



Borough of Tamworth

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AUDIT AND GOVERNANCE COMMITTEE

19 September 2023

Dear Councillor

A meeting of the Audit and Governance Committee will be held in **Town Hall, Market Street, Tamworth on Wednesday, 27th September, 2023 at 6.00 pm**. Members of the Committee are requested to attend.

Yours faithfully

A handwritten signature in black ink, appearing to be 'AJS', followed by a long horizontal line.

CHIEF EXECUTIVE

A G E N D A

NON CONFIDENTIAL

- 1 Apologies for Absence**
- 2 Minutes of the Previous Meeting (Pages 5 - 6)**
- 3 Declarations of Interest**

To receive any declarations of Members' interests (pecuniary and non-pecuniary) in any matters which are to be considered at this meeting.

When Members are declaring a pecuniary or non-pecuniary 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 pecuniary or non-pecuniary interest in respect of which they do not have a dispensation.

- 4 Audit Findings Report and Management Representation Letter (To Follow)**
(Report of the External Auditors to recommend approval of the Audit Findings Report and Management Representation Letter)
- 5 Annual Statement of Accounts and Report 2022/23 (To Follow)**
(Report of the Interim Executive Director Finance and S151 Officer)
- 6 Risk Management Quarterly Update Qt1 2023/24 (Pages 7 - 32)**
(Report of the Assistant Director, Finance)
- 7 Regulation of Investigatory Powers Act 2000 (Pages 33 - 86)**
(Report of the Assistant Director, Partnerships)
- 8 Modern Slavery Statement 2022/23 (Pages 87 - 96)**
(Report of the Assistant Director, Partnerships)
- 9 Local Government and Social Care Ombudsman Annual Review 2022/23 (Pages 97 - 116)**
(Report of the Assistant Director, People)
- 10 Audit and Governance Committee Timetable (Pages 117 - 122)**
(Discussion Item)

Access arrangements

If you have any particular access requirements when attending the meeting, please contact Democratic Services on 01827 709267 or e-mail democratic-services@tamworth.gov.uk. We can then endeavour to ensure that any particular requirements you may have are catered for.

Filming of Meetings

The public part of this meeting may be filmed and broadcast. Please refer to the Council's Protocol on Filming, Videoing, Photography and Audio Recording at Council meetings which can be found [here](#) for further information.

If a member of the public is particularly concerned about being filmed, please contact a member of Democratic Services before selecting a seat

FAQs

For further information about the Council's Committee arrangements please see the FAQ page [here](#)

To Councillors: D Maycock, B Clarke, S Daniels, S Doyle, B Price, R Pritchard and
P Thurgood

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MINUTES OF A MEETING OF THE AUDIT AND GOVERNANCE COMMITTEE HELD ON 23rd AUGUST 2023

PRESENT: Councillor D Maycock (Chair), Councillors B Clarke, S Daniels, S Doyle, B Price and P Thurgood

Officers Andrew Wood (Audit Manager), Tracey Pointon (Legal Admin & Democratic Services Manager) and Tracey Smith (Democratic Services Assistant)

Visitors Laurelin Griffiths (Grant Thornton)

13 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor R Pritchard.

14 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 27th June 2023 were approved and signed as a correct record.

(Moved by Councillor B Clarke and seconded by Councillor S Doyle)

15 DECLARATIONS OF INTEREST

There were no Declarations of Interest.

16 UPDATE FROM EXTERNAL AUDITORS

Committee received an update. Work is continuing and is on track.

17 INTERNAL AUDIT QUARTERLY PROGRESS REPORT - QUARTER 1 2023/2024

Report of the Audit Manager to provide Audit & Governance Committee with internal audit's progress report for period to 30th June 2023.

RESOLVED That Committee:

Noted Internal Audit's Quarterly Report (Appendix 1), which includes results up to 30th June 2023.

(Moved by Councillor S Daniels and seconded by Councillor S Doyle)

18 UPDATE ON INDEPENDENT MEMBER

Report of the Audit Manager to provide an update to Committee in relation to the potential appointment of an Independent Member(s) to Committee and provide an update following the recent Skills Audit completed at the beginning of the municipal year.

RESOLVED That Committee:

1. Considered the proposed training plan following the Skills Audit and provided input into any further areas that they would deem necessary for inclusion in the plan.
2. Considered and ratified the approach to be taken in respect of appointing an Independent Member(s) to the Committee.

(Moved by Councillor B Clarke and seconded by Councillor S Doyle)

19 AUDIT AND GOVERNANCE COMMITTEE TIMETABLE

The Committee reviewed and agreed the timetable.

Chair

AUDIT AND GOVERNANCE COMMITTEE

Wednesday 27th September 2023

REPORT OF THE ASSISTANT DIRECTOR FINANCE

RISK MANAGEMENT QUARTERLY UPDATE

Purpose

To report on the Risk Management process and progress for Quarter 1 of the 2023/24 financial year.

Recommendations

- **That the Committee endorses the Corporate Risk Register.**

Executive Summary

One of the functions of the Audit & Governance Committee is to monitor the effectiveness of the Authority's strategic risk management arrangements. This report includes the actions taken to manage those risks and raises issues of concern that may impact the Authority. Corporate risks are identified, managed, and monitored by the Corporate Management Team (CMT) on a quarterly basis.

A copy of the current Corporate Risk Register is attached, as **Appendix 1**. The control measures contained have been developed to reflect the actions in the 3-year corporate plan. The revised Risk control measures will ensure the delivery of the strategic objectives, as detailed in the 2022-25 Corporate Plan, and minimise the risk of strategic drift.

The corporate risk register has been reviewed and updated by CMT for 2023/24 following the independent appraisal and feedback received from the Directorate and CMT risk workshops hosted by Zurich Municipal during June and July 2023.

The main changes to the 2023/24 Corporate Risk Register are detailed below:

- 2022/23 corporate risks 2 and 5 (Modernisation and commercial agenda and Economic Growth and Sustainability) have been merged and renamed "Inability to deliver economic growth, sustainability and prosperity in the Borough." This now sits as risk number 8.
- Governance remains but sits as risk 2.
- 2022/23 corporate risk 4 Community Focus has been replaced with 'Promoting Community Resilience and Cohesive Communities'
- Organisation Resilience remains but sits as risk 5.

Four new Corporate Risk headings have been identified for 2023/24:

1. Promoting community resilience and cohesive communities (risk number 3).
2. Lack of resources, capacity, and right skills in place (risk number 4).
3. Failure to meet climate change ambitions/ meet net zero targets and plan for major weather impacts and force majeure (risk number 6).
4. Information and Data Management (risk number 7).

Causes, consequences, risk scores and control measures have been updated for all existing risks for 2023/24 as well as the new risks identified.

The operational risk champions group did not meet during quarter 1, instead they attended Directorate Risk Management workshops hosted by Zurich Municipal to discuss their current Operational Risks and have them appraised. The feedback from these workshops has been documented and sent to each Assistant Director, Head of Service and Risk Owner so they can review and update their department's operational risks accordingly. During the workshops some teams identified that they could benefit from additional support to develop their operational risk registers, there is still time available with Zurich which can be utilised for this.

There are no changes to the current manifesting risks for 2023/24 as follows:

- Energy supply Crisis
- Cost of Living Crisis
- Rising Inflation
- Food supply crisis
- Cyberattacks on critical infrastructure.

These risks will continue to have an upward pressure on supply and costs. At the same time as rising supply costs there is also the potential for a fall in income as the disposable income of the public reduces due to the pressures on households. This has the potential to affect collection rates for Council Tax and Housing rents, it is also possible that income to attractions and events will reduce. The situation will continue to be monitored through the monthly budget monitoring process.

Options Considered

None.

Resource Implications

None.

Legal / Risk Implications

There are no direct legal implications from this report but failure to manage strategic risks could lead to issues in delivering strategic priorities.

SUSTAINABILITY IMPLICATIONS

None

BACKGROUND INFORMATION

None

REPORT AUTHOR

Emma Dyer, Operations Accountant, ext. 239

LIST OF BACKGROUND PAPERS

None

APPENDICES

Appendix 1 Corporate Risk Register Qtr. 1


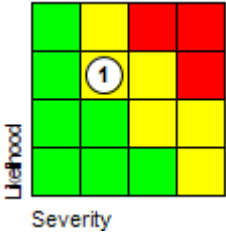

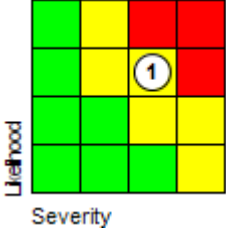

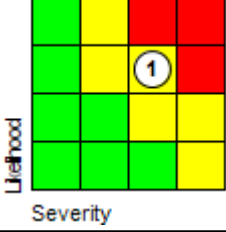

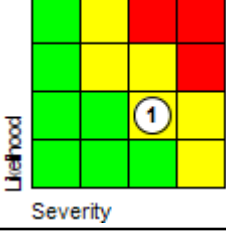
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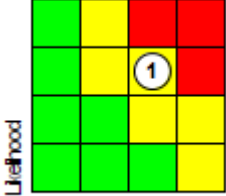
Corporate Risks Summary 2023






Generated on: 12 September 2023

Code	Corporate Risk Heading	Status	Status	Current Risk Matrix	Executive Leadership Team
1	Finance/Financial stability 2023/24		Alert		Joanne Goodfellow
2	Governance 2023		Warning		Anica Goodwin
3	Promoting community resilience and cohesive communities		OK		Rob Barnes

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Code	Corporate Risk Heading	Status	Status	Current Risk Matrix	Executive Leadership Team
4	Lack of resources, capacity and right skills in place		Warning		Anica Goodwin
5	Organisational Resilience 2023/24		Warning		Rob Barnes
6	Failure to meet climate change ambitions/ meet net zero targets and plan for major weather impacts and force majeure.		Warning		Rob Barnes
7	Information and Data Management		Warning		Anica Goodwin

Code	Corporate Risk Heading	Status	Status	Current Risk Matrix	Executive Leadership Team
8	Inability to deliver economic growth, sustainability, and prosperity in the Borough		Warning	 <p>Likelihood</p> <p>Severity</p>	Rob Barnes

Risk Status	
	Alert
	High Risk
	Warning
	OK
	Unknown

1 Finance/Financial Viability 2023/24

Generated on: 12 September 2023

Corporate Risk Heading	Finance/Financial stability 2023/24
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Corporate Risk	To ensure that the Council is financially sustainable as an organisation
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Original Matrix	 Likelihood Severity	Current Risk Matrix	 Likelihood Severity	Target Risk Matrix	 Likelihood Severity
Severity	4	Severity	4	Severity	3
Likelihood	4	Likelihood	3	Likelihood	2
Risk Score	16	Risk Score	12	Risk Score	6
		Date Reviewed	18-Aug-2023	Target Date	

Causes	<ul style="list-style-type: none"> * Risk of Austerity cuts/Major variances to the level of grant/subsidy * Uncertainty risk and potential financial disruption from External economic influences - mainly on income levels and current cost / inflationary pressures (and potential contractual cost increases) * Risk potential for poor Procurement practices and weak or ineffective Contract Management meaning VFM not maximised, and TBC exposed to unnecessary liabilities. * Ongoing cost of living crisis and inflationary pressures risk having an impact on the Council's income if households struggle to pay council tax, housing rent payments, etc. If families find themselves in financial difficulty it could also increase the demand for our 	Consequences	<ul style="list-style-type: none"> * Inability to plan long term due to uncertainty over future Local Government funding. The planned funding reforms, Fair Funding Review, business rates reset, and the revised business rates retention scheme has been deferred again. The LGFS published in December 2022 outlined funding for 2023/24 with indications for 2024/25. While this means the Council will be able to retain its business rate growth for 2023/24 and 2024/25, it also means that the uncertainty continues and potentially the Council still faces losing this growth from 2025/26. * Unplanned cost reductions / savings requirements * Financial issues leading to the Authority being taken over by Government appointed officers. * Inability to plan investments into assets
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	<p>services putting pressure on resources, for example increase in homelessness.</p> <p>* Underutilisation of Assets</p>		<p>* Inability to diverse income streams</p> <p>* Social cohesion erosion could occur as public are adversely impacts by cost-of-living impact – potential for reputable damage for the council if unable to support effectively (or perception to).</p> <p>* Negative public perception may damage Council's reputation</p>
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Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
Monthly Budget Monitoring	31-Mar-2024		Monthly Financial Health check reports to CMT and quarterly to Cabinet	Joanne Goodfellow
Proactive and targeted cost saving analysis and review of reserve funds	31-Mar-2024			Joanne Goodfellow
Robust monitoring process for MTFS in place and Quarterly Health check update to Members	31-Mar-2024		2023/24 MTFS included review and update of fees and charges and new charges introduced. Other targeted savings built into budget via policy changes.	Joanne Goodfellow

Latest Note	<p>The planned funding reforms, Fair Funding Review, business rates reset, and the revised business rates retention scheme has been deferred again. The LGFS published in December 2022 outlined funding for 2023/24 with indications for 2024/25. This settlement represents a 'holding position' until the next Parliament, aiming at stability. The ruling out of a business rates reset, or a fair funding review, means that the funding distribution will stay fairly stable (with the exception of Extended Provider Responsibility funding). But this means that the big questions about the future of the funding system remain unaddressed one way or another. While this means the Council will be able to retain its business rate growth for 2023/24 and 2024/25, it also means that the uncertainty continues and potentially the Council still faces losing this growth from 2025/26. The ongoing cost of living crisis and inflationary pressures continue to have an impact on the Council's finances. At the same time as rising supply costs there is also the potential for a fall in income as the disposable income of the public reduces due to the pressures on the household purse. This has the potential to affect collection rates for Council Tax and Housing Rents and it is also possible that income to attractions and events will reduce. If families find themselves in financial difficulty it could also increase the demand for our services putting additional pressure on resources, for example increased homelessness, exacerbated by the potential for increased numbers of asylum</p>
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seekers or Ukrainian refugees who may also present as homeless. The situation will continue to be monitored, including through the monthly budget monitoring process. A planned review of the LCTR scheme is underway as a potential mitigation to reduce the pressure on lowest income households.

Corporate Priority affected

Priority2: The Economy

Priority4: Living in Tamworth

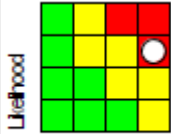
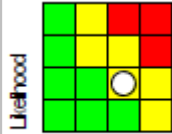
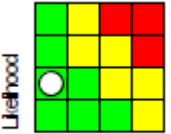
Priority5: Town Centre

2 Governance 2023/2024

Generated on: 12 September 2023



Corporate Risk Heading	Governance 2023
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Corporate Risk	To ensure the Council is fully compliant in all legislative requirements
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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	4	Severity	3	Severity	1
Likelihood	3	Likelihood	2	Likelihood	2
Risk Score	12	Risk Score	6	Risk Score	2
		Date Reviewed	25-Jul-2023	Target Date	

Causes	<ul style="list-style-type: none"> * Failure of democratic process * Failure to understand or respond adequately to new or changing legislation or regulation * No horizon scanning of legislative changes * Out of date policies and procedures * Lack of capacity to meet changing demands and priorities * Not enough capacity to plan ahead proactively due to reactive nature of business activity * Decisions made by Members could impact current planned work * Insufficient direction for strategic priorities – may not be fit for purpose which leads to lack of clarity with planning 	Consequences	<ul style="list-style-type: none"> * Prosecution of individuals * Loss of reputation * Adverse impact on Tamworth residents * Authority taken over by Government appointed officers * Increase in costs, Legal and settlement * Potential harm to vulnerable persons, employees, and commercial relationships * Legal action * Financial penalties * Reputational damage * Difficulties quantifying what success of objectives/priorities will look like * Impede work that is underway or already planned * Additional effort if required to manage workloads from
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			already stretched services *Unable to effectively priorities objectives and workloads *Potential to mis-align resources
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Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
Audit and Scrutiny Committees	31-Mar-2024		Regular meetings in place, training plan for Audit Committee members being developed.	Joanne Goodfellow
Policies and Procedures	31-Mar-2024			Zoe Wolicki

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Latest Note	Ongoing training and horizon scanning. Support from SS legals
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Corporate Priority affected	Priority2: The Economy Priority4: Living in Tamworth Priority: Organisation
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3 Promoting Community Resilience and Cohesive Communities

Generated on: 12 September 2023

Corporate Risk Heading	Promoting community resilience and cohesive communities
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Corporate Risk	Failure to understand Borough issues that may lead to community cohesion challenges and community resilience issues affecting Tamworth ‘the place’
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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	3	Severity	2	Severity	2
Likelihood	3	Likelihood	2	Likelihood	1
Risk Score	9	Risk Score	4	Risk Score	2
		Date Reviewed	19-Aug-2023	Target Date	

Causes	<ul style="list-style-type: none"> . Lack of strong local leadership (political, community etc) . Failure to provide or signpost support for the most vulnerable in our communities. . Lack of communication activity/strategy to engage with local communities. . Lack of partnership working and initiatives . Failure to understand local issues. . Lack of sustainable approach to community engagement and development which is inclusive and embraces diversity. . Poor educational outcomes and job opportunities Failure to engage with other statutory agencies 	Consequences	<ul style="list-style-type: none"> . May be unable to support the vulnerable leading to wider demands on public services. . Wider health and employment inequality . Rise in crime or perception of crime . Increased levels of community tensions . Rise in environmental crime? . Lack of civic pride Lack of aspiration
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Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
Commissioning of debt/advice services	31-Jul-2024			Joanne Sands
Community cohesion officer in place	31-Jul-2024			Joanne Sands
Quality open spaces	31-Jul-2024			New AD – Environment/Active Wellbeing/Culture
Strong Community Safety Partnership in place	31-Jul-2024			Joanne Sands
Strong partnership working with Staffordshire County Council around strategic issues affecting Tamworth communities.	31-Mar-2024			Joanne Sands
Support for the Voluntary Sector	19-Jul-2024			Joanne Sands
Tell Us	31-Jul-2024			Zoe Wolicki
Use of insight	31-Jul-2024			Zoe Wolicki
Wellbeing Strategy	19-Jul-2024			Joanne Sands
Wide range of arts, sporting and community events	19-Jul-2024			New AD – Environment/Active Wellbeing/Culture

Latest Note	
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Corporate Priority affected	Priority1: The Environment Priority4: Living in Tamworth Priority5: Town Centre
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4 Lack of Resources, Capacity, and right skills in place

Generated on: 12 September 2023






Corporate Risk Heading Lack of resources, capacity, and right skills in place

Corporate Risk Lack of resources, capacity, and right skills in place (recruitment and retention) to deliver corporate objectives

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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	3	Severity	2	Severity	2
Likelihood	4	Likelihood	3	Likelihood	3
Risk Score	12	Risk Score	6	Risk Score	6
		Date Reviewed	11-Sep-2023	Target Date	
Causes	<ul style="list-style-type: none"> *Executive staff turnover may lead to experience/ knowledge loss *Inability to drive public engagement and manage increase in demand/ expectations *Lack of succession planning *Aging profile of organisation *Lack of incentive for young people to work for council *Competitive salary market impedes finding right candidates including not enough applicants for vacant roles *Increased workloads may not leave enough capacity to complete all in a timely manner *Lack of capacity to respond to changes regulations due to delays in releasing from the Gov and staff 		Consequences	<ul style="list-style-type: none"> *Difficulties retaining staff – they may look for external opportunities *Costs of turnover and retraining new starters *Potential for non-compliance with specific roles that require accreditation or specific skills *Ability to respond to regulatory/ statutory changes may be inefficient *Working to prioritised work/leader decisions * Unable to deliver organisational strategies * Increased turnover/absenteeism * Service failure leading to ombudsman intervention and increased compensation claims * Decreased staff engagement and satisfaction resulting in poor performance. 	

	<p>already stretched with current workloads.</p> <ul style="list-style-type: none"> * Failure to have the organisational structure and a skilled and motivated workforce * Ineffective project management and governance * Ineffective performance management 		* Impact on health and wellbeing of existing staff
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Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
Comments, complaints.	31-Mar-2024		Revised Tell us process implemented	Zoe Wolicki
Effective employee relations	31-Mar-2024		Meeting with Trade Union Liaison Group	Anica Goodwin. Zoe Wolicki
Monitoring of staff turnover	31-Mar-2024		Update to CMT and Statutory Officers Group	Anica Goodwin. Zoe Wolicki
Training plan resourced	31-Mar-2024		PDR process revised and underway	Zoe Wolicki
Workforce plan in place	31-Mar-2024			Zoe Wolicki

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Latest Note	
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Corporate Priority affected	<p>Priority2: The Economy</p> <p>Priority4: Living in Tamworth</p> <p>Priority: Organisation</p>
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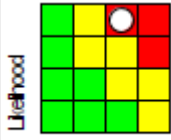
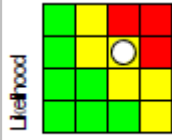
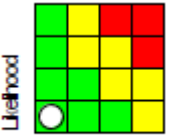
5 Organisational Resilience 2023/24





Generated on: 12 September 2023

Corporate Risk Heading	Organisational Resilience 2023/24
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Corporate Risk	Failure to provide services or maintain the continued wellbeing and operations within the Borough and be resilient to the unprecedented changes of the future.
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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	3	Severity	3	Severity	1
Likelihood	4	Likelihood	3	Likelihood	1
Risk Score	12	Risk Score	9	Risk Score	1
		Date Reviewed	18-Jan-2023	Target Date	
Causes	<ul style="list-style-type: none"> * Significant event outside of our control e.g., major disaster, pandemic etc. * Staff not aware of action to be taken in the event of an emergency/disaster * Lack of sufficient agile operational options * Lack of corporate overview to understand and effectively prioritise workloads, resource allocation and understand where cross-function collaboration stands. * National and local political interference may impede planning and priorities 		Consequences	<ul style="list-style-type: none"> * Services not delivered * Reduced 'economic attractiveness.' * Loss of reputation * Potential to misalign resources * Governance does not provide the full picture * Negative public perception may damage Council's reputation 	

Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
Business Continuity Planning	31-Mar-2024		Detailed work plan in place for EP & BC; work plan has been agreed by CMT and has been conveyed to Heads of Service.	Paul Weston
Emergency Planning	31-Mar-2024			Tina Mustafa
Delivery of People and Organisational Strategy	31-Mar-2024			Zoe Wolicki
Develop Project management skills for key staff	31-Mar-2024			Zoe Wolicki

Latest Note

Corporate Priority affected
Priority2: The Economy
Priority4: Living in Tamworth
Priority: Organisation

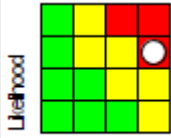
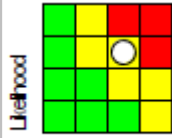
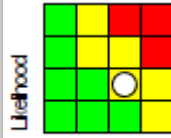
6 Failure to meet climate change ambitions/ meet net zero targets and plan for major weather impacts and force majeure.

Generated on: 12 September 2023



Corporate Risk Heading	Failure to meet climate change ambitions/ meet net zero targets and plan for major weather impacts and force majeure.
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Corporate Risk	Failure to meet climate change ambitions/ meet net zero targets and plan for major weather impacts and force majeure
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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	4	Severity	3	Severity	3
Likelihood	3	Likelihood	3	Likelihood	2
Risk Score	12	Risk Score	9	Risk Score	6
		Date Reviewed	19-Aug-2023	Target Date	

Causes	<ul style="list-style-type: none"> * Staff not aware of action to be taken in the event of an emergency/disaster * Global warming/climate change - severe weather impacts to the Borough *Failure to plan ahead financially for cost implications *Not having the specialist skills in place to develop adverse climate resistant infrastructure *Lack of trained staff to deal with emergencies and over reliance on third parties. 	Consequences	<ul style="list-style-type: none"> * Life and property put in harm's way * Extreme weather conditions/impact on business's & communities *Failure to have a plan for recovery/ repairs/ public support * Impact on vulnerable people Unable to deliver services
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Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
1B - Development of infrastructure for acting on Climate Change	31-Mar-2024		Ongoing discussions with BP Pulse over the delivery of an EV charging hub on Riverdrive.	Anna Miller
Emergency Planning	31-Mar-2024			Tina Mustafa

Latest Note

7 Information and Data Management

Generated on: 12 September 2023

Corporate Risk Heading	Information and Data Management -
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Corporate Risk	Challenges managing and gaining valuable insight from information and data systems could impede decision making and affect systems viability.
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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	3	Severity	3	Severity	2
Likelihood	3	Likelihood	2	Likelihood	1
Risk Score	9	Risk Score	6	Risk Score	2
		Date Reviewed	19-Aug-2023	Target Date	

Causes	<ul style="list-style-type: none"> *Isolated systems may not support sharing information. *Lack of joined up systems *Non-user-friendly systems may inhibit competency/confidence *Unable to keep up with costs of updating systems 	Consequences	<ul style="list-style-type: none"> *Inability to drive value of decision making from data *Missed or gaps in data could impede tracking progress of work especially with leavers *Not paying for updates to systems could result in vulnerabilities - potential for cyber-attacks. Not making use of data available to us.
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Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
Cyber Security	31-Mar-2024			Zoe Wolicki
Data Protection	31-Mar-2024			Zoe Wolicki

8 Inability to deliver economic growth, sustainability and prosperity in the Borough.

Generated on: 12 September 2023

Corporate Risk Heading	Inability to deliver economic growth, sustainability and prosperity in the Borough
-------------------------------	------------------------------------------------------------------------------------


Corporate Risk	Lack of economic growth, sustainability and prosperity in the Borough at the levels required
-----------------------	----------------------------------------------------------------------------------------------

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Original Matrix		Current Risk Matrix		Target Risk Matrix	
Severity	4	Severity	3	Severity	2
Likelihood	3	Likelihood	3	Likelihood	2
Risk Score	12	Risk Score	9	Risk Score	4
		Date Reviewed	23-Aug-2023	Target Date	

Causes	<ul style="list-style-type: none"> * Lack of investment in the Borough * General downturn in the economy due to factors beyond our control * Failure to recognise economic changes * The uncertainty and financial disruption from External Economic influences and current cost / inflationary pressures (and potential contractual cost increases. * Changes in Job market * Inadequate business continuity plans 	Consequences	<ul style="list-style-type: none"> * Economic prosperity declines * Deprivation * Reduced Business Rates income * Tamworth not seen as a positive place to live or invest in * Lack of economic and commercial growth * Unable to recruit key/essential skills * Failure to deliver project outcomes * Failure to deliver corporate plan
---------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<ul style="list-style-type: none"> * Government intervention * Increased customer dissatisfaction * Unrealised benefits * Negative public perception may damage Council's reputation
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Risk Control Measure	Risk Control Measure Due Date	Risk Control Measure Status	Risk Control Measure Note	Assistant Director
2A - Development of business initiatives to promote start up and growth	31-Mar-2024		<p>The Borough Council has awarded £25,000 grant funding to Tamworth town centre businesses to support local businesses in the current economic climate.</p> <p>The money will help town centre businesses establish or improve their physical or digital presence, gain new customers, increase turnover and increase opportunities for survival, through effective brand image and an improved service or product.</p> <p>This grant funding is available for a total of 3 years.</p> <p>The FHSF is delivering a project called the FLEX which will be entrepreneurial space/pop up space that can be</p>	Anna Miller

			flexibly managed, creating conditions for new businesses to try and establish themselves in the town.	
3A - Local plan to improve infrastructure, evening economy and transport links	31-Mar-2024		Issues and options consultation completed	Anna Miller
Management of Assets - deliver Corporate Capital Strategy and Asset Management Strategy actions	31-Mar-2024		Asset Management Strategy in draft form with amendments due following Scrutiny Feedback. Resources in place to manage current tenancies and deal with lettings as and when properties become vacant. Key strategic risk assets identified and detailed actions plans in place to deal with potential issues.	Paul Weston

Latest Note *The project for the town centre regeneration financed by the Future High Street fund and being undertaken in conjunction with the Tamworth College represents a major contribution to the town centre programme and therefore a high-profile risk area. Changes to political leadership may impact on training budgets and turnover. Key income risk from major asset identified, information regularly being fed back to Cabinet and a details project plan in place to manage.*

Corporate Priority affected

- Priority2: The Economy
- Priority1: The Environment
- Priority3: Infrastructure
- Priority4: Living in Tamworth
- Priority5: Town Centre

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Wednesday, 27 September 2023

Report of the Assistant Director - Partnerships

Regulation of Investigatory Powers Act 2000

Exempt Information

None

Purpose

To consider the annual report to demonstrate compliance with the Council's Code of Practice for carrying out surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA)

Recommendations

It is recommended that the Audit and Governance Committee:

1. Endorse the RIPA monitoring report for 2022/23 and Policy review
2. Consider and endorse the recent audit findings of the Investigatory Powers Commissioner's Office (IPCO)

Executive Summary

The Council has several statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them, including powers under the Regulation of Investigatory Powers Act 2000 (RIPA) which enable it to carry out covert Directed Surveillance in certain strict circumstances.

RIPA provides a legal framework for the control and regulation of covert surveillance and information gathering techniques which public bodies such as Tamworth Borough Council must comply with.

Following the review of the constitution in 2020, the annual review and any RIPA policy updates are now endorsed by the Audit and Governance Committee where identified. An annual report is now submitted on the use of powers to Audit and Governance Committee for update, unless applications have been made during any Council year requiring separate report.

The RIPA powers have been amended and changed in accordance with various pieces of legislation and the policy updated accordingly. The annual review by the Senior Responsible Officer, the Assistant Director Partnerships, has not identified any material changes at this time. The 2023 reviewed policy is attached at Appendix 1.

No Directed Surveillance has been carried out by the Council during 2022/23 and there have been no authorisations for the use of Covert Human Intelligence Sources.

It is not envisaged that there will be any appreciable change in the foreseeable future.

By adhering to Policy the Council ensure that the acquisition and disclosure of data is lawful, necessary and proportionate so that the Council will not be held to be in breach of Article 8 (the right to respect for private family life, home and correspondence) of the European Convention on Human Rights.

Investigatory Powers Commisioner’s Office (IPCO) Inspection

The Council’s policies, processes and use of powers were audited by the IPCO in June 2023 as part of a tri-yearly inspection regime.

There were no issues or concerns and the IPCO consider that the Council is compliant. Letter attached as Appendix 2. The next inspection will be 2026.

Options Considered

Obligations arising under RIPA for the authority are statutory therefore there the only option is compliance.

Resource Implications

Support for the RIPA obligations and functions are met from existing budget and existing staff resources.

Legal/Risk Implications Background

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.

The Regulation of Investigatory Powers Act was introduced to regulate existing surveillance and investigation 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, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as 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.

RIPA investigations can only be authorised by a local authority where it is investigating criminal offences which

- (1) attract a maximum custodial sentence of six months or more or
- (2) relate to the sale of alcohol or tobacco products to children.

There are no risk management or Health and Safety implications.

Equalities Implications

No issues arising from this report and equality issues are addressed within the policy

Environment and Sustainability Implications (including climate change)

The legislation requires the Authority to record and monitor all RIPA applications, keep the records up to date and report annually to the Audit and Governance Committee.

Background Information

The Protection of Freedoms Act 2012 requires that local authority authorisations under RIPA for Directed Surveillance or CHIS can only become effective on the granting of an order

approving the authorisation by a Justice of the Peace. Further a local authority can now only have an authorisation under RIPA for the use of Directed Surveillance where the local authority is investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco under the Licensing Act 2003 or the Children and Families Act 2014.

The RIPA Code of Practice produced by the Home Office in April 2010 and updated in January 2016 and again in August 2018 introduced the requirement to produce at a minimum annual reports to elected members to demonstrate that the Council is using its RIPA powers appropriately and complying with its own Code of Practice when carrying out covert surveillance. This requirement relates to the use of directed surveillance and covert human intelligence sources (CHIS).

Report Author

Joanne Sands – Assistant Director Partnerships

Appendices

Appendix 1 - Tamworth Borough Council RIPA Policy and Code of Practice

Appendix 2 - IPCO inspection letter 2023

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**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
POLICY STATEMENT, STRATEGY & GUIDANCE NOTES**

Document Status: Final

Originator: J M Hackett

Updated: J Sands

Owner: Assistant Director Partnerships

Version: 01.01.15

Date: 01/09/2023

Approved by Audit & Governance Committee

Document Location

This document is held by Tamworth Borough Council, and the document owner is Joanne Sands, Assistant Director Partnerships.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

Revision History

Revision Date	Version Control	Summary of changes
	1.01.01	Scheduled review
December 2008	1.01.02	Scheduled review
September 2010	1.01.03	Scheduled review
September 2011	1.01.04	Scheduled review
December 2012	1.01.05	Scheduled review
November 2014	1.01.06	Scheduled review
April 2015	1.01.07	Scheduled review
February 2016	1.01.08	Scheduled review
January 2017	1.01.09	Scheduled review
October 2017	1.01.10	OSC recommendation
October 2018	1.01.11	Scheduled review, ownership and juvenile CHIS authorisation period
April 2020	1.01.12	Scheduled review and addition of Social Media policy Update of Section L – Acquisition of Communications Data Audit Committee review
June 2021	1.01.13	Scheduled review
June 2022	1.01.14	Scheduled review
June 2023	1.01.15	Scheduled review

Approvals

Name	Title	Approved
Audit & Governance Committee	Committee Approval	Yes
CMT	Group Approval	Yes

Document Review Plans

This document is subject to a scheduled annual review by Audit and Governance Committee. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and the website.

TAMWORTH BOROUGH COUNCIL

POLICY & PROCEDURE

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)



Joanne Sands
Assistant Director Partnerships
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), 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 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.

The Codes of Practice for both Covert Surveillance and Covert Human Intelligence Sources can be obtained by following the link below:

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

There are also two other guidance documents relating the procedural changes regarding the authorisation process requiring Justice of the Peace approval from the 1st November 2012. These have been issued by the Home Office to both Local Authorities and Magistrates.

<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/>

4. ACQUISITION OF COMMUNICATIONS DATA

With effect from 27 May 2019 the acquisition of communications data held by telecommunications companies and internet service providers is regulated by the Investigatory Powers Act 2016 for national security services.

Advice is contained with the Bulk Communications Data Code of Practice (COP)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715477/Bulk_Communications_Data_Code_of_Practice.pdf

Local Authorities can still obtain limited comms data, via the National Anti Fraud Network (NAFN), as set out in the Code of Practice below which will be followed if the Council ever consider such use.

[acquisition and disclosure of communications data code of practice \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715477/Bulk_Communications_Data_Code_of_Practice.pdf)

Section B

EFFECTIVE DATE OF OPERATION AND AUTHORISING OFFICER RESPONSIBILITIES

1. The Policy and Procedures in this document have been amended to reflect the latest Codes of Practice which are in force and the legislative amendments which require Justice of the Peace (JP) approval for all Local Authority RIPA applications and renewals, which came in effect on 1 November 2012, changes in website addresses and application forms, as well as to reflect recommendations arising out of inspection by the Investigatory Powers Commissioner's Offices, (the last inspection was carried out in July 2023) and their guidance documents. It is essential, therefore, that Authorising Officers, take personal responsibility for the effective and efficient observance of this document and the Investigatory Powers Commissioner's Office (IPCO) guidance documents.
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 surveillance activity that meets the criteria as set out by RIPA 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 Assistant Director Partnerships.

5. Authorising Officers must also ensure that, when sending copies of any Forms to the Assistant Director Partnerships (or any other relevant authority), that they are sent in **sealed** envelopes and marked '**Strictly Private & Confidential**'.
6. In Accordance with the Codes of Practice, the Senior Responsible Officer (SRO) who is the Assistant Director Partnerships is responsible for
 - the integrity of the process in place within the public authority to authorise directed and intrusive surveillance
 - compliance with Part II of the 2000 Act, and with this code;
 - engagement with the Commissioner and inspectors when they conduct their inspections, and
 - where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner.

The Assistant Director Partnerships is also the RIPA Co-ordinator. The key responsibilities of the RIPA Co-ordinator are set out in Section G of this document.

7. 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 Operating Officer being satisfied that suitable training on RIPA has been undertaken.
8. The Assistant Director Partnerships will review the policy annually any updates and performance issues will be presented to the Audit and Governance Committee.
9. Annual 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** in the circumstances of the particular case; **and**
 - (c) **proportionate** to what it seeks to achieve.
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. They may also be inspected by the IPCO in respect of that particular operation. This should be pointed out during the instruction and contract stage. It is also important that the Authorising Officer is aware of the abilities of the operatives to ensure they are capable of undertaking the surveillance. 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.

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 Assistant Director Partnerships **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 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. They will be going about Council business openly. Similarly, surveillance will be overt if the subject has been told it will happen (e.g. 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 as 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 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.

Proportionality involves balancing the intrusiveness of the activity on the subject and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case, or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. The interference with the person's right should be no greater than that which is required to meet the aim and objectives.

The onus is on the Authorising Officer to ensure that the surveillance meets the tests of **necessity and proportionality**.

The codes provide guidance relating to proportionality which should be considered by both applicants and Authorising Officers :

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

When considering the intrusion, it is important that the Authorising Officer is fully aware of the technical capabilities of any proposed equipment to be used, and that any images are managed in line with the Data Protection Act and Home Office Guidance. These issues have a direct bearing on determining proportionality.

Section F

Covert Human Intelligence Source (CHIS)

Staff will need to know when someone providing information may become a CHIS, and in these circumstances the Council is required to have procedures in place should this be necessary. However, if it appears that use of a CHIS may be required, Authorising Officers must seek advice from the Assistant Director Partnerships.

A CHIS could be an informant or an undercover officer carrying out covert enquiries on behalf of the council. However, the provisions of the 2000 Act are not intended to 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 such as the Fraud Hot Line. Members of the public acting in this way would not generally be regarded as sources.

Under section 26(8) of the 2000 Act a person is a source if:

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

By virtue of section 26(9)(b) of the 2000 Act a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

By virtue of section 26(9)(c) of the 2000 Act a relationship is used covertly, and information obtained as above is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

Conduct and Use of a Source

The **use of a source** involves inducing, asking or assisting a person to engage in the conduct of a source or to obtain information by means of the conduct of such a source.

The **conduct of a source** is any conduct falling within a), b), or c), mentioned above, or which is incidental to anything falling within those sections.

The **use of a source** is what the Authority does in connection with the source and the **conduct** is what a source does to fulfill whatever tasks are given to them or which is incidental to it. **The Use and Conduct require separate consideration before authorisation.**

When completing applications for the use of a CHIS, the applicant must state who the CHIS is, what they can do and for which purpose.

When determining whether a CHIS authorisation is required, consideration should be given to the covert relationship between the parties and the purposes mentioned in a, b, and c above.

Management of Sources

Within the provisions there has to be;

- (a) a person who has the day to day responsibility for dealing with the source and for the source's security and welfare (**Handler**)
- (b) at all times there will be another person who will have general oversight of the use made of the source (**Controller**)
- (c) at all times there will be a person who will have responsibility for maintaining a record of the use made of the source

The **Handler** will have day to day responsibility for:

- dealing with the source on behalf of the authority concerned;
- directing the day to day activities of the source;
- recording the information supplied by the source; and
- monitoring the source's security and welfare;

The **Controller** will be responsible for the general oversight of the use of the source.

Tasking

Tasking is the assignment given to the source by the Handler or Controller by asking him to obtain information, to provide access to information, or to otherwise act, incidentally, for the benefit of the relevant public authority. Authorisation for the use or conduct of a source is required prior to any tasking where such tasking requires the source to establish or maintain a personal or other relationship for a covert purpose.

In some instances, the tasking given to a person will not require the source to establish a personal or other relationship for a covert purpose. For example, a source may be tasked with finding out purely factual information about the layout of commercial premises. Alternatively, a Council Officer may be involved in the test purchase of items

which have been labelled misleadingly or are unfit for consumption. In such cases, it is for the Council to determine where, and in what circumstances, such activity may require authorisation.

Should a CHIS authority be required, all of the staff involved in the process should make themselves fully aware of all of the aspects relating to tasking contained within the CHIS codes of Practice

Management Responsibility

The Council will ensure that arrangements are in place for the proper oversight and management of sources including appointing a Handler and Controller for each source prior to a CHIS authorisation.

The Handler of the source will usually be of a rank or position below that of the Authorising Officer.

It is envisaged that the use of a CHIS will be infrequent. Should a CHIS application be necessary, the CHIS Codes of Practice should be consulted to ensure that the Council can meet its management responsibilities.

Security and Welfare

The Council has a responsibility for the safety and welfare of the source and for the consequences to others of any tasks given to the source. Before authorising the use or conduct of a source, the Authorising Officer should ensure that a risk assessment is carried out to determine the risk to the source of any tasking and the likely consequences should the role of the source become known. The ongoing security and welfare of the source, after the cancellation of the authorisation, should also be considered at the outset.

Record Management for CHIS

Proper records must be kept of the authorisation and use of a source. The particulars to be contained within the records are;

- a. the identity of the source;
- b. the identity, where known, used by the source;
- c. any relevant investigating authority other than the authority maintaining the records;
- d. the means by which the source is referred to within each relevant investigating authority;

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

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 Executive Director Organisation 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

Executive Director Organisation can authorise the use of a vulnerable individual as a source.

Test Purchases

Carrying out test purchases will not normally require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation as a CHIS 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. However it will be necessary to complete the relevant separate application forms.

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 Assistant Director Partnerships.

If several shop premises are included on one application for Directed Surveillance, each premises will be required to be assessed by the Authorising Officer individually on their own merits.

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

As from 1 November 2012 there is no provision for a Local Authority to use RIPA to conduct covert activities for disorder such as anti-social behaviour, **unless** there are criminal offences involved which attract a maximum custodial sentence of six months.

Should it be necessary to conduct covert surveillance for disorder which does not meet the serious crime criteria of a custodial sentence of a maximum of six months, this surveillance would be classed as surveillance outside of RIPA, and would still have to meet the Human Rights Act provisions of Necessity and Proportionality

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.

Section G

Internet and Social Media Research and Investigations

Online open source research is widely regarded as the collection, evaluation and analysis of material from online sources available to the public, whether by payment or otherwise to use as intelligence and evidence.

The use of online open source internet and social media research techniques has become a productive method of obtaining information to assist Tamworth Borough Council with its regulatory and enforcement functions. It can also assist with other functions such as service delivery issues and debt recovery. However, the use of the internet and social media is constantly evolving and with it the risks, particularly regarding breaches of privacy under Article 8 Human Rights Act (HRA) and other operational risks.

Tamworth Borough Council is a Public Authority in law under the Human Rights Act 1998, and as such, the staff of the authority must always work within this legislation. This applies to research on the internet. Just because it may seem easier to carry out internet research does not mean that it should take place without justification.

Researching, recording, storing, and using open source information regarding a person or group of people must be both necessary and proportionate, and take account of the level of intrusion against any person.

The activity may also require authorisation and approval by a Magistrate under the Regulation of Investigatory Powers Act (RIPA) 2000. To ensure that any resultant interference with a person's Article 8 right to respect for their private and family life is lawful, the material must be retained and processed in accordance with the principles of the General Data Protection Regulations (GDPR).

The full Tamworth Borough Council Internet and Social Media Research and Investigations Policy is attached as **Appendix 3** (and available separately for relevant staff) and will be reviewed in conjunction with the full RIPA Policy.

If officers are in doubt as to whether or not directed surveillance can be used for the crime being investigated, advice can be obtained from the Assistant Director Partnerships.

Section H

THE ROLE OF THE RIPA CO-ORDINATOR

Key Responsibilities of the RIPA Co-ordinator

In this document the RIPA Co-ordinator is the Assistant Director Partnerships. 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 spread sheet 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;
- Retain an oversight of the authorisation process
- 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 by organising training and raising RIPA awareness throughout the Council;
- Provide a link to the IPCO 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 (Assistant Director Partnerships) 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 date approved by the Magistrate
- 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 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.
- Joint surveillance activity where Council staff have been authorised on another agencies authorisation will also be recorded.

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

Section I

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.

Authorising Officers

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

Chief Executive	Andrew Barratt
Executive Director Organisation	Anica Goodwin

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 at the earliest opportunity once the specific surveillance is complete. **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 Assistant Director Partnerships 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.

Grounds for Authorisation

On 1 November 2012 two significant changes came into force that effects how local authorities use RIPA.

- **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace:** The amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA for the use of Directed Surveillance or use of Covert Human Intelligence sources (CHIS) can only be given effect once an order approving the authorisation has been granted by a Justice of the Peace (JP). **This applies to applications and renewals only, not reviews and cancellations.**
- **Directed surveillance crime threshold:** The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (“the 2012 Order”) states that a local authority can now only grant an authorisation under RIPA for the use of **Directed Surveillance** where the local authority is investigating (1) criminal offences which attract a maximum custodial sentence of six months or more or (2) criminal offences under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 relating to the sale of alcohol or tobacco products to children.

The crime threshold, as mentioned is only for Directed Surveillance.

Therefore the only lawful reason is **prevention and detection of crime** in respect of its Core Functions. As from 1 November 2012 there is no provision for a Local Authority to use RIPA to conduct covert activities for disorder such as anti-social behaviour unless there are criminal offences involved which attract a maximum custodial sentence of six months.

APPLICATION PROCESS

No covert activity covered by RIPA or the use of a CHIS should be undertaken at any time unless it meets the legal criteria (see above) and has been authorised by an Authorising Officer and approved by a JP/Magistrate as mentioned above. The activity conducted must be in strict accordance with the terms of the authorisation.

The effect of the above legislation means that all applications and renewals for covert RIPA activity will have to have a JP’s approval. It does not apply to Reviews and Cancellations which will still be carried out internally.

The procedure is as follows;

All applications and renewals for Directed Surveillance and use of a CHIS will be required to have a JP’s approval.

The applicant will complete the relevant application form ensuring compliance with the statutory provisions shown above. The application form will be submitted to an Authorising Officer for consideration. If authorised, the applicant will also complete the required section of the judicial application/order form. Although this form requires the applicant to provide a brief summary of the circumstances of the case on the judicial

application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

It will then be necessary within Office hours to arrange with Her Majesty's Courts & Tribunals Service (HMCTS) administration at the magistrates' court to arrange a hearing. The hearing will be in private and heard by a single JP.

The Authorising Officer will be expected to attend the hearing along with the applicant officer. Officers who may present the application at these proceedings will need to be formally designated by the Council under section 223 of the Local Government Act 1972 to appear, be sworn in and present evidence or provide information as required by the JP. If in doubt as to whether you are able to present the application seek advice from the Solicitor to the Council.

Upon attending the hearing, the officer must present to the JP the partially completed judicial application/order form, a copy of the RIPA application/authorisation form, together with any supporting documents setting out the case, and the original application/authorisation form.

The original RIPA application/authorisation should be shown to the JP but will be retained by the local authority so that it is available for inspection by the Commissioner's office and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT).

The JP will read and consider the RIPA application/ authorisation and the judicial application/order form. They may have questions to clarify points or require additional reassurance on particular matters. These questions are supplementary to the content of the application form. **However the forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.**

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

The JP may decide to:

Approve the Grant or renewal of an authorisation

The grant or renewal of the RIPA authorisation will then take effect and the local authority may proceed to use the technique in that particular case. The duration of the authorisation commences with the magistrate's approval.

Refuse to approve the grant or renewal of an authorisation

The RIPA authorisation will not take effect and the local authority may **not** use the technique in that case.

Where an application has been refused the applicant may wish to consider the reasons for that refusal. If more information was required by the JP to determine whether the application/authorisation has met the tests, and this is the reason for refusal the officer should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.

For, a technical error, the form may be remedied without going through the internal authorisation process again. The officer may then wish to reapply for judicial approval once those steps have been taken.

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

This applies where the JP refuses to approve the application/authorisation or renew the application/authorisation and decides to quash the original authorisation or notice. However the court must not exercise its power to quash the application/authorisation unless the applicant has had at least 2 business days from the date of the refusal in which to make representations. If this is the case the officer will inform the Legal section who will consider whether to make any representations.

Whatever the decision the JP will record their decision on the order section of the judicial application/order form. The court administration will retain a copy of the local authority RIPA application and authorisation form and the judicial application/order form. The officer will retain the original application/authorisation and a copy of the judicial application/order form.

If approved by the JP, the date of the approval becomes the commencement date and the three months duration will commence on this date, The officers are now allowed to undertake the activity.

The original application and the copy of the judicial application/order form should be forwarded to the Central Register and a copy retained by the applicant and if necessary by the Authorising Officer.

A local authority may only appeal a JP decision on a point of law by judicial review. If such a concern arises, the Legal team will decide what action if any should be taken.

If it is intended to undertake both directed surveillance and the use of a CHIS on the same surveillance subject, the respective applications forms and procedures should be followed and both activities should be considered separately on their own merits. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference. The Authorising Officer will take this into account, particularly when considering the proportionality of the directed surveillance or the use of a CHIS.

Application, Review, Renewal and Cancellation Forms

Applications

All the relevant sections on an application form must be completed with sufficient information for the Authorising Officer to consider Necessity, Proportionality and the Collateral Intrusion issues. Risk assessments should take place prior to the completion of the application form. Each application should be completed on its own merits of the case. **Cutting and pasting or using template entries should not take place as this would leave the process open to challenge.**

All applications will be submitted to the Authorising Officer via the Line Manager of the appropriate enforcement team in order that they are aware of the activities being undertaken by the staff. Applications whether authorised or refused will be issued with a unique number by the Authorising Officer, taken from the next available number in the Central Record of Authorisations.

If authorised the applicant will then complete the relevant section of the judicial application/order form and follow the procedure above by arranging and attending the Magistrates Court to seek a JP's approval. The duration of the authorisation commences with the magistrate's approval. (see procedure above RIPA application and authorisation process)

Duration of Applications

Directed Surveillance	3 Months
Renewal	3 Months

Covert Human Intelligence Source	12 Months
Juvenile Sources	4 Months

Renewal	12 months
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All Authorisations must be cancelled by completing a cancellation form. They must not be left to simply expire. (See cancellations page 16)

Reviews

The reviews are dealt with internally by submitting the review form to the authorising officer. In such circumstances seek advice from the RIPA Co-ordinator. There is no requirement for a review form to be submitted to a JP. However if a different surveillance techniques is required it is likely a new application will have to be completed and approved by a JP.

Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of a review should be recorded on the central record of authorisations. Particular attention is drawn to the need to review

authorisations frequently where the surveillance provides access to confidential information or involves collateral intrusion.

In each case the Authorising Officer should determine how often a review should take place. This should be as frequently as is considered necessary and practicable and they will record when they are to take place on the application form. This decision will be based on the circumstances of each application. However reviews will be conducted on a monthly or less basis to ensure that the activity is managed. It will be important for the Authorising Officer to be aware of when reviews are required following an authorisation to ensure that the applicants submit the review form on time.

Applicants should submit a review form by the review date set by the Authorising Officer. They should also use a review form for changes in circumstances to the original application so that the need to continue the activity can be reassessed. However if the circumstances or the objectives have changed considerably, or the techniques to be used are now different a new application form should be submitted and will be required to follow the process again and be approved by a JP. The applicant does not have to wait until the review date if it is being submitted for a change in circumstances.

Managers or Team Leaders of applicants should also make themselves aware of when the reviews are required to ensure that the relevant forms are completed on time.

Renewal

Should it be necessary to renew a Directed Surveillance or CHIS application/authorisation, this must be approved by a JP.

Applications for renewals should not be made until shortly before the original authorisation period is due to expire but the applicant must take account of factors which may delay the renewal process (e.g. intervening weekends or the availability of the relevant authorising officer and a JP to consider the application).

The applicant should complete all the sections within the renewal form and submit the form to the authorising officer.

Authorising Officers should examine the circumstances with regard to Necessity, Proportionality and the Collateral Intrusion issues before making a decision to renew the activity. A CHIS application should not be renewed unless a thorough review has been carried out covering the use made of the source, the tasks given to them and information obtained. The Authorising Officer must consider the results of the review when deciding whether to renew or not. The review and the consideration must be documented.

If the authorising officer refuses to renew the application the cancellation process should be completed. If the AO authorises the renewal of the activity the same process is to be followed as mentioned earlier for the initial application.

A renewal takes effect on the day on which the authorisation would have ceased and lasts for a further period of three months.

Cancellation

Cancellation should take place at the earliest opportunity.

The cancellation form is to be submitted by the applicant or another investigator in their absence. The Authorising Officer who granted or last renewed the authorisation must cancel it if they are satisfied that the directed surveillance no longer meets the criteria upon which it was authorised. Where the Authorising Officer is no longer available, this duty will fall on the person who has taken over the role of Authorising Officer or the person who is acting as Authorising Officer.

As soon as the decision is taken that directed surveillance should be discontinued, the applicant or other investigating officer involved in the investigation should inform the Authorising Officer. The Authorising Officer will formally instruct the investigating officer to cease the surveillance, noting the time and date of their decision. This will be required for the cancellation form. The date and time when such an instruction was given should also be recorded in the central record of authorisations (see paragraph 5.18 in the Codes of Practice). **It will also be necessary to detail the amount of time spent on the surveillance as this is required to be retained by the Senior Responsible Officer.**

The officer submitting the cancellation should complete in detail the relevant sections of the form and include the period of surveillance and what if any images were obtained and any images containing third parties. The Authorising Officer should then take this into account and issues instructions regarding the management and disposal of the images etc.

The cancellation process should also be used to evaluate whether the objectives have been achieved and whether the applicant carried out what they stated was necessary in the application form. This check will form part of the oversight function. Where issues are identified they will be brought to the attention of the line manager and the Senior Responsible Officer (SRO). This will assist with future audits and oversight.

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**and**
 - (iii) **proportionate** to what it seeks to achieve. (see section on proportionality)
- (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 Executive Director Organisation.

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.

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.

Urgent Authorisations

There is now no provision under RIPA for urgent oral authorisations.

Section J

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. The agency will be provided with a copy of the application form (redacted if necessary) or at the least the authorisation page containing the unique number.

Equally, if Council staff are authorised on another agencies RIPA authorisation, the staff will obtain a copy of the application form (redacted if necessary), or at the least the authorisation page containing the unique number, a copy of which should be forwarded for filing within the central register. They must ensure that they do not conduct activity outside of that authorisation.

Provisions should also be made regarding any disclosure implications under the Criminal Procedure and Investigations Act (CPIA) and the management, storage and dissemination of any product obtained.

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 (redacted if necessary) or at the least the authorisation page containing the unique number for the record (a copy of which must be passed to the Assistant Director Partnerships for the Central Register) Should this be an urgent oral authorisation they should obtain a copy of the contemporaneous notes of what has been authorised by the Authorising Officer in line with current guidance. A copy of these notes will be forwarded for filing in the central register.
- (b) wish to use the Council's premises for their own RIPA action, the responsible Corporate Management Team officer 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.

If in doubt, please consult with the Assistant Director Partnerships at the earliest opportunity.

Section K

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 Assistant Director Partnerships.

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 Assistant Director Partnerships

Authorising Officers must forward a copy of the form to the Assistant Director Partnerships for the Central Register, within 5 working days of the authorisation, review, renewal, cancellation or rejection. The Assistant Director Partnerships 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

The retention of the material obtained during a RIPA operation is governed by the Criminal Procedure and Investigations Act (CPIA) 1996 and the Data Protection Act 2018.

Arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance or CHIS. Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate

data protection requirements under the Data Protection Act 2018 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 five years from the ending of the authorisation. The Investigatory Powers Commissioner's Office (IPCO) can audit/review the Council's policies and procedures, and individual authorisations. The IPCO 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.

Errors

There is a requirement as set out in the IPCO procedures and Guidance 2011 to report all covert activity that was not properly authorised to the IPCO in writing as soon as the error is recognised. This would be known as an error. This includes activity which should have been authorised but wasn't or which was conducted beyond the directions provided by the authorising officer. It is therefore important that when an error has been identified it is brought to the attention of the SRO in order to comply with this guidance. The Council has a responsibility to report to the Inspector at the commencement of an inspection all activity which should have been authorised but wasn't. This is to confirm that any direction provided by the IPCO has been followed. This will also assist with the oversight provisions of the Councils' RIPA activity.

This does not apply to covert activity which is deliberately not authorised because an authorising officer considers that it does not meet the legislative criteria, but allows it to continue. This would be surveillance outside of RIPA. (See oversight section below)

Section L

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

As above – think you need to include reference to comms data.

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 Assistant Director Partnerships (who is also the Monitoring Officer).

APPENDIX 1

A FORMS

DIRECTED SURVEILLANCE

All forms can be obtained from:

<https://www.gov.uk/government/collections/ripa-forms--2>

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 Assistant Director Partnerships.

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 2

B FORMS

CONDUCT OF A COVERT HUMAN INTELLIGENCE SOURCE

All forms can be obtained from:

<https://www.gov.uk/government/collections/ripa-forms--2>

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 Assistant Director Partnerships.

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

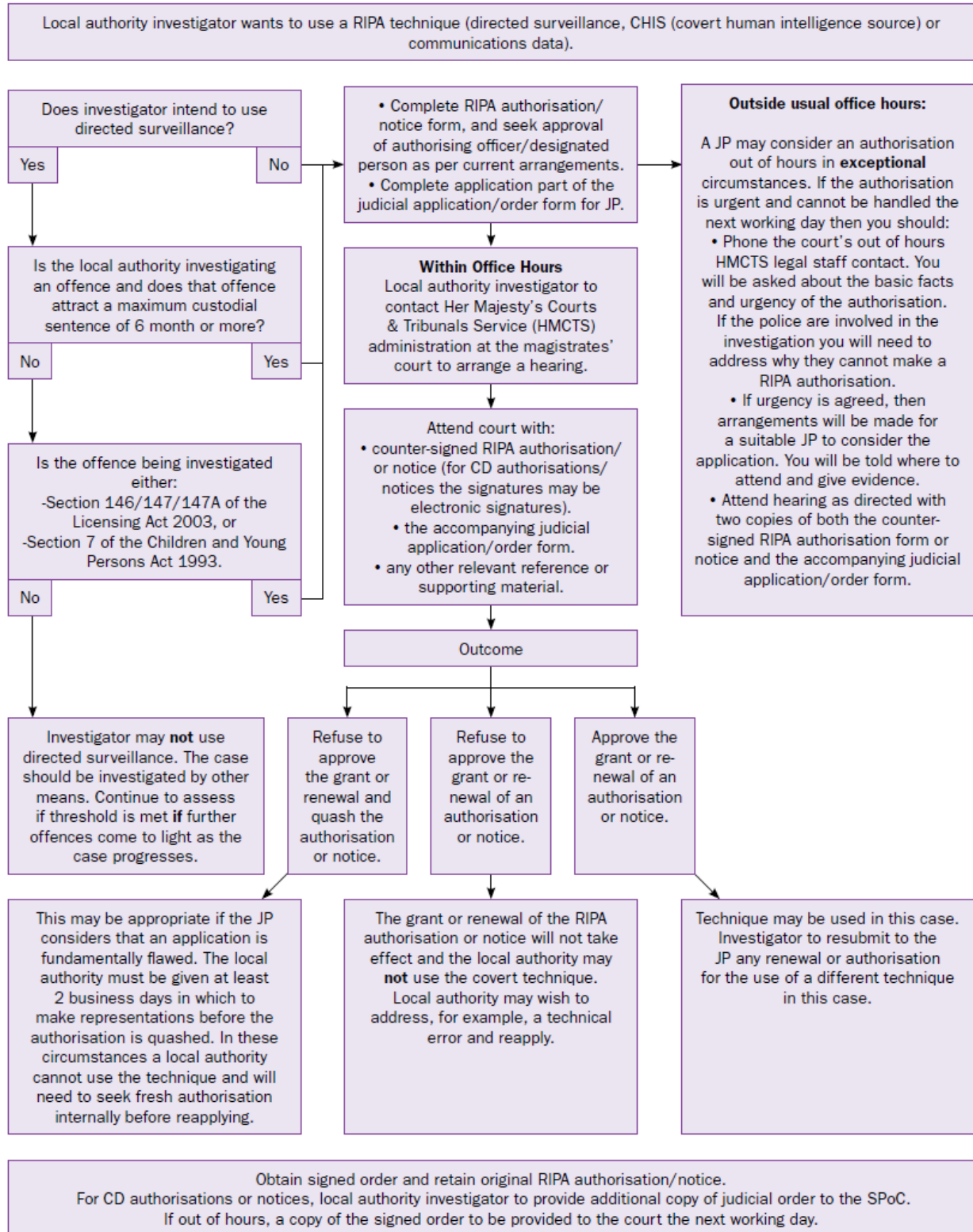
Application for Review of a Covert Human Intelligence Source (CHIS) Authorisation.

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.

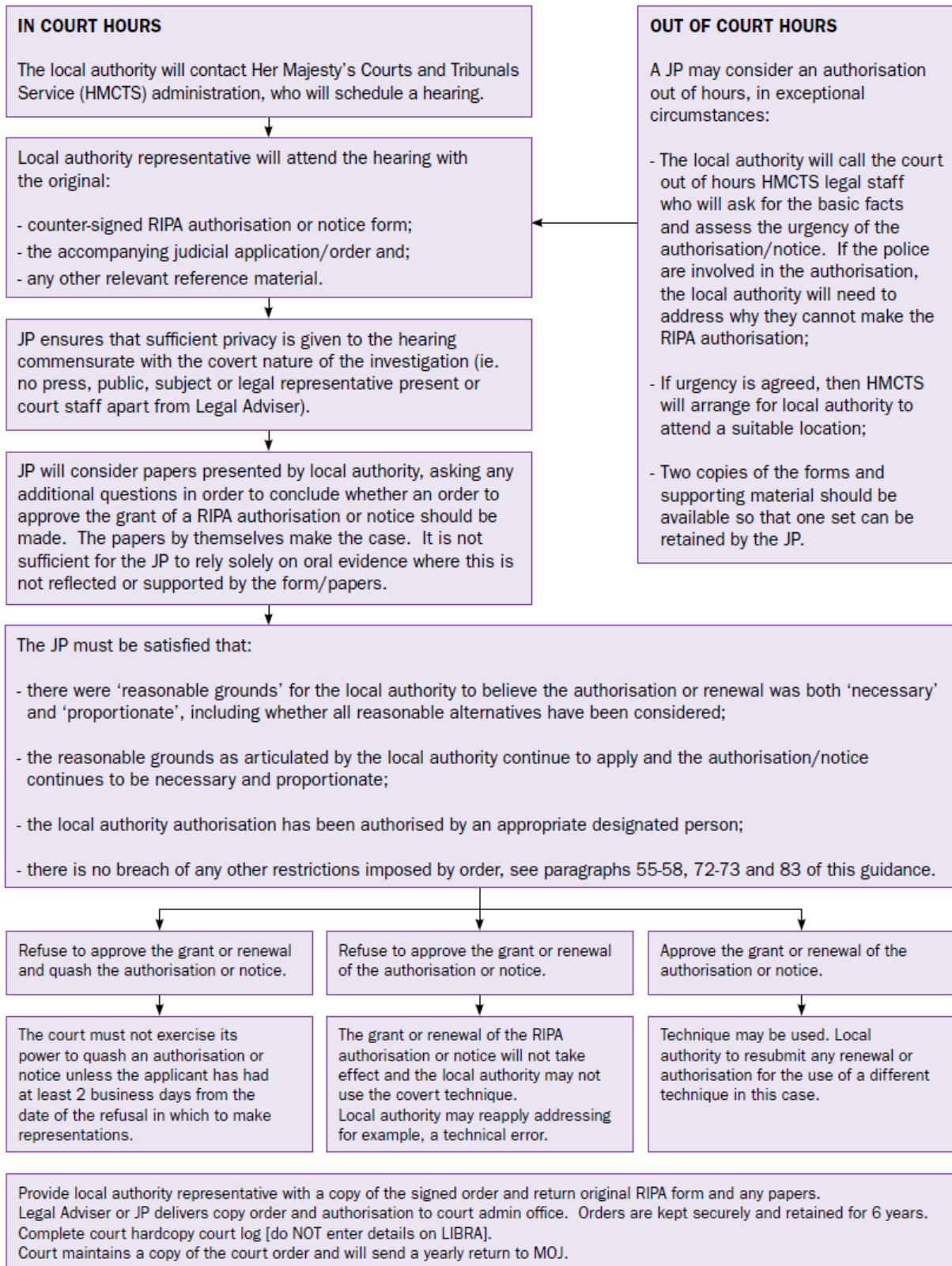
Annex A Local Authority Procedure

LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



Annex B JP Procedure

PROCEDURE: LOCAL AUTHORITY APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



Annex C Application for Judicial Approval and Order Form

Application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Local Authority:.....

Local authority department:.....

Offence under investigation:.....

Address of premises or identity of subject:.....

.....

Covert technique requested: (tick one and specify details)

Communications Data

Covert Human Intelligence Source

Directed Surveillance

Summary of details

.....
.....
.....
.....
.....
.....

Note: this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer:.....

Authorising Officer/Designated Person:.....

Officer(s) appearing before JP:.....

Address of applicant department:.....

Contact telephone number:.....

Contact email address
(optional):.....

Local authority
reference:.....

Number of
pages:.....

Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Magistrates' court:.....

Having considered the application, I (tick one):

- am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal and quash the authorisation/notice.

Notes

.....
.....
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.....
.....

Reasons

.....
.....
.....
.....
.....
.....

Signed:

Date:

Time:

Full name:

Address of magistrates' court:

APPENDIX 3

INTERNET & SOCIAL MEDIA RESEARCH & INVESTIGATIONS POLICY

1. Introduction

1.1 Online open source research is widely regarded as the collection, evaluation and analysis of material from online sources available to the public, whether by payment or otherwise to use as intelligence and evidence.

1.2 The use of online open source internet and Social Media research is a method of obtaining information to assist Tamworth Borough Council with its regulatory and enforcement functions. It can also assist with service delivery issues. However, the use of the internet and Social Media is constantly evolving and with it the risks, particularly regarding breaches of privacy under Article 8 Human Rights Act (HRA) and other operational risks.

1.3 Tamworth Borough Council is a Public Authority in law under the Human Rights Act 1998, and as such, the staff of the authority must always work within this legislation. This applies to research on the internet.

1.4 Researching, recording, storing, and using open source information regarding a person or group of people must be both necessary and proportionate and take account of the level of intrusion against any person. The activity may also require authorisation and approval by a Magistrate under the Regulation of Investigatory Powers Act (RIPA) 2000. To ensure that any resultant interference with a person's Article 8 right to respect for their private and family life is lawful, the material must be retained and processed in accordance with the principles of the General Data Protection Regulations (GDPR).

2. Scope of Policy

2.1 This policy and associated procedure establishes Tamworth Borough Council's approach to ensure that all online research and investigations are conducted lawfully and ethically to reduce risk. It provides guidance to all staff when engaged in their official capacity of the implications and legislative framework associated with online internet and Social Media research. It will also ensure that the activity undertaken, and any evidence obtained will stand scrutiny.

2.2 This policy takes account of the Human Rights Act 1998, Regulation of Investigatory Powers Act (RIPA) 2000, Criminal Procedure and Investigations Act (CPIA) 1996, General Data Protection Regulations (GDPR), NPCC Guidance on Open Source Investigation/Research.

2.3 This policy and associated procedure will be followed at all times and should be read, where required with the RIPA Codes of Practice and any other legislation and relevant policies mentioned in this document. Should there be any queries, advice can be sought from the Assistant Director Partnerships

2.4 Not adhering to this policy and procedure could result in members of staff being dealt with through the Council's disciplinary procedure.

2.5 This policy should not be exempt from disclosure under the Freedom of Information Act 2000

3. Risk

3.1 Staff must be aware that any activity carried out over the internet leaves a trace or footprint which can identify the device used, and, in some circumstances, the individual carrying out the activity. This may pose a legal and reputational risk to the Council from being challenged by the subject of the research for breaching Article 8.1 of the HRA which states:-

"Everyone has the right to respect for his private and family life, his home and his correspondence".

8.2 states:-

"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".

3.2 There is also a risk of compromise to other investigations, therefore, the activity should be conducted in a manner that does not compromise any current or future investigation or tactics.

4. Necessity / Justification

4.1 To justify the research, there must be a clear lawful reason, and it must be necessary. Therefore, the reason for the research, such as, the criminal conduct that it is aimed to prevent or detect must be identified and clearly described. This should be documented with clear objectives. Should the research fall within RIPA activity, the RIPA authorisation deals with this criteria for it to be lawful.

5. Proportionality

5.1 Proportionality involves balancing the intrusiveness of the research on the subject and other innocent third parties who might be affected by it (collateral intrusion) against the need for the activity in operational terms.

- What is the benefit to carrying out the activity?
- How will the benefit outweigh the intrusion?

5.2 The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less

intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair

6 Private information

6.1 Private information is defined in the RIPA Codes of Practice and states it “includes any information relating to a person’s private or family life. Private information should be taken generally to include any aspect of a person’s private or personal relationship with others, including family and professional or business relationships.

6.2 Prior to, and during any research, staff must take into account the privacy issues regarding any person associated with the research.

7. Reviewing the Activity

7.1 During the course of conducting the internet open source research, the nature of the online activity may evolve. It is important staff continually assess and review their activity to ensure it remains lawful and compliant. Where it evolves into RIPA activity, the RIPA procedure should be followed. If in doubt, seek advice.

8. Use of Material

8.1 The material obtained from conducting open source internet and Social Media research may be used as intelligence or evidence.

8.2 Any material gathered from the internet during the course of a criminal investigation must be retained in compliance with the Criminal Procedure and Investigations Act (CPIA) Codes of Practice and all material stored in line with the General Data Protection Regulations (GDPR) data retention policy

9. Monitoring and Review of Policy

9.1 This policy will monitored and reviewed where necessary by the Assistant Director Partnerships upon review of the RIPA Policy.

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IPCO

Investigatory Powers Commissioner's Office

PO Box 29105, London
SW1V 1ZU

Andrew Barratt
Chief Executive
Tamworth Borough Council
Marmion House
Lichfield Street
Tamworth
Staffordshire
B79 7BZ

12 July 2023

Dear Chief Executive,

Thank you for providing IPCO with your response to the matters identified at points 1 to 10 of my Inspector's letter dated 23 May 2023.

I am satisfied that your reply provides your assurance that ongoing compliance with RIPA 2000 and the Investigatory Powers Act 2016 will be maintained. As such, your Council will not require further inspection this year.

I would ask that you ensure that the key compliance issues continue to receive the necessary internal governance and oversight through yourself and your Senior Responsible Officer: policy refreshes; annual updates to your Elected Members; ongoing training and awareness raising; internal compliance monitoring by lead managers within their business areas; and the retention, review and destruction (RRD) of any product obtained through the use of covert powers (Records and Product Management in accordance with the Safeguards Chapters of the relevant Codes of Practice).

Your Council will be due its next inspection in 2026, but please do not hesitate to contact my Office if IPCO can be of assistance in the intervening period.

Yours sincerely,



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

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Wednesday, 27 September 2023

Report of the Assistant Director - Partnerships

Modern Slavery Statement 2022/23

Exempt Information

None

Purpose

To endorse the Council's Modern Slavery and Human Trafficking Statement 2022/23

Recommendations

It is recommended that:

1. The Committee endorse the Modern Slavery and Human Trafficking Statement 2022/23 for publication on the Council website in accordance with the Modern Slavery Act 2015

Executive Summary

Section 54 of the Modern Slavery Act 2015 imposes a legal duty on organisations, which supply goods and/or services from or to the UK and have a global turnover above £36 million, to publish a slavery and human trafficking statement covering each financial year.

The statement is due for publication by 30 September each year immediately following the end of the preceding financial year.

There are no financial or criminal penalties for failing to produce a slavery and human trafficking statement, although the Secretary of State can apply to the Court for an injunction to force an organisation to produce a statement.

Tamworth Borough Council adopts a zero-tolerance position on known violations of anti-human trafficking and anti-modern slavery laws and is included in Safeguarding policies and duties. We are committed to improving our practices and ensuring there is no modern slavery or human trafficking in any part of our business and in so far as is possible requiring our suppliers to hold similar ethos.

The council has a key role to play in tackling modern slavery, including in identifying and supporting victims and working in partnership locally and can be separated into four distinct areas:

- identification and referral of victims
- supporting victims – this can be through safeguarding children and adults with care and support needs and through housing/homelessness services
- community safety services and disruption activities
- ensuring that the supply chains councils procure from are free from modern slavery

The Modern Slavery and Human Trafficking Statement (attached as Appendix 1) sets out the continuing council's actions to understand potential modern slavery risks related to its business and ongoing actions to ensure that there is no slavery or human tracking in its own business, and its supply chains and relates to actions and activities during the financial year

1 April 2022 to 31 March 2023 and (once endorsed) will be published on the Tamworth Borough Council website.

The statement has been endorsed by the Corporate Management Team and signed by the Chief Executive. The actions are ongoing and included as part of the wider community safety plans and safeguarding policies.

Options Considered

None

Resource Implications

Support of the Modern Slavery Act 2015 obligations is met from existing budget and staff resources through the Partnerships team.

Legal/Risk Implications Background

The publication of an annual Modern Slavery and Human Trafficking Statement is a requirement of the Modern Slavery Act 2015

Equalities Implications

The statement seeks to ensure that persons at risk of, or subject to modern slavery are protected.

Environment and Sustainability Implications (including climate change)

None

Background Information

Modern slavery is an international crime, affecting an estimated 49.6 million people around the world. It is a growing global issue that transcends age, gender and ethnicities. It includes victims who have been brought from overseas and vulnerable people in the UK, who are forced to illegally work against their will across many different sectors such as agriculture, hospitality, construction, retail and manufacturing.

The Modern Slavery Act 2015 consolidates various offences relating to human trafficking and slavery. In broad terms:

- 'slavery' is where ownership is exercised over a person.
- 'servitude' involves coercion to oblige a person to provide services.
- 'Forced and compulsory labour' is where a person works or provides services on a non-voluntary basis under the threat of a penalty.
- 'Human trafficking' involves arranging or facilitating the travel of a person with a view to exploiting them.

Section 52 of the Act imposes a duty on public authorities, including district councils, to notify the Secretary of State of suspected victims of slavery or human trafficking.

Section 54 of the Act imposes a legal duty on organisations, which supply goods and/or services from or to the UK and have a global turnover above £36 million, to publish a slavery and human trafficking statement each financial year.

The Council engages in commercial activity (statutory and discretionary) and provides a range of services to residents, businesses and visitors. This includes waste collection and recycling, collection of council tax and business rates, housing, homeless support, parks and open spaces, planning and building control, street cleaning, promoting economic growth and regeneration, environmental health, leisure services, community safety and election administration. Services are delivered through a mixture of direct provision, commissioned

services, contracted services, joint/shared services, and partnerships. Its annual turnover is greater than £36 million.

Report Author

Joanne Sands – Assistant Director Partnerships

List of Background Papers

Modern Slavery Act 2015

Appendices

Appendix 1 – Modern Slavery Statement 2022/23

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Tamworth Borough Council Modern Slavery and Human Trafficking Statement

1. Introduction

Modern slavery is an international crime, affecting an estimated 49.6 million people around the world. It is a growing global issue that transcends age, gender and ethnicities. It includes victims who have been brought from overseas and vulnerable people in the UK, who are forced to illegally work against their will across many different sectors such as agriculture, hospitality, construction, retail and manufacturing.

Tamworth Borough Council adopts a zero-tolerance position on known violations of anti-human trafficking and anti-modern slavery laws. We are committed to improving our practices and ensuring there is no modern slavery or human trafficking in any part of our business and in so far as is possible requiring our suppliers to hold similar ethos.

This Modern Slavery and Human Trafficking Statement sets out the Council's actions to understand potential modern slavery risks related to its business and put in place steps that are aimed at ensuring that there is no slavery or human trafficking in its own business, and its supply chains.

This Modern Anti-Slavery and Human Trafficking Statement relates to actions and activities during the financial year 1 April 2022 to 31 March 2023

2. The Modern Slavery Act 2015

The Modern Slavery Act 2015 consolidates various offences relating to human trafficking and slavery. In broad terms:

- 'slavery' is where ownership is exercised over a person.
- 'servitude' involves coercion to oblige a person to provide services.
- 'forced and compulsory labour' is where a person works or provides services on a non-voluntary basis under the threat of a penalty.
- 'human trafficking' involves arranging or facilitating the travel of a person with a view to exploiting them.

Section 52 of the Act imposes a duty on public authorities, including district councils, to notify the Secretary of State of suspected victims of slavery or human trafficking.

Section 54 of the Act imposes a legal duty on organisations, which supply goods and/or services from or to the UK and have a global turnover above £36 million, to publish a slavery and human trafficking statement each financial year.

3. Organisation Structure and Supply Chains

The Council engages in commercial activity (statutory and discretionary) and provides a range of services to residents, businesses and visitors. This includes waste collection and recycling, collection of council tax and business rates, benefits payments, housing, housing repairs call centre, homeless support, street scene cleansing and open spaces management, cemetery services, planning and building control, promoting economic growth and regeneration,

environmental health, active wellbeing, heritage services, arts and events, community safety, election administration, democratic services and general customer services. Services are delivered through a mixture of direct provision, commissioned services, contracted services, joint/shared services, and partnerships. Its annual turnover is greater than £36million.

4. Policies in Relation to Slavery and Human Trafficking

Tamworth Borough Council has a range of policies and plans in place which reflect its commitment to acting ethically and with integrity to prevent slavery and human trafficking in its operations:

- Vision and Corporate Plan - The Council's vision is 'Tamworth – celebrating our heritage, creating a better future' and our priorities under 'Living in Tamworth' includes a commitment to community safety focus on neighbourhoods and place
- Safeguarding Children and Adults at Risk Policy – outlines a robust approach taken by the Council to safeguard the welfare of children and 'adults at risk'.

All staff and councillors are required to read and work within this policy. The Council works within multi-agency partnerships to protect and safeguard people and has an identified lead officer for modern slavery.

The policy covers how the Council should comply with the duty to notify the Secretary of State of suspected victims of slavery and human trafficking.

- Whistleblowing Policy – encourages all its employees to report concerns about any aspect of service provision, conduct of officers and others acting on behalf of the Council, or the supply chain. The policy is designed to make it easy to make disclosures without fear of discrimination and victimisation.
- Employee and Members Code of Conduct – is the ethical framework that employees and Members work to, which makes clear the actions and behaviour expected of them when representing the Council. The Council strives to maintain the highest standards of employee conduct and ethical behaviour and breaches are investigated.
- Recruitment Policy – sets out robust processes in line with UK employment laws, including 'right to work' document checks and contracts of employment. To comply with the Asylum, Immigration and Nationality Act 2006, all prospective employees are asked to supply evidence of their eligibility to work in the UK. References are also requested and followed up.
- When the Council uses employment agencies it ensures that the agency carries out the same standard of checking as outlined in the paragraph above.

- Job Evaluation Scheme – All roles are evaluated under a national scheme which eliminates bias and ensures that job roles are paid fairly and equitably. When the Council uses employment agencies to source labour it verifies the practice of any new agency it is using before accepting workers from that agency.
- Equality and Diversity Scheme ‘Making Equality Real in Tamworth’ - sets out the how the Council will promote diversity and equality in the delivery of services provided both directly and in conjunction with our partners.
- Living Wage – the Council pay above the living wage and national minimum wage and volunteers are not permitted to undertake unpaid work that an employee would normally be paid to do

5. Due Diligence Processes

Tamworth Borough Council is committed to ensuring modern slavery and human trafficking is not taking place anywhere in any of its supply chains, developing prevention, detection, and reporting measures both at the procurement and the contract management stage.

As part of the council’s due diligence processes, it requires its suppliers to demonstrate their commitment and approach to preventing slavery. The Council screens its suppliers as part of the procurement process.

Tamworth Borough Council continues to expect all suppliers of goods and services to comply with all applicable laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015, their own anti-slavery policy (where applicable) and this Modern Anti-Slavery and Human Trafficking Statement.

The Council recognises that the organisation is exposed to greater risk when dealing with contractors and service suppliers. The Council has a wide range of suppliers delivering services across all directorates. The Council aims to reduce the risk of modern slavery in its supply chain by undertaking the following actions:

- Where appropriate key contractors are required to have safeguarding policies, procedures and training in place, in addition to providing confirmation of compliance with the Modern Slavery Act;
- Identify services that are more vulnerable to modern slavery and seeking assurance that their supply chain is free of modern slavery and human trafficking.
- All tenderers/suppliers are required to self-certify that they comply with the provisions of the Modern Slavery Act and our Invitation To Quote (ITQ) and Invitation To Tender (ITT) documents ask if the contractor is a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act").
- If a bidder fails to self-certify they are a compliant, their response is checked
- Successful contractors are asked for evidence that they are compliant with the annual reporting requirements contained within Section 54 of the Act. If they are compliant then the contractor is required to provide

the relevant URL address and if they aren't, then the company is recorded as failing is removed from the procurement process.

- Where sub-contractors are involved, a reliance is placed on the main contractor. Our standard terms and conditions with regard to sub-contracting, state that:-
- 'the Contractor shall be responsible for the acts and omissions of any assignee or sub Contractor and its employees and agents as though they were the acts and omissions of the Contractor or the Contractor's employees or agents'

6. Risk Assessment and Management

- Tamworth Borough Council has a strong track record of working in partnership with other agencies to respond to safeguarding, slavery and trafficking issues. This includes supporting the Staffordshire County Council, the Staffordshire Commissioners Office for Police, Fire and Crime and Staffordshire Police through the Tamworth Community Safety Partnership.
- The Council works with colleagues to develop a common understanding and partnership approach to the threats, vulnerabilities and risks relating to slavery and human trafficking.
- We also work with a range of agencies to safeguard children and adults at risk. This includes supporting the work of the local safeguarding boards and district Councils safeguarding network. The Council wants its employees to understand more about this growing issue and how to report any suspicions they may have, whether in a work or personal context.
- Relevant staff now attend Staffordshire Police Modern Slavery and Human Trafficking Tactical group to share relevant information.
- Risks have been identified with partners in premises subject to licensing regulations and all partners have taken a collaborative role to report concerns, investigate and take appropriate enforcement actions.

7. Key Performance Indicators to Measure Effectiveness of Steps Being Taken

Tamworth Borough Council will meet the following standards and also expects those with whom it does business with, to meet these standards:

- To support every individual's human right to live free from abuse, servitude and inhumane treatment
- To promote ethical business and operational practices in corporate activity and the services delivered
- To take appropriate steps to ensure that slavery and human trafficking is not taking part in any of its business or supply chains
- To take reports of witnessed, suspected or disclosed concerns of slavery and human trafficking seriously

- To take appropriate steps with relevant partner agencies to address actual instances of slavery and human trafficking

8. Training on Modern Slavery and Trafficking

Tamworth Borough Council has a programme of safeguarding training for all employees and elected members which continues to be utilised and is part of mandatory induction training – this is reported to Health and Wellbeing Scrutiny twice per year. Modern Slavery awareness is included in this training.

Level 1 safeguarding training - eLearning modules to staff and members are now embedded. Level 1 safeguarding training must be refreshed every 3 years and is delivered as a rolling programme.

Level 2 safeguarding children training is delivered by the Staffordshire Safeguarding Children Board (SSCB) training team. Staffing roles that require this enhanced level of training have been identified and officers requested to complete this training.

Level 3 safeguarding children training provides subject specific training courses going forward the Partnership Vulnerability Officer will be working with managers to identify relevant safeguarding courses that will support staff in their job role.

Level 4 specialist training i.e., Designated Safeguarding Lead training. The Assistant Director Partnerships remains the lead officer for the Council.

Information on Modern Slavery is incorporated into the Council's Safeguarding Policy and is available to all staff – an update to the policy was shared via Astute in April 2021

A bespoke eLearning Modern Slavery and human trafficking package remains available for all staff and members during induction enabling them to identify and know how to report suspected or disclosed incidents.

At present any concerns can continue to be reported to the Designated Safeguarding Officer or Deputy

Relevant public information is now available on the Council's website.

9. How to Report Modern Slavery

If you suspect someone may be at risk of Modern Slavery telephone 101 to report it to Staffordshire Police, or if someone is in immediate danger always call 999.

Crimes can be anonymously reported via Crimestoppers on 0800 555 111 or via [modernslavery.co.uk](https://www.modernslavery.co.uk) hotline on 0800 0121 700.

10. Going Forward

The Council will strengthen its approach to tackling modern slavery by:

- Continuing commitment to attend the Staffordshire Modern Slavery Human Trafficking Tactical meeting to ensure crime trends are recognised, proactively organise action with multi-agency partners to tackle possible problems in the Tamworth area and respond to suspicions of Modern Slavery Human Trafficking.
- Continuing to support training through the Salvation Army, Voice of Hope and Catch 22 for identified front line staff as appropriate.
- Raising awareness through the Tamworth Community Safety Partnership about County Lines (exploitation of vulnerable people) which is now recognised as a modern slavery human trafficking issue).
- Continuing to work with the Responsible Bodies Group (RBG) to identify and report modern slavery concerns which may be identified through ongoing programmed inspections of licenced or other premises.
- Continuing to seek reassurance via current training packages that staff remain up to date and have undergone relevant training.
- Working with identified safeguarding champions in each Council service
- Continuing to work with Service Managers to undertake relevant risk assessments as necessary with suppliers to ensure their understanding and compliance with the Modern Slavery Act.
- Ensuring that Anti-Slavery Week is promoted via relevant social media channels.

This Modern and Anti-Slavery and Human Trafficking Statement has been approved by Council's Corporate Management Team and endorsed by the Audit & Governance Committee. It will be reviewed and updated as necessary on an annual basis for monitoring and assurance purposes.



Andrew Barratt
Chief Executive
September 2023

Wednesday, 27 September 2023

Report Assistant Director - People

Local Government and Social Care Ombudsman Annual Review 2022/23

1. Exempt Information

None

2. Purpose

To advise the committee of the contents of the Local Government and Social Care Ombudsman's Annual Review letter for the year ended 31st March 2023 in relation to complaints against Tamworth Borough Council.

3. Recommendations

It is recommended that the committee endorse the contents of the 2022/23 Ombudsman Annual Review Letter and the summary of complaints, decisions and compliance contained within it.

4. Executive Summary

4.1 Annual Letter

The Local Government and Social Care Ombudsman (LGSCO) produces an annual letter setting out statistics about complaints relating to Tamworth Borough Council that have been referred to them. This year's letter was published on 19th July and covers the period 1st April 2022 to 31st March 2023 a copy of which can be found at Appendix 1.

All decisions made by the ombudsman regarding complaints against Tamworth Borough Council can be found on the LGSCO website <https://www.lgo.org.uk/decisions>. This data can also be viewed via an interactive map of all council's performance nationally which can be found on this link <https://www.lgo.org.uk/your-councils-performance>.

Section 4.2 of this report provides full detail of the complaints and enquiries received by the ombudsman in respect to Tamworth Borough Council along with the decisions made.

During this reporting period it was necessary for Tamworth Borough Council to seek an extension in time to respond to two ombudsman enquiries, although in both cases the Link Officer discussed the cases and agreed extensions with them, the ombudsman still registers this as a late response.

The ombudsman annual letter also reports on the number of complaints upheld as a percentage of the total detailed investigations. For this reporting period 2 decisions out of 2 investigations were upheld giving a statistic of 100% of complaints being upheld in comparison to 59% in similar organisations. Although this percentage looks extremely high in terms of performance it is skewed by the low number of complaints that are received about the council. The ombudsman have advised that in 2022-23 they changed their investigation processes which has contributed to an increase in the average uphold against all complaints, and as such comparisons should not be made against previous years.

The ombudsman also reports on compliance with recommendations made by the ombudsman, in both cases we had done so achieving 100% compliance which is the same when compared to similar organisations.

The final element reported by the ombudsman is the percentage of upheld cases where the council provides a satisfactory remedy before the complaint reached the ombudsman. In this reporting period we had not provided satisfactory remedies to the two upheld cases in comparison to an average of 15% in similar organisations.

4.2 Complaints and enquiries received by the ombudsman in 2022/23

In the reporting year the Ombudsman received 11 enquiries and complaints about Tamworth Borough Council and made 11 decisions. Appendix 2 gives a detailed breakdown of this.

The complaints received by the Ombudsman were related to the following service areas:

- 4 complaints for Environmental Services, Public Protection & Regulation
- 4 complaints for Housing
- 2 complaints Planning and Development
- 1 complaint for Benefits/Council Tax

When a complaint is received an ombudsman assessor makes an initial judgement on the case and decides whether to progress it further. Within this reporting year the ombudsman closed 4 complaints before contact was made with the Council where they gave the complainant advice to contact the Council to resolve the issue locally.

The ombudsman contacted the council with respect to the 7 remaining complaints to assess if a full investigation was necessary.

- Three complaints/ enquiries were closed after initial enquiries, in two of these cases the complaint was because the ombudsman judged that the complaint was not warranted by the alleged fault. The third case was closed as the ombudsman deemed there was no worthwhile outcome achievable by continuing with the investigation.
- One complaint was referred back to the council for local resolution as the complainant had not exhausted the Council's policy.
- One complaint was deemed as incomplete/ invalid as there was insufficient information to proceed with the investigation.

4.3 Complaints investigated in detail

2 complaints were passed on for detailed investigation. The ombudsman upheld both complaints, which were from the same customer about the same issue several months apart but were determined on the same day.

4.3.1 The first complaint was about the Council's inaction in dealing with a customer's reports of a neighbour making low frequency noise to annoy her. The customer was also not happy with the Council's decision to restrict access to the council via a single point of contact (SPOC). The Ombudsman's view was the Council had taken appropriate action to deal with Ms S's reports. But they did find fault, as the Council did not advise Ms S that she could appeal the decision on restricting her contact.

The ombudsman made some recommendations to which the council agreed which were:

- To write to the complainant apologising for not advising of the right to appeal the decision on restricting contact.
- To review the restrictions on the contact the complainant has with the council and if restrictions remained then to advise the customer of the right to appeal them.
- Amend the template letter advising customers of restricted contact.

The recommendations were actioned, confirmation provided to the ombudsman, and they subsequently confirmed that they were happy the remedies had been satisfied. The full anonymised report from the Ombudsman can be found at Appendix 3.

4.3.2 The second complaint was about the Council's lack of action in dealing with noise nuisance and anti-social behaviour from the complainant's neighbour. The Ombudsman's investigation found the Council considered the issue, but decided the noise was not statutory nuisance or anti-social. The ombudsman decided that they could not question the merits of that decision. But they did uphold the complaint, because of the Councils delayed response to the complaint.

The Council issued an apology letter to the complainant regarding the delay in responding therefore the ombudsman concluded that there was not enough remaining injustice to warrant further action and that the remedy was complete and satisfied. The full anonymised report from the Ombudsman can be found at Appendix 4.

4.4 Future Developments

The council remains committed to continuous improvement and to learning from complaints to improve service delivery and customer satisfaction. To support this the following actions are planned within the 2023/24 year:

- The Information Governance Team will continue to facilitate, monitor and improve the complaints process.
- More robust reporting on complaints performance to Corporate Management Team including adherence to the revised timescales.
- Complaints will be reported to Scrutiny and Cabinet on a regular basis via the quarterly performance report.
- The Link Officer will continue to attend focus groups and workshops with the LGSCO as they seek to develop a unified code of practice with the Housing Ombudsman.

5. Resource Implications

There are no resource implications arising from this report.

6. Legal/Risk Implications

Failure to manage complaints effectively not only reduces the opportunities to learn from the information they provide but could also have a negative impact on the council's reputation and increase costs via compensation payments. The comments, compliments and complaints policy implemented in April 2023 will help reduce this risk.

7. Equalities Implications

There are no equalities implications arising from this report.

8. Environment and Sustainability Implications (including climate change)

There are no environment or sustainability implications arising from this report.

9. Background Information

The Committee's role and function includes a requirement to monitor the effectiveness of Local Government and Social Care Ombudsman (LGSCO) investigations. As the operation of the LGSCO forms part of this regulatory framework the Committee is provided with the LGSCO annual review for consideration. The LGSCO distribute annual review letters to all councils

regarding their performance in dealing with complaints made about them to the Ombudsman. The aim is to provide councils with information to help them improve complaint handling, and improve services more generally, for the benefit of the public. The letters also include a summary of statistics relating to the complaints received by the LGSCO and dealt with against each council.

The LGSCO has the power to investigate complaints by members of the public who consider that they have been caused injustice by maladministration or service failure in connection with action taken by the Council in the exercise of its administrative functions. Whilst the Ombudsman can investigate complaints about how the Council has done something, it cannot question what a Council has done simply because someone does not agree with it.

A complainant must give the council an opportunity to deal with a complaint against it first although in practice this is not always the route taken. The Ombudsman expects the council's own complaints procedure to be exhausted in the first instance, in this case the two stages of the Comments, Compliments and Complaints policy. If a complainant is not satisfied with the action the council takes, they can send a written complaint to the Local Government and Social Care Ombudsman. Complainants are informed on how to do so at the conclusion of the Comments, Compliments and Complaints stage two process.

The objective of the Ombudsman is to secure, where appropriate, satisfactory redress for complainants and better administration from authorities. Since 1989, the Ombudsman has had power to issue advice on good administrative practice in local government based on experience derived from their investigations.

The LGSCO provide each local authority with an annual review of the authority's performance in dealing with complaints against it which were referred to them, so that the authority can learn from its own performance compared to other authorities.

The LGSCO require every authority to have a Link Officer to whom all complaints are referred, at TBC this is Zoe Wolicki (Assistant Director People) with Nicola Hesketh (Data Protection Officer and Monitoring Officer) providing support.

Report Author

Zoe Wolicki – Assistant Director People

Appendices

Appendix 1 – Annual Review Letter

Appendix 2 – Complaints, Decisions and Compliance Data

Appendix 3 – Final Decision letter

Appendix 4 – Final Decision letter

19 July 2023

By email

Mr Barratt
Chief Executive
Tamworth Borough Council

Dear Mr Barratt

Annual Review letter 2022-23

I write to you with your annual summary of complaint statistics from the Local Government and Social Care Ombudsman for the year ending 31 March 2023. The information offers valuable insight about your organisation's approach to complaints. As always, I would encourage you to consider it as part of your corporate governance processes. As such, I have sought to share this letter with the Leader of your Council and Chair of the appropriate Scrutiny Committee, to encourage effective ownership and oversight of complaint outcomes, which offer such valuable opportunities to learn and improve.

The end of the reporting year, saw the retirement of Michael King, drawing his tenure as Local Government Ombudsman to a close. I was delighted to be appointed to the role of Interim Ombudsman in April and look forward to working with you and colleagues across the local government sector in the coming months. I will be building on the strong foundations already in place and will continue to focus on promoting improvement through our work.

Complaint statistics

Our statistics focus on three key areas that help to assess your organisation's commitment to putting things right when they go wrong:

Complaints upheld - We uphold complaints when we find fault in an organisation's actions, including where the organisation accepted fault before we investigated. We include the total number of investigations completed to provide important context for the statistic.

Over the past two years, we have reviewed our processes to ensure we do the most we can with the resources we have. One outcome is that we are more selective about the complaints we look at in detail, prioritising where it is in the public interest to investigate. While providing a more sustainable way for us to work, it has meant that changes in uphold rates this year are not solely down to the nature of the cases coming to us. We are less likely to carry out investigations on 'borderline' issues, so we are naturally finding a higher proportion of fault overall.

Our average uphold rate for all investigations has increased this year and you may find that your organisation's uphold rate is higher than previous years. This means that comparing uphold rates

with previous years carries a note of caution. Therefore, I recommend comparing this statistic with that of similar organisations, rather than previous years, to better understand your organisation's performance.

Compliance with recommendations - We recommend ways for organisations to put things right when faults have caused injustice and monitor their compliance with our recommendations.

Failure to comply is rare and a compliance rate below 100% is a cause for concern.

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

Finally, we compare the three key annual statistics for your organisation with similar authorities to provide an average marker of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data, and a copy of this letter, will be uploaded to our interactive map, [Your council's performance](#), on 26 July 2023. This useful tool places all our data and information about councils in one place. You can find the detail of the decisions we have made about your Council, read the public reports we have issued, and view the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

Your organisation's performance

It has been necessary to liaise with your Council to make enquiries on two cases during the year. Disappointingly the responses to both were delayed and the Council took, on average, 32 days to respond against the permitted timescale of 20 days. Delayed investigations can further frustrate complainants and I hope to see an improvement in your Council's timeliness in the forthcoming year.

Supporting complaint and service improvement

I know that complaints offer organisations a rich source of intelligence and insight that has the potential to be transformational. These insights can indicate a problem with a specific area of service delivery or, more broadly, provide a perspective on an organisation's culture and ability to learn. To realise the potential complaints have to support service improvements, organisations need to have the fundamentals of complaint handling in place. To support you to do so, we have continued our work with the Housing Ombudsman Service to develop a joint complaint handling code that will provide a standard for organisations to work to. We will consult on the code and its implications prior to launch and will be in touch with further details.

In addition, our successful training programme includes practical interactive workshops that help participants develop their complaint handling skills. We can also offer tailored support and bespoke training to target specific issues your organisation might have identified. We delivered

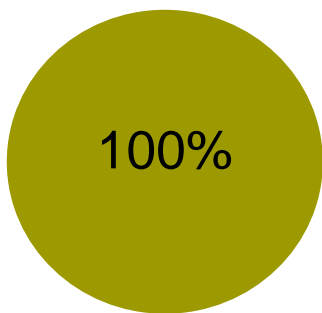
105 online workshops during the year, reaching more than 1350 people. To find out more visit www.lgo.org.uk/training or get in touch at training@lgo.org.uk.

Yours sincerely,



Paul Najsarek
Interim Local Government and Social Care Ombudsman
Interim Chair, Commission for Local Administration in England

Complaints upheld



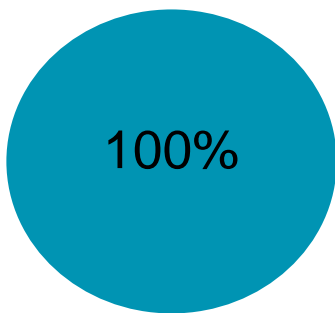
100% of complaints we investigated were upheld.

This compares to an average of **59%** in similar organisations.

2
upheld decisions

Statistics are based on a total of **2** investigations for the period between 1 April 2022 to 31 March 2023

Compliance with Ombudsman recommendations



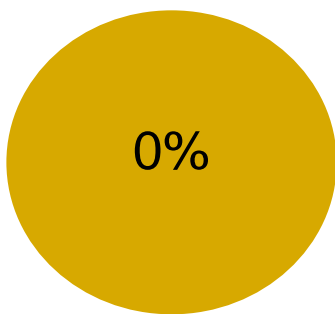
In **100%** of cases we were satisfied the organisation had successfully implemented our recommendations.

This compares to an average of **100%** in similar organisations.

Statistics are based on a total of **2** compliance outcomes for the period between 1 April 2022 to 31 March 2023

- Failure to comply with our recommendations is rare. An organisation with a compliance rate below 100% should scrutinise those complaints where it failed to comply and identify any learning.

Satisfactory remedy provided by the organisation



In **0%** of upheld cases we found the organisation had provided a satisfactory remedy before the complaint reached the Ombudsman.

This compares to an average of **15%** in similar organisations.

0
satisfactory remedy decisions

Statistics are based on a total of **2** upheld decisions for the period between 1 April 2022 to 31 March 2023

Reference	Authority
21001803	Tamworth Borough Council
22000844	Tamworth Borough Council
22001557	Tamworth Borough Council
22010703	Tamworth Borough Council
22011907	Tamworth Borough Council
22012394	Tamworth Borough Council
22014543	Tamworth Borough Council
22014550	Tamworth Borough Council
22014566	Tamworth Borough Council
22016459	Tamworth Borough Council
22017803	Tamworth Borough Council

Category	Received
Environmental Services & Public Protection & Regulation	26/04/22
Housing	21/04/22
Environmental Services & Public Protection & Regulation	09/05/22
Housing	03/11/22
Environmental Services & Public Protection & Regulation	08/12/22
Benefits & Tax	09/12/22
Housing	27/01/23
Planning & Development	27/01/23
Environmental Services & Public Protection & Regulation	23/01/23
Planning & Development	10/03/23
Housing	24/03/23

The Ombudsman's final decision

Summary: Ms S complains about the Council's inaction in dealing with her reports of her neighbour making low frequency noise to annoy her. She also complains the Council decided to restrict her contact with it. The Ombudsman's view is the Council has taken appropriate action to deal with Ms S's reports. So we cannot question the merits of its decision. Similarly, we cannot question the merits of its decision to restrict Ms S's contact. But we do find fault, as the Council did not advise Ms S that she could appeal the decision on restricting her contact.

The complaint

1. The complainant, whom I shall refer to as Ms S, complains:
 - she reported to the Council that her neighbour was deliberately making a low frequency buzzing noise to annoy her;
 - on multiple occasions she asked the Council to look at her evidence. But the Council has not taken this new issue seriously. It has closed the case;
 - the Council then decided to restrict her contact with it.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. As part of the investigation, I have:
 - considered the complaint and the documents provided by Ms S;
 - made enquiries of the Council and considered its response;
 - spoken to Ms S;

-
- sent my draft decision to Ms S and the Council and considered the responses I received.

What I found

Legal and administrative background

Statutory nuisance

5. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take 'reasonably practicable steps' to investigate potential 'statutory nuisances'. Noise can amount to a statutory nuisance.
6. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
 - injure health or be likely to injure health.
7. There is a long-established legal principle that 'nuisance' must be judged on how it affects the average person, not someone who, for whatever reason, is particularly sensitive to it. Officers should always therefore consider whether the issue would amount to a nuisance to the 'average' person.

Anti-social behaviour

8. Councils have a general duty to take action to tackle anti-social behaviour (ASB). But ASB can take many different forms; and councils should make informed decisions about which of their powers is most appropriate for any given situation.

The Council's *Managing Unreasonable Customer Behaviour Policy*

9. The Council's policy says:
 - customers chasing the same enquiry or making the same requests or complaints were 'persistent'. Sometimes persistent contact was justified;
 - but persistent contact could become unreasonable for several reasons. This included:
 - "Refusing to accept that certain issues are not within the scope of the Council;
 - Insisting that a service, process, officer, procedure or policy etc. is dealt with in ways that are not in line with specified process and policy; or
 - Refusing to accept the decision; repeatedly arguing points with no new evidence";
 - the Council might decide to restrict somebody's contact if it viewed their contacts as unreasonably persistent. The restrictions should be proportionate to the nature and frequency of the contacts;
 - if the Council invoked the policy, a senior manager would write to tell the person of what behaviour was unacceptable, the action the Council was taking and the duration;
 - a customer had a right to appeal the decision. The decision letter should explain how the customer could challenge the decision.

What happened

Background

10. Ms S says, soon after new neighbours moved into a home adjoining hers, several years ago, she began to experience unwanted noise from them. She began to report issues with noise from the neighbours to the Council. In 2021 the Council considered Ms S's reports of anti-social behaviour via a formal 'Community Trigger' process.
11. The way the Council dealt with Ms S's contacts are the subject of an earlier complaint.

Low frequency noise

12. In March 2022 Ms S says she turned off her boiler. From then, she became aware of a buzzing noise coming from her neighbour's home. She said it is a low frequency noise that only a small percentage of people can hear. The Council gave Ms S access to its noise recording equipment, but the recordings did not pick up the buzzing. Its officer visited Ms S. She could hear the noise at the time, but the officer could not. The officer also visited the neighbour and found no evidence of anything untoward there.
13. The Council consulted internally and with the police. Its conclusion was it did not have the equipment or expertise to investigate the issue. It would have to employ a contractor, which would be expensive and it still might be unable to trace the alleged source.
14. Over a few days at the end of March and into April, Ms S sent several emails about the issue. She says the effect of the noise on her was so bad (it physically affected her), she went to stay in a hotel. Ms S reports that she still heard the humming at the hotel (over a mile from her home). She says this showed the issue must be affecting other residents, so the Council should take action.
15. On 5 April the Council advised Ms S it did:

“...not have the equipment or expertise to determine the cause of the alleged nuisance which cannot be regarded as statutory nuisance or Anti-Social Behaviour. We would suggest that you seek advice from a specialist in this area who may be able to assist. I must point out that the Council would not fund this and any costs incurred, either through monitoring the alleged nuisance or works carried within your property. This would have to be financed by yourself.

This case will now be closed and regrettably we must advise that further emails on this topic will not receive any further action.”
16. A few weeks later, the police advised the Council it had stopped 'resourcing' Miss S's contact about the low frequency noise.

Restricting Ms S's contact

17. Ms S continued to contact the Council about the issue with the low frequency noise, including making a new complaint. At the end of April, the Council consulted internally whether it needed to restrict Ms S's contact. At the beginning of May the Council emailed Ms S. Its senior officer advised:

“I have reviewed your contact with various departments of the Council, including Environmental Health, Partnerships and Enforcement, along with the responses and assistance given to you by officers within those Teams. I conclude that all available avenues of assistance have been exhausted and

(based on current evidence) there is no further action that Tamworth Borough Council can take in response to your reports of nuisance. Despite this having been explained to you, you have continued to contact Tamworth Borough Council, the local MP and Police Services. I deem this to be excessive and disproportionate contact and therefore unacceptable.”

18. The email explained it was putting restrictions on Ms S’s contact with the Council. It gave her a single point of contact (who was the officer who had, in the main, been dealing with her contacts about her neighbour). It advised her she could still contact it with new information, or about other services. It would review the restrictions in October.

Analysis

The Council’s action about the buzzing noises

19. The role of Ombudsman is not to decide if there is a statutory noise nuisance, but to consider whether the Council properly investigated Ms S’s complaints of noise disturbance.
20. Low frequency noise is noise which occurs at a level just above the hearing threshold. That threshold varies between people. This means while one person may hear it another may not. That makes it difficult for a Council to take action under its noise nuisance procedure, because the test for that is the ‘average’ person.
21. The Council has taken suitable informal action to respond to Ms S’s reports. It visited her at time she could hear the noise. It gave her recording equipment. It also liaised with the police. Its view was it did not have the equipment to investigate. And an independent contractor would be prohibitively expensive, given the possibility it would be unable to locate the source of any noise it found. Those were ‘reasonably practicable steps’, which is what the law on noise nuisance says the Council should take. Without supporting evidence from its investigations, the Council could not take action. Therefore, I cannot say there was fault in its actions, no matter how strongly Ms S disagrees.
22. It was also unlikely further action would conclude the neighbour was anti-social. I note the police have also come to the same conclusion. And the Council has not told the Ombudsman of any other residents reporting problems with the low frequency noise.

The decision to restrict Ms S’s contact

23. The Council has used significant amounts of officer time and other resources dealing with Ms S’s complaints. I understand (having spoken to Ms S) the noise she can hear has significantly affected her. But the Council has been clear it cannot take any action about this. Ms S has continued to contact it, as she does not accept that decision. I do not consider it was fault for the Council to decide to restrict Ms S’s contacts. It struck the appropriate balance between its wider duties to all other members of the public and its staff, while allowing Ms S to continue to have contact. It did not prevent Ms S from contacting the Council on other matters.
24. However, the Council’s policy says the decision was appealable. And it should have advised Ms S about this in its decision. The email to Ms S does not mention any appeal rights. So my decision is that was fault.

Recommended action

25. In response to my draft decision the Council has agreed, within a month of my final decision, to:
- write to Ms S apologising for not advising her of her right to appeal its decision on restricting her contact;
 - review what restrictions it had on her contact with the Council. If it still had restrictions in place, it would advise Ms S of her right to appeal the restrictions;
 - change its template letter that advised customers of restricted contact to advise of the right to appeal.

Final decision

26. The Ombudsman upholds this complaint because of fault by the Council in not advising Ms S about her right to appeal a decision. The Council has agreed to my recommendations. So I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

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The Ombudsman's final decision

Summary: Ms S complains about the Council's lack of action in dealing with noise nuisance and anti-social behaviour from her neighbour. The Ombudsman's investigation found the Council considered the issue, but decided the noise was not statutory nuisance or anti-social. We cannot question the merits of that decision. But we do uphold the complaint, because the Council delayed responding to Ms S's complaint. The Council has apologised. So there is not enough remaining injustice to warrant further action by the Ombudsman.

The complaint

1. The complainant, whom I shall refer to as Ms S, complains the Council:
 - ignored her for months, after she complained about noise and harassment from her neighbour;
 - did not deal with her request for a stage two complaint.

What I have investigated

2. Since contacting the Ombudsman about the above complaint, Ms S made a new complaint about the Council's inaction. We have dealt with that complaint separately.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. As part of the investigation, I have:
 - considered the complaint and the documents provided by Ms S;
 - made enquiries of the Council and considered its response;
 - spoken to Ms S;
 - sent my draft decision to Ms S and the Council and considered the responses I received.

What I found

Legal and administrative background

Statutory nuisance

7. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'. Noise can amount to a statutory nuisance.
8. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
 - injure health or be likely to injure health.
9. There is a long-established legal principle that 'nuisance' must be judged on how it affects the average person, not someone who, for whatever reason, is particularly sensitive to it. Officers should always therefore consider whether the issue would amount to a nuisance to the 'average' person.
10. Councils have powers of enforcement under the EPA, which can involve the Magistrates Court. So, if a council serves a notice asking someone to abate a nuisance that person can appeal the notice to the Magistrates Court. Or, in cases where a council believes prosecution is the only way to stop a nuisance that will also involve court proceedings, giving rights of defence. For that reason, a council must gather evidence that will persuade a court the action is proportionate and necessary. It cannot therefore act on the complainant's word alone. It would need strong evidence, likely including its own officers witnessing the noise.

Anti-social behaviour

11. Councils have a general duty to take action to tackle anti-social behaviour (ASB). But ASB can take many different forms; and councils should make informed decisions about which of their powers is most appropriate for any given situation.

Community Trigger

12. The Anti-social Behaviour, Crime and Policing Act 2014 introduced a mechanism to review the handling of complaints of ASB. This is commonly known as the 'Community Trigger' process. When a person requests a review, relevant bodies (which may include the council, police and others) should decide whether the local threshold has been met.
13. If the threshold has been met, the relevant bodies should undertake the review. They should share information, consider what action has already been taken, decide whether more should be done, and then inform the complainant of the outcome. We can only consider councils' actions in an ASB case review. Any

contribution made by other relevant bodies, such as the police, is not in our jurisdiction.

What happened

14. In 2018, new neighbours moved into a home that adjoins Ms S's. She says, from soon after the move, she has experienced unwanted noise from them. In January 2020 she began to report issues with noise from the neighbours to the Council and police.
15. In March 2021 Ms S complained to the Council about its inaction.
16. In April, Ms S asked the Council for a Community Trigger. The Council accepted the request. Around the same time, it also referred Ms S and her neighbour to mediation.
17. The Council wrote to Ms S in May, after its Community Trigger meeting. It advised:
 - the main noise she reported was loud radios, doors slamming, heavy feet on the stairway and dogs barking. This usually happened in the daytime or early evening;
 - the Council considered this noise to be everyday noise and not unreasonable;
 - the design of the houses and the COVID-19 lockdowns may have exacerbated Ms S's awareness of the noise;
 - the neighbour had made counter allegations, so the Council had asked both households to sign good neighbour agreements;
 - the Council had also referred the case for mediation;
 - it was closing its case.
18. Later in May and again in June, internal Council emails noted an improvement in reports, following work with the Ms S and her neighbours.
19. Ms S contacted the Ombudsman again in April 2022; after problems with the neighbour re-started. We asked the Council to respond to the complaint. It did so in July. It apologised it had not dealt with her March 2021 complaint, which it said was an "unfortunate oversight". But it did not uphold the other parts of Ms S's complaint.

Analysis

20. I have restricted my investigation to events from April 2021 onwards, as Ms S did not complain to us until April 2022. I see no reason why it would have been unreasonable for her to not come to us sooner.
21. The Council's notes indicate that a large part of the noise Ms S reported was during the daylight hours, or of a type that could be interpreted by the courts as everyday household noise. Ms S has a strong contrary view about the persistent noise. While I understand the noise has undoubtedly affected her, we cannot criticise the merits of the Council's decision about whether the noise amounted to a statutory nuisance, or if the neighbour had been anti-social.
22. The Council has taken appropriate action to respond to Ms S's reports. It took part in the Community Trigger process. It also suggested mediation. The evidence suggests this did lead to an improvement for a while.
23. I do however uphold the complaint, because the Council has accepted it did not provide a response to Ms S's March 2021 complaint. We agree: the Community

Trigger process is not analogous with a complaint. But the Council has apologised for this, which is a suitable remedy. So there no need for any further recommendation.

Final decision

24. I uphold the complaint because the Council did not respond to Ms U's complaint. But the Council has apologised, so no further action is needed.

Investigator's decision on behalf of the Ombudsman

ROLLING AUDIT & GOVERNANCE TIMETABLE OF PLANNED REPORTS TO AUDIT AND GOVERNANCE COMMITTEE

2023/24 Year

	Report	Committee Date	Report of	Comments
1	Audit Findings Report and Management Representation Letter	27 September 2023	Grant Thornton	
2	Annual Statement of Accounts	27 September 2023	Executive Director Finance	
3	Risk Management Quarterly Update	27 th September 2023	Assistant Director – Finance	<i>Moved from 23rd August 2023</i>
4	Regulation of Investigatory Powers Act (RIPA) Annual Report & Review of the RIPA Policy	27 September 2023	Assistant Director, Partnerships	<i>Agreed that this be moved to September 2023.</i>
5	Modern Slavery and Human Trafficking Statement	27 September 2023	Assistant Director – Partnerships	<i>Check whether September or October meeting is preferred for 2023</i>
6	Local Government Ombudsman’s Annual Review and Report 2022/23	27 September 2023	Assistant Director – People	
	Report	Committee Date	Report of	Comments
1	Audit & Governance Committee update	25 October 2023	Grant Thornton	

2	Internal Audit Quarterly Update and EQA Action Plan	25 October 2023	Audit Manager	
3	Annual Treasury Outturn	25 October 2023	Executive Director Finance	<i>Moved from September 2023</i>
4	Risk Management Quarterly Update	25 October 2023	Assistant Director – Finance	
5	Future High Street Fund Risk Report	25 October 2023	Assistant Director, Growth & Regeneration	
Page 118	Report	Committee Date	Report of	Comments
	Counter Fraud update	15 Nov 2023	Audit Manager	<i>Moved from October 2023</i>
	2 Councillor Code of Conduct	15 Nov 2023	Monitoring Officer	<i>Annual refresh to normally be in April each year</i>
	3 Review of the Constitution and Scheme of Delegation for Officers	15 Nov 2023	Monitoring Officer	<i>Annual refresh to normally be in March / April each year</i>
	Report	Committee Date	Report of	Comments
1	Internal Audit Quarterly Update and EQA Action Plan	8 February 2024	Audit Manager	
2	Risk Management Quarterly Update	8 February 2024	Assistant Director – Finance	

3	Audit Committee Effectiveness	8 February 2024	Audit Manager	
4	Future High Street Fund Risk Report	8 February 2024	Assistant Director, Growth & Regeneration	
	Report	Committee Date	Report of	Comments
1	Audit and Governance Committee update	20 March 2024	Grant Thornton	<i>Verbal Update</i>
2	Internal Audit Charter and Audit Plan	20 March 2024	Audit Manager	
3	Final Accounts – Accounting Policies and Action Plan	20 March 2024	Assistant Director of Finance	<i>March or April (ideally March)</i>
	Private meeting of Internal and External Auditors and Committee members	20 March 2024		

	Report	Committee Date	Report Of	Comments
1.	Public Sector Internal Audit Standards/Quality Assurance and Improvement Programme	24 April 2024	Audit Manager	
2.	Annual Report of the Chair of Audit & Governance Committee	24 April 2024	Audit Manager / Chair	
3.	Review of Financial Guidance	24 April 2024	Assistant Director Finance	
4.	Review of the Treasury Management Strategy Statement, Minimum Revenue Provision Policy Statement and Annual Investment Statement and the Treasury Management Strategy Statement and Annual Investment Strategy Mid-Year Review Report	24 April 2024	Executive Director Finance	<i>March or April</i>

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Note: Audit Committee member training planned for 13 June 2023

The Portfolio Holder for Operations and Finance

Items Considered by the Committee

1.	Auditor's Annual Report	27 June 2023	Grant Thornton	
2.	External Audit Plan	27 June 2023	Grant Thornton	
3.	Internal Audit Annual Report and Quarterly Update for 2022/23	27 June 2023	Audit Manager	
4.	Annual Governance Statement and Code of Corporate Governance	27 June 2023	Chief Executive	
5.	Risk Management Quarterly Update	27 June 2023	Assistant Director, Finance	
6.	Future High Street Fund Risk Report	27 June 2023	Assistant Director, Growth & Regeneration	
	Report	Committee Date	Report of	Comments
1	Audit & Governance Committee update	23 August 2023	Grant Thornton	
2	Internal Audit Quarterly Update and EQA Action Plan	23 August 2023	Audit Manager	
3	Independent Member update	23 August 2023	Audit Manager	

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