

NON-CONFIDENTIAL



Borough of Tamworth

6 September 2011

Dear Councillor

You are hereby summoned to attend a **meeting of the Council of this Borough** to be held on **TUESDAY, 13TH SEPTEMBER, 2011** at 6.00 pm in the **COUNCIL CHAMBER - MARMION HOUSE**, for the transaction of the following business:-

AGENDA

NON CONFIDENTIAL

- 1 Apologies for Absence**
- 2 To receive the Minutes of the previous meeting (Pages 1 - 4)**
- 3 Declarations of Interest**

To receive any declarations of Members' interests (personal and/or personal and prejudicial) in any matters which are to be considered at this meeting.

When Members are declaring a personal interest or personal and prejudicial interest in respect of which they have dispensation, they should specify the nature of such interest. Members should leave the room if they have a personal and prejudicial interest in respect of which they do not have a dispensation.

- 4 To receive any announcements from the Mayor, Leader, Members of the Cabinet or the Chief Executive**
- 5 Question Time:**

- (i) To answer questions from members of the public pursuant to Procedure Rule No. 10.
- (ii) To answer questions from members of the Council pursuant to Procedure Rule No. 11

6 Annual Report on the Treasury Management Service and Actual Prudential Indicators 2010/11 (Pages 5 - 22)

7 Regulation of Investigatory Powers Act 2000 Office of Surveillance Commissioners Inspection (Pages 23 - 64)

Yours faithfully

A handwritten signature in black ink, appearing to be 'A. O. O. T.', enclosed within a large, loopy circular flourish.

CHIEF EXECUTIVE

People who have a disability and who would like to attend the meeting should contact Democratic Services on 01827 709264 or e-mail committees@tamworth.gov.uk preferably 24 hours prior to the meeting. We can then endeavour to ensure that any particular requirements you may have are catered for.

Marmion House
Lichfield Street
Tamworth



**MINUTES OF A MEETING OF THE
COUNCIL
HELD ON 12th JULY 2011**

PRESENT: Councillor J Oates (Chair), Councillors L Bates, S Claymore, D Cook, R Cook, C Cooke, S Doyle, J Faulkner, D Foster, K Gant, M Gant, J Garner, M Greatorex, A James, A Lees, A Lunn, R McDermid, S Munn, K Norchi, M Oates, N Oates, S Peale, G Pinner, S Pritchard, E Rowe and M Thurgood

The following officers were present: Anthony E Goodwin (Chief Executive), Anica Goodwin (Assistant Chief Executive) and Jane Hackett (Solicitor to the Council and Monitoring Officer)

23 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors B Beale, T Clements, R Pritchard and P Seekings.

24 TO RECEIVE THE MINUTES OF THE PREVIOUS MEETINGS

The minutes of meetings held on 19th May 2011 and 21st June 2011 were approved subject to the following alterations which were inserted therein:

19th May 2011 – Removal of “Ch” and “VCh” from the Appointment of Committees 2011/12.

21st June 2011 – Insertion of the written responses to Councillor Cooke’s questions.

25 DECLARATIONS OF INTEREST

Councillors K Gant and C Cooke declared that despite their views on the fluoridation of water, they had not predetermined the issue and came to the meeting with an open mind and would make their final decision after hearing the full debate.

26 TO RECEIVE ANY ANNOUNCEMENTS FROM THE MAYOR, LEADER, MEMBERS OF THE CABINET OR THE CHIEF EXECUTIVE

Announcement by Councillor K Gant

A painting of Prince Charles which was given to the Royal British Legion by Councillor Trenfield has been presented to the Mayor to be displayed in the Town Hall.

This was supported by Councillor Peaple

Announcement by the Mayor

On behalf of the Council he accepted the gift and confirmed that it would be displayed in the Town Hall.

Announcement by Councillor R McDermid

12 July 2011 was Councillor Brian Beale's 69th Birthday and he was wished a speedy recovery.

This was supported by all Councillors.

Announcement by the Mayor

The Mayor put forward in terms of Procedure Rule 13(c) a Motion to change the order of business. It was moved that item 8 be dealt with as item 7 and item 7(ii) became 8 (i) and item 7(i) became 8(ii).

(Moved by Councillor D Cook and seconded by Councillor J Faulkner)

27 QUESTION TIME:

QUESTIONS FROM MEMBERS OF THE COUNCIL **NO 1.**
Under Procedure Rule No 11, Councillor C Cooke will ask the Portfolio Holder for Quality of Life, the following question:-

"I have now received the written answer to my question to the last Full Council and note this answer appears to contradict the answer that was given at the March Full Council. Would the portfolio holder now agree that the Incentive To Move policy is restrictive and should be reviewed in that there are many tenants living in larger accommodation who will stay in that accommodation, as is their right, rather than being forced by Tamworth's Allocations Policy to downsize further than they would wish to?"

Councillor M Oates gave the following reply:-

"No I would not agree with the Councillor. If you look at the Forward Plan you will see that it will be reviewed in December when we know what impact Housing Benefit changes will have on over occupancy."

QUESTIONS FROM MEMBERS OF THE COUNCIL **NO 2.**

Under Procedure Rule No 11, Councillor C Cooke will ask the Portfolio Holder for Corporate Services & Assets, the following question:-

"Will the portfolio holder please tell me how many Penalty Charge Notices have been issued to Tamworth Borough Council employees, since Tamworth's parking scheme started, for somehow falling foul of parking regulations for either not properly displaying their permits or otherwise allegedly not parking correctly in their free parking facilities in the River Drive area?"

In the absence of the Portfolio Holder for Corporate Services and Assets Councillor R Pritchard the following written reply was given and circulated to all Members:-

"Since April 2009 there has been 791 penalty charge notices issued in this location. However as Tamworth Borough Council does not record a person's employer when issuing parking notices, we cannot provide the data requested. "

QUESTIONS FROM MEMBERS OF THE COUNCIL **NO 3.**

A further question was received from Councillor A James but it was later withdrawn.

28 APPOINTMENT OF CHIEF EXECUTIVE

The report of the Leader of the Council/Chair of Appointments & Staffing Committee seeking formal approval of the result of the review of the Chief Executive role in accordance with the Council's Constitution and the Local Authorities (Standing Orders) Regulations 2001 was considered.

Resolved:- The Council approved the appointment of Anthony E Goodwin to the post of Chief Executive with immediate effect.
(Moved by Councillor D Cook, seconded by Councillor J Faulkner and carried unanimously)

29 OUTSIDE BODIES 2011/2012

The revised list of Outside Bodies following the annual review was received.

30 PETITIONS

(i) Save Stonydelph Ducklings Petition

Mrs L Pitt addressed the meeting and advised that, as a ramp to enable the ducklings to climb out of the weir had now been installed, the matter was concluded.

(ii) Fluoridation Petition

Following a presentation by Mrs J Warren debate followed.

Resolved: The Council accepted the fluoridation petition and referred the issue of fluoridation to the Community and Wellbeing Scrutiny Committee for consideration as requested by the petitioners.

(Moved by Councillor C Cooke, seconded by Councillor M Greatorex and carried unanimously)

The Mayor

COUNCIL

DATE OF COMMITTEE
13th September 2011

REPORT OF THE PORTFOLIO HOLDER FOR

Corporate Services and Assets

ANNUAL REPORT ON THE TREASURY MANAGEMENT SERVICE AND ACTUAL PRUDENTIAL INDICATORS 2010/11

EXEMPT INFORMATION

None

PURPOSE

The Annual Treasury report is a requirement of the Council's reporting procedures. It covers the Treasury activity for 2010/11, and the actual Prudential Indicators for 2010/11.

The report meets the requirements of both the CIPFA Code of Practice on Treasury Management and the CIPFA Prudential Code for Capital Finance in Local Authorities. The Council is required to comply with both Codes in accordance with Regulations issued under the Local Government Act 2003.

RECOMMENDATIONS

That Council be asked to,

1. Approve the actual 2010/11 Prudential Indicators within the report;
2. Accept the Treasury Management stewardship report for 2010/11.

EXECUTIVE SUMMARY

This report covers Treasury operations for the year ended 31st March 2011 and summarises:

- the Council's Treasury position as at 31st March 2011;
- performance measurement;

The key points raised for 2010/11 are;

- The Council's Capital Expenditure and Financing
- The Council's overall borrowing need
- Treasury Position as at 31 March 2011
- The Strategy for 2010/11
- The Economy and Interest Rates
- Borrowing Rates in 2010/11
- Borrowing Outturn for 2010/11
- Investment Rates in 2010/11
- Investment Outturn for 2010/11
- Performance Measurement
- Icelandic Bank Defaults.

The Treasury Function has achieved the following favourable results:

- The Authority has complied with the professional codes, statutes and guidance;
- There are no issues to report regarding non-compliance with the approved prudential indicators;
- Excluding the Icelandic investments (currently identified 'at risk') the Council maintained an average investment balance of £19.08m and achieved an average

return of 0.99% (budgeted at £15.77m 1.75%).

These results compare favourably with the Council's own Benchmarks of the average 7 day and the 3 month LIBID rates for 2010/11 of 0.433% and 0.615% respectively, but below the CIPFA Treasury Benchmarking Club average rate of 1.19%. This is not considered to be a poor result in light of the current financial climate, our lower levels of deposits/funds and shorter investment timelines due to Banking sector uncertainty, when compared to other Authorities;

- The closing internal rate on borrowing has reduced from 6.92% to 6.61%;
- The Treasury Management Function has achieved an outturn investment income of £189k compared to a budget of £258k, the shortfall being due to the exceptional circumstances that have continued over the year.

During 2010/11 the Council complied with its legislative and regulatory requirements.

The Corporate Director Resources confirms that no borrowing was undertaken within the year and the Authorised Limit, was not breached.

At 31st March 2011, the Council's external debt was £20.392m (£22.392 at 31st March 2010) and its investments totalled £12.99m (£13.77m at 31st March 2010) this excludes £5.16m Icelandic Banking sector deposits that were 'At Risk' at the year end (£5.93m at the 31st March 2010).

RESOURCE IMPLICATIONS

There are no financial implications or staffing implications arising from the report.

LEGAL/RISK IMPLICATIONS BACKGROUND

The Council is aware of the risks of passive management of the Treasury Portfolio and with the support of Sector, the Council's current Treasury advisers, has proactively managed its debt and investments over this very difficult year.

SUSTAINABILITY IMPLICATIONS

None

CONCLUSIONS

That Members approve the above recommendations, following consideration of the information contained within the report.

BACKGROUND INFORMATION

Introduction and Background

The Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management 2009 was adopted by this Council on 23rd February 2010 and this Council fully complies with its requirements.

The primary requirements of the Code are as follows:

- Creation and maintenance of a Treasury Management Policy Statement which sets out the policies and objectives of the Council's Treasury management activities.
- Creation and maintenance of Treasury Management Practices which set out the manner in which the Council will seek to achieve those policies and objectives.
- Receipt by the Full Council of an Annual Treasury Management Strategy report (including the annual investment strategy report) for the year ahead, a midyear review report (as a minimum) and an annual review report of the previous year.
- Delegation by the Council of responsibilities for implementing and monitoring Treasury management policies and practices and for the execution and administration of Treasury management decisions.
- Delegation by the Council of the role of scrutiny of Treasury management strategy and policies to a specific named body which in this Council is the Audit and Governance Committee.

Treasury management in this context is defined as:

"The management of the local authority's investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks."

The purpose of this report is to meet one of the above requirements of the CIPFA Code, namely the annual review report of Treasury management activities, for the financial year 2010/11.

This report summarises:

- The Council's Capital Expenditure and Financing
- The Council's overall borrowing need
- Treasury Position as at 31 March 2011
- The Strategy for 2010/11
- The Economy and Interest Rates
- Borrowing Rates in 2010/11
- Borrowing Outturn for 2010/11
- Investment Rates in 2010/11
- Investment Outturn for 2010/11
- Performance Measurement
- Icelandic Bank Defaults

The Council's Capital Expenditure and Financing 2010/11

The Council undertakes capital expenditure on long-term assets. These activities may either be:

- Financed immediately through the application of capital or revenue resources (capital receipts, capital grants, revenue contributions etc.), which has no resultant impact on the Council's borrowing need; or
- If insufficient financing is available, or a decision is taken not to apply resources, the capital expenditure will give rise to a borrowing need.

The actual capital expenditure forms one of the required prudential indicators. The table below shows the actual capital expenditure and how this was financed.

£m	2009/10 Actual	2010/11 Estimate	2010/11 Actual
Non-HRA capital expenditure	4.690*	2.037	1.272
HRA capital expenditure	4.341	4.475	4.352
Total capital expenditure	9.031	6.512	5.624
Resourced by:			
• Capital receipts	1.051	1.042	0.877
• Capital grants	0.215	0.208	0.155
• Capital reserves	0.710	0.958	0.908
• Revenue	3.189	3.824	3.204
Un-financed capital expenditure	3.866	0.480	0.480

*Included £3.386m Icelandic Impairment Capitalisation

The Council's Overall Borrowing Need

The Council's underlying need to borrow for capital expenditure is termed the Capital Financing Requirement (CFR). This figure is a gauge of the Council's debt position. The CFR results from the capital activity of the Council and what resources have been used to pay for the capital spend. It represents the 2010/11 un-financed capital expenditure (see above table), and prior years' net or un-financed capital expenditure which has not yet been paid for by revenue or other resources.

Part of the Council's Treasury activities is to address the funding requirements for this borrowing need. Depending on the capital expenditure programme, the Treasury service organises the Council's cash position to ensure sufficient cash is available to meet the capital plans and cash flow requirements. This may be sourced through borrowing from external bodies (such as the Government, through the Public Works Loan Board [PWLB] or the money markets), or utilising temporary cash resources within the Council.

Reducing the CFR – the Council's (non HRA) underlying borrowing need (CFR) is not allowed to rise indefinitely. Statutory controls are in place to ensure that capital assets are broadly charged to revenue over the life of the asset. The Council is required to make an annual revenue charge, called the Minimum Revenue Provision – MRP, to reduce the CFR. This is effectively a repayment of the non-Housing Revenue Account (HRA) borrowing need (there is no statutory requirement to reduce the HRA CFR).

This differs from the Treasury management arrangements which ensure that cash is available to meet capital commitments. External debt can also be borrowed or repaid at any time, but this does not change the CFR.

The total CFR can also be reduced by:

- the application of additional capital financing resources (such as unapplied capital receipts); or
- charging more than the statutory revenue charge (MRP) each year through a Voluntary Revenue Provision (VRP).

The Council's 2010/11 MRP Policy (as required by CLG Guidance) was approved as part of the Treasury Management Strategy Report for 2010/11 on 23rd February 2010.

The Council's CFR for the year is shown below, and represents a key prudential indicator.

CFR (£m)	31 March 2010 Actual	31 March 2011 Original Indicator	31 March 2011 Actual
Opening balance	23.104	27.557	26.943
Add un-financed capital expenditure (as above)	3.866*	0.480	0.480
Less MRP	0.027	0.226	0.195
Closing balance	26.943	27.811	27.228

*Included £3.386m Icelandic Impairment Capitalisation

The borrowing activity is constrained by prudential indicators for net borrowing and the CFR, and by the authorised limit.

Net borrowing and the CFR - in order to ensure that borrowing levels are prudent over the medium term the Council's external borrowing, net of investments, must only be for a capital purpose. This essentially means that the Council is not borrowing to support revenue expenditure. Net borrowing should not therefore, except in the short term, have exceeded the CFR for 2010/11 plus the expected changes to the CFR over 2011/12 and 2012/13. This indicator allows the Council some flexibility to borrow in advance of its immediate capital needs in 2010/11. The table below highlights the Council's net borrowing position against the CFR. The Council has complied with this prudential indicator.

	31 March 2010 Actual	31 March 2011 Original	31 March 2011 Actual
Net borrowing position	£8.620m	£11.297m	£7.406m
CFR	£26.943m	£27.811m	£27.228m

The authorised limit - the authorised limit is the "affordable borrowing limit" required by s3 of the Local Government Act 2003. The Council does not have the power to borrow above this level. The table below demonstrates that during 2010/11 the Council has maintained gross borrowing within its authorised limit.

The operational boundary – the operational boundary is the expected borrowing position of the Council during the year. Periods where the actual position is either below or over the boundary is acceptable subject to the authorised limit not being breached.

Actual financing costs as a proportion of net revenue stream - this indicator identifies the trend in the cost of capital (borrowing and other long term obligation costs net of investment income) against the net revenue stream.

	2010/11 £m
Authorised limit	30.400
Maximum gross borrowing position (PWLB Debt)	22,392
Operational boundary	22.792
Average gross borrowing position (PWLB Debt)	22.228
Financing costs as a proportion of net revenue stream*	-4.45%

* This figure is negative as our average investments exceeded our average borrowings during the year.

Treasury Position as at 31st March 2011

The Council's debt and investment position at the beginning and the end of the year (excluding Icelandic Investments) was as follows

	31st March 2011 Principal	Rate/ Return	Average Life	31st March 2010 Principal	Rate/ Return	Average Life
Fixed Rate Funding:	£m	%	Years	£m	%	Years
-PWLB	20.392	6.61	32.66	22.392	6.92	31.47
-Market	0	0	0	0	0	0
Variable Rate Funding:						
-PWLB	0	0	0	0	0	0
-Market	0	0	0	0	0	0
Total Debt	20.392	6.61	32.66	22.392	6.92	31.47
CFR	27.228			26.943		
Over/ (under) borrowing	(6.836)			(4.551)		
Investments:						
-In-House	12.986	1.33	0.32	13.772	1.73	0.14
-With Managers	0	0	0	0	0	0
Total Investments	12.986	1.33	0.32	13.772	1.73	0.14

The maturity structure of the debt portfolio was as follows:

	31 March 2010 Actual £m	2010/11 original limits %	31 March 2011 Actual £m
Under 12 months	2.000	20	0
12 months and within 24 months	0	20	0
24 months and within 5 years	0	25	3.000
5 years and within 10 years	5.000	75	2.000
10 years and above	15.392	100	15.392

The maturity structure of the investment portfolio of £12.986m at the 31st March 2011 was all under one year.

The exposure to fixed and variable rates was as follows:

	31 March 2010 Actual £m	2010/11 Original Limits £m	31 March 2011 Actual £m
Fixed rate principal (investments)	13.772	13,239	12.986
Fixed rate Principal (debt)	22.392	22.424	20.392
Variable rate (investments/debt)	0	0	0

The Strategy for 2010/11

The expectation for interest rates within the strategy for 2010/11 anticipated low but rising Bank Rate (starting in quarter 4 of 2011) with similar gradual rises in medium and longer term fixed interest rates over 2010/11. Variable or short-term rates were expected to be the cheaper form of borrowing over the period.

Continued uncertainty in the aftermath of the 2008 financial crisis promoted a cautious approach, whereby investments would be dominated by low counterparty risk considerations, resulting in relatively low returns compared to borrowing rates.

In this scenario, the Treasury strategy was to postpone borrowing to avoid the cost of holding higher levels of investments and reduce counterparty risk.

The actual movement in interest rates broadly followed the expectations in the strategy, as detailed in the following section.

The Economy and Interest Rates

2010/11 proved to be another watershed year for financial markets. Rather than a focus on individual institutions, market fears moved to sovereign debt issues, particularly in the peripheral Euro zone countries. Local authorities were also presented with changed circumstances following the unexpected change of policy on Public Works Loan Board (PWLB) lending arrangements in October 2010. This resulted in an increase in new borrowing rates of 0.75 – 0.85%, without an associated increase in early redemption rates. This made new borrowing more expensive and repayment relatively less attractive.

UK growth proved mixed over the year. The first half of the year saw the economy outperform expectations, although the economy slipped into negative territory in the final quarter of 2010 due to inclement weather conditions. The year finished with prospects for the UK economy being decidedly downbeat over the short to medium term while the Japanese disasters in March, and the Arab Spring, especially the crisis in Libya, caused an increase in world oil prices, which all combined to dampen international economic growth prospects.

The change in the UK political background was a major factor behind weaker domestic growth expectations. The new coalition Government struck an aggressive fiscal policy stance, evidenced through heavy spending cuts announced in the October Comprehensive Spending Review, and the lack of any “giveaway” in the March 2011 Budget. Although the main aim was to reduce the national debt burden to a sustainable level, the measures are also expected to act as a significant drag on growth.

Gilt yields fell for much of the first half of the year as financial markets drew considerable reassurance from the Government’s debt reduction plans, especially in the light of Euro zone sovereign debt concerns. Expectations of further quantitative easing also helped to push yields to historic lows. However, this positive performance was mostly reversed in the closing months of 2010 as sentiment changed due to sharply rising inflation pressures. These were also expected (during February / March 2011) to cause the Monetary Policy Committee to start raising Bank Rate earlier than previously expected.

The developing Euro zone peripheral sovereign debt crisis caused considerable concerns in financial markets. First Greece (May), then Ireland (December), were forced to accept assistance from a combined EU / IMF rescue package. Subsequently, fears steadily grew about Portugal, although it managed to put off accepting assistance till after the year end. These worries caused international investors to seek safe havens in investing in non-Euro zone government bonds.

Deposit rates picked up modestly in the second half of the year as rising inflationary concerns, and strong first half growth, fed through to prospects of an earlier start to increases in Bank Rate. However, in March 2011, slowing actual growth, together with weak growth prospects, saw consensus expectations of the first UK rate rise move back from May to August 2011 despite high inflation. However, the disparity of expectations on domestic economic growth and inflation encouraged a wide range of views on the timing of the start of increases in Bank Rate in a band from May 2011 through to early 2013. This sharp disparity was also seen in MPC voting which, by year-end, had three members voting for a rise while others preferred to continue maintaining rates at ultra low levels.

Risk premiums were also a constant factor in raising money market deposit rates beyond 3 months.

Although market sentiment has improved, continued Euro zone concerns, and the significant funding issues still faced by many financial institutions, mean that investors remain cautious of longer-term commitment. The European Commission did try to address market concerns through a stress test of major financial institutions in July 2010. Although only a small minority of banks “failed” the test, investors were highly sceptical as to the robustness of the

tests, as they also are over further tests now taking place with results due in mid-2011.

Chart 1: Bank Rate v LIBID investment rates

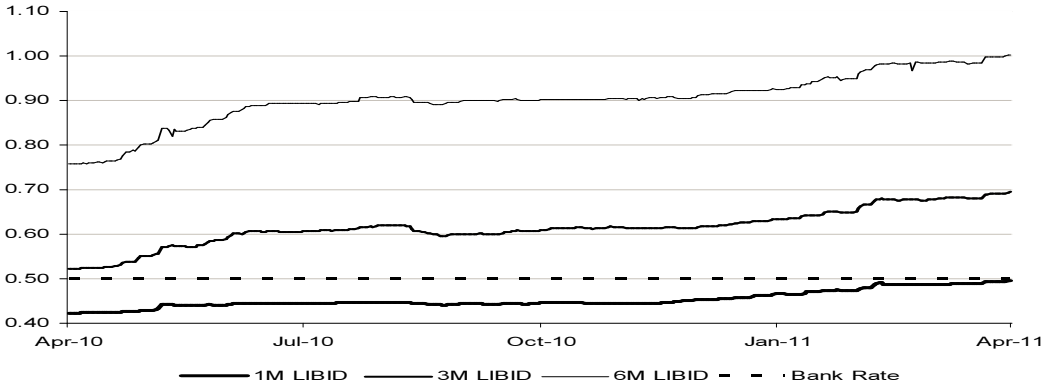
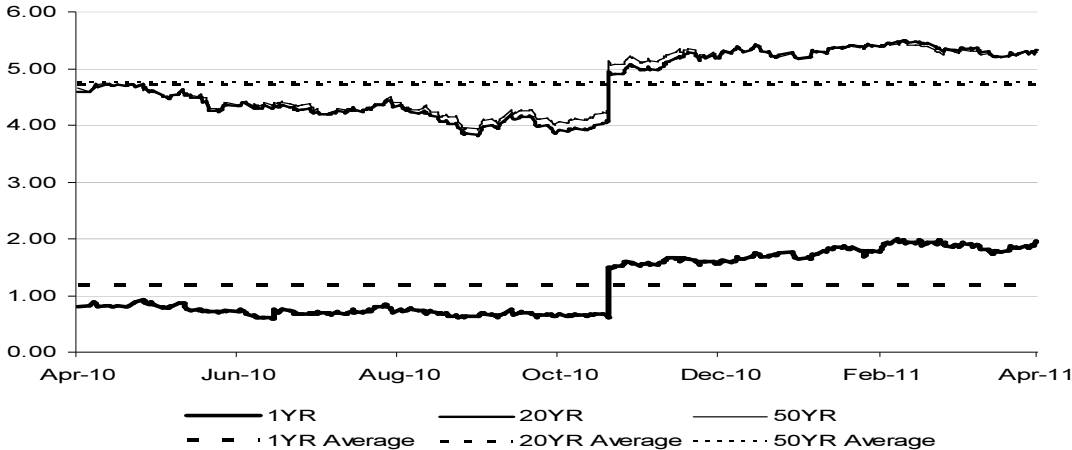


Chart 2: Average v New borrowing rates

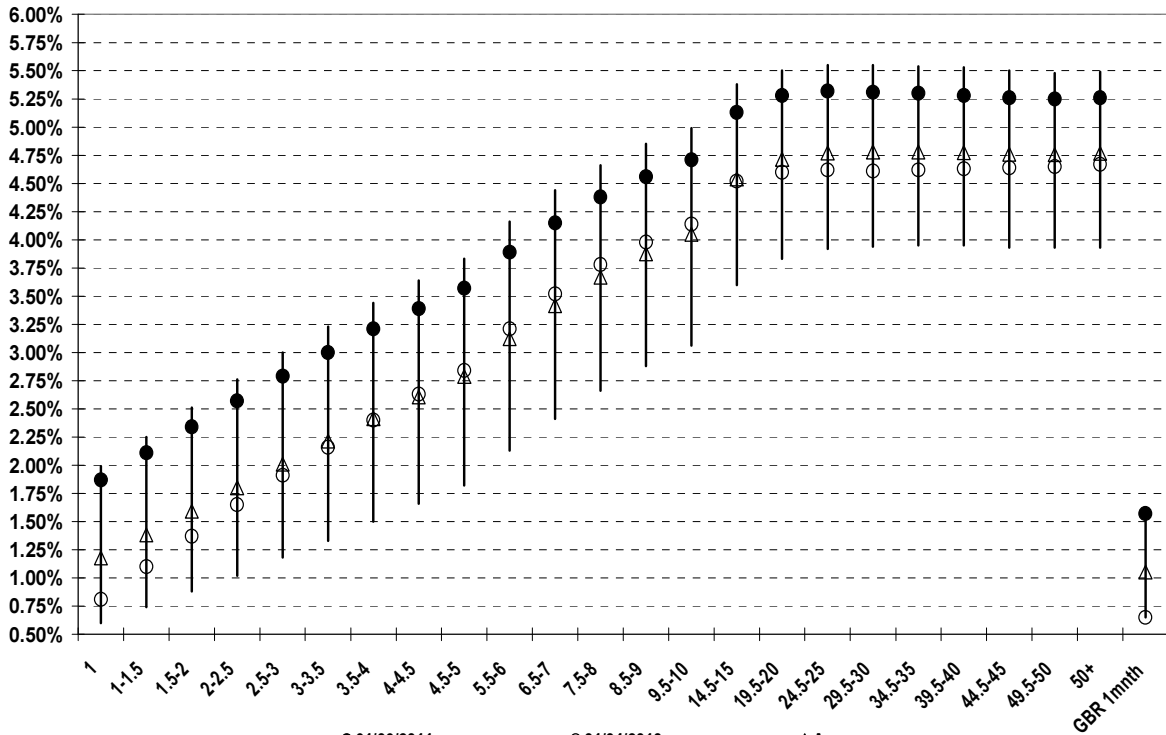


Borrowing Rates in 2010/11

PWLB borrowing rates - the graph and table for PWLB maturity rates below show, for a selection of maturity periods, the range (high and low points) in rates, the average rates and individual rates at the start and the end of the financial year.

Variations in most PWLB rates have been distorted by the October 2010 decision by the PWLB to raise its borrowing rates by about 0.75 – 0.85% e.g. if it had not been for this change, the 25 year PWLB at 31 March 2011 (5.32%) would have been only marginally higher than the position at 1 April 2010.

PW LB rate variations in 2010-11



PWLB Rates 2010/11 for 31/03/2011 01/04/2010 Δ Average 1 to 50 years

	1	1.5 - 2	2.5 - 3	3.5 - 4	4.5 - 5	9.5 - 10	24.5 - 25	49.5 - 50	1 Month Variable
01/04/2010	0.810	1.370	1.910	2.400	2.840	4.140	4.620	4.650	0.650
31/03/2011	1.870	2.340	2.790	3.210	3.570	4.710	5.320	5.250	1.570
High	1.990	2.510	3.000	3.440	3.830	4.990	5.550	5.480	1.570
Low	0.600	0.880	1.180	1.500	1.820	3.060	3.920	3.930	0.650
Average	1.177	1.590	2.009	2.413	2.788	4.050	4.771	4.756	1.052
Spread	1.390	1.630	1.820	1.940	2.010	1.930	1.630	1.550	0.920
High Date	07/02/2011	07/02/2011	07/02/2011	07/02/2011	09/02/2011	09/09/2011	09/02/2011	09/02/2011	07/03/2011
Low Date	15/06/2010	12/10/2010	12/10/2010	12/10/2010	12/10/2010	31/08/2010	31/08/2010	31/08/2010	01/04/2010

Borrowing Outturn for 2010/11

Treasury Borrowing – The Council did not undertake any new borrowing during the year.

Debt Rescheduling – The Council did not undertake any debt rescheduling in the year.

Our Treasury management advisors, Sector, started 2010/11 with the expectation that longer-term PWLB rates would be on a rising trend during the year and that shorter term rates would be considerably cheaper. However, moving from long term to short term debt would mean taking on a greater risk exposure to having to re-borrow longer term in later years at considerably higher rates than most of the long term debt currently in the debt portfolio. Short term savings could be achieved by internally financing new capital expenditure and replacing maturing debt by utilising existing cash balances which were only earning minimal rates of interest due to the fact that Bank Rate was kept at 0.5% all year. Using cash balances also meant reduced counterparty risk on the investment portfolio.

Maturities - on 3rd March 2011 the Council repaid a maturing £2.0m PWLB loan which had a coupon rate of 10.125% using investment balances.

Summary of debt transactions – the overall position of the debt activity resulted in a nominal fall in the average interest rate by 0.31%.

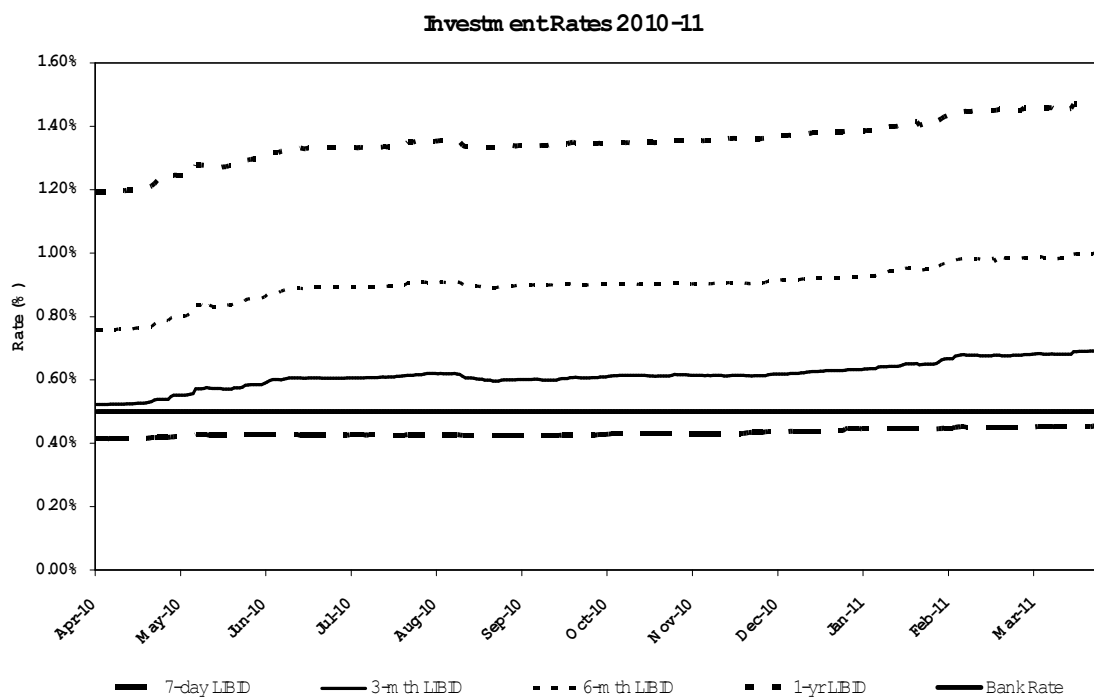
Investment Rates in 2010/11

The tight monetary conditions following the 2008 financial crisis continued through 2010/11 with little material movement in the shorter term deposit rates. Bank Rate remained at its

historical low of 0.5% throughout the year, although growing market expectations of the imminence of the start of monetary tightening saw 6 and 12 month rates picking up.

Overlaying the relatively poor investment returns was the continued counterparty concerns, most evident in the Euro zone sovereign debt crisis which resulted in rescue packages for Greece, Ireland and latterly Portugal. Concerns extended to the European banking industry with an initial stress testing of banks failing to calm counterparty fears, resulting in a second round of testing currently in train. This highlighted the ongoing need for caution in Treasury investment activity.

	Overnight	7 Day	1M onth	3 Month	6 Month	1 Year
01/04/2010	0.41%	0.41%	0.42%	0.52%	0.76%	1.19%
31/03/2011	0.44%	0.46%	0.50%	0.69%	1.00%	1.47%
High	0.44%	0.46%	0.50%	0.69%	1.00%	1.47%
Low	0.41%	0.41%	0.42%	0.52%	0.76%	1.19%
Average	0.43%	0.43%	0.45%	0.61%	0.90%	1.35%
Spread	0.03%	0.04%	0.07%	0.17%	0.24%	0.28%
High date	31/12/2010	30/03/2011	31/03/2011	31/03/2011	31/03/2011	31/03/2011
Low date	01/04/2010	01/04/2010	01/04/2010	01/04/2010	01/04/2010	01/04/2010



Investment Outturn for 2010/11

Investment Policy – the Council’s investment policy is governed by CLG guidance, which was implemented in the annual investment strategy approved by the Council on 23rd February 2010. This policy sets out the approach for choosing investment counterparties, and is based on credit ratings provided by the three main credit rating agencies supplemented by additional market data (such as rating outlooks, credit default swaps, bank share prices etc.).

The investment activity during the year conformed to the approved strategy, and the Council had no liquidity difficulties.

Resources – the Council’s longer term cash balances comprise, primarily, revenue and capital resources, although these will be influenced by cash flow considerations. The Council’s core cash resources comprised as follows, and met the expectations of the budget:

Balance Sheet Resources	31 March 2010 £m	31 March 2011 £m
Balances	9,635	9,639
Earmarked reserves	7,042	7,237
Provisions	70	668
Usable Capital Receipts	2,618	1,907
Total	19,365	19,451

Investments held by the Council - the Council maintained an average balance of £19.08m of internally managed funds. The internally managed funds earned an average rate of return of 0.99%. The comparable performance indicator is the average 7-day LIBID rate which was 0.433%. This compares with a budget assumption of £15.8m investment balances earning an average rate of 1.75%.

Performance Management

One of the key requirements in the Code is the formal introduction of performance measurement relating to investments, debt and capital financing activities. Whilst investment performance criteria have been well developed and universally accepted, debt performance indicators continue to be a more problematic area with the traditional average portfolio rate of interest acting as the main guide. The Council's performance indicators were set out in the Annual Treasury Strategy.

This service had set the following local performance indicators:

- To Maximise investment returns by ensuring that the average balance held in the Council's current accounts (non-interest earning) is maintained below £5,000;

The actual average balance held in the current accounts for 2010/11 was £4,459 cr (in hand) (£633 dr over drawn in 2009/10);

The net loss of interest for 2010/11 (loss of investment interest on un-invested balances less any overdraft interest incurred) was £19 compared to £17 for 2009/10 (approximately 5p per day);

- Average external interest receivable in excess of 3 month LIBID rate;

Whilst the assumed benchmark for local authorities is the 7 day LIBID rate, a higher target is set for internal performance. The actual return was 0.99% compared to the 3 month LIBID of 0.615% (0.375% above target).

CIPFA Benchmarking Club

The Council is a member of the CIPFA Treasury Management Benchmarking Club which is a means to assess our performance for the year against other members. Our average return for the year (as mentioned above) was 0.99% compared to the group average of 1.19% (information from CIPFA Benchmarking Report 2010/11) excluding the impaired investments in Icelandic banks.

This can be analysed further into the following categories:

Category	Average Balance Invested £ m		Average Rates Received %	
	Tamworth Borough Council	CIPFA Benchmarking Club	Tamworth Borough Council	CIPFA Benchmarking Club
Investments < 365 days Managed in-house	8.5	40.0	0.83	1.06

Investments > 365 days Managed in-house	2.6	14.3	2.24	3.60
Call Accounts	7.6	23.7	0.79	0.79
DMADF	0.4	5.6	0.25	0.25
CD's Gilts and Bonds	0	27.5	0.00	3.72
Callable and Structured Deposits	0	15.4	0.00	2.60
Money Market Funds	0	13.2	0.00	0.62
All Investments Managed in-house	19.1	88.1	0.99	1.19

The data above displays that despite the Council being a small investor in the markets, performance is not significantly lower when compared with other members of the benchmarking club.

The graphs reproduced at **APPENDIX 2** highlights Tamworth's investment performance compared to other members of the benchmarking club.

Icelandic Bank Defaults

The authority currently has the following investments 'at risk' in Icelandic banks;

Bank	Original Deposit £m	Accrued Interest £m	Total Claimed £m	Repayments Received @ 31/03/2011 £m	Balance Outstanding	Anticipated Total Recovery %
Glitnir	3.000	0.474	3.474	0.000	3.474	29*
Kaupthing Singer & Friedlander	3.000	0.175	3.175	1.683	1.492	82
Heritable	1.500	0.005	1.505	0.754	0.751	85
TOTALS	7.500	0.654	8.154	2.437	5.717	

* Original indications of a projected 100% recovery have been confirmed in the Icelandic courts, however, current legal challenges have questioned the status of Local Authorities as depositors, so a 'worst case' recovery of 29% is still being quoted as a prudent measure. A final decision is anticipated later in 2011.

The Icelandic Government has stated its intention to honour all its commitments as a result of their banks being placed into receivership. The U.K. Government is working with the Icelandic Government to help bring this about. At the current time, the process of recovering assets is still ongoing with the administrators. The Local Government Association is co-ordinating the efforts of all UK authorities with Icelandic investments. Members will be periodically updated on the latest developments on these efforts.

REPORT AUTHOR

Phil Thomas 709239

LIST OF BACKGROUND PAPERS

- Local Government Act 2003
- Statutory Instruments: 2003 No 3146 & 2007 No 573

- CIPFA Code of Practice on Treasury Management in Public Services
- Treasury Management Strategy & Prudential Indicators (Council 23 Feb 10)
- Treasury Outturn Report 2009/10 (Council 20/07/2010)
- CIPFA Treasury Benchmarking Club Report 2011

APPENDICES

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Prudential Indicators

PRUDENTIAL INDICATORS	2009/10	2010/11	2010/11
Extract from budget and rent setting report	Actual	Original Estimate	Actual
	£m	£m	£m
Capital Expenditure			
Non – HRA	4.690*	2.037	1.273
HRA	4.341	4.475	4.352
TOTAL	9.031	6.512	5.624
Ratio of financing costs to net revenue stream	%	%	%
Non - HRA	-1.81	-0.02	3.69
HRA	-3.24	-4.43	-4.19
Net borrowing requirement **	£m	£m	£m
brought forward 1 st April 2010	4.242	7.619	8.633
carried forward 31 st March 2011	2.695	11.297	7.406
in year borrowing requirement	-1.547	3.678	-1.227
Annual Change in Capital Financing Requirement	£m	£m	£m
Non – HRA	3.359*	-226	-195
HRA	480	480	480
TOTAL	3.839	254	285
Capital Financing Requirement as at 31st March 2011	£m	£m	£m
Non – HRA	4.028	4.417	3.833
HRA	22.915	23.395	23.395
TOTAL	26.943	27.812	27.228
Incremental impact of capital investment decisions	£ p	£ p	£ p
Increase in Council tax (band D) per annum	0.46	3.52	3.52
Increase in average Housing Rent per week	0.17	0.05	0.05
* Includes £3.386m Capitalisation of Icelandic Banking Impairments			
** Excluding Icelandic deposits			

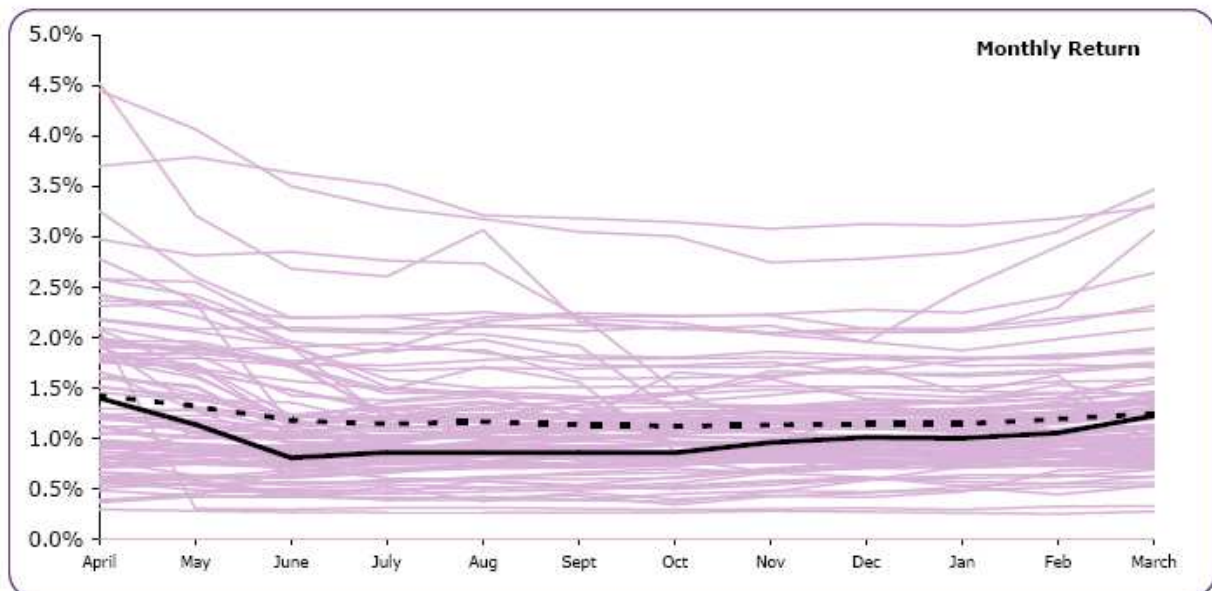
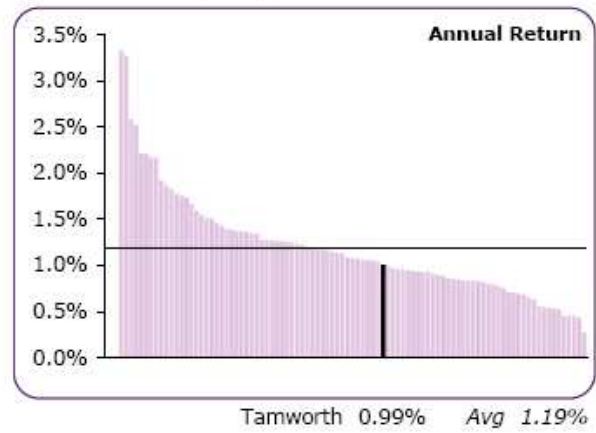
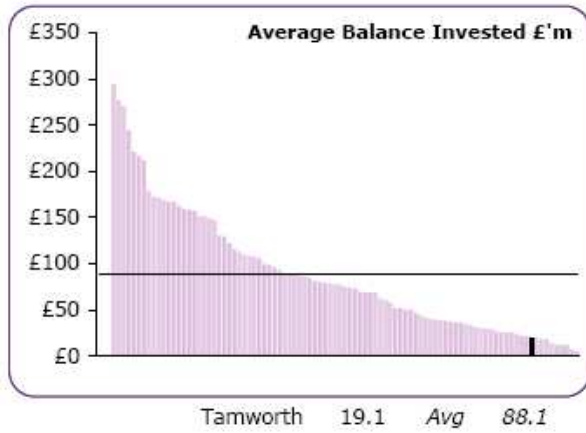
TREASURY MANAGEMENT INDICATORS	2009/10	2010/11	2010/11
	Actual	Original Estimate	Actual
	£m	£m	£m
Authorised Limit for external debt -			
borrowing	33.600	28.400	28.400
other long term liabilities	2.000	2.000	2.000
TOTAL	35.600	30.400	30.400
Operational Boundary for external debt -			
borrowing	22.392	22.792	22.792
other long term liabilities	0	0	0
TOTAL	22.392	22.792	22.792
Actual external debt	22.392	22.792	20.392
Upper limit for fixed interest rate exposure			
Net principal re fixed rate borrowing / investments	-2.221*	9.185	9.185
Upper limit for variable rate exposure			
Net principal re variable rate borrowing / investments	2.243	2.242	2.242
Upper limit for total principal sums invested for over 364 days (per maturity date)	4.000	3.500	3.500

* This figure is negative as our average investments exceeded our average borrowings during the year.

Table 3: Maturity structure of fixed rate borrowing during 2010/11	upper limit	lower limit
	%	%
under 12 months	20	0
12 months and within 24 months	20	0
24 months and within 5 years	25	0
5 years and within 10 years	75	0
10 years and above	100	0

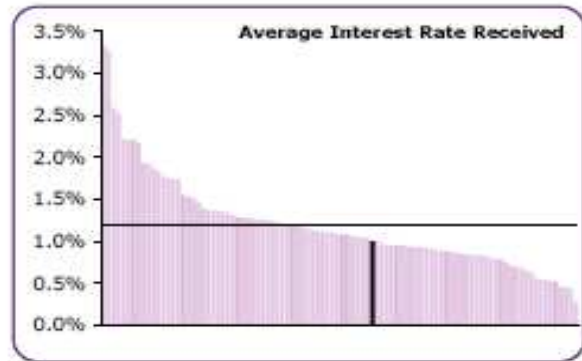
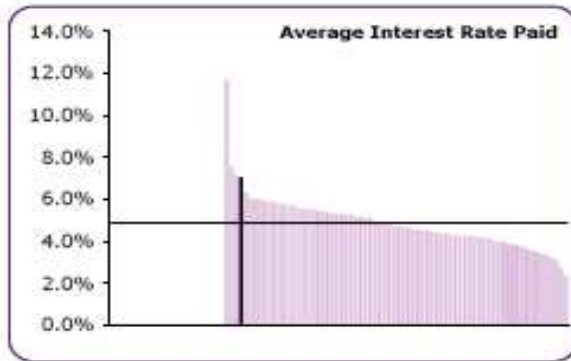
Benchmarking Data

COMBINED IN-HOUSE INVESTMENTS (excluding impaired investments)



Monthly Return (April 10 - March 11)													
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	Year
Av Bal £'m	16.94	16.78	17.87	18.60	19.94	20.34	21.68	21.50	20.80	20.82	18.94	14.69	19.08
Earned £'k	19.5	16.3	11.9	13.7	14.6	14.5	15.9	17.0	17.9	17.7	15.4	15.3	189.6
% Return	1.40%	1.14%	0.81%	0.86%	0.86%	0.87%	0.86%	0.96%	1.01%	1.00%	1.06%	1.23%	0.99%
Average	1.43%	1.32%	1.18%	1.15%	1.17%	1.14%	1.12%	1.14%	1.15%	1.15%	1.19%	1.25%	1.19%
Margin	-0.03%	-0.18%	-0.37%	-0.28%	-0.31%	-0.28%	-0.26%	-0.17%	-0.13%	-0.14%	-0.14%	-0.02%	

Interest Analysis 2010/11



Annual Average Investment

	Authority			Group Total		
	Av. Balance £'m	Interest £'k	Rate	Balance £'m	Interest £'k	Average Rate
Variable rate	7.6	59.7	0.8%	3,163	29,014	0.8%
Short-term fixed	8.9	71.5	0.8%	4,249	45,605	1.1%
Long-term fixed	2.6	58.5	2.2%	981	30,371	3.5%
Externally Managed	0.0	0.0	na	438	5,300	1.4%
Total	19.1	189.6	1.0%	8,830	110,290	1.2%

Annual Average Borrowing

	Authority			Group Total		
	Av. Balance £'m	Interest £'k	Rate	Balance £'m	Interest £'k	Average Rate
Variable rate	0.0	0.0	na	625	13,937	1.4%
Short-term fixed	0.0	0.0	na	582	2,440	0.6%
Long-term fixed	22.2	1,549.5	7.0%	13,824	710,385	5.2%
LOBO	0.0	0.0	na	3,831	166,446	4.5%
Total	22.2	1,549.5	7.0%	19,176	908,487	4.9%

**COUNCIL
13 September 2011**

Report of the Solicitor to the Council and Monitoring Officer

**REGULATION OF INVESTIGATORY POWERS ACT 2000
OFFICE OF SURVEILLANCE COMMISSIONERS INSPECTION**

1. PURPOSE

- 1.1 To inform members of the outcome of the visit from the Office of Surveillance Commissioner on 18 July 2011.
- 1.2 To advise Members of proposed changes to the RIPA Policy arising therefrom

RECOMMENDATIONS

- 1. That Members note the outcome arising from the visit by the Office of Surveillance Commissioner.**
- 2. That Members approve the changes to the RIPA Policy.**

3. RESOURCE IMPLICATIONS

- 3.1 None

4. LEGAL AND STATUTORY IMPLICATIONS

4.1 The recording of applications, authorisations, renewals and cancellations of investigations using covert surveillance techniques or involving the acquisition of communications data is covered by the Regulation of Investigatory Powers Act 2000.

4.2 The Regulation of Investigatory Powers Act was introduced to regulate existing surveillance and investigations in order to meet the requirements of Article 8 of the Human Rights Act. Article 8 states: Everyone has the right for his private and family life. His home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4.3 RIPA investigations are authorised for the prevention or detection of crime or the prevention of disorder.

4.4 There are no risk management nor Health and Safety implications.

5. BACKGROUND INFORMATION

5.1 The Council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. These functions include investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), benefit fraud, licensing and food safety legislation.

5.2 Whilst the majority of investigations are carried out openly, some investigations must be carried out using covert surveillance techniques or involve the acquisition of communications data. Communications data is information about the times of calls or internet use and the location and identity of the callers but not the content of the calls or the details of the websites viewed.

5.3 The Regulation of Investigatory Powers Act 2000 regulates the authorisation and monitoring of these investigations to safeguard the public from unwarranted intrusion of privacy. There has been recent media interest in the use of covert surveillance and acquisition of communications data by local authorities. Since January 2010 the Council has received five Freedom of Information Act requests about its use of these powers. The investigations carried out have been necessary, proportionate and in accordance with the law.

5.4 The Solicitor to the Council and Monitoring Officer is the Senior Responsible Officer (SRO) responsible for the integrity of the process and for ensuring that the Authorised Officers have received appropriate training. The SRO also maintains a central register of all applications and authorisations, reviews and cancellations of authorisations relating to directed surveillance under RIPA.

5.5 The Authority has four Authorising Officers to deal with applications under RIPA. The Authorising Officers are:

- Tony Goodwin :- Chief Executive
- John Wheatley :- Deputy Chief Executive
- Andrew Barratt:- Deputy Director Assets and Environment
- Rob Mitchell:- Deputy Director Communities, Planning & Partnerships

5.6 The Council is subject to regular inspections by the Office of the Surveillance Commissioner (OSC) who report on our policy, procedures, documentation and training. An inspection was carried out on 18 July 2011. The Commissioner reported that much work has been done since July 2008 by the authority to meet the previous OSC recommendations:- "The SRO has approached her role with purpose, applications and authorisations are RIPA compliant and there is an established practice whereby all relevant documentation is frequently reviewed. Policy and training requirements are now firmly established, supplemented by a small cadre of trained Authorised Officers. The personal engagement of the Chief Executive and that of other Senior Authorising Officers founds confidence that the recommended improvements will be made in future authorisations though it was not possible to judge this as there have been no applications since training was provided in October 2010. "

5.7 The Commissioner has recommended

(1) that the RIPA policy include parts of the guidance provided within the Covert Surveillance and Property Interference Code of Practice. This is attached at Appendix 1

(2) that the Central Record of Authorisations contain additional information e.g. details where an Authorising Officer is involved in the surveillance activity.

- (3) that the Senior Responsible Officer provide refresher training for staff involved in the RIPA process and
- (4) that an action plan incorporating the recommendations be submitted to the OSC by 3 October 2011. This is attached at Appendix 2

REPORT AUTHOR

Jane Hackett, Solicitor to the Council and Monitoring Officer Tel;709258.
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LIST OF BACKGROUND PAPERS

Regulation of Investigatory Powers Act 2000
The Covert Surveillance and Property Interference Code of Practice

APPENDICES

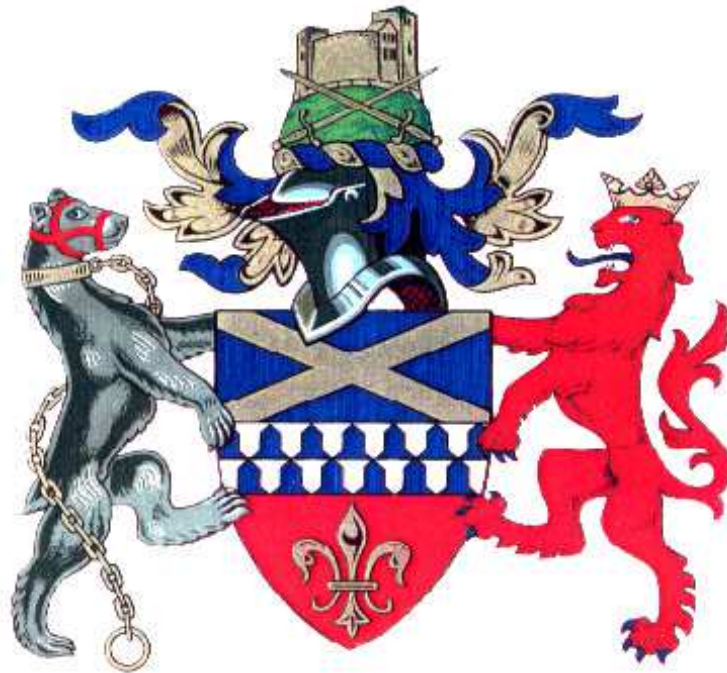
- Appendix 1 - The revised RIPA policy showing the recommended inclusions in italic script
- Appendix 2 - The Action Plan incorporating the recommendations of the OSC

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TAMWORTH BOROUGH COUNCIL

POLICY & PROCEDURE

**REGULATION OF INVESTIGATORY
POWERS ACT 2000
(RIPA)**



Jane M Hackett
Solicitor to the Council
Tamworth Borough Council

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Section A

Introduction

1. OBJECTIVE: SUSTAINABLE COMMUNITIES; SAFER AND STRONGER COMMUNITIES

Tamworth Borough Council is committed to improving the quality of life for the communities of Tamworth which includes benefiting from an attractive place to live, meeting the needs of local people and employers with opportunities for all to engage in community life. It also wishes to maintain its position as a low crime borough and a safe place to live, work and learn. Although most of the community comply with the law, it is necessary for Tamworth to carry out enforcement functions to take full action against those who flout the law. Tamworth Borough Council will carry out enforcement action in a fair, practical and consistent manner to help promote a thriving local economy.

2. HUMAN RIGHTS ACT 1998 – ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE & FAMILY LIFE, HOME AND CORRESPONDENCE

The Human Rights Act 1998 brought into UK domestic law much of the European Convention on Human Rights and Fundamental Freedoms 1950. Article 8 of the European Convention requires the Council to respect the private and family life of its citizens, their homes and their correspondence. Article 8 does, however, recognise that there may be circumstances in a democratic society where it is necessary for the state to interfere with this right.

3. USE OF COVERT SURVEILLANCE TECHNIQUES AND HUMAN INTELLIGENCE SOURCES

The Council has various functions which involve observing or investigating the conduct of others, for example, investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), benefit fraud, licensing and food safety legislation. In most cases, Council officers carry out these functions openly and in a way which does not interfere with a person's right to a private life. However, there are cases where it is necessary for officers to use covert surveillance techniques to undertake a specific investigation. The use of covert surveillance techniques is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA), which seeks to ensure that the public interest and human rights of individuals are appropriately balanced. This document sets out the Council's policy and procedures on the use of covert surveillance techniques and the conduct and use of a Covert Human Intelligence Source. You should also refer to the two Codes of Practice published by the Government. These Codes, which were revised in 2010, are on the Home Office website and supplement the procedures in this document. The Codes are admissible as

evidence in Criminal and Civil Proceedings. If a provision of these Codes appear relevant to any court or tribunal, it must be taken into account.

Covert Surveillance and Property Interference Code of Practice:-

[http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ri
pa/publication-search/general-publications/ripa-cop/covert-surveil-prop-inter-
COP](http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ri
pa/publication-search/general-publications/ripa-cop/covert-surveil-prop-inter-
COP)

Covert Human Intelligence Sources Code of Practice:

[http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ri
pa/publication-search/general-publications/ripa-cop/covert-human-intel-source-
COP](http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ri
pa/publication-search/general-publications/ripa-cop/covert-human-intel-source-
COP)

4. ACQUISITION OF COMMUNICATIONS DATA

RIPA also regulates the acquisition of communications data. Communications data is data held by telecommunications companies and internet service providers. Examples of communications traffic data which may be acquired with authorisation include names, addresses, telephone numbers, internet provider addresses, geographical location of the calling or the called parties. Communications data surveillance does not monitor the content of telephone calls or emails. This document sets out the procedures for the acquisition of communications data. You should also refer to the Code of Practice which is available on the Home Office website.

Acquisition and Disclosure of Communications Data Revised Draft Code of Practice:

[http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ri
pa/publication-search/general-publications/ripa-cop/acquisition-disclosure-cop](http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ri
pa/publication-search/general-publications/ripa-cop/acquisition-disclosure-cop)

Section B

EFFECTIVE DATE OF OPERATION AND AUTHORISING OFFICER RESPONSIBILITIES

1. The Policy and Procedures in this document have been amended to reflect the two revised Codes of Practice which came into force in April 2010, changes in website addresses and application forms as well as to reflect recommendations arising out of inspection by the Office of Surveillance Commissioners. It is essential, therefore, that Authorising Officers, take personal responsibility for the effective and efficient observance of this document.
2. It will be the responsibility of Authorising Officers to ensure that their relevant members of staff are suitably trained as 'Applicants'.
3. Authorising Officers will also ensure that staff who report to them follow this Policy and Procedures Document and do not undertake or carry out any form of covert surveillance without first obtaining the relevant authorisations in compliance with this document.
4. Authorising Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances, should an Authorising Officer approve any RIPA form unless, and until they are satisfied that
 - the health and safety of Council employees/agents are suitably addressed
 - risks minimised so far as is possible, and
 - risks are proportionate to the surveillance being proposed.

If an Authorising Officer is in any doubt, prior guidance should be obtained from the Solicitor to the Council.

5. Authorising Officers must also ensure that, when sending copies of any Forms to the Solicitor to the Council (or any other relevant authority), that they are sent in **sealed** envelopes and marked '**Strictly Private & Confidential**'.
6. In Accordance with SI 2010 521, the Senior Responsible Officer with responsibility for Authorising Officers is the Solicitor to the Council. The Chief Executive in consultation with Corporate Management Team has power to appoint Authorising Officers for the purposes of RIPA. Authorising Officers will only be appointed on the Chief Executive being satisfied that suitable training on RIPA has been undertaken.
7. The Solicitor to the Council will review the policy every six months and annual reports on performance of the policy will be presented to the Audit and Governance Committee of the Council.
8. Quarterly reports on the use of RIPA will be considered by the Audit and Governance Committee.

Section C

GENERAL INFORMATION ON RIPA

1. The Human Rights Act 1998 requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, their homes and their correspondence.
2. The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council may interfere in the citizen's right mentioned above, if such interference is:-
 - (a) **in accordance with the Law;**
 - (b) **necessary** (as defined in this document); **and**
 - (c) **proportionate** (as defined in this document).
3. The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a statutory mechanism (ie. 'in accordance with the law') for authorising **covert surveillance** and the use of a '**covert human intelligence source**' ('CHIS') – eg. undercover agents. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA and this Policy and Procedure document seeks to ensure both the public interest and the human rights of individuals are suitably balanced.
4. Directly employed Council staff and external agencies working for the Council are covered by the Act for the time they are working for the Council. All external agencies must, therefore, comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised by one of the Council's designated Authorising Officers. Please refer to Section H and to the paragraph on "Authorising Officers."
5. If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman and/or the Council could be ordered to pay compensation.
6. A flowchart of the procedures to be followed appears at **Appendix 1**.

Section D

WHAT RIPA DOES AND DOES NOT DO

1. RIPA:

- requires prior authorisation of directed surveillance.
- prohibits the Council from carrying out intrusive surveillance.
- requires authorisation of the conduct and use of a CHIS.
- requires safeguards for the conduct and use of a CHIS.

2. RIPA does not:

- make lawful conduct which is otherwise unlawful.
- prejudice or affect any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, the Council's current powers to obtain information from the DVLA or from the Land Registry as to the ownership of a property.

3. If the Authorising Officer or any Applicant is in any doubt, s/he should ask the Solicitor to the Council BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

Section E

TYPES OF SURVEILLANCE

'Surveillance' includes:

- monitoring, observing and listening to persons, watching or following their movements, listening to their conversations and other such activities or communications. It may be conducted with or without the assistance of a surveillance device.
- recording anything mentioned above in the course of authorised surveillance.
- surveillance, by or with, the assistance of appropriate surveillance device(s).

Surveillance can be overt or covert.

Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases, Officers will be behaving in the same way as a normal member of the public (eg. in the case of most test purchases), and/or will be going about Council business openly. Similarly, surveillance will be overt if the subject has been told it will happen (eg. where a noisemaker is warned (preferably in writing) that noise will be recorded).

Covert Surveillance

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) of RIPA).

RIPA regulates two types of covert surveillance, (Directed Surveillance and Intrusive Surveillance) and the use of Covert Human Intelligence Sources (CHIS).

Directed Surveillance

Directed Surveillance is surveillance which:-

- is **covert**; and
- is **not intrusive surveillance** (see definition below – the Council cannot carry out any intrusive surveillance).
- is not carried out in an immediate response to events which would otherwise make seeking authorisation under the Act reasonable, eg. spotting something suspicious and continuing to observe it; and
- it is undertaken for the purpose of a **specific investigation** or operation in a manner **likely to obtain private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation). (Section 26(10) RIPA).

Private Information in relation to a person includes any information relating to his private and family life, his home or his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others with whom s/he comes into contact. Private information may include personal data such as names, addresses or telephone numbers. Where such information is acquired by means of covert surveillance of a person having a reasonable expectation of privacy, a directed surveillance authorisation is appropriate.

Similarly, although overt town centre CCTV cameras do not normally require authorisation, if the camera is tasked for a specific purpose, which involves prolonged surveillance on a particular person, authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. Privacy considerations are likely to arise if several records are examined together to establish a pattern of behaviour.

For the avoidance of doubt, only those Officers appointed as ‘Authorising Officers’ for the purpose of RIPA can authorise ‘Directed Surveillance’ IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Document, are followed.

Intrusive Surveillance

This is when it:-

- is covert;
- relates to residential premises and private vehicles, even if used on a temporary basis. This includes the use of tracking devices on vehicles; and
- involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

This form of surveillance can be carried out only by police and other law enforcement agencies. Intrusive surveillance relates to the location of the surveillance, and not any consideration of the information that is likely to be obtained. Council officers cannot carry out intrusive surveillance.

“Proportionality”

This term contains three concepts:-

- the surveillance should not be excessive in relation to the gravity of the matter being investigated;
- the least intrusive method of surveillance should be chosen; and
- collateral intrusion involving invasion of third parties’ privacy and should, so far as possible, be minimised.

Section F

CONDUCT AND USE OF A COVERT HUMAN INTELLIGENCE SOURCE (CHIS)

The Council can use a CHIS IF, AND ONLY IF, RIPA procedures, detailed in this document, are followed.

It is unlikely that a Local Authority will want to use a CHIS. If it appears that use of a CHIS may be required Authorising Officers must seek legal advice from the Solicitor to the Council.

Who is a CHIS?

Someone who establishes or maintains a personal or other relationship for the covert purpose of helping the covert use of the relationship to obtain information. RIPA does not apply in circumstances where members of the public volunteer information to the Council as part of their normal civic duties, or to contact numbers set up to receive information.

What must be authorised?

The conduct or use of a CHIS requires prior authorisation.

- **Conduct** of a CHIS = Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or incidental to) obtaining and passing on information.
- **Use** of a CHIS = Actions inducing, asking or assisting a person to act as a CHIS and the decision to use a CHIS in the first place.

Juvenile Sources

Special safeguards apply to the use or conduct of juvenile sources (i.e. those under the age of 18). On no occasion can a child under 16 years of age be authorised to give information against his or her parents or any person with parental responsibility for him or her. Only the Chief Executive, or in his absence, the Deputy Chief Executive can authorise the use of a juvenile as a source.

Vulnerable Individuals

A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

A Vulnerable Individual will only be authorised to act as a source in the most exceptional of circumstances. Only the Chief Executive, or in his absence, the Deputy Chief Executive can authorise the use of a vulnerable individual as a source.

Test Purchases

Carrying out test purchases will not (as highlighted above) require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).

By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product (e.g. illegally imported products) will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance. A combined authorisation can be given for a CHIS and also directed surveillance.

Authorising Officers should consider the likelihood that the test purchase will lead to a relationship being formed with a person in the shop. If the particular circumstances of a particular test purchase are likely to involve the development of a relationship Authorising Officers must seek legal advice from the Solicitor to the Council.

Anti-Social Behaviour Activities (eg. Noise, Violence, Race etc)

Persons who complain about anti-social behaviour, and are asked to keep a diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (eg. the decibel level) will not normally capture private information and, therefore, does not require authorisation.

Recording sound (with a DAT recorder) on private premises could constitute intrusive surveillance, unless it is done overtly. For example, it will be possible to record without RIPA authorisation if the noisemaker is warned that this will occur. Placing a covert stationary or mobile camera outside a building to record anti-social behaviour on residential estates will require prior authorisation.

Section G

THE ROLE OF THE RIPA CO-ORDINATOR

Key Responsibilities of the RIPA Co-ordinator

- In this document the RIPA Co-ordinator is the Solicitor to the Council. The key responsibilities of the RIPA Co-ordinator are to:
- Retain all applications for authorisation (including those that have been refused), renewals and cancellations for a period of at least **three years** together with any supplementary documentation;
- Provide a unique reference number and maintain the central register of all applications for authorisations whether finally granted or refused (see section below);
- Create and maintain a spreadsheet for the purpose of identifying and monitoring expiry dates and renewal dates although the responsibility for this is primarily that of the officer in charge and the Authorising Officer;
- Monitor types of activities being authorised to ensure consistency and quality throughout the Council;
- Ensure sections identify and fulfil training needs;
- Periodically review Council procedures to ensure that they are up to date;
- Assist Council employees to keep abreast of RIPA developments;
- Provide a link to the Surveillance Commissioner and disseminate information on changes on the law, good practice etc. Officers becoming aware of such information should, conversely, send it to the RIPA Co-ordinator for this purpose;
- Check that Authorising Officers carry out reviews and cancellations on a timely basis.

Central Record of Authorisations

A centrally retrievable record of all authorisations will be held by the RIPA Co-ordinator (Solicitor to the Council) which must be up-dated whenever an authorisation is granted, renewed or cancelled. These records will be retained for a period of **three years** from the ending of the authorisation and will contain the following information:

- The type of authorisation;
- The date the authorisation was given;
- The name and title of the Authorising Officer;

- The unique reference number of the investigation (URN);
- The title of the investigation or operation, including a brief description and the names of the subjects, if known;
- Whether the urgency provisions were used and if so why;
- Whether the investigation will obtain confidential information;
- Whether the authorisation was granted by an individual directly involved in the investigation;
- The dates the authorisation is reviewed and the name and title of the Authorising Officer;
- If the authorisation is renewed, when it was renewed and the name and title of the Authorising Officer;
- The date the authorisation was cancelled.

Access to the data will be restricted to the RIPA Co-ordinator and Authorising Officers to maintain the confidentiality of the information.

Section H

AUTHORISATION PROCEDURES

1. Directed surveillance and the use of a CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation.

Appendix 1 provides a flow chart of the process from application consideration to recording of information.

Authorising Officers

Forms can only be signed by Authorising Officers. The Authorising Officers are:

Chief Executive	Tony Goodwin
Deputy Chief Executive	John Wheatley
Deputy Director Assets & Environment	Andrew Barratt
Deputy Director Community, Planning & Partnerships	Rob Mitchell

Appointment of the aforesaid officers is subject to the training requirements set out in the paragraph below.

Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and any internal departmental Schemes of Management.

RIPA authorisations are for specific investigations only, and must be renewed or cancelled once the specific surveillance is complete or about to expire. **The authorisations do not lapse with time.**

Authorising officers should not normally be responsible for authorising operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations, or where it is necessary to act urgently or for security reasons. Where an authorising officer authorises such an investigation or operation the centrally retrievable record of authorisations should highlight this and the attention of a Commissioner or Inspector should be invited to it during the next inspection.

Training

Authorising Officers will only be appointed if the Chief Executive is satisfied that they have undertaken suitable training on RIPA. Evidence of suitable training is to be supplied in the form of a certificate/confirmation from the trainer to the effect that the Authorising Officer has completed a suitable course of instruction.

The Solicitor to the Council will maintain a Register of Authorising Officers and details of training undertaken by them.

If the Chief Executive is of the view that an Authorising Officer has not complied fully with the requirements of this document, or the training requirements then that Officer's authorisation can be withdrawn until they have undertaken further approved training or has attended a one-to-one meeting with the Chief Executive.

Application Forms

Only the approved RIPA forms referred to in Appendices 2 and 3 must be used. The forms have to be downloaded and completed in the applicant's handwriting.

Grounds for Authorisation

Directed Surveillance (A Forms) or the Conduct and Use of the CHIS (B Forms) can be authorised by the Council only on the ground of:-

preventing or detecting crime or preventing disorder.

No other ground is available.

Assessing the Application Form

The following information should be included on the application form:

- the reasons why the authorisation is necessary in the particular case and on the grounds listed in Section 28(3)b of RIPA;
- the nature of the surveillance and the precise location it is to take place;
- the identities, where known, of those to be the subject of the surveillance;
- a summary of the intelligence case and appropriate unique intelligence references where applicable;
- an explanation of the information which it is desired to obtain as a result of the surveillance;
- the details of any potential collateral intrusion and why the intrusion is justified;
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance;
- the reasons why the surveillance is considered proportionate to what it seeks to achieve and detail of less intrusive options that have been considered.

Before an Authorising Officer signs a Form, they must:-

- (a) Be mindful of this Policy & Procedures Document and the training undertaken
- (b) Be satisfied that the RIPA authorisation is:-
 - (i) **in accordance with the law;**
 - (ii) **necessary** in the circumstances of the particular case on the ground mentioned in paragraph 10 above; **and**
 - (iii) **proportionate** to what it seeks to achieve.
- (c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- *balance the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;*
- *explain how and why the methods to be adopted will cause the least possible intrusion on the subject and others;*
- *consider whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;*
- *evidence, what other methods have been considered and why they were not implemented.*

The least intrusive method will be considered proportionate by the courts.

- (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**collateral intrusion**). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion. This matter may be an aspect of determining proportionality;
- (e) Set a date for review of the authorisation and review on only that date;
- (f) Obtain a Unique Reference Number (URN) for the application from the Solicitor to the Council on 01827 709258
- (g) Ensure that a copy of the RIPA Forms (and any review/cancellation of the same) is forwarded to the Solicitor to the Council, Central Register, **within 5 working days of the relevant authorisation, review, renewal, cancellation or rejection.**

Additional Safeguards when Authorising a CHIS

When authorising the conduct or use of a CHIS, the Authorising Officer must also:-

- (a) be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved.
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment;

- (c) Consider the likely degree of intrusion of all those potentially affected;
- (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need to know basis.
- (f) Ensure that if the CHIS is under the age of 18 or is a vulnerable adult the Authorising Officer is the Chief Executive or in his absence, the Deputy Chief Executive.

The Authorising Officer must attend to the requirement of section 29(5) RIPA and of the Regulation of Investigatory Powers (Source Records) Regulations 2000. It is strongly recommended that legal advice is obtained in relation to the authorisation of a CHIS.

Urgent Authorisations

Urgent authorisations should not be necessary.

In exceptional circumstances, however, urgent authorisations may be given orally if the time that would elapse before a written authorisation can be granted would be likely to jeopardise the investigation or operation for which the authorisation was being given.

It will not be urgent where the need for authorisation has been neglected or is of the Officer's own making.

Urgent authorisations last for no more than 72 hours. They must be recorded in writing on the standard form as soon as practicable and the extra boxes on the form completed to explain why the authorisation was urgent.

Urgent authorisations can only be granted by the Chief Executive or in his absence the Deputy Chief Executive.

Duration

It is important that all those involved, including applicants and practitioners, in undertaking directed or intrusive surveillance activities or interference with property under the 2000 Act, 1997 Act or 1994 Act are fully aware of the extent and limits of the authorisation.

The Form **must be reviewed in the time stated and cancelled** once it is no longer needed.

*The 'authorisation' to carry out/conduct the surveillance lasts for **3 months** (from authorisation) for Directed Surveillance. Accordingly, a written authorisation granted by an authorising officer will cease to have effect (unless renewed or cancelled) at*

the end of a period of three months beginning with the time at which it took effect. An authorisation for a CHIS lasts for 12 months (from authorisation).

However, whether the surveillance is carried out/conducted or not, in the relevant period, does not mean the 'authorisation' is 'spent'. In other words, **the forms do not expire**. The forms have to be reviewed and/or cancelled (once they are no longer required).

Urgent oral authorisation, if not already ratified in a written authorisation, will cease to have effect after 72 hours, beginning with the time when the authorisation was granted.

Authorisations can be renewed in writing when the maximum period has expired. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred. All authorisations should be reviewed based on the level of collateral intrusion or the amount of confidential information obtained. Authorising Officers should set review dates based on the likelihood of this information being captured.

The renewal will begin on the day when the authorisation would have expired. In exceptional circumstances, renewals may be granted orally in urgent cases and last for a period of seventy-two hours.

Section I

WORKING WITH / THROUGH OTHER AGENCIES

When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. The agency must be made aware explicitly what they are authorised to do.

When another agency (e.g. Police, Customs & Excise, Inland Revenue etc):-

- (a) wishes to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, the Officer must obtain a copy of that agency's RIPA form for the record (a copy of which must be passed to the Solicitor to the Council for the Central Register) and/or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources;
- (b) wish to use the Council's premises for their own RIPA action, the Chief Officer or Head of Service should, normally, cooperate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's cooperation in the agent's RIPA operation. In such cases, however, the Council's own RIPA forms should not be used as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

If the Police or any other Agency wish to use Council resources for general surveillance, as opposed to specific RIPA operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the police or other Agency before any Council resources are made available for the proposed use.

Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of any similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. It is therefore recommended that where an authorising officer from a public authority considers that conflicts might arise they should consult a senior officer within the police force area in which the investigation or operation is to take place.

If in doubt, please consult with the Solicitor to the Council at the earliest opportunity.

Section J

RECORD MANAGEMENT

The Council must keep detailed records of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all Authorisation Forms will be maintained and monitored by the Solicitor to the Council.

Records Maintained in the Department

The following documents must be retained by the Department authorising the surveillance:

- a copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the Authorising Officer;
- the Unique Reference Number for the authorisation (URN).

Central Register maintained by the Solicitor to the Council

Authorising Officers must forward a copy of the form to the Solicitor to the Council for the Central Register, within 5 working days of the authorisation, review, renewal, cancellation or rejection. The Solicitor to the Council will monitor the same and give appropriate guidance to Authorising Officers from time to time, or amend this document in the light of changes of legislation or developments through case law.

Retention and Destruction of Material

Arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed or intrusive surveillance or property interference. Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and any relevant codes of practice produced by individual authorised relating to the handling and storage of material.

The Council will retain records for a period of at least three years from the ending of the authorisation. The Office of the Surveillance Commissioners (OSC) can audit/review the Council's policies and procedures, and individual authorisations.

The Office of the Surveillance Commissioners will also write to the Council from time to time, requesting information as to the numbers of authorisations made in a specific period. It will be the responsibility of the Solicitor to the Council to respond to such communications.

Section K

ACQUISITION OF COMMUNICATIONS DATA

What is Communications Data?

Communication data means any traffic or any information that is or has been sent by or over a telecommunications system or postal system, together with information about the use of the system made by any person.

Powers

There are two powers granted by S22 RIPA in respect of the acquisition of Communications Data from telecommunications and postal companies ("Communications Companies").

S22 (3) provides that an authorised person can authorise another person within the same relevant public authority to collect the data. This allows the local authority to collect the communications data themselves, i.e. if a private telecommunications company is technically unable to collect the data, an authorisation under this section would permit the local authority to collect the communications data themselves.

In order to compel a communications company to obtain and disclose, or just disclose communications data in their possession, a notice under S22 (4) RIPA must be issued. The sole grounds to permit the issuing of a S22 notice by a permitted Local Authority is for the purposes of "preventing or detecting crime or of preventing disorder". The issuing of such a notice will be the more common of the two powers utilised, in that the Communications Company will most probably have means of collating and providing the communications data requested.

Single Point of Contact

In accordance with the Home Office Acquisition and Disclosure of Communications Data Code of Practice the Council is required to have a "Single Point of Contact" ("SPoC"). The role of the SPoC is to enable and maintain effective co-operation between a public authority and communications service providers in the lawful acquisition and disclosure of communications data. Before an officer can be a SPoC specialist training recognised by the Home Office has to be undertaken. A SPoC must also register his or her details with the Home Office. The Solicitor the the Council is SPoC for Tamworth Borough Council.

Details of the training undertaken is kept in the Central Register.

The functions of the SPoC are to:

- Assess, where appropriate, whether access to communications data is reasonably practical for the postal or telecommunications operator;

- Advise Applicants and Authorising Officers on the practicalities of accessing different types of communications data from different postal or telecommunications operators
- Advise Applicants and Authorising Officers on whether communications data falls under section 21(4)(a), (b) or (c) of RIPA
- Provide safeguards for authentication
- Assess any cost and resource implications to both the Council and postal or telecommunications operator.

The Senior Responsible Officer

In accordance with the Code of Practice each public authority must have a Senior Responsible Officer who is responsible for:

- The integrity of the process in places within the public authority to acquire communications data;
- Compliance with Chapter II of Part 1 of RIPA and with the Code;
- Oversight of the reporting of errors to the Interception of Communications Commissioner's Office (IOCCO) and the identification of both the cause of errors and the implementation of processes to minimise repetition of errors;
- Engagement with the IOCCO inspectors when they conduct their inspections and;
- Where necessary, oversee the implementation of post – inspection action plans approved by the Commissioner

The Council's Senior Responsible Officer is the Solicitor to the Council.

Application Forms

Only the approved Accessing Communications Data forms referred to in Appendix 4 must be used. The forms have to be downloaded and completed in the Applicants handwriting

Procedure

All applications to obtain communications data must be channelled through the SPoC. If an investigating officer is considering making an application to obtain communications data they should contact the SPoC for advice and to obtain the appropriate forms.

In completing the forms the investigating officer must address the issues of necessity, proportionality and collateral intrusion. The following is guidance on the principles of necessity, proportionality and collateral intrusion.

“Necessity” should be a short explanation of the crime (together with details of the relevant legislation), the suspect, victim or witness and the telephone or communications address and how all these three link together. It may be helpful to outline the brief details of the investigation and the circumstances leading to the application as this will assist with justifying necessity. The source of the telephone number or communications address should also be outlined. E.g. if the number was

obtained from itemised billing or a business flyer there should be specific identifiers such as the telephone number or exhibit number.

As regards “proportionality” there should be an outline of what the investigating officer expects to achieve from obtaining the data and explain how the level of intrusion is justified when taking into consideration the benefit the data will give to the investigation. The investigating officer should give an explanation as to why specific date/time periods of data have been requested. An explanation of what is going to be done with the communications data once it is acquired and how that action will benefit the investigation will assist with the justification of proportionality. The investigating officer should outline what other checks or methods have been tried e.g. visiting other known addresses, ringing the number etc or why such methods are not deemed feasible.

“Collateral intrusion” should also be addressed on the suspect or individual in question to demonstrate that the intrusion is not arbitrary or unfair. There will only be minimal collateral intrusion in relation to subscriber checks or none will be identified at the time of making the application. In some case it will be clear that the suspect has been contacted on the actual telephone number by the complainant or the investigating officer and therefore this reduces the potential for collateral intrusion. Investigating officers should also mention whether it is known that the telephone number (or other type of data) has been used to advertise the business, either in the press/internet or on business cards/flyers as this would also be evidence to show that the suspect is actually using the telephone number and further reduce the potential for collateral intrusion. Collateral intrusion becomes more relevant when applying for service use data and investigating officers should outline specifically what collateral intrusion may occur, how the time periods requested impact on collateral intrusion and whether they are likely to obtain data which is outside the realm of their investigation.

Once the investigating officer has completed the application form it should be passed to the SPoC together with a draft Notice to the Communications Service Provider. If the SPoC is satisfied that the application should proceed, the Application and the draft Notice to the Communications Service Provider will be considered by an Authorising Officer¹. If the SPoC decides that the application is not justified it will be rejected. If the SPoC requires further information in order to consider the application this will be requested from the investigating officer and recorded on the SPoC Log Sheet.

The Authorising Officer must consider:

- (a) whether the case justifies the accessing of communications data for the **purposes of preventing or detecting crime or of preventing disorder** and why obtaining the data is **necessary**;

and

- (b) whether obtaining access to the data by the conduct authorised, or required of the postal or telecommunications operator in the case of a notice, is **proportionate** to what is sought to be achieved.

The Authorising Officer will complete the Application Form as appropriate.

If the Authorising Officer becomes directly involved in the operation, such involvement and their justification for undertaking the role of Authorising Officer must be explicit in the written considerations on the Application Form or alternatively the application should be passed to another Authorising Officer for consideration.

If the accessing of communications data is authorised the Authorising Officer will sign the Notice to the Communication Service Provider, complete the date/time of issue and return all forms to the SPoC

The SPoC will then issue the Notice to the Communications Service Provider

1. NOTE: The Code of Practice referred to in paragraph 5 above refers to "Designated Persons" as those whose authority is obtained with regard to the application. However, for the purposes of this policy and procedure the term "Authorising Officer" will be used for that of "Designated Person".

Duration

Authorisations and notices are only valid for one month. A shorter period should be specified if this is satisfied by the request. An authorisation or notice may be renewed during the month by following the same procedure as obtaining a fresh authorisation or notice.

An Authorising Officer shall cancel an authorisation or notice as soon as it is no longer necessary or the conduct is no longer proportionate to what is sought to be achieved. The duty to cancel a notice falls on the Authorising Officer who issued it.

Record Management

Applications, authorisations and notices for communications data must be retained by the SPoC until audited by the IOCCO. All such documentation must be kept in locked storage.

Errors

Where any errors have occurred in the granting of authorisations or the giving of notices, a record shall be kept and a report and explanation sent to the IOCCO as soon as reasonably practicable.

Oversight

The IOCCO will write to the Council from time to time requesting information as to the numbers of applications for communications data and confirmation as to whether there have been any errors which have occurred when obtaining data communications. It will be the responsibility of the Solicitor to the Council to respond to such communications.

Section L

CONCLUSION

Obtaining an authorisation under RIPA and following the guidance and procedures in this document will assist in ensuring that the use of covert surveillance or a CHIS is carried out in accordance with the law and subject to safeguards against infringing an individual's human rights. Complying with the provisions of RIPA protects the Council against challenges for breaches of Article 8 of the European Convention on Human Rights.

Authorising Officers will be suitably trained and they must exercise their minds every time they are asked to sign a Form. They must never sign or rubber stamp Form(s) without thinking about their personal and the Council's responsibilities.

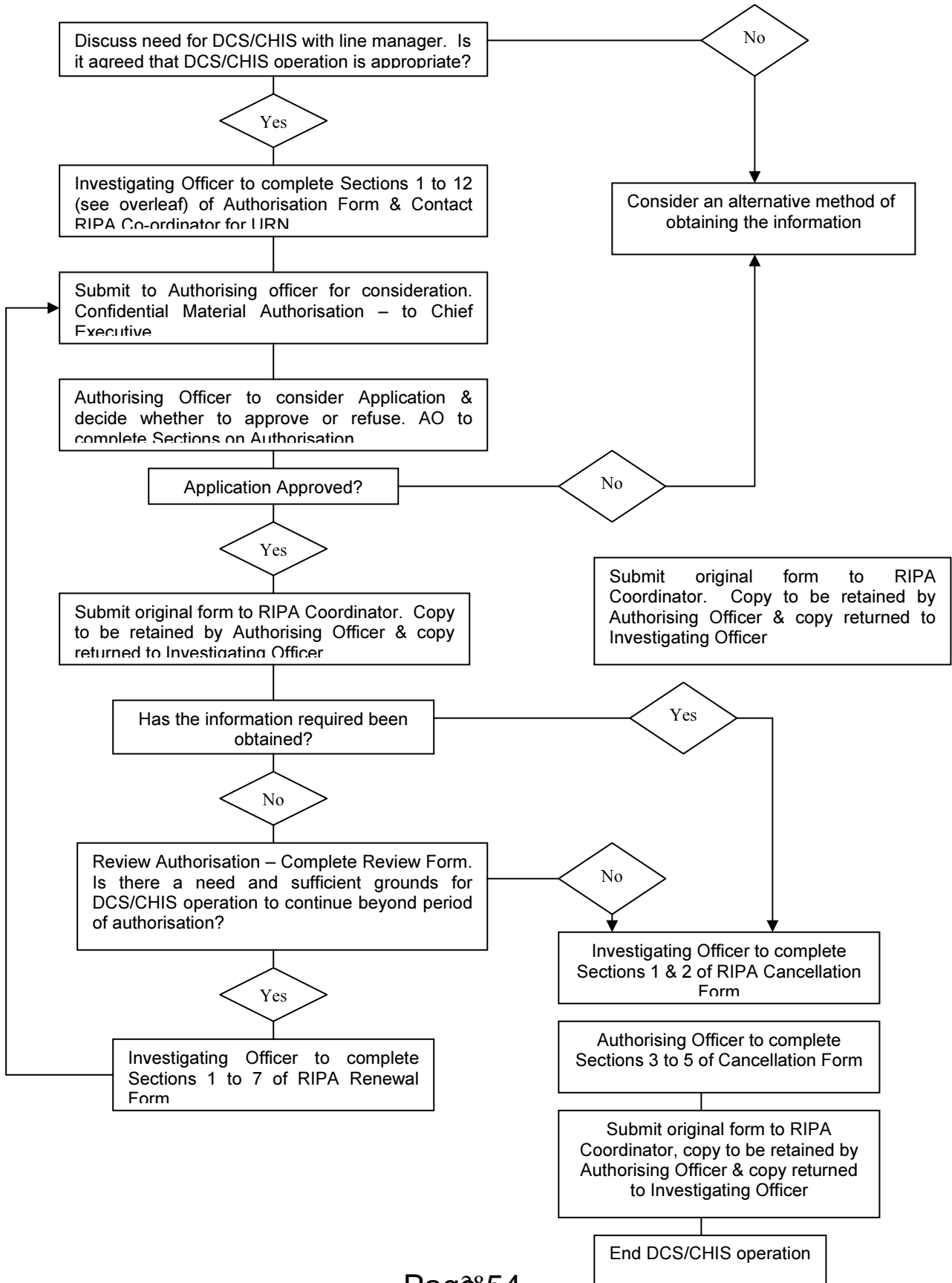
Any boxes not needed on the Form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same. Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.

For further advice and assistance on RIPA, please contact the Solicitor to the Council (who is also the Monitoring Officer).

APPENDIX 1

It is important that all those involved including applicants, practitioners and authorising officers in undertaking directed or intrusive surveillance activities or interference with property under the 2000 Act or 1994 Act are fully aware of the extent and limits of the authorisation.

PROCEDURE FOR OBTAINING RIPA



APPENDIX 2

A FORMS

DIRECTED SURVEILLANCE

All forms can be obtained from:

<http://www.homeoffice.gov.uk/counter-terrorism/ripa-forms/>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Application for Authorisation Directed Surveillance

Application for Review of a Directed Surveillance Authorisation

Application for Renewal of a Directed Surveillance Authorisation

Application for Cancellation of a Directed Surveillance Authorisation

APPENDIX 3

B FORMS

CONDUCT OF A COVERT HUMAN INTELLIGENCE SOURCE

All forms can be obtained from:

<http://www.homeoffice.gov.uk/counter-terrorism/ripa-forms/>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Application for Authorisation of the conduct or use of a Covert Human Intelligence Source (CHIS).

Application for Review of a Covert Human Intelligence Source (CHIS) Authorisation.

Application for renewal of a Covert Human Intelligence Source (CHIS) Authorisation.

Application for Cancellation of an authorisation for the use or Conduct of a Covert Human Intelligence Source.

APPENDIX 4

C FORMS

ACQUISITION OF COMMUNICATIONS DATA

All forms can be obtained from the Home Office: RIPA Codes of Conduct website:
<http://www.homeoffice.gov.uk/counter-terrorism/ripa-forms/>

The form has to be downloaded and completed in the applicant's handwriting. The Authorising Officer must also complete the relevant section of the form in handwriting. The original form has to be passed to the Solicitor to the Council.

Part I Chapter II request schedule for subscriber information

Specimen Part I Chapter II authorisation

Specimen Part I Chapter II Notice

Chapter II application for communications data

Guidance notes regarding chapter II application form

RIPA Section 22 notice to obtain communications data from communications service providers

Reporting an error by a CSP to the IOCCO

Reporting an error by a public authority to the IOCCO

Appendix 5

USE OF COVERT SURVEILLANCE EQUIPMENT – Technical Guidance

1. Introduction

The use of covert CCTV systems across the Tamworth Borough Council is governed by law and policy. The CCTV and Parking Manager Manager has to ensure the Council comply with the provisions of the Data Protection Act 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000. Compliance with these Acts, their associated Codes of Practice and the council's RIPA Policy will assist the users of the surveillance equipment in meeting their legal obligations.

2. Initial Assessment Procedures

Before installing and using covert surveillance equipment users will need to ENSURE authorisation to install surveillance had been obtained and establish the purpose or purposes for which they intend to use the equipment, as the First Data Protection Principle requires Data Controllers to have a legitimate basis for processing personal data, in this case images of individuals. Hence the following procedures should be carried out:

1. Assess the appropriateness of, and reasons for, using CCTV or similar surveillance equipment and document this process.
2. Establish the purpose of the operation.
3. Establish the person or persons responsible for ensuring the day-to-day compliance with this Code of Practice.
4. Establish the associated security and disclosure policies.
5. Obtain the approval of the authorising officer for this activity by using the specified forms and processes set out in the RIPA Policy.

There are only 4 persons in Tamworth Borough Council who can authorise surveillance operations:-

Chief Executive,
Deputy Chief Executive,
Corporate Director Resources and
Deputy Director Assets and Environment.

3. Equipment

The Council currently has access to surveillance systems. The system consists of two types of covert systems; one for internal locations which has three cameras and one hard drive recorder. The second system for external use

consists of a battery box, 6 bullet cameras and two hard drive recorders. All the equipment is kept in locked storage and can only be accessed by key, which is managed by a diary. All equipment being removed MUST be logged out in the diary. The CCTV and Parking Manager has sole access to the data collected.

4. Deploying the Systems/cameras

1. The equipment should be sited in such a way that it monitors only the area intended, i.e. where the incident of fly tipping is likely to occur.
2. The user/s should only use the covert system/s as set out in the authorisation document.
3. Investigating officers must be aware of the purpose(s) for which the operation has been established.
4. Investigating officers are expected to fill in the appropriate risk assessment and premises consent forms when necessary.

5. Handling of the Images

It is important that the images produced by the equipment are as clear as possible in order that they are effective for the purpose(s) for which they are intended. The following standards should therefore be observed:

1. Carry out an initial check on installation to ensure that the equipment performs properly.
2. Ensure that, where tapes are used they are of good quality.
3. Images should be retained until prosecution is completed.
4. ALL storage discs must be kept in the metal locked cupboard except in the case of viewing, production as evidence of court proceeding.
5. Media should not continue to be used once it becomes clear that the quality of the images has begun to deteriorate.
6. All systems and cameras should be properly maintained and serviced to ensure that clear images are recorded and a maintenance log kept.
7. Cameras should be protected from vandalism in order to ensure that they remain in working order.

6. Processing the Images

To maintain the integrity of the images and to protect the rights of the individual, the following standards should be maintained:

1. Access to recorded images should be restricted to the person responsible for managing the investigation (the Data Owner) or his/her nominee who will decide whether to allow requests for access by third parties.
2. Where images are retained, it is essential that their integrity be maintained, whether to ensure their evidential value or to protect the rights of the people whose images may have been recorded.

3. Images should not be retained for longer than is necessary; once the retention period has expired, the images should be removed or erased. If in doubt. Speak to the The CCTV and Parking Manager Manager or Legal Services.
4. If the images are retained for evidential purposes, they should be kept in a secure place (locked metal cupboard) to which access is controlled.
5. On removing the medium on which images have been recorded for use in legal proceedings, the operator should ensure that s/he has documented the date on which the images were removed from the general system for such use, the reason for doing so, any crime incident number to which the images may be relevant, the new location of the images and the signature of the person collecting the images. In such instances this will only be officer from Staffordshire Police or an Authorising officer within the Council.

7. Access to and Disclosure of Images to Third Parties

It is important that access to, and disclosure of, the images recorded by CCTV and similar surveillance equipment is restricted and carefully controlled, not only to ensure that the rights of the individual are preserved, but also to ensure that the chain of evidence remains intact should the images be required for evidential purposes. Staff should maintain the following standards:

1. Access to recorded images should be restricted to those staff who need to have access in order to achieve the purpose(s) of using the recording equipment.
2. All access to the medium on which images are recorded should be documented.
3. Disclosure of recorded images to third parties, whether officers of the Enforcement Team or not, should only be made in limited and prescribed circumstances.
4. All requests for access or for disclosure should be recorded and, if access is denied, the reason should be documented.
5. If access to or disclosure of images is allowed, then the following should be recorded:
 - The date and time access was allowed or disclosure made.
 - The identification of any third party who was allowed access or to whom disclosure was made.
 - The reason for allowing access or disclosure.
 - The extent of the information to which access was allowed or which was disclosed.

8. Monitoring Compliance with this Code of Practice

1. The The CCTV and Parking Manager Manager will undertake regular reviews of the documented procedures and the above processes to ensure that the provisions of this Code are being complied with.

Tamworth Borough Council

Action Plan following OSC Inspection 18th July 2011

Introduction

Following a review of the Council's management of covert activities on 18th July 2011 the Chief Surveillance Commissioner indicated in his report that much had been done to meet previous OSC recommendations. The apparent inertia within the authority to deal with previous OSC recommendations had been reversed. This action plan proposes to improve the conduct of covert activities and to be used as a tool for the SRO and Authorising Officers.

The Authority uses performance management software named "Covalent". It is an effective management tool. The actions and milestones contained in this Action Plan will be populated on Covalent to assist in the management of the Policy and associated action arising therefrom.

The Action Plan is organised under 4 headings:

1. RIPA Policy
2. Applications
3. Central Record of Authorisations
4. Training

Glossary of Terms/Abbreviations

OSC	Office of Surveillance Commissioners
RIPA	Regulation of Investigatory Powers Act 2000
SRO	Senior Responsible Officer
CSPI Code of Practice	Covert Surveillance and Property Interference Code of Practice

RIPA POLICY & PROCEDURES

Action Plan

HEADING	OBJECTIVE	TIMETABLE & RESPONSIBILITY		MEANS OF VERIFICATION
RIPA Policy	Update policy to include paragraphs 3.5; 3.6; 5.10 and 3.7 of the CSPI Code of Practice	Mid September 2001	JMH	Policy to be approved by Full Council 13 September 2011. Copy sent to OSC once approved
	Officer Compliance 1. Raise awareness of requirements relating to content of an authorisation by updating policy and circulating relevant paragraphs from CSPI Code of Practice. 2. Raise awareness of requirements relating to self authorisation and involvement in surveillance activities Para 5.7 of CSPI Code of Practice	End September 2011	All Users & JMH	Policy to be out on Net Consent for all users to verify have read and understood content Training session by SRO to include inter alia said requirements
Applications	1. More consideration required to be given to proportionality (more detail on application)	By January 2012	JMH & All users	Approval on Net Consent and training session by SRO

HEADING	OBJECTIVE	TIMETABLE & RESPONSIBILITY		MEANS OF VERIFICATION
	2. Effective Time Periods a) 3 months normal duration b) reviews c) cancellation	By January 2012	JMH & All users	Approval on Net Consent and training session by SRO
	3. Evidence of Practitioners having complied with parameters of authorisation a) agreed protocol with external service provider b) operatives aware of parameters of authorisation	By January 2012	JMH & All users	Approval on Net Consent and training session by SRO
	4. Authorising Officers properly manage the product from the surveillance. Para 9.3 CSPI Code of Practice	By January 2012	JMH & Authorising Officers	Approval on Net Consent and training session by SRO
	5. Core function requirements to be considered where appropriate. Paras 2.25 & 2.26 of the CSPI Code of Practice	By January 2012	JMH & Authorising Officers	Approval on Net Consent and training session by SRO
Central Records of Authorisations	Update spreadsheet to include columns for self authorisation detail of investigation/operation include brief description, name of subject(s) etc	Mid September 2011	JMH	Copy details of amended spreadsheet to OSC

HEADING	OBJECTIVE	TIMETABLE & RESPONSIBILITY		MEANS OF VERIFICATION
Training	Ensure regular training takes place and all users understand process involved	By January 2012	JMH & All users	<ol style="list-style-type: none"> 1. Formal training next due Oct 2012, biannually thereafter 2. Six monthly reminders of Policy content and that of the CSPI Code of Practice for all users 3. Training session by SRO no later than January 2012