

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

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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.

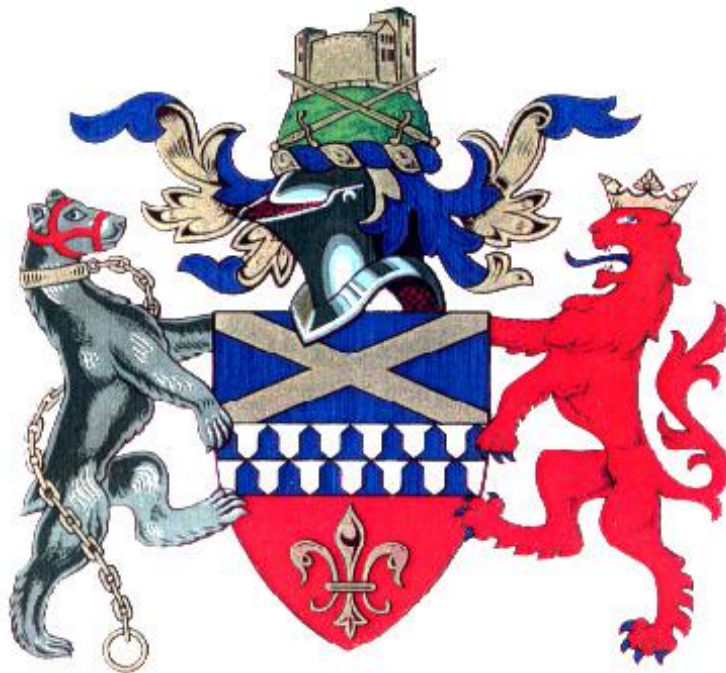
Distribution

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

Table of Contents

Section A Introduction	1
Section B	3
Section C	5
Section D	6
Section E	7
Section F.....	10
Covert Human Intelligence Source (CHIS)	10
Conduct and Use of a Source	10
Management of Sources	11
Tasking	11
Management Responsibility	12
Security and Welfare	12
Record Management for CHIS	12
Section G	15
Section H.....	16
Section I.....	18
APPLICATION PROCESS	19
Application, Review, Renewal and Cancellation Forms	22
Applications	22
Duration of Applications	22
Reviews	22
Renewal	23
Cancellation	24
Section J	27
Section K.....	29
Section L	31
CONCLUSION	31
APPENDIX 1	32
APPENDIX 2	33
Annex A Local Authority Procedure	35
Annex B JP Procedure	36
Annex C Application for Judicial Approval and Order Form	37
APPENDIX 3	40

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 2017) 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. (The IPCO replaced the OSC on 1 September 2017)
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

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

As from 1 November 2012 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).

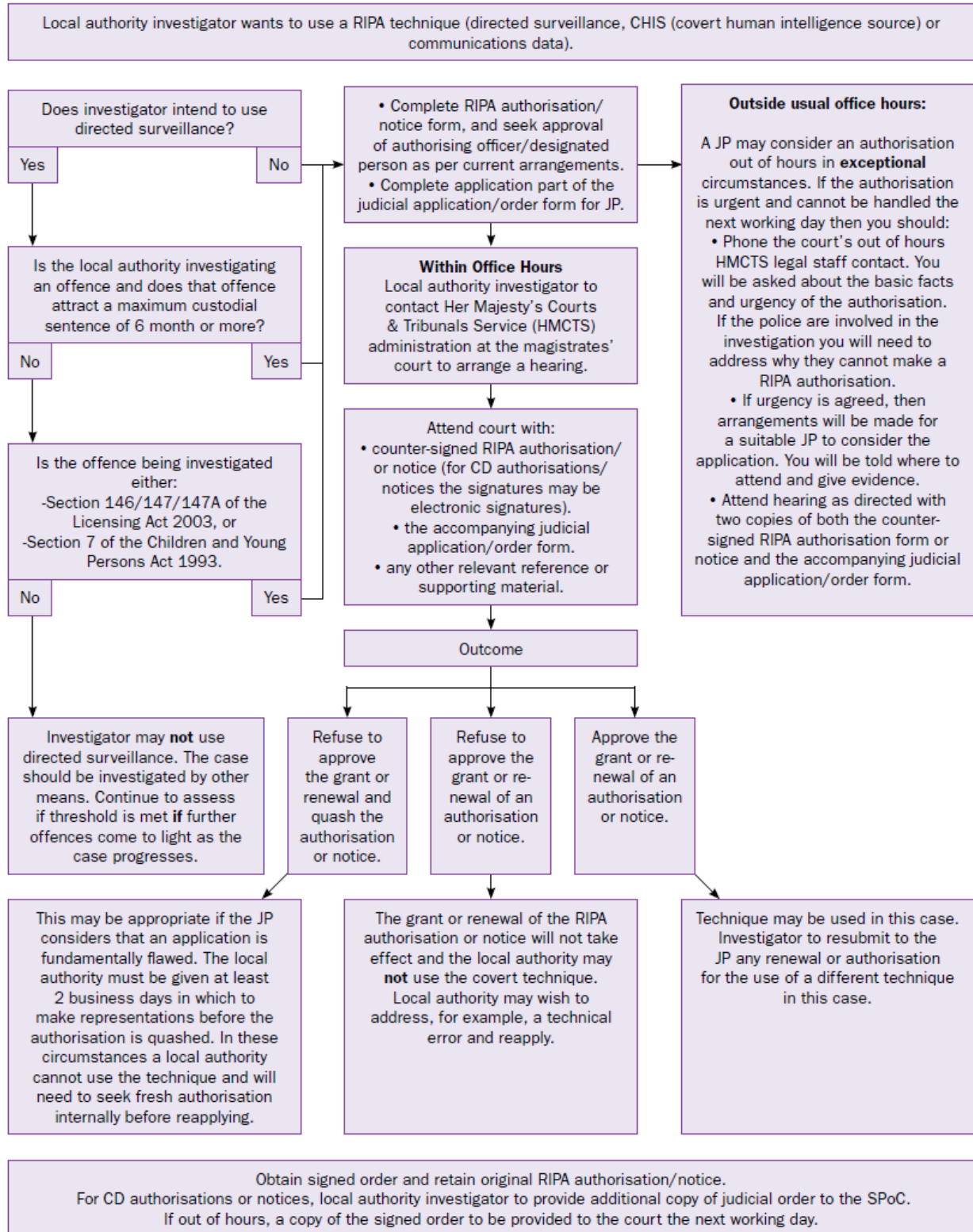
Application for Review of a Covert Human Intelligence Source (CHIS) Authorisation.

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.

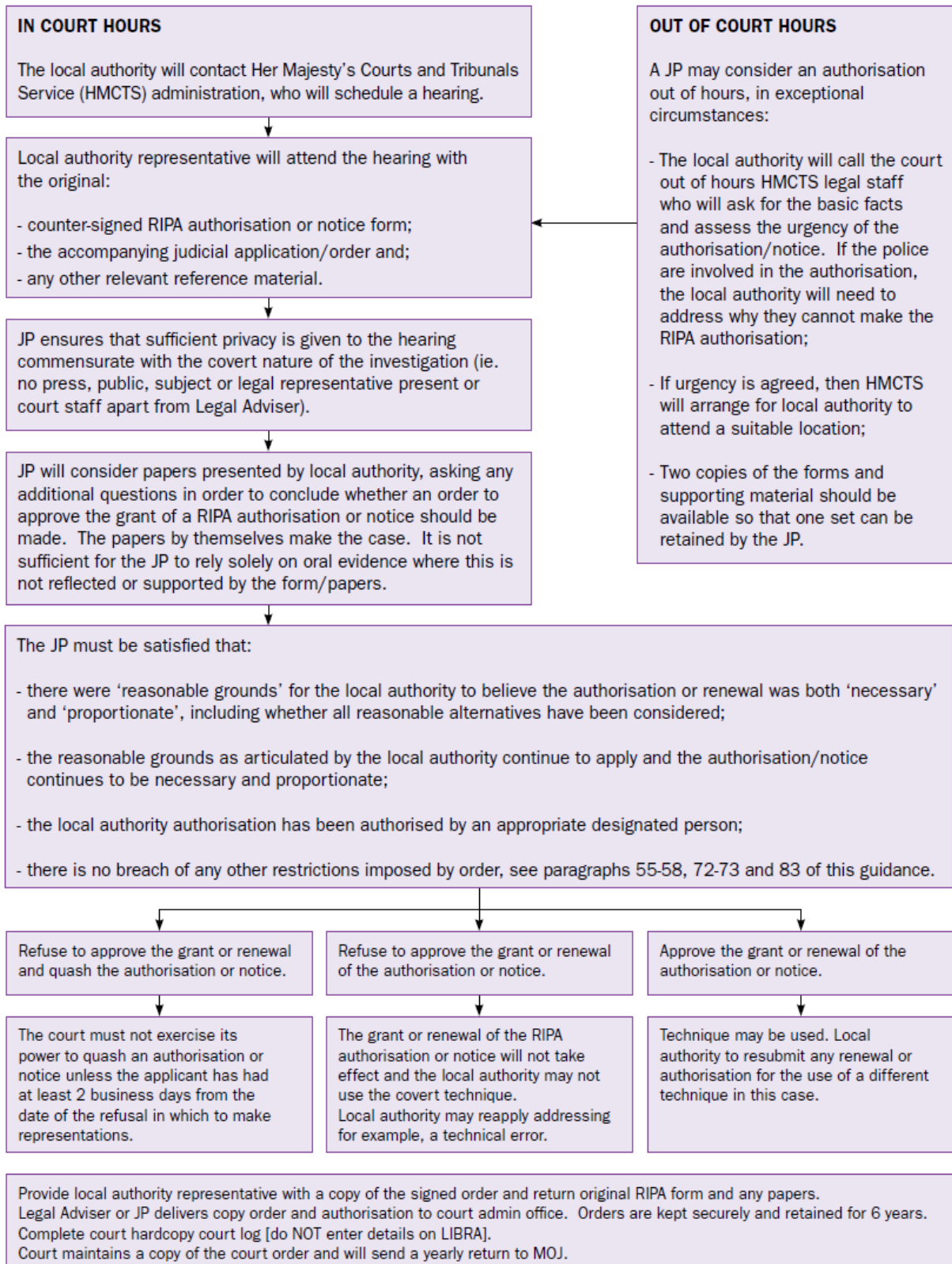
Annex A Local Authority Procedure

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

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

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.