard format. Our detailed testing highlighted that clear, concise reports are issued in good time following the conclusion of audits. Draft reports are subject to a quality check by a cold read of the report by someone not involved in the detailed work.

Reports acknowledge satisfactory performance as well as highlighting areas for improvement.

Draft reports are sent out to relevant managers and chief officers, with an acknowledgement of receipt of final reports required from chief officers.

An overall Internal Audit Opinion on the Council's system of internal control is given in the annual governance review, which considers evidence from the Risk and Assurance Map and IA activity. The relevant report includes a statement on compliance with the PSIAS.

Monitoring progress

There is a formal follow-up procedure where audit recommendations are made (low risk recommendations are not followed-up). Our file reviews confirmed that recommendations had been followed up where appropriate. Target implementation dates for actions arising from recommendations are recorded in MKI for future follow-up.

There is a high implementation rate of IA recommendations, and this is reported to the AGC as part of the performance monitoring of IA.

Communicating the acceptance of risks

The Audit Manual sets out the processes required where recommendations are not accepted by managers. Reports are sent to the relevant Chief Officer highlighting the issue and requesting a response.

In practice, when risk is deemed to be at an unacceptable level, the HAPPM brings the matter to the attention of the AGC, which is in line with PSIAS. We found that the Audit Manual included the wording of the relevant Standard, but had not included this process in the relevant detailed paragraph. The wording in the Audit Manual is to be amended to address this minor inconsistency.

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AUDIT AND GOVERNANCE COMMITTEE

26 April 2019

RISK AND ASSURANCE MAP 2019/2020

Report of the Head of the Internal Audit

1. Purpose of Report

- 1.1 To enable the Audit and Governance Committee to consider:
- The proposed Risk and Assurance Map and the supporting plans of work for the Internal Audit and Risk and Assurance teams for 2019/20;
 - Internal Audit's key performance measures and targets for 2019/20.
- 1.2 The report covers work undertaken for the Council and Council owned companies.

2. Background

- 2.1 In December 2018, the Audit and Governance Committee was asked for its comments in relation to a range of potential areas of work to support the Risk and Assurance Map for the coming year. The comments made have been considered when developing the Map and the supporting plans of work for Internal Audit and the Risk and Assurance Team.
- 2.2 This report presents the Risk and Assurance Map for 2019/20 and sets out where assurance will be obtained from, including the plans of work for Internal Audit and the Risk and Assurance team. Quarterly update reports will continue to be provided to Members throughout the coming year.

3. Recommendation

- 3.1 The Audit and Governance Committee is invited to note and consider the report.

Risk and Assurance Map 2019/20

1. Introduction

- 1.1 In order for the Council to ensure that it has robust arrangements for delivering its priorities, managing its affairs and completing its Annual Governance Statement with some certainty, it must have in place three key elements: good Governance, Risk Management and Assurance. The Council's Integrated Risk and Assurance Framework provides a comprehensive view on the arrangements in place within the Council.
- 1.2 This Framework enables assurances to be sourced from service management, corporate functions with an oversight role, internal audit and external sources (e.g. external audit / inspectorates) in relation to key risk areas

2. Risk and Assurance Map

- 2.1 The proposed Risk and Assurance Map for 2019/20 is shown at Appendix 1. This highlights those areas for which assurance will be provided, where the assurance is expected to be obtained from and the current assurance level based on work undertaken previously.
- 2.2 As previously, the Map is split into three parts, Strategic Risk Areas which align with the Corporate Plan priorities, Corporate Risk Areas which represent the risk areas that need to be managed for the Council to maintain a strong system of internal control, and companies owned by the Council.
- 2.3 Where assurance is expected to be provided from a particular source this is marked with an X. As in previous years the level of assurance provided will be updated based on the results of the work undertaken within the area and the assurance gathered from the various sources.
- 2.4 The Map has been prepared based on the work undertaken and reported previously and the planned activity has been developed in consultation with the Chief Executive, all Executive and Corporate Directors and key senior officers across the Council. The current assurance position in relation to all key risk areas is either Amber or Green, with the exception of Children's Services.
- 2.5 The work to be undertaken by Internal Audit and the Risk and Assurance team in support of the Map is shown at Appendix 2. The appendix shows all of the work that contributes to providing assurance against each risk area (some work provides assurance to more than one risk area).
- 2.6 The work to be undertaken by the Risk and Assurance Team is a high level plan as much of the work of the team cannot be planned in detail. The team will be involved in providing support, challenge and assurance to the major projects ongoing, especially those which contribute to the Council achieving its strategic priorities.

3. Key Areas of Activity

- 3.1 As in previous years the level of change ongoing within the Council continues to be significant and the level of risk remains due the reduction in the number of staff now in post, the recent senior management restructure (including the movement of a number of services) and the pressure to deliver the Council's Strategic Priorities and budget savings. A new City Plan (which will replace the Corporate Plan) will have an impact on the work of the teams and the Strategic and Corporate Risk profiles will be refreshed in line with the City Plan.
- 3.2 The work of the Risk and Assurance team includes obtaining assurance on the progress in relation to the actions identified to manage risks in the Strategic and Corporate Risk Profiles. Key areas of work for the team are as follows:
- Economic regeneration such as the International Advanced Manufacturing Park, Enterprise Zones, and the SSTC phase 3.
 - Upgrade to the ICT infrastructure, including implementing Office 365 and Windows 10, and moving to the Microsoft Cloud.
 - The project to upgrade SAP in relation to the purchasing and human resource management systems.
 - The planned move to a new civic centre, City Hall, which will require different ways of working as well as a change in location.
- 3.3 Internal audit work will include the following:
- The recent senior management restructure has resulted in the loss of a number of key officers and the movement of some services between directorates and managers. Work will therefore be undertaken to ensure that roles and responsibilities are clear and appropriate delegations are in place.
 - Following the introduction of the new City Plan a review will be undertaken of the performance management arrangements in place to ensure that the priorities set out therein are being delivered.
 - The Council is being subject to a corporate Peer review early in the year. Internal Audit work will be undertaken to confirm that any resultant actions are being appropriately implemented.
 - The Council's ICT infrastructure, particularly where systems have been changed and new security arrangements are in place. These changes also require the replacement of a significant amount of ICT equipment, and the arrangements for management of this will also be reviewed.
 - Further work around cyber security will be undertaken to ensure the

Council continues to have appropriate arrangements in place.

- The governance arrangements in relation to Council Companies Sunderland Care and Support Ltd, Sunderland Homes Ltd and Siglion LLP are changing, therefore a review of the relationships between these organisations and the Council will be undertaken.

3.4 The cycle of audits of key systems and counter fraud work will continue based on the Corporate Risk Profile and an assessment of fraud risks.

3.5 With Siglion LLP becoming wholly owned by the Council, the internal audit function shall be provided by the City Council. An assessment of work required will need to be undertaken and as such this Plan does not include specific audit work in this regard. Once determined and resourced the Committee shall be updated.

4. Internal Audit

4.1. The Key Performance Indicators and targets that Internal Audit aim to achieve are attached at Appendix 3. The target for 'the completion of audits by the target date' has been increased from 82% to 85% based on current performance.

4.2. It is confirmed that the internal auditors undertaking the work continue to remain independent of the areas audited.

5. Reporting Protocols

5.1 A quarterly progress report will be presented to the Committee. The update reports will indicate the level of assurance provided and any major findings arising from the work undertaken. Any areas requiring improvement will be highlighted to Members for them to consider and highlighted to the relevant Executive Director.

5.2 An Annual Report (including the year end Risk and Assurance Map) will be prepared for the Chief Officers Group and Audit and Governance Committee in order to provide assurance or otherwise and enable the Annual Governance Statement to be completed.

Risk and Assurance Map

April 2019

Strategic and Corporate Risk Areas		
	Current Risk Score	Cumulative Assurance Position
Strategic Risk Areas		
Growing the Economy		
Promoting Better Living & Working		
Maximising the Cultural Offer		
Improving Education and Skills		
Improving Health and Wellbeing		
Protecting Vulnerable Children		
Protecting Vulnerable Adults		
Building Resilient Communities		
Corporate Risk Areas		
Commissioning		
Strategic Planning		
Service/Business Planning		
Service Delivery Arrangements		
Performance Management		
Partnership/Integrated Working		
Procurement		
Relationship/Contract Management		
Legality		
Risk Management		
Performance Reporting		
Strategic Financial Management		
Financial Reporting		
Financial Management		
Income Collection		
Capital Programme Management		
HR Management		
Health and Safety		
ICT Infrastructure		
Cyber Security		
Information Governance/Security		
Business Continuity Management		
Programme and Project Management		
Asset Management		
Anti-Fraud and Corruption		
Council Owned Companies		
Sunderland Care and Support Ltd.		
Together for Children Sunderland Ltd.		
Sunderland Homes Ltd.		
Siglion LLP		

	2019/20											
1st Line	2nd Line										3rd Line	
Management Assurance	Other Internal Assurance Activity										Internal Audit	External Assurance
	Law & Governance	Financial Resources	Programmes & Projects	Performance	ICT	HR &OD	Health & Safety	Business Continuity	Risk & Assurance			
				X					X			
				X					X			
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Key: X=activity planned, White=no coverage, Green=full / substantial assurance, Amber=moderate assurance, Red=limited / no assurance

Detailed Coverage 2019/20 – Internal Audit and Risk & Assurance

Strategic Risk Area	Internal Audit Work	Risk and Assurance Work
Growing the Economy		Risk and assurance support to economic regeneration projects such as the International Advanced Manufacturing Park, SSTC phase 3 and Enterprise Zones
Promoting Better Living and Working		Risk support to the Council's joint venture, Siglion
Maximising the Cultural Offer		
Improving Education and Skills		Risk and Assurance support to the International Advanced Manufacturing Park Skills Workstream
Improving Health and Wellbeing		Risk and Assurance support to the Safeguarding Adults Board
Protecting Vulnerable Children	Liquid Logic Social Care System – Children (12 days)	
Protecting Vulnerable Adults	Liquid Logic Social Care System – Adults (15 days)	Risk and Assurance support to the Safeguarding Adults Board, and Liquid Logic project
Building Resilient Communities		Monitoring progress of managing risks in the Strategic Risk Profile

Corporate Risk Area	Internal Audit Work	Risk and Assurance Work
Commissioning		
Strategic Planning		
Service/Business Planning		Risk support to the Port in developing the Vision and Business Plan
Service Delivery Arrangements	<p>Licencing arrangements (community safety) (15 days)</p> <p>Development Control service arrangements (12 days)</p> <p>Effectiveness of Environmental Services within localities(18 days)</p> <p>Delivery of services following the Council restructure (30 days)</p> <p>Liquid Logic Social Care System - Adults (15 days)</p>	Risk support for the council's arrangements in the case of a no-deal Brexit
Performance Management	<p>Performance Monitoring arrangements following the introduction of the City plan (15 days)</p> <p>Review of the delivery of PEER Review Action Plan (5 days)</p>	
Partnership/Integrated Working	Effectiveness of partnership working in delivery of the City Plan (12 days)	
Procurement	<p>Testing of a sample of revenue procurement transactions (8 days)</p> <p>Testing of a sample of capital procurements (10 days)</p>	<p>Risk and assurance support to economic regeneration projects such as the development of the International Advanced Manufacturing Park, SSTC phase 3 and enterprise zones</p> <p>Financial Assessments of bidders – as part of the procurement process</p>

Corporate Risk Area	Internal Audit Work	Risk and Assurance Work
Relationship/Contract Management	Contract Monitoring arrangements for Sunderland Care and support Ltd (10 days) Contract Monitoring arrangements for Siglion (8 days) Contract Monitoring arrangements for Sunderland Homes (8 days)	
Legality		Risk and assurance support to economic regeneration projects such as the development of the International Advanced Manufacturing Park, SSTC phase 3 and enterprise zones
Risk Management		Refresh of the Strategic and Corporate risk Profiles in line with the City Plan Risk management support to senior managers as required throughout the year on service delivery and project management issues
Performance Reporting		
Strategic Financial Management		
Financial Reporting		
Financial Management	Main Accounting system (10 days) Treasury Management arrangements (10 days) BACS transaction testing (4 days) Payroll (15 days) Accounts Payable (20 days)	SAP optimisation project – implementation of new functionality to deliver efficiency savings

Corporate Risk Area	Internal Audit Work	Risk and Assurance Work
	Grants (33 days) EFA Funding Local Transport Capital Settlement - Capital Maintenance Local Transport Capital Settlement - Integrated Transport Local Transport Capital Settlement – National Productivity Investment Fund Nexus (Combined Authority) Pothole Action Fund Better Care Fund – DFG Northern Gateway 23 School audits	
Income Collection	Cash Receipting, compliance testing (5 days) Council Tax Setting and Billing (10 days) Cash Receipting and Periodic Income (5 days) Council Tax Liability (10 days) Business Rates Setting and Billing (10 days) Business Rates Liability (10 days)	
Capital Programme Management	Project Management Benefits Realisation, including capital funding (25 days)	Risk and assurance support to economic regeneration projects such as the development of the International Advanced Manufacturing Park, SSTC phase 3 and enterprise zones

Corporate Risk Area	Internal Audit Work	Risk and Assurance Work
HR Management	<p>HR – Effectiveness of the implementation of the new SAP procedures (12 days)</p> <p>Port - Effectiveness of the implementation of the restructure (15 days)</p> <p>Communications regarding organisational change (15 days)</p>	<p>Risk and assurance support for the update of procedures on SAP</p> <p>Risk and Assurance support for the Civic Centre Project</p>
Health and Safety		
ICT Infrastructure	Asset management in relation to ICT equipment (15 days)	Risk and Assurance support for the move to the Microsoft Cloud and Office 365
Cyber Security	<p>Continuing review of the Council's arrangements in relation to Cyber Security (5 days)</p> <p>Review of the security arrangements for the management of the Council's Mobile Devices (12 days)</p>	
Information Governance/Security	General Data Protection Regulations - compliance (5 days)	
Business Continuity Management	Review of the update of directorate business continuity plans following the Council restructure (10 days)	
Programme and Project Management	Project Management Benefits Realisation, including capital funding (25 days)	<p>Risk and assurance support for the update of procedures on SAP</p> <p>Risk and Assurance support for the Civic Centre Project</p> <p>Risk and assurance support to economic regeneration projects such as the development of the International Advanced Manufacturing Park, SSTC phase 3 and enterprise zones</p>

Corporate Risk Area	Internal Audit Work	Risk and Assurance Work
Asset Management		Risk and Assurance support for the Civic Centre Project
Anti-Fraud and Corruption	Transactions testing based on fraud risk assessment, including matches from the National Fraud Initiative	

Note: Given a piece of work can contribute towards more than one risk area, audits may be shown more than once above.

Detailed Coverage 2019/20 – LATC work (for information only)

Council Owned Companies	Internal Audit Work	Risk and Assurance Work
Sunderland Care and Support	Risk and Assurance Framework (10 days) Data Protection Officer Checks (3 days) Unit Costing (12 days) Compliance with financial procedures in establishments (25 days) Business Continuity - Telecare (12 days) Recruitment and DBS Checks (12 days)	
Together for Children	Troubled Families Grant Claim (10 days) Schools Financial Support Service (10 days) Performance Management - Data Quality (8 days) Purchase cards (15 days) Achievement of cost savings (18 days) Legal services (10 days)	
Sunderland Homes	Governance Arrangements (12 days) Procurement and Contract Management (12 days)	
Siglion	To be determined	Risk support for the establishment of the new arrangements

Appendix 3

Internal Audit - Overall Objectives, Key Performance Indicators (KPI's) and Targets for 2019/20		
Efficiency and Effectiveness		
Objectives	KPI's	Targets
1) To ensure the service provided is effective and efficient.	1) Complete sufficient audit work to provide an opinion on the corporate risk areas	1) All corporate risk areas covered over a 3 year period
	2) Percentage of draft reports issued within 15 days of the end of fieldwork	2) 90%
	3) Percentage of audits completed by the target date	3) 85%
Quality		
Objectives	KPI's	Targets
1) To maintain an effective system of Quality Assurance	1) Opinion of External Auditor	1) Satisfactory opinion
2) To ensure recommendations made by the service are agreed and implemented	2) Percentage of agreed high, significant and medium risk internal audit recommendations which are implemented	2) 100% for high and significant. 90% for medium risk
Client Satisfaction		
Objectives	KPI's	Targets
1) To ensure that clients are satisfied with the service and consider it to be good quality	1) Results of Post Audit Questionnaires	1) Overall average score of better than 1.5 (where 1=Good and 4=Poor)
	2) Results of other Questionnaires	2) Results classed as 'Good'
	3) Number of Complaints / Compliments	3) No target – actual numbers will be reported

AUDIT AND GOVERNANCE COMMITTEE

26 April 2019

REGULATION OF INVESTIGATORY POWERS ACT

**Joint report of the Director of People, Communications and Partnerships and
Assistant Director of Law and Governance**

1. Purpose of Report

- 1.1 The purpose of this report is to seek comments of the Committee on the Council's Guidance to Staff on the Regulation of Investigatory Powers Act 2000 ('RIPA').

2. Background

- 2.1 The Act regulates public services, including local authorities, in their conduct of directed surveillance and use of covert human intelligence sources. Members may recall that there was at one time a degree of controversy reported in the media regarding exercise of local authority powers under RIPA, e.g. in relation to surveillance of school attendance.
- 2.2 Subsequent changes introduced by the Protection of Freedoms Act 2012 amended RIPA to make local authority authorisations subject to judicial approval. The amendment means that all authorisations must be made in writing and require JP approval, and local authorities are no longer able to orally authorise the use of RIPA techniques.
- 2.3 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources)(Amendment) Order 2012 introduced a new 'serious crime test' meaning that local authorities can only authorise use of directed surveillance to prevent or detect criminal offences that would be punishable by a maximum term of at least 6 months imprisonment. Local authorities do, though, also remain able to authorise surveillance in relation to offences concerning the underage sale of alcohol, tobacco and nicotine-inhaling products.
- 2.4 The RIPA regime applies only where investigations cannot be made without covert surveillance activity. The Council has made maximum use of overt investigation techniques, as is recommended best practice and has not authorised covert activity under RIPA powers since 2012. The last authorisation was granted on 31/10/2012 – the last in a series involving the investigation of

fraudulent insurance claims against the Council. Six out of the nine authorisations granted for the whole year were in support of this investigation.

3. Guidance for Staff

- 3.1 The guidance has been updated to reflect the changes in council structures and responsibilities which came into effect from 1 April 2019.
- 3.2 The guidance document takes account of the requirements of the most recent Codes of Practice produced by the Secretary of State.
- 3.3 Changes to the Codes include additional guidance on;
 - Internet material and investigations, social media and internet research.
 - The role of the Senior Responsible Officer.
 - Use of tracking devices, drones etc.
 - CCTV and ANPR.
 - Expanded guidance on necessity and proportionality.
- 3.4 The updated guidance document is attached for Members' review at Appendix A.

4. Recommendations

- 4.1 The Committee is asked to consider and provide its comments on the report and guidance.



**Guidance to Staff
on the
Regulation of Investigatory
Powers Act 2000**

**Directed Surveillance and Use of Covert
Human Intelligence Sources**

INDEX

1. Introduction
2. Directed Surveillance
3. Covert use of Human Intelligence Source (CHIS – also known as a “source”).
4. Social Media & The Internet
5. Authorisation, Renewals and Duration
6. Central Register of Authorisations
7. Codes of Practice
8. Benefits of Obtaining Authorisation under the 2000 Act
9. Scrutiny and Tribunal

Appendix 1 Definitions from the 2000 Act

Appendix 2 Source Records Regulations.

Appendix 3 Forms

- Appendix 3(a) Application/Authorisation of a Directed Surveillance
3(b) Review/Authorisation of a Directed Surveillance
3(c) Renewal/Authorisation of a Renewal of a Directed Surveillance
3(d) Cancellation/Authorisation of a Directed Surveillance
3(e) Home Office Guidance: Magistrates' Approval Process
3(f) Directed Surveillance Equipment: deployment record.
3(g) Application/Authorisation of a CHIS
3(h) Review/Authorisation of a CHIS
3(i) Renewal/Authorisation of a CHIS
3(d) Cancellation/Authorisation of a CHIS

PROCEDURE SUMMARY 2019

Directed Surveillance activities undertaken by, or on behalf of, the Council must be authorised by the relevant senior officers below. The same applies where the Council proposes to make use of a covert human intelligence source. Authorised applications must then be approved by a Magistrate before the activity becomes lawful under RIPA. (see section 5.1.1.3)

The Central Register of Authorisations is held by the RIPA Coordinating Officer (RCO) (see Section 5).

Where time allows, a draft of every authorisation, review, renewal and cancellation should be provided to the RCO, for review and comment, before authorisation is granted.

Every authorisation, review, renewal and cancellation made must be forwarded promptly to the RCO for inclusion on the Central Register. (see Section 5 Authorisations, Renewals and Duration).

Authorising and Investigating Officers are required to identify and log **all** surveillance equipment deployed and / or used in the completion of a given directed surveillance activity. A record of equipment deployed and / or used should be kept in the investigation file in question and a copy passed to the DPO for addition to the RIPA Central Register.

Forms for authorisation, review, renewal and cancellation are available at Appendix 3 (LINK to forms) and are to be used in the place of previous forms. No use is to be made of outdated forms previously issued, and any remaining stock of these is to be destroyed.

RELEVANT SENIOR OFFICERS

SENIOR RESPONSIBLE OFFICER (SRO)

<u>Name</u>	<u>Job Title</u>	<u>Directorate</u>

AUTHORISING OFFICERS (AO)

<u>Name</u>	<u>Job Title</u>	<u>Directorate</u>

RIPA COORDINATING OFFICER (RCO)

<u>Name</u>	<u>Job Title</u>	<u>Directorate</u>

NB:

- Only the Chief Executive or, in his absence, the person acting as Head of Paid Service, can authorise use of a juvenile source.
- Only the Chief Executive or, in his absence, the person acting as Head of Paid Service, have the power to authorise directed surveillance, which involves the covert filming of any officer.
- This list is to be maintained and notification of any change of relevant personnel given to the RCO to allow the list to be updated within 7 days.

1. **Introduction**

- 1.1 This Guidance addresses the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) which regulates any covert investigations carried out by a number of public bodies, including local authorities, and its codes of practice. The Act was introduced to ensure that individuals' human rights are protected while also ensuring that the UK's law enforcement and security agencies have the powers they need to do their job effectively. It applies in relation to the covert surveillance of individuals, including recording, and the use of covert human intelligence sources, including undercover officers, agents and informants.
- 1.2 This guidance support's the Council's commitment to work within the RIPA framework with regard to the authorisation of both Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS), to carry out investigations in a fair and equitable manner that respects the human rights of individuals.
- 1.3 The purpose of this guidance is to;
- Explain the scope of RIPA and the circumstances where it applies
 - Provide guidance on the procedures to be followed in respect of authorisations, renewals and cancellations.
- 1.4 The overt use of CCTV systems is covered by a separate Council policy statement and code of practice.
- 1.5 This guidance provides officers with an overview of their responsibilities. It is not a comprehensive statement of the requirements that must be observed and all officers involved in directed surveillance or CHIS activity must familiarise themselves with the detailed guidance provided in the relevant Codes of Conduct and obtain advice as appropriate. Any service using covert operations is expected to comply with the authorisation procedures in accordance with the legislation and the Codes of Practice produced by the Home Office. This guidance gives an overview only of those aspects of RIPA most pertinent to the council's operations. Officers considering the use of technologies, including recording telephone calls and use of emerging technologies such as drones for aerial surveillance, should consult the relevant sections of the codes of practice and always seek advice on whether authorisation is required.
- The Codes of Practice are available online at;
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>.
- 1.6 The Act requires that when the Council undertakes "directed surveillance" or uses a "Covert Human Intelligence Source" ("a source") these activities are authorised by an officer with delegated powers, and only when the relevant criteria are satisfied. The list of Authorising Officers is at page 3.

- 1.7 Authorisation under RIPA gives lawful authority to carry out surveillance and the use of a source. Obtaining authorisation helps to protect the Council and its officers from complaints of interference with the rights protected by Article 8 (1) of the European Convention on Human Rights which is enshrined in English law through the Human Rights Act 1998. This is because the interference with the private life of citizens will be “in accordance with the law”. Provided the activities undertaken are also “reasonable and proportionate” they will not be in contravention of Human Rights legislation.
- 1.9 The Council can only authorise covert activity under RIPA for the purpose of an investigation that is necessary for the purpose of preventing or detecting crime that is punishable by a maximum tariff of at least 6 months imprisonment, or that is related to the underage sale of alcohol, tobacco or nicotine inhaling products.
- 1.10 The Council cannot authorise “Intrusive Surveillance”. Intrusive Surveillance is described at paragraph 2.3 to 2.5 inclusive.
- 1.11 Neither can the Council or any Council Officer authorise entry on property.
- 1.12 Deciding when authorisation is required involves making a judgment. The Codes of Practice provide useful examples that should be referred to. For example, where intelligence suggests that underage sales of alcohol are taking place and trading standards officer might then visit the shop in question and made a test purchase as part of their enforcement functions. Where this does not involve the forming of a relationship with the shopkeeper or another person, and does not involve the systematic surveillance of an individual, it forms a part of the everyday functions of law enforcement or other public bodies and will not usually be regulated under RIPA. Conversely where systematic covert surveillance is undertaken then an authorisation will be required.
- Where, for example, investigators knock on a suspect’s door to ascertain whether they do in fact live at that address, then provided they identify themselves and the purpose of the call no authorisation is required since the approach is overt and not covert.
- Neither do the requirements of RIPA or this guidance cover 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, and the systems are clearly signposted. Covert use of CCTV as part of a planned operation, however, will require authorisation.
- If you are in doubt, seek the advice of an Authorising Officer. If they are in doubt they should contact the RIPA Coordinating Officer to seek specialist advice
- 1.13 Only the Head of Paid Service or, in his absence, the person acting as Head of Paid Service, can authorise use of a juvenile source.

Only the Chief Executive and Assistant Director of Law & Governance have the power to authorise directed surveillance, which involves the covert filming of any officer.

- 1.14 The RCO will maintain a Central Record of all authorisations for covert surveillance, reviews, renewals and cancellations, and monitor them to ensure uniformity of practice. The SRO will also examine the Central Record on a routine basis, to ensure compliance.
- 1.14 Each Directorate is to retain its authorisations, reviews, renewals and cancellations on a secured and controlled centralised file, and ensure a copy is put on the individual case file,
The Authorising Officer will, within 7 days of authorisation, forward a further copy to the RCO for the Central Record, in a sealed envelope marked “confidential”. Authorising Officers will ensure that a copy of each authorisation, renewal and cancellation is forwarded promptly.

1.15 Roles and Responsibilities

1.15.1 Senior Responsible Officer (SRO)

The SRO is available to advise on procedure and is responsible for:

- the integrity of the process in place within the Council to authorise directed and intrusive surveillance and interference with property or wireless telegraphy and for the management of CHIS;
- compliance with Part II of the 2000 Act, Part III of the 1997 Act, section 5 of the 1994 Act and with the Codes of Practice;
- Oversight of the reporting of errors to the Investigatory Powers Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- engagement with the Investigatory Powers Commissioner and inspectors who support the Commissioner when they conduct their inspections;
- overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner, and;
- Ensuring that all authorising officers are of an appropriate standard, addressing any recommendations and concerns in the inspection reports prepared by the Investigatory Powers Commissioner.

1.15.2 Authorising Officers (AO)

The role of the Authorising Officers is to authorise, review, renew and cancel directed surveillance.

Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved. Where an Authorising Officer authorises such an investigation or operation the Central Record of Authorisations should highlight this, and it should be brought to the attention of a Commissioner or Inspector during their next inspection.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 prescribes that for local authorities the Authorising Officer shall be a Director, Assistant Director, Service Manager or equivalent as distinct from the officer responsible for the conduct of an investigation.

A designated Authorising Officer must qualify both by rank and by competence. Officers who wish to be designated must have been trained to an appropriate level so as to have an understanding of the Act and the requirements that must be satisfied before an authorisation can be granted.

Authorisations must be given in writing by the Authorising Officer. They must complete the relevant section on the application form. The Authorising Officer must believe the surveillance is proportionate to what it seeks to achieve, taking into account the collateral intrusion issues, and that the level of the surveillance is appropriate to achieve the objectives.

If any equipment such as covert cameras, video cameras is to be used, the Authorising Officer should know the capability of the equipment before Authorising its use. This will have an impact on collateral intrusion, necessity and proportionality. They should not rubber-stamp a request. It is important that they consider all the facts to justify their decision. They may be required to justify their actions in a court of law or some other tribunal.

Authorising Officers are also responsible for carrying out regular reviews of applications which they have authorised and also for the cancellation of authorisations.

Authorised Officers must acquaint themselves with the relevant Codes of Practice issued by the Home Office regarding RIPA and guidance provided by the Investigatory Powers Commissioner (IPC).

1.15.3 Investigating Officers (IO)

Investigating Officers should consider carefully whether there is a need to undertake DS or CHIS before they seek authorisation. Investigating Officers need first to consider whether they can obtain the information by using techniques other than covert surveillance. There is nothing that prevents an Investigating Officer discussing the issue of surveillance beforehand.

IOs should then discuss investigative requirements with line managers, Authorising Officers and / or Legal Services (as necessary) to determine whether RIPA authorisation is a necessary step to take in pursuing the investigation.

1.15.4 RIPA Co-Ordinating Officer (RCO)

The RIPA Co-Ordinating Officer will coordinate advice and guidance on RIPA issues and maintain the Council's Central Register of Authorisations in accordance with relevant guidance and the Codes of Conduct.

2. Directed Surveillance

NOTE: you must seek RIPA authorisation before undertaking "directed surveillance"

2.1 What is meant by Surveillance?

"Surveillance" includes;

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

For RIPA purposes surveillance does not include:

- a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source; (for example, if you confront a neighbour with evidence obtained by a professional witness tenant in an attempt to shame them into better behaviour).
- b) the use of a covert human intelligence source for so obtaining or recording information, or any entry on or interference with property or wireless telegraphy as would be unlawful unless authorised under warrants for the intelligence service legislation or powers of police and customs officers.

2.2 When is surveillance directed?

Surveillance is 'Directed' if it is covert, but not intrusive and is undertaken:

- a) for the purposes of a specific investigation or a specific operation.
- b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not this is specifically identified for the purposes of the investigation or operation); and
- c) is carried out for reasons other than an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

2.3 When is surveillance intrusive?

NOTE: The Council is not authorised to carry out intrusive surveillance. Surveillance becomes intrusive if the covert surveillance is:

- a) carried out in relation to anything taking place on any “residential premises” or in any “private vehicle”; and
- b) involves the presence of an individual or surveillance device on the premises or in the vehicle or is carried out by means of a surveillance device; or
- c) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle but is carried out without that device being present on the premises or in the vehicle, where the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

If the device is not on the premises or in the vehicle, it is only intrusive surveillance if it consistently produces information of the same quality as if it were.

Commercial premises and vehicles are therefore excluded from intrusive surveillance.

Surveillance relating to legal consultations and/or carried out in courts, police stations or legal adviser’s offices is also considered intrusive.

2.4 Does RIPA apply?

Before any officer of the Council undertakes any surveillance of any individual or individuals they need to assess whether the activity comes within the 2000 Act. In order to do this the following key questions need to be asked.

2.4.1 Is the surveillance covert?

Surveillance is covert if it is carried out in a manner (calculated) to ensure that subjects of it are unaware it is or may be taking place.

If activities are open and not hidden from the subjects of an investigation, the 2000 Act framework does not apply. This includes the overt use of CCTV and ANPR systems.

2.4.2 Is it for the purposes of a specific investigation or a specific operation?

For example, are Town Centre CCTV cameras which are readily visible to anyone walking down the street covered?

The answer is; not if their usage is to monitor the general activities of what is happening in the street. However, if that usage changes, the 2000 Act may apply.

For example, if the CCTV cameras are targeting a particular known offender, and we have been asked to assist law enforcement agencies in tracking his activities, that has turned into a directed surveillance operation, and will require authorisation.

2.4.3 **Is it in such a manner that it is likely to result in the obtaining of private information about a person?**

“Private Information” is any information relating to a person’s private or family life. As a result private information may include any aspect of a person’s private or personal relationship with others, such as family and professional or business relationships. By contrast, information that is publicly available, for example through books, newspapers, TV, websites, business publications etc is not considered private.

For example, if part of an investigation is to observe an individual’s home to determine their comings and goings then that would be covered. Private information is not, however, confined to information within the home. The law in this area is developing and the definition may include information gathered from observations made in a public, work or professional setting. Advice should be sought when considering surveillance that may impact on an individual in a situation where they may have an expectation of privacy, for example in a situation where a member of the public may have a reasonable expectation of privacy when in conversation on the street or on a bus, or where a member of staff may have a reasonable expectation of privacy within the workplace.

If it is likely that observations will not result in the obtaining of private information about a person, then it is outside the RIPA framework.

2.4.4 **What if we need to act immediately?**

You need to obtain authorisation for surveillance in every case with the exception of circumstances where it is a necessary immediate response to an event or circumstances where it is not reasonably practicable to get authorisation.

This is applicable where action is taken as an immediate response to something happening during the course of an observer’s work which is unforeseeable.

However, if as a result of an immediate response, a specific investigation subsequently takes place that brings it within the 2000 Act framework.

3. Covert use of Human Intelligence Source (CHIS – also known as a “source”)

3.1 A person is a source if:

- a) s/he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c).
- b) s/he covertly uses such a relationship to obtain information or provide access to any information to another person; or
- c) s/he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

3.2 A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose; and

3.3 This clearly covers the use of professional witnesses to obtain information and evidence. For example, it will include professional witnesses retained to obtain information and evidence against alleged nuisance perpetrators.

It may also cover “entrapment cases” if the foregoing criteria were established. For example, Licensing Officers or Police Officers who at their instigation pretend to be fares to catch the unwary private hire vehicle doing unlicensed pick-ups, but only if, in doing so, they develop a degree of relationship with the driver, that goes beyond the mere transaction.

An officer entering a shop and making a test purchase does not require an authorisation, unless a degree of relationship is built up with the shopkeeper, for example where a number of visits are made without the officer identifying him/herself as an investigator. However, where the test purchase is to be made by another person (for example a juvenile, where the investigation is directed at establishing whether the shopkeeper observes the law regarding under age sales) then the covert attendance of an officer to observe the transaction does require authorisation, if it fulfils the criteria for directed surveillance.

3.4 Officers should be particularly alert to the potential for a CHIS relationship to arise where, for example, they receive information from a member of the public who is asked, or who indicates, they intend to continue to monitor a

situation e.g. through the covert manipulation of an existing relationship. CHIS relationship arises at the point the relationship is formed or maintained in order to supply information. This includes situations where the officer does not request ongoing covert activity but envisages it may take place unrequested.

If in doubt officers should seek authorisation.

4. Social Media and the Internet

Any officer considering internet / social media investigation of individuals must first consider the detailed guidance provided in the codes of practice and consult with their service manager and the RIPA Co-ordinating Officer.

- 4.1 The Internet can be a powerful tool supporting Council investigations – websites and social media allow ready access to information. As a public body, the Council needs to balance the power of the internet with our obligations to remain within the law.

4.2 Basic Principles

While it is possible to obtain significant information about individuals without leaving the office, the same principles apply as would in the case of information we might gather by following, photographing or filming individuals. Officers should view the internet in the same way as they would view information received directly from a complainant, a witness or a suspect in 'the real world'.

4.2.1 Initial Google Searches

A Google search for an individual may be thought of as an initial 'drive-by' observation in an investigation. It is broadly equivalent to an officer responding to an initial complaint or tip-off and visiting a particular location to establish 'the lay of the land'. It doesn't gather significant, detailed or private information, but it is a starting point that allows us to decide if more detailed and directed investigation is required and / or possible.

An initial Google (or similar) search is not covert or directed surveillance and is unlikely to require RIPA authorisation.

Details of any such searches and their results should, however, be recorded in any notes or records of a given case.

4.2.2 Detailed Google Searches

While initial Google search results are equivalent to an initial drive-by in a case, if this is continued covertly and becomes a focussed search, likely to result in the obtaining of private information about a person or group the activity becomes 'directed' within the definition of Directed Surveillance.

A shift into the definition of Directed Surveillance is significantly more likely when an initial google search produces social media links for a person under investigation.

4.2.3 Social Media information

An initial look on social media platforms such as Facebook, LinkedIn, Twitter and others can usually be viewed in the same way as an initial google search: that is, an officer is looking to see if a particular person has an online presence– the officer is simply looking to see if there are any resources that might provide lines of enquiry in future, more detailed, investigation.

However, returning to look at / into a person's online presence in more detail in order to monitor it or extract information relevant to an investigation is likely to require authorisation and advice must be taken on whether authorisation is required before proceeding.

Anyone cultivating an online relationship with an investigation subject (for example, a 'friend request' or similar) is likely to be moving into the scope of CHIS investigations, and advice must be taken on whether authorisation is required before proceeding.

5 **Authorisations, renewals and duration**

5.1 **The Conditions for Authorisation**

5.1.1 **Directed Surveillance**

5.1.1.1 For directed surveillance no Council officer shall grant an authorisation for the carrying out of directed surveillance unless s/he believes:

- a) that an authorisation is necessary for the purpose of preventing or detecting crime or of preventing disorder; and
- b) the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

Note that proportionality requires –

- i) that the proposed covert surveillance is proportional to the mischief under investigation
- ii) that it is proportional to degree of anticipated intrusion on the target and others, and
- iii) it is the only option – other overt means having been considered and (reasonably) discounted.

5.1.1.2 The onus is therefore on the person authorising such surveillance to satisfy themselves it is:

- a) necessary; i.e. that all other available options have been weighed up and found to be unsatisfactory. Factors to consider include consideration of the aims and objectives of the surveillance exercise (which must be for the purpose of preventing and detecting crime or of preventing disorder), whether there are alternative courses of action, or enquiry, whether the information to be obtained is likely to significantly benefit the enquiry or chance of prosecution. Authorising officers must remind themselves that surveillance is an intrusion into a person's privacy and should only be considered as a last resort.
- b) is proportionate to its aim; Authorising Officers must evaluate the size and scope of an application against the gravity and extent of the perceived mischief; they must be satisfied that methods proposed will cause the least possible intrusion on a target or others; they must be satisfied that any operation is an appropriate use of RIPA provisions in preference to other available options. If in doubt as to the proportionality of the proposed surveillance Authorising Officers must contact the RCO to seek advice.

In order to ensure that authorising officers have sufficient information in order to make an informed decision it is important that detailed records are maintained using the forms in the Appendix 3. Detailed information should be given in applications regarding necessity and proportionality, sufficient for an authorising officer to make an informed decision. When completing the forms officers should try to cover the principles thoroughly but without repeating information unnecessarily.

When completing an application, the case must be presented in a fair and balanced way and present any relevant information that weakens the case for a grant of authorisation.

The authorising officer must take account of the risks of collateral intrusion and identify the measures to be taken to mitigate these, if it is considered proportionate to proceed.

An authorisation must be wide enough to cover all the measures required, but no wider than is necessary to achieve the objectives of the surveillance. This will permit effective monitoring of what is done against what is authorised.

- 5.1.1.3 Authorising Officers must obtain Magistrates' approval of the authorisation before the activity can proceed. Home Office Guidance on the Magistrates' Approval Process is provided at Appendix 2(e), the brief process being as follows -

- a) The first stage will be to apply for an internal authorisation in the usual way. Once it has been granted, the local authority will need to contact the local Magistrates Court to arrange a hearing.

b) The hearing is a 'legal proceeding' and therefore local authority officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP. It is envisaged that the investigating officer will be best suited to fulfill this role. The local authority may consider it appropriate for the SPoC (Single Point of Contact) to attend for applications involving communications data.

c) The local authority will provide the JP with a copy of the original RIPA authorisation or notice. This forms the basis of the application to the JP and should contain all information that is relied upon. In addition, the local authority will provide the JP with two copies of a partially completed judicial application/order form (which is included in the Home Office Guidance).

d) The hearing will be in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters. The forms and supporting papers must provide sufficient information by themselves to make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.

e) The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed or the notice was given or renewed, there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate. He/She will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the person who granted the authorisation or gave the notice was an appropriate designated person within the local authority and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met (see below).

f) The order section of the above-mentioned form will be completed by the JP and will be the official record of the his/her decision. The local authority will need to retain a copy of the form after it has been signed by the JP.

The JP may decide to –

- *Approve the grant or renewal of an authorisation or notice*

The grant or renewal of the RIPA authorisation or notice will then take effect and the local authority may proceed to use the technique in that particular case. The local authority will need to provide a copy of the order to the

communications service provider (CSP), via the SPoC (Single Point of Contact), for all CD requests.

- *Refuse to approve the grant or renewal of an authorisation or notice*

The RIPA authorisation or notice will not take effect and the local authority may not use the technique in that case. Where an application has been refused the local authority may wish to consider the reasons for that refusal. For example, a technical error in the form may be remedied without the local authority going through the internal authorisation process again. The local authority may then wish to reapply for judicial approval once those steps have been taken.

- *Refuse to approve the grant or renewal and quash the authorisation or notice*

This applies where a Magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice and decides to quash the original authorisation or notice. The court must not exercise its power to quash that authorisation or notice unless the applicant has had at least two business days from the date of the refusal in which to make representations.

Appeals

A local authority may only appeal a JP's decision on a point of law by making an application for judicial review in the High Court. The Investigatory Powers Tribunal (IPT) will continue to investigate complaints by individuals about the use of RIPA techniques by public bodies, including local authorities. If, following a complaint to them, the IPT finds fault with a RIPA authorisation or notice it has the power to quash the JP's order which approved the grant or renewal of the authorisation or notice. It can also award damages if it believes that an individual's human rights have been violated by the public authority doing the surveillance.

- 5.1.1.4 Investigating and Authorising Officers must record any **surveillance equipment** deployed and / or used in pursuit of a given authorisation using the form at Appendix 3(f)

5.2 Covert Use of Human Intelligence Sources

- 5.2.1 The same principles of necessity and proportionality apply, as with Directed Surveillance (see paragraph 5.1.1.2 above).
- 5.2.2 The conduct so authorised is any conduct that:

- a) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a covert human intelligence source, as are specified or described in the authorisation.
- b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and
- c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

5.2.3 In order to ensure that authorising officers have sufficient information to make an informed decision it is important that detailed records are maintained. The forms in the Appendices must be completed and the requirements of the Source Records Regulations addressed (see Appendix 2). Detailed information should be given in applications regarding necessity and proportionality, sufficient for an authorising officer to make an informed decision regarding the tests set out at para 5.1.1.2.

An authorisation must be wide enough to cover all the measures required, but no wider than is necessary to achieve the objectives of the surveillance. This will permit effective monitoring of what is done against what is authorised.

All authorisations **MUST** include the appointment of a Controller and Handler to manage the CHIS operation, keep appropriate records and ensure the safety of the Source, in accordance with the Home Office Code of Practice on Covert Human Intelligence Sources. Controller and Handler must be adequately trained in CHIS management and handling, and cannot be the same officer.

5.2.4 Although it is possible to combine two authorisations in one form the Council's practice is for separate forms to be completed to maintain the distinction between Directed Surveillance and the use of a source.

5.2.5 The Code of Practice makes it clear that the 2000 Act can interfere with Article 8 of the Human Rights Act 1998, where information about the private or family life of another person is obtained covertly.

5.2.6 There is no geographical limit on a source – authorisations can be obtained both in and out of the UK.

5.2.7 Nothing in the 2000 Act prevents material obtained from the use or conduct of the source being used in evidence in Court proceedings. Existing Court discretion and procedures can protect, where appropriate, the disclosure of the source's identity.

5.2.8 The Authorising Officer, Controller and Handler must consider the safety and welfare of that source, and the foreseeable consequences to others of

the tasks they are asked to carry out. A risk assessment should be carried out before authorisation is given. Consideration of the safety and welfare of the source, even after cancellation of the authorisation, should also be considered.

- 5.2.9 In accordance with the Source Records Regulations, accurate and proper recording keeping should be kept about the source and tasks undertaken although the confidentiality of the source must be maintained.
- 5.2.10 The Authorising Officer must ensure that satisfactory arrangements exist for the management of the source in accordance with paragraph 4.2.3 above.
- 5.2.11 A source may, in the context of an authorised operation, infiltrate existing criminal activity, or be a party to the commission of criminal offences, within the limits recognised by law. A source who acts beyond these limits will be at risk of prosecution. The need to protect the source cannot alter this principle.
- 5.2.12 Before authorising the use or conduct of a source, the authorising officer should believe that the conduct/use including the likely degree of intrusion into the privacy of those potentially affected is proportionate to what the use or conduct of the source seeks to achieve. He should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the operation or investigation (collateral intrusion). Measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation.
- 5.2.13 Particular care should be taken in circumstances where people would expect a high degree of privacy or where, as a consequence of the authorisation, "confidential material" is likely to be obtained.
- 5.2.14 Consideration should also be given to any adverse impact on community confidence that may result from the use or conduct of a source or information obtained from that source.
- 5.2.15 Additionally, the Authorising Officer should make an assessment of any risk to a source in carrying out the conduct in the proposed authorisation.

5.2.16 **Cultivation of a source**

Cultivation is the process of developing a relationship with a potential source, with the intention of:

- Covertly making a judgement as to his/her likely value as a source of information;
- Covertly determining whether and, if so, the best way in which to propose to the subject that he/she become a source.

- 5.2.17 It may be necessary to infringe the personal privacy of the potential source in the process of cultivation. In such cases, authorisation is needed for the

cultivation process itself, as constituting the conduct (by the person undertaking the cultivation) of a source.

5.2.18 **Use and conduct of a source**

Authorisation for the use and conduct of a source is required prior to any tasking. Tasking is an assignment given to the source, asking him or her to obtain information, to provide access to information or to otherwise act, incidentally, for the benefit of the relevant public authority. It may involve the source infiltrating existing criminal activity in order to obtain that information. It may include the source using an internet profile to establish or maintain a relationship.

5.2.19 **Vulnerable individuals**

Vulnerable individuals, such as the mentally impaired, may only be authorised to act as source by the Head of Paid Service and in the most exceptional circumstances.

5.2.20 **Juvenile sources**

Special safeguards also apply to the authorisation for the use or conduct of juvenile sources; that is sources under the age of 18 years. Only the Head of Paid Service, or, in his absence, the person acting as Head of Paid Service may authorise the use of a juvenile source. On no occasion should the use or conduct of a source under 16 years of age to give information against his or her parents be authorised. In other cases, authorisations should not be granted unless:

- A risk assessment has been undertaken as part of the application to deploy a juvenile source, covering the physical dangers and the psychological aspects of his or her deployment;
- The risk assessment has been considered by the authorising officer and he has satisfied himself that any risks identified in it have been properly explained; and
- The Authorising Officer has given particular consideration as to whether the juvenile is to be asked to get information from a relative, guardian or any other person who has for the time being assumed responsibility for his welfare.

As stated at 3.2 a juvenile making a test purchase will not be a CHIS in circumstances where no relationship is formed with the seller.

5.2.21 In addition juvenile authorisations should not be granted unless the Authorising Officer believes that arrangements exist which will ensure that there will at all times be a person who has responsibility for ensuring that an appropriate adult will be present between any meetings between the authority and a source under 16 years of age.

5.3 **Summary of Factors to Consider**

- 5.3.1 Any person giving an authorisation should first satisfy him/herself that the authorisation is necessary on particular grounds and that the surveillance is proportionate to what it seeks to achieve. Authorising officers should specify in their own words what they are authorising. They must direct their mind to the circumstances of the individual case. Authorising officers must record the time of the commencement of the authorisation.
- 5.3.2 Particular consideration should be given to collateral intrusion on or interference with the privacy of persons other than the subject(s) of surveillance.
- 5.3.3 An application of an authorisation should include an assessment of the risk of any collateral intrusion or interference. This will be taken into account by the authorising officer, particularly when considering the proportionality of the surveillance.
- 5.3.4 Those carrying out the covert surveillance should inform the authorising officer if the operation/investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation in some other way. In some cases the original authorisation may not be sufficient and consideration should be given to whether a separate authorisation is required.
- 5.3.5 Any person giving an authorisation will also need to be aware of any particular sensitivities in the local community where the surveillance is taking place or of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance.
- 5.3.6 The fullest consideration should be given in cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance near his/her home, or where there are special sensitivities.

5.3.7 **Seal of Confession**

No operations will be undertaken in circumstances covered by the Seal of the Confession. In addition, where they are satisfied that a Minister of Religion is not him/herself involved in the matter under investigation, and they believe that surveillance will lead to them intruding on spiritual counselling between the Minister and a member of his/her faith, they should, in preparing the case for authorisation, given serious consideration to discussing the matter first with a relevant senior representative of the religious authority. The views of the senior representative would be included in the request for authorisation. In this respect, spiritual counselling is defined as conversations with a Minister of Religion acting in his/her official capacity which does not amount to a sacramental confession, but where the person being counselled is seeking or the

Minister is imparting forgiveness, or absolution of conscience with the authority of the Divine Being of their faith.

5.3.8 **Confidential Material**

RIPA does not provide any special protection for 'confidential material' (see the definitions in Appendix 1). Nevertheless, such material is particularly sensitive, and is subject to additional safeguards under the Home Office code. In cases where the likely consequence of the conduct of a source would be for any person to acquire knowledge of confidential material, the deployment of the source should be subject to special authorisation by a Chief Officer or Deputy Chief Officer.

5.3.9 In general, any application for an authorisation which is likely to result in the acquisition of confidential material should include an assessment of how likely it is that confidential material will be acquired. Special care should be taken where the target of the investigation is likely to be involved in handling confidential material. Such applications should only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.

5.3.10 The following general principles apply to confidential material acquired under Part II authorisations: -

- Those handling material from such operations should be alert to anything which may fall within the definition of confidential material. Where there is doubt as to whether the material is confidential, advice should be sought from a legal adviser before further dissemination takes place;
- Confidential material should not be retained or copied unless it is necessary for a specified purpose;
- Confidential material should be disseminated only where an appropriate officer (having sought advice from a legal adviser) is satisfied that it is necessary for a specific purpose;
- The retention or dissemination of such information should be accompanied by a clear warning of its confidential nature. It should be safeguarded by taking reasonable steps to ensure that there is no possibility of it becoming available, or its content being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.
- Confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

5.3.11 **Combined authorisations**

In cases of joint working i.e. with other agencies on the same operation, authority for directed surveillance by the Housing Benefit Investigator must be obtained from the LA authorising officers. Authority cannot be granted by Benefits Agency authorising officers for the actions of LA staff and vice versa.

- 5.3.12 Although it is possible to combine two authorisations in one form the Council's practice is for separate forms to be completed to maintain the distinction between Directed Surveillance and the use of a source.

5.4 Review

- 5.4.1 Authorising Officers should ensure regular review of each authorisation. Reviews should take place at an interval of no more than 28 days, or earlier in the case of surveillance operation involving particularly sensitive issues, such as the obtaining of confidential information, or high risk of collateral intrusion. Where a surveillance operation is anticipated to be of shorter duration, arrangements should be made for earlier review. On each review the Authorising Officer shall consider whether the authorisation should remain in place. (See 4.3.8 to identify AO in cases involving confidential information)
- 5.4.2 The review should also include consideration of; developments since the authorisation was given, the number of days on which surveillance has been carried out, whether the surveillance has achieved its objectives, whether amendments are required to the authorisation.
- 5.4.3 Authorising Officers reviewing an authorisation which is not to be cancelled shall ensure the record is updated appropriately.

5.6 Renewals

- 5.6.1 Authorisations lapse, if not renewed:
- within 72 hours if either granted or renewed orally, (or by a person whose authorisation was confined to urgent cases) beginning with the time of the last grant or renewal, or
 - 4 months, if it is for the conduct or use of a juvenile as a covert human intelligence source, or
 - 12 months – if in writing/non-urgent – from date of last renewal if it is for the conduct or use of a covert human intelligence source or
 - in all other cases (i.e. directed surveillance) 3 months from the date of their grant or latest renewal
- 5.6.2 An authorisation can be renewed at any time before it ceases to have effect by any person entitled to grant a new authorisation in the same terms.

However, for the conduct of a covert human intelligence source, a person should not renew unless a review has been carried out and that person has

considered the results of the review when deciding to renew or not. A review must cover what use has been made of the source, the tasks given to them and information obtained.

5.7 Handling and disclosure of product

- 5.7.1 Authorising officers are reminded of the guidance relating to the retention and destruction of confidential material as described in paragraph 4.3.10 above.
- 5.7.2 Authorising officers are responsible for ensuring that authorisations undergo timely reviews and are cancelled promptly after directed surveillance activity is no longer necessary.
- 5.7.3 Authorised officers must ensure that copies of each authorisation are sent to the IGT as described in paragraph 5 below.
- 5.7.4 Applications for directed surveillance are to be securely retained by the authorising officer, for a period of 5 years. Where it is believed that the records could be relevant to pending or future criminal proceedings, they should be retained for a suitable further period, commensurate to any subsequent review. Once the investigation is closed (bearing in mind cases may be lodged sometime after the initial work) the records held (save of course for the copy of the Authorisation itself) by the Department should be disposed of in an appropriate manner (e.g. shredded).
- 5.7.5 Authorising officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice in the handling and storage of material. Where material is obtained by surveillance, which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, it should be destroyed immediately. Consideration of whether or not unrelated material should be destroyed is the responsibility of the authorising officer. Where enforcement action is likely to follow, the officer must ensure that all material associated with the investigation is retained to be made available for disclosure to the Defence as unused material when proceedings have been initiated.

Similarly if there is reason to believe that material obtained during the course of an investigation might be relevant to another investigation or to any pending or future civil or criminal proceedings, then it must not be destroyed but should be retained as it will form part of the unused prosecution material.

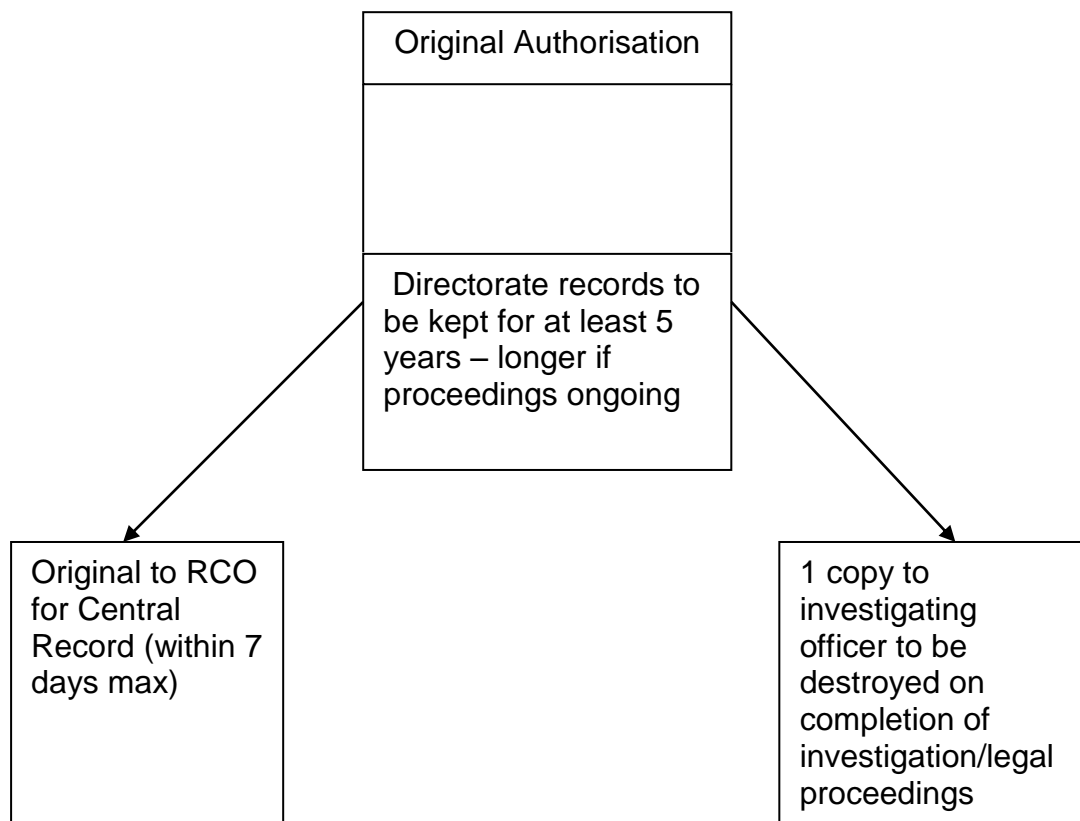
- 5.7.6 There is nothing in the 2000 Act that prevents material obtained through the proper use of the authorisation procedures from being used in other investigations. However, the use outside the authority which authorised the surveillance, or the courts, of any material obtained by means of covert surveillance and, other than in pursuance of the grounds on which it was obtained, should be authorised only in the most exceptional circumstances.

6. Central Register of Authorisations

- 6.1 The 2000 Act requires a central register of all authorisations to be maintained by authorities coming within the Act. The RIPA Coordinating Officer maintains this register.
- 6.2 Whenever authorisations (including reviews, renewals and cancellations) are issued the authorising officer must (within 7 days of issue) arrange for the document to be sent to the RCO in a sealed envelope marked “Confidential” for the Central Record. Further copies must be placed on the individual case file, retained on the Directorate’s Central Record.

Magistrate approvals of authorised applications must be similarly copied and retained.

The diagram below illustrates this part of the procedure.



7. Codes of Practice

As outlined above, there are Home Office codes of practice that expand on this guidance. The Codes are available to staff and members of the public on the Home Office website at

<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>.

The codes do not have the force of statute, but are admissible in evidence in any criminal and civil proceedings. As stated in the codes, “if any provision of the code appears relevant to a question before any Court or tribunal considering any such proceedings, or to the tribunal established under the 2000 Act, or to one of the commissioners responsible for overseeing the powers conferred by the 2000 Act, it must be taken into account”.

Staff should refer to these Codes of Practice for supplementary guidance.

8. Benefits of Obtaining Authorisation under the 2000 Act

8.1 Authorisation of Surveillance and Human Intelligence Sources

The 2000 Act states that

- if authorisation confers entitlement to engage in a certain conduct and
- the conduct is in accordance with the authorisation, then
- it shall be “lawful for all purposes”.

However, the opposite is not true – i.e. if you do not obtain the 2000 Act authorisation it does not make any conduct unlawful (e.g. use of intrusive surveillance by local authorities). It just means you cannot rely on any of the benefits and protections RIPA provides.

8.2 The 2000 Act states that a person shall not be subject to any civil liability in relation to any conduct of his which: –

- a) is incidental to any conduct that is lawful by virtue of S5(1); and
- b) is not itself conduct for which an authorisation or warrant is capable of being granted under a relevant enactment and might reasonably be expected to have been sought in the case in question.

9. Reporting errors

NOTE failure to adhere to the RIPA safeguards can have significant consequences for an affected individual’s rights and must be reported to the Investigatory Powers Commissioner.

9.1 The SRO will review the Central Record of authorisations at regular intervals and maintain a log of the findings of those reviews, including whether a relevant error has been identified or authorisation obtained based on incorrect information. A relevant error is any error by the local authority in complying with the RIPA requirements. This would include circumstances where;

- Surveillance or CHIS activity has taken place without lawful authorisation
- There has been a failure to adhere to the safeguards provided in the legislation, or those contained in the Codes of Practice

9.2 If an officer believes or suspects a relevant error has occurred or that authorisation has been obtained based on incorrect information they must report this immediately to the SRO.

9.3 On identifying or receiving a report of a relevant error or that authorisation has been obtained based on incorrect information, the SRO will direct investigation by a nominated officer, and approve the terms of reference

and timescale for that investigation. Where practicable the investigation shall be completed within 10 working days. The report should state the cause of the error, the amount of surveillance or CHIS activity conducted and material obtained or disclosed, any unintended collateral intrusion, the local authority's analysis and action taken, whether any material has been retained or destroyed and action taken to prevent recurrence.

- 9.4 Where a relevant error is identified the SRO will make a full report to the Investigatory Powers Commissioner as soon as reasonably practicable, and no later than 10 working days (or as agreed with the Commissioner) after it has been identified to the SRO. Where the full report is not available within that timescale, or it is clear that the full report is unlikely to be available within 10 days the SRO will make an initial notification to the Commissioner as soon as reasonably practicable with an estimated timescale for providing the full report and an explanation of the steps being taken to establish the full facts of the error.

10. Oversight and Tribunal

- 10.1 The Investigatory Powers Commissioner and his Judicial Commissioners are responsible for overseeing the use of investigatory powers by public authorities which include law enforcement, local authorities and other regulators.
- 10.2 The **Investigatory Powers Tribunal (IPT)** is an independent judicial body which hears complaints about surveillance by public bodies. The Tribunal has jurisdiction to consider complaints about the use of surveillance by any organisation, including a local authority, that has powers under the Regulation of Investigatory Powers Act.
- 10.3 Complaints can be made by persons aggrieved by the council's actions or alleged actions, e.g. a person who believes they have been the subject of directed surveillance. Claims should be brought within one year unless it is just and equitable to extend that.
- 10.4 Organisations under the IPT's jurisdiction must provide details to the IPT of any activity that is being complained about. The IPT's role is to decide whether any surveillance that is being carried out is lawful. The IPT will consider, on a judicial review basis, whether surveillance has been appropriately authorised and conducted in accordance with RIPA requirements.
- 9.5 The tribunal can order, among other remedies, the quashing or cancellation of any warrant or authorisation and can order destruction of any records or information obtained by using a warrant or authorisation or records of information held by a public authority in relation to any person. The case may currently then be taken on to the [European Court of Human Rights](#) in the event of dissatisfaction with the IPT's conclusions.-

Definitions from the 2000 Act

- “1997 Act” means the Police Act 1997.
“2000 Act” means the Regulation of Investigatory Powers Act 2000.
- **“Confidential Material”** has the same meaning as it is given in sections 98-100 of the 1997 Act.

It consists of: -

- a) matters subject to legal privilege;
 - b) confidential personal information; or
 - c) confidential journalistic material.
- **“Matters subject to legal privilege”** includes both oral and written communications between a professional legal adviser and his/her client or any person representing his/her client, made in connection with the giving of legal advice to the client or in contemplation of legal proceedings and for the purposes of such proceedings, as well as items enclosed with or referred to in such communications. Communications and items held with the intention of furthering a criminal purpose are not matters subject to legal privilege (see Note A below).
 - **“Confidential Personal Information”** is information held in confidence concerning an individual (whether living or dead) who can be identified from it, and relating:
 - a) to his/her physical or mental health; or
 - b) to spiritual counselling or other assistance given or to be given, and which a person has acquired or created in the course of any trade, business, profession or other occupation, or for the purposes of any paid or unpaid office (see Note B below). It includes both oral and written information and also communications as a result of which personal information is acquired or created.

Information is held in confidence if:

- c) it is held subject to an express or implied undertaking to hold it in confidence; or
- d) it is subject to a restriction on disclosure or an obligation of secrecy contained in existing or future legislation.

- **“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 such an undertaking.
- **“Covert Surveillance”** means 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;
- **“Authorising Officer”** For the purposes of authorising directed surveillance under the 2000 Act an “authorising officer” means the person designated for the purposes of section 28 of the 2000 Act to grant authorisations for directed surveillance. (See the Regulation of Investigatory Powers) (Prescription of Officers, Ranks and Positions) Order SI 2000/2417.
- **“Private Information”** defined in Section 26(10) of RIPA as including any information relating to a person's private or family life. This must be broadly interpreted to include an individual's private or personal relationships with others, and family life should be treated as extending beyond the formal relationships created by marriage. Applying a broad interpretation means it may also include business and professional activities.
- **“Working Day”** means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Note A. *Legally privileged communications will lose their protection if there is evidence, for example, that the professional legal adviser is intending to hold or use them for a criminal purpose; privilege is not lost if a professional legal adviser is properly advising a person who is suspected of having committed a criminal offence. The concept of legal privilege shall apply to the provision of professional legal advice by any agency or organisation.*

Note B. *Confidential personal information might, for example, include consultations between a health professional or a professional counsellor and a patient or client, or information from a patient's medical records.*

REGULATION OF INVESTIGATORY POWERS ACT 2000

SOURCE RECORDS REGULATIONS

Particulars to be included in the records relating to each source:

- (a) the identity of the source;
- (b) the identity, where known, used by the source;
- (c) any relevant investigating authority other than the authority maintaining the records;
- (d) the means by which the source is referred to within each relevant investigating authority;
- (e) any other significant information connected with the security and welfare of the source;
- (f) any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- (g) the date when, and the circumstances in which, the source was recruited;
- (h) the identities of the persons who, in relation to the source, are discharging or have discharged the functions mentioned in section 29(5)(a) to (c) of the 2000 Act or in any order made by the Secretary of State under section 29(2)(c);
- (i) the periods during which those persons have discharged those responsibilities;
- (j) the tasks given to the source and the demands made of him in relation to his activities as a source;
- (k) all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- (l) the information obtained by each relevant investigating authority by the conduct or use of the source;
- (m) any dissemination by that authority of information obtained in that way; and
- (n) in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

