

STANDARDS COMMITTEE

**TUESDAY
19TH JUNE 2012
AT 1400 HOURS IN
COMMITTEE ROOM 1**

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Sherwood Lodge
Bolsover
Derbyshire
S44 6NF

Date: 11th June 2012

Dear Sir or Madam,

You are hereby summoned to attend a Standards Committee meeting of the Bolsover District Council to be held in Committee Room 1, Sherwood Lodge, Bolsover, on Tuesday 19th June 2012 at 1400 hours.

Members are reminded that under Section 51 of the Local Government Act 2000 the Bolsover Code of Conduct was adopted by the Council on 16th May 2007. It is a Councillor's duty to familiarise him or herself with the rules of personal conduct by which Councillors must conduct themselves in public life. In addition, Members should review their personal circumstances on a regular basis with these rules in mind and bearing in mind the matters listed on the Agenda for discussion at this meeting.

Copies of the Bolsover Code of Conduct for Members will be available for inspection by any Member at the meeting.

Register of Members' Interest - Members are reminded that a Member must within 28 days of becoming aware of any changes to their interests under paragraph 14 or 15 of the Code of Conduct provide written notification to the Authority's Monitoring Officer.

Members are reminded of the provisions of Section 106 of the Local Government Finance Act 1992 and the responsibility of Members to make a declaration at this meeting if affected by the Section and not to vote on any matter before this meeting which would have an affect on the Council's budget.

You will find the contents of the agenda itemised on page 16.

Yours faithfully,



Chief Executive Officer
To: Members of the Standards Committee

TERMS OF REFERENCE - STANDARDS COMMITTEE

1. Promoting and maintaining high standards of conduct by Members and co-opted Members of the Council.
2. Assisting Members and co-opted Members of the Council to observe the Code of Conduct.
3. Advising the Council on the adoption or revision of a Code of Conduct.
4. Monitoring the operation of the Council's Code of Conduct.
5. Advising, giving training and arranging to train Members and co-opted Members of the Council on matters relating to the Council's Code of Conduct.
6. Member Training (including the attendance of Members at courses) in relation to matters affecting their conduct and probity.
7. All matters relating to dispensations for Members to speak and vote where the Members concerned have personal prejudicial interests.
8. To assess and review complaints against Members
9. To conduct determination hearings.
10. To promote and maintain high standards of conduct within Town/Parish Councils and to assist them in following the Code of Conduct.
11. To deal with complaints against Town and Parish Councillors in accordance with 8 and 9 above.
12. Applications for dispensations received from Town/Parish Councils.
13. To grant exemptions for politically restricted posts.
14. Responsibility for the Regulation of Investigatory Powers Act 2000 (RIPA) policy and procedures, to include monitoring, revisions and approval.

The political balance rules do not apply to this Committee, but this Committee prefers representatives from all political groups to serve on it.

TO RECOMMEND TO COUNCIL WITH REGARD TO:-

15. Overseeing the Council's "whistle blowing" policy and arrangements and to amend them as appropriate.

16. Changes required to the Constitution as a result of the monitoring and reviewing undertaken by the Committee.

(i) Assessment Sub-Committee

1. The receipt and assessment of complaints as to the conduct of Members in accordance with the Local Government and Public Involvement in Health Act 2007.

2. To consider investigation reports prepared on behalf of the monitoring officer following a referral by the Sub Committee on an initial assessment and to determine:

(a) That it accepts the monitoring officer's finding of no failure: or

(b) That the matter should be considered at a meeting of the Hearing Sub Committee: or

(c) That the matter should be referred to the Adjudication Panel for determination.

(ii) Review Sub-Committee

1. The review and assessment of complaints as to the Conduct of Members in accordance with the Local Government and Public Involvement in Health Act 2007.

STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee of the Bolsover District Council held in Committee Room 1, Sherwood Lodge, Bolsover, on Tuesday 24th April 2012 at 1400 hours.

PRESENT:-

Independent Members: -

J. Yates - Chair

B. Betts, K. Belshaw, A. Gascoyne, J.M. Hill, J. Jaffray, R. Lilley and D. Wright.

Members: -

District Councillors; M.G. Crane, M.J. Dooley, H.J. Gilmour, A. M. Syrett and D.S. Watson.

Officers:-

S. Sternberg (Solicitor and Monitoring Officer), A. Turner (Deputy Monitoring Officer) (from Minute No. 1072), and A. Bluff (Democratic Services Officer).

1063. APOLOGIES

There were no apologies for absence received.

1064. URGENT ITEMS

There were no urgent items of business to consider.

1065. DECLARATIONS OF INTEREST

There were no declarations of interest submitted.

STANDARDS COMMITTEE

1066. MINUTES – 21st FEBRUARY 2012

Moved by J. Jaffray, seconded by D. Wright

RESOLVED that the minutes of a meeting held on 21st February 2012 be accepted as a correct record.

1067. RECOMMENDED ITEM FROM SAFETY COMMITTEE HELD ON 2ND MARCH 2012 – AMENDMENT TO TERMS OF REFERENCE FOR SAFETY COMMITTEE

The Monitoring Officer presented a recommended item from Safety Committee held on 2nd March 2012 regarding amendments to the Terms of Reference for Safety Committee to be included in the Council's Constitution.

The amendments were to take into account the appointment of a Shared Health and Safety Manager with Bassetlaw District Council. It was also noted that the Shared Health and Safety Manager would attend Bolsover's Safety Committee meetings.

Moved by Councillor H. Gilmour, seconded by Councillor M. J. Dooley

RESOLVED that the amendments to the Terms of Reference for Safety Committee be approved for inclusion in the Council's Constitution.

(Head of Democratic Services)

1068. RECOMMENDED ITEM FROM SCRUTINY MANAGEMENT BOARD HELD ON 12TH MARCH 2012 – DRAFT BUDGET SCRUTINY TERMS OF REFERENCE

The Monitoring Officer presented a recommended item from Scrutiny Management Board held on 12th March 2012 regarding Terms of Reference for the Budget Scrutiny Committee.

Members were advised that the Budget Scrutiny Committee would meet four times per annum.

Councillor Syrett commented that this was an improvement on current arrangements and was a good saving for the Council. It would also work better and save officer time.

Councillor Crane agreed with Councillor Syrett and added that Members would have more access to budget information.

STANDARDS COMMITTEE

Moved by Councillor M.J. Dooley, seconded by J. Jaffray

RESOLVED that that the Budget Scrutiny Terms of Reference be approved for inclusion in the Council's Constitution.

(Head of Democratic Services)

1069. RECOMMENDED ITEM FROM COUNCIL HELD ON 28TH MARCH 2012 IN RELATION TO MINUTE NO. 900 OF STANDARDS COMMITTEE HELD ON 21ST FEBRUARY 2012

The Monitoring Officer reported that an item relating to arrangements for future Scrutiny Committees, which had been approved at Standards Committee on 21st February 2012, had been deferred by Council on 28th March 2012 for clarification. The Monitoring Officer advised the meeting that the item was now progressing and would be presented to a future Standards Committee.

Moved and seconded

RESOLVED that the report be noted.

(Head of Democratic Services)

1070. STANDARDS COMMITTEE WORK PLAN

The Monitoring Officer presented the Standards Committee Work Plan to the meeting

Members were advised that a number of items on the Work Plan had been put in abeyance due to guidance under the Localism Act 2011 being awaited on the new arrangements for Standards. It was hoped that the guidance would be received shortly so a special meeting of Standards Committee could be arranged for May 2012.

The report was noted.

(Head of Democratic Services)

STANDARDS COMMITTEE

1071. COMPLAINTS TO THE STANDARDS COMMITTEE

The Monitoring Officer presented a report in relation to complaints made against Members.

Members were reminded that complaints received after 1st July 2012 would be dealt with under the new arrangements for Standards brought in by the Localism Act.

Members asked questions.

A short discussion took place.

The Monitoring Officer advised the meeting that the current membership of Standards Committee would stay the same until it changed to a new structure after 1st July 2012.

The report was noted.

The Deputy Monitoring Officer entered the meeting at this point.

1072. ARRANGEMENTS FOR THE APPOINTMENT OF INDEPENDENT PERSONS (LOCALISM ACT 2011)

The Monitoring Officer presented a report to seek Members views on the arrangements for the appointment of Independent persons under the new Standards regime. A template copy of the LGA Code of Conduct was also attached to the agenda.

The new regime for Standards would have to be in place by 1st July 2012, though no regulation or guidance had yet been produced by the Government on recruiting Independent Persons.

In the meantime the Council needed to put in place suitable arrangements so that the new system could be in place in time.

Derbyshire Monitoring Officers Group had now met twice and was working on all aspects of the new framework.

Presently, there are two models of the replacement Code of Conduct which were being put forward for consideration by the Derbyshire Monitoring Officers Group, one being a two page model drafted by the LGA and the other a modified version

STANDARDS COMMITTEE

of the current Code. The LGA model was the preferred model by the majority of the Group. Standards Committee Members' views were sought.

Recommendations are that two Independent persons be appointed to ensure that the Authority is never left in a position where, through illness or retirement, there is no Independent Person available. In addition, because the Independent Person would be dealing with both the Monitoring Officer and the Councillor complained of, it would seem advisable to have two.

It would also be logical, in view of the Strategic Alliance Partnership between Bolsover and North East Derbyshire District Council, to carry out joint advertising. Chesterfield Borough Council had also shown an interest in joining in with the process.

The Monitoring Officer advised the meeting that current Co-optees on the Standards Committee would be able to apply to become Independent Persons for other Councils, but not Bolsover.

The Independent Person is not a Member so is not covered by the Independent Remuneration Panel which reports on Members' Allowances. It was suggested, however, that Standards Committee Members should still offer their view on remuneration.

A discussion took place.

Members agreed that Independent Members remuneration arrangements should stay the same as current Cooptees Standards Members under the new structure.

Members also agreed that with regard to joint advertising, the Council's 'In Touch' magazine, and parish council notice boards were good options to use for advertising for the recruitment of Independent persons.

The Council had already agreed that it wished to continue with a Standards Committee for dealing with Member complaints and training etc, and also to keep the experienced Members of the current Committee, though the membership and constitution would change in that there will be no requirement for Co-optees or parish council representatives and the new Committee would have to be politically balanced. It was noted, however, that the Council did have power to put co-optees and parish council representatives, and any number of them, on the Standards Committee but they would have no voting powers.

A short discussion took place.

Councillors Syrett, Gilmour and Dooley agreed that they would like to see co-opted members on the Standards Committee.

STANDARDS COMMITTEE

Moved and seconded.

RESOLVED that (1) Members considered the LGA code and the current code and considered the pros and cons,

(2) Members considered the issues surrounding the new ethical framework with the details currently known,

(3) Members agreed that Independent Members remuneration arrangements should stay the same as current Cooptees Standards Members under the new structure,

(4) Members considered the size and make up of the new Standards Committee from the 1st July 2012,

RECOMMENDED TO COUNCIL that the Monitoring Officer is given delegated power to do anything necessary to bring the ethical framework into being for the 1st July or any subsequent deadline.

The meeting closed at 1510 hours.

Recommended Item from Executive – 28th May 2012

3.4 Executive Functions

1. The making and revocation of appointments to outside bodies where the appointments relate to Executive functions.
2. Any function under the Derbyshire Act 1981 other than those relating to licensing, registration or regulatory matters.
3. Overall responsibility for the Best Value process.
4. The formulation or preparation of plans or strategies for consideration by Council where the plan or strategy is required to be approved by Council.
5. The amendment, variation, revocation of such plan or strategy required to give effect to a requirement of the Secretary of State or Minister of the Crown in relation to a plan submitted for his approval.
6. The making of applications for disposal of land (following authorisation by the Council) under section 135 of the Leasehold Reform, Housing & Urban Development Act 1993 (Programme for disposals) and sections 32 and 43 of the Housing Act 1985 for disposal of housing land other than under Right to Buy legislation.
7. The implementation of the requirements of the Health and Safety at Work Etc. Act 1974 in respect of the Council as an employer and all its operations.
8. The delegation of such matters within its terms of reference as may be appropriate to the Chief Executive Officer or other appropriate officer.
9. The appointment, terms of reference and membership of sub-committees to deal with matters within the Executive's terms of reference.
10. The provision of such resources as may be necessary for the proper operation of the Council provided the resources are within the Budget and Policy Framework.
11. The level of grant aid and other assistance to Parish Councils and voluntary organisations of a cultural, sporting or other philanthropic nature.
12. The management of all the Council's properties and land including (for the avoidance of doubt) the purchase and disposal of freeholds and leaseholds, the letting of Council houses in accordance with the Housing Act 1996 and the granting of contractual licences.
13. The approval of the level of any fee, charge, rent or other payment due to the Council provided they are within the Budget and Policy Framework.

14. The implementation and monitoring of the Council's Treasury Management policies and practices.
15. Agreeing any agency arrangements with any local authorities or other bodies in so far as they relate to executive functions.
16. To monitor and enforce the effective implementation and reviews of the Council's **Single Equality Scheme** ~~Policy and Race Equality Scheme~~.
17. The management of the IT Strategy for the Council.
18. The opening and consideration and, if appropriate acceptance subject to scrutiny, of tenders for works in excess of £50,000.
19. The promotion of economic development and employment opportunities in the District.
20. Monitoring the finances of the Council.
21. The granting of discretionary relief for NNDR/Community Charge/Council Tax including the management of the Council Tax and Housing Benefit Schemes.
22. The collection of sundry and other debts, administration of mortgages and determination of any matter relating to the Council's insurance cover.
23. Monitoring level of homelessness and Council's responsibilities for this under the Housing Act 1996 - Part VII.
24. The maintenance of good relations with the Council's tenants.
25. The development of sports and recreational facilities and opportunities within the District and the development and promotion of tourism.
26. The co-ordination of and assistance to the arts provided throughout the District.
27. The fostering of community development and liaison with Parish Councils and voluntary bodies within the District.
28. The management of any Council markets including the level of rents for market stalls and any other level of charges relating to markets.
29. The development of international partnerships and friendships.
30. All other functions not specifically designated as Council functions and not required by law to be exercised by the Council.
31. Regular monitoring of Ombudsman and Corporate Complaints.

32. Regular monitoring of Freedom of Information Act 2000 requests for information.
33. Responsibility for the implementation and monitoring of its treasury management policies and practices.
34. To respond to the views of the Council on petitions which have been debated at Council where the petition relates to an executive function or executive matters.

Recommended Item from Executive – 28th May 2012

**41. COMMERCIAL PROPERTY LEASE APPROVAL
EXEMPT – PARAGRAPH 3**

The Projects Officer, Policy and Research presented the report to seek Executive approval of five lease agreements which had been recently secured and to request delegated authority be given to the Assistant Director of Regeneration to agree future commercial property lease agreements.

There are a number of commercial properties within the Council ownership which are advertised and available for lease across the District. Interested parties wishing to rent the property from the Council are expected to agree and enter in to a lease agreement with the Council for a property, which outlines the terms and conditions for their occupation of the unit / building and in recent weeks, the Council has finalised and agreed terms with tenants for a number of its available commercial properties.

It is proposed to change the delegation scheme so that in the future the Assistant Director of Regeneration will have the authority to agree to commercial leases in consultation with Strategic Alliance Management Team and the Leader and Deputy Leader. This will ensure that leases can be agreed and completed quickly and ensure that rental income can be received at the earliest opportunity.

Moved by Councillor E. Watts, seconded by Councillor D. McGregor

RESOLVED that (1) the Council enters into the lease agreement relating to the Market Store, Clowne on the terms proposed and agreed with both Legal and Regeneration;

(2) the Council enters in to the lease agreement relating to the 2a Station Road, Clowne on the terms proposed and agreed with both Legal and Regeneration;

(3) the Council enters in to the lease agreement relating to the Retail Unit at Cavendish Walk on the terms proposed and agreed with both Legal and Regeneration;

(4) the Council enters in to the lease agreement relating to the 3 & 4 Vernon Street, Shirebrook on the terms proposed and agreed with both Legal and Regeneration;

(5) the Council enters in to the lease agreement relating to the Hilltop Barn, Bolsover on the terms proposed and agreed with both Legal and Regeneration.

RECOMMENDED that (6) Standards Committee and Council approve an amendment to the delegation scheme to include delegated authority for the Assistant Director of Regeneration to agree commercial property lease agreements relating to the Council's commercial property portfolio and for leases relating to electricity sub-stations and gas governor sites in consultation with the Strategic Alliance Management Team and the Leader and Deputy Leader.

REASON FOR DECISION: **To enable the Council to manage its commercial properties.**

(Assistant Director of Regeneration/Council/Standards)

STANDARDS COMMITTEE

AGENDA

Tuesday 19th June 2012 at 1400 hours in Committee Room 1

Item No.		Page No.(s)
	PART 1 – OPEN ITEMS	
1.	To receive apologies for absence, if any.	
2.	Election of Chair.	
3.	Appointment of Vice Chair.	
4.	To note any urgent items of business which the Chairman has consented to being considered under the provisions of Section 100(B) 4 (b) of the Local Government Act 1972.	
5.	Members should declare the existence and nature of any personal or prejudicial interests in respect of:- a) any business on the agenda b) any urgent additional items to be considered c) any matters arising out of those items and, if appropriate, withdraw from the meeting at the relevant time.	
6.	To agree the Terms of Reference.	3 to 4
7.	Minutes of a meeting held on 24 th April 2012.	5 to 10
8.	Minutes of a Standards Committee Hearing held on 1 st May 2012.	To follow
9.	Recommended Item from Executive held on 28 th May 2012 - Amendment to Executive Functions.	11 to 13
10.	Recommended Item from Executive held on 28 th May 2012 - Commercial Property Lease Agreements – Delegation.	14 - 15
11.	Revision of the RIPA Policy and Procedure.	To follow
12.	Gifts and Hospitality Advice Review.	To follow
13.	Ethical Framework Update.	Verbal report
14.	Standards Committee Work Plan.	To follow
15.	Complaints to the Standards Committee.	To follow

Date: 15th June 2012

Sherwood Lodge
Bolsover
Derbyshire
S44 6NF

Dear Sir or Madam

STANDARDS COMMITTEE – TUESDAY 19TH JUNE 2012

I refer to your recently circulated agenda for the above meeting and now enclose the following items:

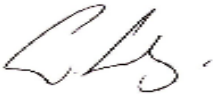
Part One – Open Items

Agenda Item 11 – Revision of the RIPA Policy and Procedure
(Pages 17 to 39)

Agenda Item 14 – Standards Committee Work Plan
(Pages 40 to 42)

Agenda Item 15 – Complaints to the Standards Committee
(Pages 43)

Yours faithfully



Chief Executive Officer

To: Members of the Standards Committee



INVESTORS IN PEOPLE

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Chief Executive Officer: Wes Lumley, B.Sc. F.C.C.A.



The Council and its staff

Committee:	Standards Committee	Agenda Item No.:	11.
Date:	19 th June 2012	Category	*
Subject:	RIPA	Status	Open
Report by:	Solicitor to the Council and Monitoring Officer		
Other Officers involved:	Legal and Standards Officer and Deputy Monitoring Officer		
Director	N/A		
Relevant Portfolio Holder	N/A		

RELEVANT CORPORATE AIMS

COMMUNITY SAFETY – Ensuring that communities are safe and secure

By ensuring that covert surveillance is properly authorised.

TARGETS

The subject matter does not contribute directly to any targets specified in the Corporate Plan.

VALUE FOR MONEY

The report does not involve the expenditure of money.

THE REPORT

The RIPA Policy and Procedure has been reviewed and is attached at pages. to .

The Office of the Surveillance Commissioners (OSC) is carrying out an inspection on the 12th July. They do this periodically, the last time having been in 2009.

In addition under the Protection of Freedoms Act 2012, on a date to be announced, the requirements for authorisations will change. Local authorities will no longer be able to authorise their own applications but will also have to seek the consent of a Magistrate. The Magistrate will have to consider whether the application crosses the “seriousness” threshold. If it doesn’t, the application will be refused.

The criteria for assessing the “seriousness” of the matter will restrict applications to those relating to an offence which attracts a maximum custodial sentence of 6 months or more.

This was a change the Coalition Government promised when they came into power.

ISSUES FOR CONSIDERATION

Approval of the changes highlighted in the RIPA Policy and Procedure.

IMPLICATIONS

Financial : None
Legal : As in the Report
Human Resources : None

RECOMMENDATION(S)

That members approve the revised RIPA Policy and Procedure.

ATTACHMENT: **Y – the RIPA Policy and Procedure**
FILE REFERENCE: **RIPA file**
SOURCE DOCUMENT: **Regulation of Investigatory Powers Act**

MARCH 2002 – REVISED DECEMBER 2003, 2004 2006 AND SEPTEMBER 2009 AND JUNE 2012.

BOLSOVER DISTRICT COUNCIL'S POLICY AND PROCEDURE ON THE APPLICATION OF PART II OF RIPA

1.0 OBJECTIVE

1.1 To summarise the impact of the Regulation of Investigatory Powers Act 2000, ("RIPA"), particularly Part II (Surveillance and Covert Human Intelligence Sources), on the work of the Council and to formalise procedures already adopted to ensure that the exercise and performance of the powers granted under RIPA are correctly carried out.

2.0 BACKGROUND – RIPA AND HUMAN RIGHTS

2.1 All local authorities undertake functions that require the use of investigatory techniques including surveillance.

2.2 In this Authority these functions would include for example investigations into benefit fraud, planning enforcement, environmental health and housing matters and work by the CAN Rangers.

2.3 On the face of it some types of surveillance may breach an individual's human rights, namely Article 8 of the European Convention of Human Rights and Fundamental Freedoms, Rights to respect for private and family life, which provides that:-

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a local authority with the exercise of this right except such as in accordance with law and is necessary in a democratic society in the interests of the prevention of disorder or crime.

2.4 The purpose of RIPA is to ensure that local authorities can show that they have considered and balanced the rights of the individual as detailed in paragraph 1 of Article 8 against the limitations of the right contained in paragraph 2.

3.0 THE RIPA AUTHORISATION

3.1 RIPA introduces a system of authorisations, the aim of which is to avoid legal challenge to the use of the evidence obtained using covert surveillance. The Council approved its procedures at Standards Committee on 17th September 2001 and 13th December 2004.

3.2 The central register is kept by the Solicitor to the Council and includes the original of each authorisation, renewal, review and cancellation.

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3.3 The whole system can and has been inspected by the Office of the Surveillance Commissioner.

4.0 WHAT IS COVERT SURVEILLANCE

4.1 Part II of RIPA refers to covert surveillance. Covert surveillance means surveillance that is carried out in such a way as to ensure that the person under surveillance does not know about the surveillance.

4.2 For the purpose of the Act there are two types of covert surveillance, “directed surveillance” and “intrusive surveillance”. The Council is not empowered to undertake intrusive surveillance.

5.0 DIRECTED SURVEILLANCE

5.1 This is covert but not intrusive (and not an immediate response to events) but undertaken for a specific investigation or operation in a way likely to obtain private information about a person. It must be necessary and proportionate to what it seeks to achieve and may be used by the wide range of organisations identified in the legislation. The Council is not empowered to undertake intrusive surveillance.

5.2 An authorisation for directed surveillance may be granted for the purposes of preventing and detecting crime.

5.3 It must be proportionate to what it seeks to achieve.

6.0 INTRUSIVE SURVEILLANCE

6.1 The Council is not empowered to undertake intrusive surveillance.

6.2 Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or is carried out by means of surveillance device.

6.3 Where surveillance is carried out in relation to anything taking place on any premises or in any vehicle by means of a device without that device being present on the premises or in the vehicle, it is not intrusive unless the device provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle. For example information obtained outside premises that provides a limited view and no sound of what is happening inside the premises would not be considered as intrusive surveillance.

7.0 COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

- 7.1 Provisions in Part II also cover the use of CHIS. The use or conduct of someone who establishes or maintains a personal or other relationship with a person for the covert purpose of obtaining information and covertly discloses that information is the use of a CHIS. The authorising officer must be satisfied that the authorisation is necessary, that the conduct authorised is proportionate to what is sought to be achieved and that arrangements for the overall management and control of the individual are in force. CHIS may be used by the wide range of organisations identified in the legislation including the Council.
- 7.2 This does not relate to members of the public who volunteer information which they have received in the course of their normal personal or business life and/or when they have no expectation of reward or advantage.
- 7.3 The Act regulates the use and conduct of CHIS.
- 7.4 Use means any action inducing or asking a person to engage as an intelligence source. Conduct is conduct which establishes a personal or other relationship for the purposes of obtaining the information.
- 7.5 **Currently the Council does not use CHIS.** If an application were received, it would have to be dealt with in accordance with the following rules in addition to those applicable to directed covert surveillance – i.e. for the prevention and detection of crime or preventing disorder, that the Authorising Officer considers that it is proportionate and necessary, details of the nature of the investigation are given, details of any expected collateral inclusion or confidential information are given.
- 7.6 In addition the authorisation should give a description of the purpose for which the source will be deployed and the nature of what the source will be asked to do.
- 7.7 Authorisations last for 12 months
- 7.8 As with other authorisations, there should be regular reviews and renewals applications where necessary. **The authorisation must also be cancelled when it is no longer needed.**
- 7.9 Anyone intending to apply for a CHIS authorisation needs to supply evidence of a risk assessment as to the safety of the CHIS and that the correct handling arrangements are in place – i.e. that a handler, a manager and a recorder are in place to deal with the CHIS – currently RIPA (Source Records) Regulations SI 2000/2725.
- 7.10 Records will have to be kept of the dealings with the CHIS in accordance with the relevant regulations.
- 7.11 If anyone is considering applying for a CHIS authorisation, advice **must** be sought first from the Solicitor to the Council or the Senior Principal Solicitor or the Deputy Monitoring Officer.

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8.0 WHEN/HOW CAN WE AUTHORISE

The Authorisation

- 8.1 The nature of the authorisation required depends upon the nature of the surveillance being undertaken.
- 8.2 Most surveillance undertaken by Council officers is not covert surveillance at all and does not therefore require authorisation. Other cases will be directed surveillance, not intrusive surveillance. The latter is not undertaken by this Council by law.
- 8.3 In order to ensure that the provisions of the Act are complied with throughout the organisation, staff are reminded an authorisation for directed surveillance in accordance with the procedures outlined in this RIPA Policy and Procedure must be obtained where directed surveillance is proposed and that whenever an authorisation is granted the authorisation (and any renewals, reviews or cancellations) must be sent to the Solicitor to the Council as soon as possible.
- 8.4 Before seeking an Authorising officers need to consider:-
- 8.4.1 Their powers to investigate the matter being investigated.
 - 8.4.2 Is the proposed action proportionate to the matter being investigated.
I.e. the Authorising Officer must consider whether the use of covert surveillance is proportional to the intrusion on the target and others.
 - 8.4.3 Could the same information be obtained from a different source.
 - 8.4.4 Is the proposed action in accordance with the relevant Code of Practice (see Appendix C).
- 8.5 Members of Strategic Alliance Management Team have power to grant authorisations for directed surveillance under RIPA. Please see the attached list of Authorised Officers at Appendix A and forms at Appendix B.
- 8.6 No Authorising Officer would usually authorise covert surveillance by an officer from their own staff group.
- 8.7 The legislation requires that an officer giving the authorisation must first satisfy him/herself that the authorisation is necessary on the particular ground and that the surveillance is proportional. This means the Authorising Officer must consider whether the use of covert surveillance is necessary in the particular circumstances.
- 8.8 Amongst other things he/she must particularly consider collateral intrusion (interference with the privacy of persons other than the subject(s) of the proposed surveillance) particularly when considering the proportionality of the surveillance. Appendix E includes guidance to

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Authorising Officers on these issues for when they are considering applications.

8.9 Standard forms have been produced and are used by the Council. These forms are designed to ensure that all these issues and others are addressed when officers are seeking an authorisation. Again these are referred to in Appendix B which has links to the Home Office website.

8.10 The forms are as follows:-

Directed Surveillance

Application for Directed Surveillance Authorisation	Form 1
Review of Directed Surveillance Authorisation	Form 2
Renewal of Directed Surveillance Authorisation	Form 3
Cancellation of Directed Surveillance Authorisation	Form 4

Covert Human Intelligence Sources (CHIS)

Application for conduct-use of CHIS Authorisation	Form 5
Review of CHIS	Form 6
Renewal of CHIS Authorisation	Form 7
Cancellation of conduct-use of CHIS Authorisation	Form 8

(Link to the Home Office site that has the up to date version of the above forms are to be found in schedule B below on page 9)

8.11 Authorisations must be given in writing by the Authorising Officer except in urgent cases where they may be given orally but a record of the authorisation must be recorded in writing as soon as is reasonably practicable. This should be done by the person requesting the authorisation but it must then be endorsed by the authorising officer at a later stage.

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8.12 Authorising officers should not be responsible for authorising their own activities i.e. those operations/investigations in which they are directly involved.

8.13 A written authorisation for directed covert surveillance will cease to have effect (unless renewed) at the end of a period of three months beginning with the day on which it took effect. A CHIS authorisation lasts 12 months.

8.14 Oral authorisations will, unless renewed, cease to have effect after 72 hours, beginning with the time when the authorisation was granted.

8.15 **Where there is any doubt as to whether or not a surveillance needs authorisation the officer should err on the side of caution and apply for an authorisation.**

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8.16 **Intrusive surveillance cannot be undertaken or authorised by officers working for the Council and can only be undertaken with the assistance of the Police in, for example a joint operation.**

8.17 Renewals

The Authorisation may be renewed for a further 3 months at its end by the completion of the appropriate form and further consideration by an Authorising Officer. Consent for renewal will be given in writing. Such a renewal should be made shortly before expiry of the previous authorisation. The original Renewal authorisation must be passed to the Solicitor to the Council for inclusion in the Register.

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8.18 Authorisations may be reviewed more than once.

8.19 Review

Regular reviews of Authorisations will be undertaken to assess the need for the authorisation. Results of the review should be passed to the Solicitor to the Council for inclusion in the Register.

8.20 It is for the Authorising Officer to decide how frequently a review should be carried out. However reviews should be no less than once a month. The Review period **must** be stated in the Authorisation by the Authorising Officer.

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8.21 Cancellation

All Authorisations, even time limited ones, need to be cancelled at the end of their use. The cancellation form must be completed and submitted to the Solicitor to the Council within 28 days of cancellation for inclusion on the Register.

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8.22 **The cancellation must be completed by the Authorising Officer. In the absence of the original Authorising Officer, the cancellation may be given by another Authorising Officer.**

8.23 Combined Surveillance

Where surveillance is being undertaken with another agency (eg the Police) only one Authorisation is required for both agencies. A lead in obtaining the authorisation should be taken by the appropriate agency. If this is not the Council, a copy of the other agency's Authorisation should be submitted to the Solicitor to the Council for inclusion on the Register.

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9.0 THE REGISTER AND ITS MAINTENANCE

- 9.1 The Solicitor the Council will keep the Register of Authorisations. As confidential information will be contained within the Register it will be kept under lock and key. The Register will include a log of the number and type of authorisations together with all renewals, reviews and cancellations. The purpose of the Register is to ensure that covert surveillance is properly authorised and is carried out by the Council only in accordance with the authorisation, this policy and procedure and the legislation.
- 9.2 Authorisations will be kept for a period of 3 years from the ending of the Authorisation and will then be destroyed.
- 9.3 Regular reminders of the need for Authorisations will be given by the Solicitor to the Council through Management Team and by email more generally.
- 9.4 An Annual report will be made to Standards Committee on the use of Authorisations.
- 9.5 Access to the Register will be given only on a strict need to know basis.
- 9.6 The Solicitor to the Council will ensure regular monitoring of compliance with the Council's RIPA Policy and Procedure and the legislation.
- 9.7 All FBU Managers will ensure their staff are suitably trained and will review training requirements annually.
- 9.8 Once a year the Solicitor to the Council will arrange a meeting of Authorising Officers and Investigating and Enforcement Officers to review and share information/experience/training.

10.0 OTHER TYPES OF SURVEILLANCE

- 10.1 The Act also covers other investigatory techniques such as the interception of communications, but as with intrusive surveillance this type of investigatory activity cannot be undertaken or authorised by officers working for the Council.

11.0 CODES OF PRACTICE

- 11.1 There is a link to these in Appendix C. These are issued by the Home Office. Anyone wishing to undertake covert surveillance or use a CHIS must consider advice in the relevant code.

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12.0 THE OFFICE OF THE SURVEILLANCE COMMISSIONER (the “OSC”)

- 12.1 The Act also establishes a Surveillance Commissioner who has a duty to keep under review the exercise and performance of powers and duties under Part II of the Act.
- 12.2 All those involved in the authorisation process have a duty to provide information to the Surveillance Commissioner at his request. The OSC has written to all public authorities informing them of his responsibilities to keep under review the exercise and performance of powers and duties under RIPA.
- 12.3 The OSC has also recently written to all local authorities asking for information to be provided to him.

13.0 FREQUENTLY ASKED QUESTIONS

- 13.1 A set of FAQs is attached at Appendix D to aid interpretation but officers need to be aware that legislation may change over time and that the advice in this procedure is not meant to be a definitive guide to the law so if you are in any doubt please contact Legal Services.

14.0 OTHER INFORMATION/GUIDANCE

- 14.1 There are Codes of Practice which officers seeking authorisations and those granting authorisations should familiarise themselves with. These include codes on the use of CHIS’s and covert surveillance.
- 14.2 Enforcement Policies and Procedures must be consistent with the requirements of RIPA.

APPENDIX A

Officers authorised to grant authorisations for directed surveillance under section 28 of the Regulation of Investigatory Powers Act 2000.

W. Lumley	Chief Executive Officer
S. Tomlinson	Director of Neighbourhoods
<u>B Mason</u>	Director of <u>Corporate</u> Resources
<u>K Hopkinson</u>	<u>Director of Development</u>
<u>P Hackett</u>	<u>Director of Health and Well Being</u>

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APPENDIX B

Forms

Directed Surveillance

Application for Directed Surveillance Authorisation	Form 1
Review of Directed Surveillance Authorisation	Form 2
Renewal of Directed Surveillance Authorisation	Form 3
Cancellation of Directed Surveillance Authorisation	Form 4

Covert Human Intelligence Sources (CHIS)

Application for conduct-use of CHIS Authorisation	Form 5
Review of CHIS	Form 6
Renewal of CHIS Authorisation	Form 7
Cancellation of conduct-use of CHIS Authorisation	Form 8

These can all be obtained from the Home Office website on the following link:-

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

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APPENDIX C

CODES OF PRACTICE

The link to Covert Surveillance Code of Practice and Link to Covert Human Intelligence Source (CHIS) Codes of Practice are on the Home Office website. The current link is:-

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<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>

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APPENDIX D

FREQUENTLY ASKED QUESTIONS ON THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

BACKGROUND

RIPA has the following parts:

PART	CONTENTS	IN FORCE	BDC USE
Part I (Chapter 1)	The interception of communications	02.10.00	No
Part I (Chapter II)	The access and disclosure of communications data		No
Part II	Intrusive surveillance directed surveillance and use and conduct of covert human intelligence sources (known as a 'CHIS'), which would include informants or undercover officers. Intrusive surveillance cannot be undertaken by this Authority.	02.10.00	Yes, except intrusive surveillance
Part III	The investigation of electronic data protected by encryption		No
Part IV	Oversight mechanisms, the establishment of complaints procedures and codes of practice	02.10.00	N/A

GENERAL OVERVIEW

Q1 what does Part II of RIPA cover?

A1 Part II covers the use of surveillance (both intrusive and directed surveillance) and the conduct and use of covert human intelligence sources (agents, informants and undercover officers).

Q2 Can this Council use any of the powers within Part II of RIPA?

A2 **No-one at the Council is able to carry out intrusive surveillance.** However, a designated officer within the Council can authorise the use of directed surveillance and the conduct and use of a covert human intelligence source (CHIS).

Q3 What does directed surveillance and CHIS mean?

A3 The definitions can be found in section 26(2)

(2) ...surveillance is directed for the purpose of this Part if it is covert but not intrusive and is undertaken

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

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And section 26(8), respectively.

- (8) For the purposes of this Part a person is a covert human intelligence 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 with 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.

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Q4 Who can authorise directed surveillance and the conduct and use of a CHIS?

A4 The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000 (SI 2000 No. 2417) prescribes the officers who may grant an authorisation. For this Council both directed surveillance and the conduct and use of a CHIS has to be authorised by one of the persons listed in Appendix A.

Q5 What does the authorising officer have to consider?

A5 Whether an authorisation is:

- Necessary on the ground provided in section 28(3) or 29(3) RIPA;
- Proportionate i.e. not a sledgehammer to crack a nut (section 28(2)(b) or section 29(2)(b); and
- Non-discriminatory (Article 14 ECHR)

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Q6 How long does an authorisation last for?

A6 The length of an authorisation will vary depending on the type of activity:

A **Directed Surveillance Authorisation** lasts for up to 3 months unless cancelled or renewed. In urgent cases the designated person may orally authorise surveillance for 72 hours, where the person to whom the designated person spoke will compile a written record. **A CHIS authorisation** lasts for a period of 12 months unless cancelled or renewed. **All authorisations must be cancelled when they are no longer necessary or proportionate**

Q7 What forms or records should I use to get the authorisation?

A7 There are standard forms that will require completion, providing evidence to the authorising officer that the criteria and grounds for surveillance have been fulfilled. The forms are to be found in Appendix B via a link to the Home Office website.

Q8 How long do we have to keep authorisation records?

A8 The Codes of Practice require authorisations to be kept for a minimum of 5 years to allow the Chief Surveillance Commissioner to maintain an independent review of the authorisation procedure (see Part IV RIPA).

EXAMPLES / SCENARIOS

Q9 A benefits officer wants to carry out covert surveillance on a person suspected of benefit fraud using photographic equipment to gain further information about his or her activities and associates. What are the implications of RIPA on this activity?

A9 This is 'directed surveillance', which is defined in section 26(2) RIPA because:

- The activity is pre-planned (i.e. it is not in response to immediate events or circumstances (see section 26(2)(c) RIPA);
- It is a covert surveillance operation; and
- It is likely to result in obtaining private information.

The surveillance will require authorisation.

Q10 The officer, as a result of the above surveillance, wants to establish contact with the suspect. What are the implications of RIPA on this activity?

A10 The officer will become a CHIS, which is defined in section 26(8) RIPA, if he will be establishing a covert relationship with the suspect, for the purpose of obtaining information.

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The conduct and use of the CHIS will require authorisation.

Q11 As an authorised CHIS the officer wants to record meetings with the suspect, using a hidden tape recorder. Does this require any additional authorisation?

A11 No. Once authorisation has been obtained to act as a CHIS the officer will not require any additional authorisation to record those meetings even if he is using a surveillance device (see section 48(3) RIPA).

Q12 The officer also wants to use a recording device to record any telephone conversations with the suspect. What are the implications of RIPA on this activity?

A12 This is directed surveillance as one person consenting to the interception of the communication i.e. the telephone conversation, without the knowledge or consent of the other person (see section 48(4) RIPA). Whether or not an officer is a CHIS, he will need to obtain a directed surveillance authorisation.

Q13 The officer wants to make a hand written note of a telephone conversation, with the suspect, without using a recording device. What are the implications of RIPA on this activity?

A13 Providing the officer is authorised as a CHIS, no additional authorisation would be required. However, if the officer is not authorised as a CHIS, then consideration would need to be given as to whether the officer is establishing a relationship to covertly obtain information (see section 26(8) RIPA).

Q14 Do I need an authorisation to make a test purchase?

A14 Where an adult or young person carries out a test purchase, he may be a CHIS and an authorisation for directed covert surveillance **will** be required if technical equipment is worn or the operation is observed by an adult. In all cases a risk assessment must be carried out.

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Q15 I want to use a hidden surveillance camera to record a suspect who I have been told is working and claiming benefits. He has a stall in a busy market, close to other traders and I recognise that I may also capture other consumers and traders on the photographs. May I use this surveillance camera and if so what authorisation do I require?

A15 Authority for 'directed surveillance' may be required, if you are likely to obtain private information about the suspect (or any other person). If other members of the public may be photographed it will be important to consider the collateral intrusion issues and whether such surveillance is necessary and proportionate i.e. could other

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surveillance techniques be used to identify traders and avoid capturing other members of the public on film.

Q16 I have set up a camera viewing the house where the suspect lives, with the intention of observing his movements. In addition to movements at the front door I can see into the lounge. Is this intrusive surveillance?

A16 Although the activities observe an individual in residential premises, it provides a limited view inside the residential premises (see section 26(5) RIPA) and is therefore not intrusive surveillance. Authorisation would be required. In this instance you would be required to obtain directed surveillance authorisation. However, if the camera consistently provides information of the same quality and detail as might be expected from a device actually present on the premises then an intrusive surveillance authorisation would be required and the Council cannot undertake intrusive surveillance.

'Intrusive surveillance' is defined in section 26(3) RIPA as covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

However, local authorities may not lawfully authorise intrusive surveillance activities themselves. If from the start you hope to record activities within the lounge then an intrusive surveillance authorisation is required, providing the operation meets the necessary criteria e.g. for serious crime see section 81(3). However the Council cannot undertake intrusive surveillance and accordingly cannot be authorised.

Q17 I have received a noise complaint and I have asked the complainant to provide a written record detailing the frequency and nature of the noise nuisance e.g. times, source of noise etc. Do I need to obtain any authorisation?

A17 This depends on the way that the Council deals with such a complaint. If the local authority receives a complaint and issues a formal letter to the person responsible for the alleged nuisance, which informs them that the Council will be monitoring their premises, any monitoring (as set down in the formal letter) would not be classed as covert surveillance.

Q18 To further investigate a noise complaint I have set up a sound level meter (SLM) to record the decibel sound level, with the complainant's consent. Do I need to obtain any authorisation?

A18 If the Council sends a formal letter and/or a noise abatement notice, which indicated that monitoring may occur, then by inference this would not be carried out covertly and would not require any authorisation.

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Q19 To further investigate a noise complaint I have set up two noise recorders in his house to record the noises heard – a sound level meter (SLM) and a DAT recorder (which will record the noises actually heard at their calibration levels). Do I need to obtain any authorisation?

A19 If an authority sends a formal letter and/or a noise abatement notice, which indicated that monitoring may occur, then by inference this would not be carried out covertly and would not require any authorisation.

If the letter does not indicate that monitoring may occur, and the complainant is asked to assist the local authority to obtain further information (i.e. operate the equipment), this person may be regarded as a CHIS. In this case the type of information obtained during the course of this activity would be within the scope of Article 8 ECHR, as private information may be acquired, and an authorisation should be sought.

Officers should also consider whether any letter and/or noise abatement notice has actually been received and read by the householder, other residents and all other visitors to the property. It is possible that the householder may simply deny receipt of the letter. Any monitoring could therefore be subject to challenges under Article 8 of the European Convention on Human Rights (ECHR) unless authorisation is obtained.

In noise pollution cases particularly, when using equipment to record sound, special care should be taken to ensure that intrusive surveillance is not inadvertently undertaken. This is a danger where the equipment has the facility to pre record or post record an event. If the citing of the equipment and the nature of the equipment mean that, for example, conversations can be recorded this would be intrusive and the equipment should not be used in that way.

Q20 I have set up a camera viewing a shop where the suspect works, with the intention of observing his activities and contacts. I can only see the doorway and entrance to the shop. Do I need to obtain any authorisation?

A20 Yes. A directed surveillance authorisation would be required if you are likely to obtain private information.

Q21 What is private information?

A21 Private information is defined in section 26(10) as any information relating to a person's private or family life.

The European Court of Human Rights (ECHR) has said that the term 'private life' must not be interpreted restrictively. In particular, respect for private life comprises the right to establish and develop

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relationships with other human beings. The notion of private life should be taken to include activities of a professional or business nature (*Amann v Switzerland* (2000) 30 ECHR 843).

Q22 Are CCTV surveillance systems regulated by RIPA?

A22 No the provisions of the Act do not cover the use of CCTV systems. Members of the public are aware that these systems are used overtly for their own protection and to prevent crime. However, if the CCTV operators are being investigated, then a directed surveillance authority should be sought.

Q23 I want to place a camera near a public highway, where domestic and business rubbish being tipped, to record individuals committing an offence. The camera may capture other members of the public who park in the lay-by, but are not committing any offences. What do I have to consider and what authorisation will be necessary?

A23 You need to consider whether you are likely to obtain private information as a result of the surveillance. If so, you should consider the necessity and proportionality of obtaining a directed surveillance authorisation, having regard to the issue of collateral intrusion.

APPENDIX E

Guidance for Authorising Officers under RIPA in considering applications for directed surveillance or CHIS

Necessary and Proportionate

1. Is the application truly for covert surveillance?

E.g. CAN Rangers use a well marked van, the markings explaining that surveillance occurs (not covert) however they can also use the extending mast for the camera on the van and view from a considerable distance in circumstances where the van cannot be seen (covert surveillance).

2. Has the applicant demonstrated that the authorisation for the covert surveillance is necessary and proportionate? If the applicant has not, the authorisation must be refused.

The applicant may resubmit with further evidence in order to try to establish that the authorisation is necessary and proportionate.

Necessary

To demonstrate necessity, you, as Authorising Officer, must believe that the authority is necessary in the circumstances of the particular case. Accordingly, you should ask questions to determine whether or not this is the case and if not, you should refuse the application.

Proportionality

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You, as Authorising Officer, must believe that the activities (if authorised) would be proportionate to what evidence is sought. You must consider this against the background of the intrusion on the target and others.

This may be established by asking the following questions:-

- Is the intrusion on the target and others balanced by the need for the activity in operational terms?
- Is the activity excessive in the circumstances of the case?
- Can the information be reasonably obtained by other less intrusive means?
- Is the activity arbitrary or unfair?
- Ultimately is the activity necessary?
- Are the proposed activities the least intrusive means of obtaining the evidence.

3. As Authorising Officer, you must not only satisfy yourself as to it being necessary and proportionate, but you must explain your reasoning.

Reasons should not include:-

- Lack of resources
- Cost saving

as sufficient reason to use more intrusive surveillance methods.

Your potential statement should include an explanation of the following:-

- Balancing the size and scope of the operation against the gravity and extent of the perceived mischief
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others.
- That the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result
- Evidencing what other methods had been considered and why they were not implemented.

4. It is not normally necessary to restrict the duration of the authorisation to specific hours in order to demonstrate proportionality. Operationally this will make compliance more administratively burdensome.

Applicants making applications in this way should be advised to amend the application.

5. Remember all applications last for 3 months or until cancelled whichever is sooner. Do not accept without amendment applications purporting to be for a shorter period.

6. All authorisations last until midnight on the last day.

Statutory Ground

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5. The applicant must demonstrate the applicability of the one ground in section 28(3) (for directed surveillance) or section 29(3) (for CHIS) which applies to the Authority namely:-

For the purpose of preventing or detecting crime or of preventing disorder;

If this has not been demonstrated to your satisfaction you should refuse the authorisation.

Any other grounds quoted should be deleted.

Collateral Intrusion

6. Has the applicant explained what (if any) risk of intrusion there is into the privacy of persons other than those the subject of the surveillance?

If not the applicant should be required to demonstrate an appraisal of the risk.

Has the applicant, in cases where there is such a risk, demonstrated how it is proposed that risk is eliminated or minimised?

If not the applicant should be required to do so before an authorisation is given.

Reviews

7. It is for you, as Authorising Officer, to determine whether the first review should be and how often the authorisation should be reviewed. Do not leave this section blank.
8. Remember that these should be frequent enough to ensure adequate monitoring of the use of the authorisation.
9. The date of the review must be agreed and put in the diary at the authorisation meeting. It should not be left vague and the date must be adhered to.

Renewals

10. As Authorising Officer, you may renew the authorisation for a further period of 3 months. The renewed authorisation will be effective from the date of expiry of the previous authorisation and can only be considered before the expiry of previous authorisation. The renewal does not have to be granted by the same Authorising Officer, nor is there a restriction on the number of renewals which may be granted – subject to overall reasonableness.

Other Issues

11. Has the conduct/activity to be authorised been adequately described including the nature of the surveillance? So that anyone reading the application is fully aware of what is required?
12. Has the purpose of the activity to be authorised been adequately described? E.g. to establish there is evidence for Court proceedings or that someone is innocent.

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13. Have the identities of those to be surveilled been given where possible?
14. Has a description of the information required by the surveillance been given?
15. Have you completed the Authorising Officer's statement as to why directed surveillance is necessary - the who what where when why and how questions? **This box must be completed.** The Authorisation is defective if it is not.
16. Have you completed the Authorising Officer's statement as to why the directed surveillance is proportionate - the who what where when why and how questions? **This box must be completed.** The Authorisation is defective if it is not.
17. It is for the Authorising Officer to specify a period for review of the Authorisation. Please make sure this is included on the form, and arrange an appointment with the applicant on that date.
18. Is this an urgent case? If so please complete/make sure that relevant boxes are completed fully.

CHIS

19. In addition to the above for CHIS make sure that the purpose for which the CHIS is deployed has been adequately described.
20. Also has the applicant adequately described what the CHIS will be tasked to do?
21. Has the risk assessment on the security and welfare of the CHIS been adequately done and explained?

Application

19. The application is for the operation not the individual seeking approval. If an employee leaves having been the applicant, there is no need to cancel and reapply in someone else's name; the operation can continue.

Paperwork

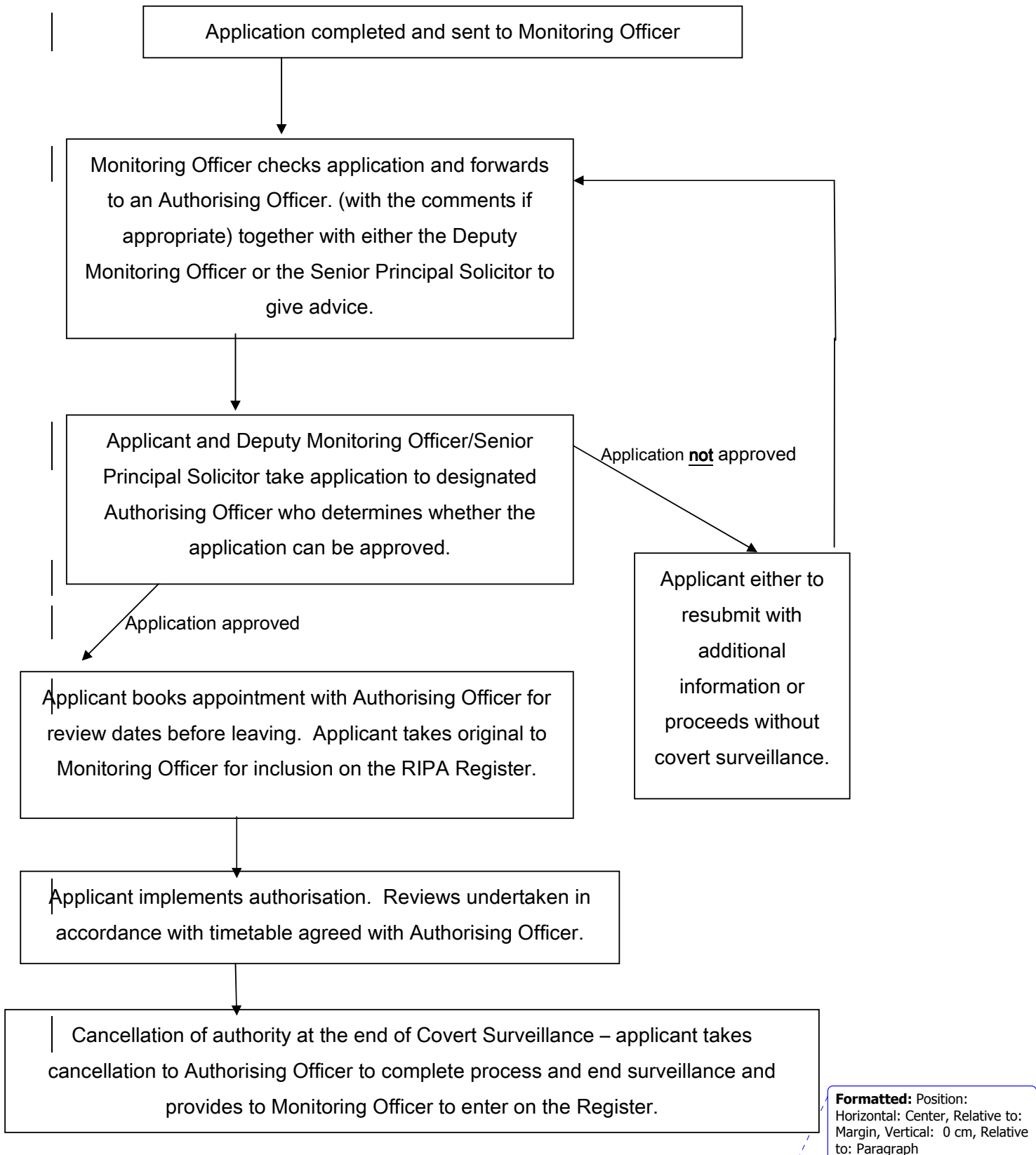
20. The originals of all grants, renewals, reviews or cancellations must be forwarded to the Monitoring Officer in accordance with the flow chart attached.

Revised June 2012.

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RIPA PROCESS



Regulation of Investigatory Powers Act (RIPA)

RIPA provides legality to covert surveillance. Provided authorisations are obtained in accordance with the Act, covert surveillance can be undertaken and the results used in criminal cases in the Courts. Surveillance undertaken covertly without authorisation can result in payment of damages to the person surveilled and to the evidence being disallowed in the Courts.

Introduction

The purpose of this Act is to ensure that any public body – including local authorities - that needs to carry out covert investigation, (which by their very nature may otherwise be in breach of the Human Rights Act 1998) are placed on a legitimate footing and that appropriate controls are put in place to ensure that the activities are properly controlled and monitored.

What is the purpose of RIPA?

The provisions of RIPA are designed to regulate any act of covert investigation or surveillance carried out by a local authority in relation to the purpose of preventing or detecting crime or preventing disorder.

The Human Rights Act introduced a remedy for persons claiming that their privacy had been breached. The effect of Part II of RIPA is to provide protection to the local authority itself **and to the individual officer** against any such claim, provided it is possible to demonstrate full compliance with the procedures prescribed by RIPA. For this Council, those procedures are contained within the RIPA Policy and Procedure which is on ERIC.

If an investigation is carried out in accordance with the Council's RIPA procedures, then any breach of the subject's privacy rights would not be actionable as a civil claim. In addition, in criminal proceedings arising from the investigation, the evidence gathered will not be challengeable under Section 78 of the Police & Criminal Evidence Act 1996, on the ground that it is a breach of privacy rights.

It is therefore crucial that all investigating officers adhere to the requirements of RIPA.

This means that all enforcement officers (and anyone else who may undertake surveillance) should make themselves familiar with the Council's RIPA Policy and Procedure which is on ERIC. You should also ensure that you consider whether what you are seeking to do is such that you should make an application under RIPA.

Advice is always available from the Solicitor to the Council and Legal Services.

Training – this is currently being arranged for all Authorising Officers. There will be a limited number of additional places for those who seek authorisation under the RIPA procedures. This training will be in December and your managers will be told of the available spaces on a first come first serve basis. Regular training is essential for **all** using RIPA.

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STANDARDS COMMITTEE WORK PLAN 2011/12

ITEM	MILESTONES	DATES OF MEETINGS	COMMENTS	STATUS
1. Annual report to Council by Chairman of Standards Committee		<ul style="list-style-type: none"> • 24th April 2012 	<ul style="list-style-type: none"> • Suggested date • Suggest that this is done at the first Council meeting in June. It is likely that there will be a report to Council in respect of the ethical framework changes following the Localism Act 2011. 	Not yet Started
2. Review of training needs – District and Parish Councillors	<ul style="list-style-type: none"> • District Councillors • Parish Councillors • Monitoring of attendance 	<ul style="list-style-type: none"> • progress reports at each meeting 	<ul style="list-style-type: none"> • District Cllrs – the induction has taken place. • Parish Cllrs – needs reviewing at 21st February 2012 meeting when Localism Bill has been enacted. • April 2011 - this will need including within the proposals for the new ethical framework. Suggest that it is suspended till then. 	Ongoing
3. Annual Reports -	<ul style="list-style-type: none"> • Year end number of complaints against District and Parish Councillors received by the Standards Board • Gifts and hospitality Registers • RIPA 	<ul style="list-style-type: none"> • 20/6/2011 • 20/6/2011 • 20/6/2011. 	<ul style="list-style-type: none"> • Considered at a previous meeting • Considered at a previous meeting • Considered at a previous meeting. • June 2012 - the RIPA Policy and Procedure is on this agenda 	<ul style="list-style-type: none"> • Done • Done • Done

ITEM	MILESTONES	DATES OF MEETINGS	COMMENTS	STATUS
4. Liaison meetings	<ul style="list-style-type: none"> Meeting of Chairman with District Council's CEO Meeting of Chairman with each of the 3 political parties' Leaders 	<ul style="list-style-type: none"> 24th April 2012 4th January 2012 	<ul style="list-style-type: none"> It is also suggested that this is put on hold pending the changes under the Localism Act 2011. It is suggested that this is put on hold and the meeting takes place as part of the consultation on the new code under the Localism Act 2011. 	<ul style="list-style-type: none"> Not yet started Not yet started
5. Review of guidance to members involved with the Planning process	<ul style="list-style-type: none"> To be determined in 2011/12 depending on the progress of the Localism Bill. 	<ul style="list-style-type: none"> 21st December 2012 	<ul style="list-style-type: none"> April 2011 – suggest this is suspended until the new ethical framework is in place. In the meantime, the changes to predetermination contained in the Localism Act 2011 are being discussed with Planning with a view to advising members as soon as possible. 	<ul style="list-style-type: none"> Not yet started
6. Review of Constitution			<ul style="list-style-type: none"> This is dependent on the Localism Act 2011. Changes will be required to the Constitution, but these have yet to be determined. 	<ul style="list-style-type: none"> Not yet started
	Contracts Standing orders	<ul style="list-style-type: none"> 20/6/2011. 	<ul style="list-style-type: none"> August 2011 – these were approved by Council on 20th July and so are now in place and being acted upon. 	Done
	Financial Regulations review	<ul style="list-style-type: none"> 20/6/2011 	<ul style="list-style-type: none"> I've asked the Director of Resources to update me on when this will be available. August 2011 – the Director of Resources has confirmed that these will be presented to the next meeting on 26th October 2011. January 2012 – considered at this meeting. Council to consider these on 15th February 2012. 	Done

ITEM	MILESTONES	DATES OF MEETINGS	COMMENTS	STATUS
	Delegation Scheme	•	<ul style="list-style-type: none"> This is dependent upon the Strategic Alliance and progress with arrangements. August 2011 – an updated version is now on the web. This simply takes into account changes of title and changes to departmental structure. The scheme will need a re write following the Strategic Alliance changes. This will need to be done in parallel with NEDDC, our Strategic Alliance partner. April 2011 – following the recent appointments of Assistant Directors this can now be taken up. June 2012 – this is in draft but was not ready for presentation at this meeting. 	Suspended
7. Development of the Annual Standards Committee work plan for 2012 to 2013	•	<ul style="list-style-type: none"> 27/4/11. 21/2/2012 	<ul style="list-style-type: none"> This is dependent on the Council's decision following the enactment of the Localism Bill. January 2012 – this will be considered as part of the Council's consideration of the Localism Act 2011. April – suggest this is suspended until the new ethical framework is in place. 	Not yet started
8. Partnership Governance arrangements and the ethical framework?	• Scoping report	•	<ul style="list-style-type: none"> Request this is suspended until the requirements of the Localism Bill are known. 	Suspended
9. Review of Constitution User Guide	•	•	<ul style="list-style-type: none"> This is dependent on the changes to be made by the Localism Bill. 	Suspended

June 2012

Complaints to the Standards Board

Year	Number	PC	DC	Review requested	ESO investigation	Monitoring Officer investigation	Hearing	Outstanding
2002	3	2	1		3		2	
2003	10	5	5		5		1	
2004	12	8	4		3	0	0	
2005	6	3*	3		2	0	0	
2006	10	9	1		3	1	0	
2007	3	2	1		0	0	0	
2008 to 8/5/08	2	1	1		0	0	0	
2008 from 8/5/08	9	6	4**	1	2	5	1	0
2009	17	13	4***	0	2	5	0	0
2010	6	6	0	0	0	0	0	0
2011	8+	4	5	0		3	1	2
2012	5	2	3	0		1		1

* 1 complaint was made against an entire Parish Council but this has been shown as one complaint

** 1 complaint was against a councillor as both a Parish and District Councillor.

*** Each of the 4 complaints was against 4 councillors

+ one complaint was withdrawn before the LAC met and another was a repeat complaint.

Average time taken to reach a decision by the LAC

Year	Number of Complaints	average time to LAC decision
2010	6	20
2011	5	26.5
2012	3	18

14th June 2012.

Committee:	Standards Committee	Agenda Item No.:	12.
Date:	19 th June 2012	Category	
Subject:	Amendment to the Gifts and Hospitality Guidance	Status	Open
Report by:	Deputy Monitoring Officer		
Other Officers involved:	Monitoring Officer		
Director			
Relevant Portfolio Holder			

RELEVANT CORPORATE AIMS

STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

The Council's Standards Committee plays a vital role in promoting and maintaining the highest standard of conduct by Councillors of Bolsover District Council and the parishes in its areas.

TARGETS

VALUE FOR MONEY

THE REPORT

Appendix 1 of the Employee Code of Conduct in the Council's Constitution sets out the Guidelines on Acceptance of Gifts/Hospitality. A copy of the Guidelines is attached to this report.

Following a review by the Internal Audit Consortium it is proposed that paragraph 6(b) of the Guidelines is deleted. Paragraph 6(b) reads:

"A social event, e.g. a society's golf day or an open day organised by a company where other organisations are guests."

ISSUES FOR CONSIDERATION

Bringing the Gifts and Hospitality Guidelines in line with the Internal Audit Consortium's recommendation.

IMPLICATIONS

Financial : None
Legal : As in the report
Human Resources : None

RECOMMENDATION

That Standards Committee recommend to Council that Paragraph 6(b) is deleted from the Council's Guidelines on Acceptance of Gifts/Hospitality.

ATTACHMENT: Guidelines on Acceptance of Gifts/Hospitality
FILE REFERENCE:
SOURCE DOCUMENT:

APPENDIX 1 – EMPLOYEE CODE OF CONDUCT

GUIDELINES ON ACCEPTANCE OF GIFTS/HOSPITALITY

(1) In many areas of the commercial world it is common practice to offer and accept gifts, hospitality and other benefits. This practice is frequently used to influence a decision when one company is seeking business with another and it is perfectly legal to do so – but it can be quite the contrary in public service.

(2) The acceptance of gifts, hospitality or other benefits, even on a modest scale, may arouse suspicion of impropriety and extreme caution and discretion should be exercised in accepting either. In principle you should refuse any personal gift offered to you or your family by any person or company who has or seeks dealings of any kind with the Council.

(3) The only reasonable exceptions to the guidance given in 2 above are:-

(a) Small gifts of a purely token value given by way of trade advertisements (e.g., calendars, diaries, articles for general use in the office).

(b) Small articles, again purely of a token value given at the conclusion of courtesy visits (e.g. to a factory)

(c) A small gift offered without warning and where refusal would give particular offence

(4) Should you receive an unexpected gift, which falls outside the categories (see 3 above) you should consult your Director or Head of Service, as appropriate, who will decide the course of action. This may include:-

(a) returning the gift, ensuring that the donor is told in a polite way why this has been necessary,

(b) passing the gift on to some charitable cause if it is appropriate to do so,

(c) agree that the gift may be kept by the recipient.

(5) Details of all gifts covered by the above categories must be recorded in a book kept for this purpose by the Director or Head of Service, as appropriate. A copy of the relevant Hospitality Register Form is attached at Appendix 2

(6) Directors/Heads of Service receiving gifts which fall within paragraph 4 should consult with the Chief Executive Officer before accepting if they are in any doubt. Any gift which is accepted should be recorded as described in paragraph 4.

Hospitality is sometimes offered to employees and it is not always possible or desirable to reject offers of a moderate nature.

Examples of acceptable hospitality include:-

(a) a working lunch of a modest standard, provided to allow business discussion to continue,

(b) A social event, e.g. a society's golf day or an open day organised by a company where other organisations are guests.

(7) Some offers of hospitality are clearly unacceptable and these would include offers of holiday accommodation, individual offer of theatre tickets for yourself or your family and individual invitation to dinner.

(8) You should be particularly cautious when any form of hospitality is offered by an individual or organisation seeking to do business with, or a decision from the Council as acceptance might affect your relations with the party offering it and how this might be viewed by councillors, your manager and the public. If in any doubt at all you should consult with your Director or Head of Service as appropriate before acceptance. Directors/Heads of Service must consult with the Chief Executive Officer.

(9) Acceptance of offers of hospitality must be recorded in the book kept for the purpose by the Director or Head of Service as appropriate as described in paragraph 4.

(10) These guidelines are intended as a general overview on the acceptance of gifts and hospitality but cannot cover every eventuality. If you are in any doubt you should consult your Director or Head of Service, as appropriate, or the Chief Executive Officer.