

**STANDARDS COMMITTEE
AGENDA**

Monday 2nd July 2018 at 1000 hours in Committee Room 2, The Arc, Clowne

Item No.		Page No.(s)
	PART 1 – OPEN ITEMS.	
1.	<u>Apologies for absence</u>	
2.	<u>Urgent Items of Business</u> 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.	
3.	<u>Declarations of Interest</u> Members should declare the existence and nature of any Disclosable Pecuniary Interest and Non Statutory Interest as defined by the Members' Code of Conduct 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.	
4.	Minutes of a meeting held on 8 th May 2018.	3 to 8
5.	Operational Review of Standards Committee by the Customer Service and Transformation Scrutiny Committee.	To Follow
6.	High Court Case - Ledbury Town Council.	9 to 11
7.	Annual Report of the Standards Committee 2017/18.	12 to 18
8.	Review of Joint RIPA Policy.	19 to 52
9.	Strategic Alliance Joint Committee – Terms of Reference.	53 to 57
10.	Annual Review of Gifts and Hospitality Register – 2016, 2017.	58 to 66
11.	Councillor Complaint Procedure.	67 to 81
12.	Complaints against Members Update	Verbal Update
13.	Work Plan 2018/19.	82

STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee of the Bolsover District Council held in Committee Room 2, The Arc, Clowne, on Thursday, 8th May 2018 at 1400 hours.

PRESENT:-

Members:-

Mrs R Jaffray in the Chair

Councillors H. J. Gilmour, C. R. Moesby, T. Munro, K. Reid, B. Watson and D.S. Watson

Officers:-

S. E. A. Sternberg (Monitoring Officer), V. Dawson (Team Manager – Solicitor) and N. Calver (Governance Manager).

0804. APOLOGIES FOR ABSENCE

Apologies for absence were submitted by Councillors M. Dixey and S. Statter.

0805. DECLARATIONS OF INTEREST

There were no declarations of interest made at this meeting.

0806. NOTES OF INFORMAL MEETING HELD ON 27th NOVEMBER 2017

Moved by Councillor H.J. Gilmour and Seconded by Councillor D.S. Watson

RESOLVED that the notes of an informal meeting of the Standards Committee held on 27th November 2017 be noted.

0807. MINUTES OF THE CONSTITUTION WORKING GROUP HELD ON 26th FEBRUARY 2018

Moved by Councillor T. Munro and seconded by Councillor K. Reid

RESOLVED that the Minutes of a meeting of the Constitution Working Group held on 26th February 2018 be approved as a correct record.

0808. PARLIAMENTARY REVIEW ON INTIMIDATION IN ELECTIONS

The Committee considered a report of the Joint Head of Corporate Governance and Monitoring Officer, which advised Members of a review that had taken place by the Parliamentary Committee on Standards in Public Life on Intimidation in Elections.

STANDARDS COMMITTEE

The Prime Minister had commissioned the Review in response to the findings of the intimidation experienced by candidates running in the 2017 General Election.

The Parliamentary Committee had identified several areas of concern:-

- Social media companies have been too slow in taking action on online intimidation to protect their users;
- The Political Parties had failed to show leadership in calling out intimidatory behaviour and changing the tone of political debate;
- Police authorities have shown inconsistency in supporting those facing legal intimidatory activities;
- Election Law is out of date.

The reports of the type of behaviour experienced, especially on social media platforms, were shown to be persistent and shocking with the statistics showing that it was largely aimed at female candidates and those within the LGBT community. Discriminatory comments were also freely being made on race or religious grounds.

The Parliamentary Committee as part of their review had made suggestions to tackle this matter, including working more closely with social media to set up task groups during election periods to speedily take down abusive messages on platforms such as Twitter and Facebook. Also, they had made suggestions to lay responsibility on Political Parties to address matters internally, and tackle issues within the fringe groups.

Members noted that Election Law may be reviewed to remove candidate contact details from ballot papers leaving only information about which ward they reside in.

Members were provided with a full review of the Parliamentary Committee which was attached to the report at Appendix 1.

Members gave consideration to the support that could be provided to candidates by the Council during an Election period. It was requested that officers and Members give further consideration to this matter and present the report with details on support to a future Meeting of Council.

Moved by Councillor C. Moesby and Seconded by H. Gilmour

RESOLVED that (1) the Parliamentary briefing on intimidation in Elections be noted,

(2) the report be submitted to a future meeting of Council along with details around support to Members.

(Monitoring Officer/Governance Manager)

0809. CONSULTATION ON ETHICAL STANDARDS BY COMMITTEE ON STANDARDS IN PUBLIC

The Governance Manager reported that a review was being undertaken by the Parliamentary Committee on Standards in Public Life on 'Local Government Ethical Standards'. In particular, the review was to examine structures, processes and practices in Local Government in England for:-

STANDARDS COMMITTEE

- Maintaining Codes of Conduct for local Councillors;
- Investigating alleged breaches fairly and with due process;
- Enforcing Codes and imposing sanctions for misconduct;
- Declaring interests and managing conflicts of interest; and
- Whistleblowing

The consultation questions were detailed in Appendix 1 to the report and the Standards Committee gave due consideration to each question in turn to provide a collective response. This would be submitted by the Governance Manager to the Parliamentary Committee on Standards in Public Life and is attached to these Minutes as an Appendix.

Members felt that consideration of the Consultation questions posted offered them a useful opportunity to discuss ethical Standards on a Local and National basis and wished to revisit the questions in twelve months' time

Moved by Councillor C. Moesby and Seconded by Councillor H. Gilmour

RESOLVED that (1) the collective response of the Standards Committee to the questions attached at Appendix 1 of the report be submitted to the Parliamentary Committee for Standards in Public Life,

(2) an item be added to the work plan to revisit the questions and responses in April / May 2019.

(Monitoring Officer/Governance Manager)

0810. WHISTLEBLOWING POLICY

The Committee considered a report of the Joint Head of Corporate Governance and Monitoring Officer suggesting updates the Whistleblowing Policy.

North East Derbyshire District Council and Bolsover District Council had in place a Joint Whistleblowing Policy that both were committed to updating the Policies on a regular basis to ensure they were fit for purpose.

Minor changes were recommended to the existing Policy to amend various job titles and clarify the form of Register.

A track changed version of the Whistleblowing Policy was attached to the report at Appendix A for Members consideration, with the main changes being comprised of amendments to officer titles following the recent review of the management structure.

Moved by Councillor T. Munro and Seconded by Councillor C. Moesby

RESOLVED that the Whistleblowing Policy be approved as amended.

0811. MEMBER / OFFICER PROTOCOL

At its meeting on 5th September 2017 the Standards Committee gave consideration to the Protocol on Member/Officer Relations and were given the opportunity for targeted scrutiny.

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In addition, the Constitution Working Group met on 26th February 2018 to give the matter further consideration. It was resolved at that meeting that the Joint Head of Corporate Governance and Monitoring Officer carry out consultation with Members and the Senior Management Team on Protocol.

The Strategic Alliance Management Team at their meeting on 16th February 2018 gave consideration to the Protocol in detail and offered amendments which were incorporated in to the existing Protocol for consideration by Members. In addition, each Member of Council was offered the opportunity to feed in to this review.

Members gave consideration to a revised version of the Protocol for Members/Officer Relations attached at Appendix 1 to the report and noted the main revisions which included:-

- In light of recent political debates in Parliament, inclusion has been given to include elements covered by the Equalities Act 2010;
- Inclusion of details around applying pressure on Members or Officers in regard to duties they're neither empowered nor within their duties;
- Additional of principles of the Protocol as requested by the Standards Committee
- Providing clarification an advice to Political group and restricted posts, also requested by Standards Committee;
- Providing clarity around how Members request information and how employees are to meet these requests;
- Preparation and presentation of reports in line with the Leader's request for Executive Members to present at meetings;
- Call in decisions and expectations on Members and Officers;
- Providing clarity around publicity; and
- The inclusion of a 'does and don'ts' document as an Appendix to the protocol.

Members debated each revision and gave their support to its content.

On a procedural matter, Members requested for Officers to speak to Executive Members prior to writing reports in their name rather than consulting them afterwards. The Monitoring Officer undertook to look at this matter in more detail

Moved by Councillor T. Munro and Seconded by Councillor H. Gilmour

RESOLVED that the protocol on Member/Officer relations be supported and recommended to Council for adoption as part of the review of the Constitution Report.

(Monitoring Officer/Governance Manager)

0812. REVIEW OF CONSTITUTION

The Committee considered a report of the Joint Head of Corporate Governance and Monitoring Officer which reviewed the Council's Constitution with proposed amendments for consideration by the Standards Committee prior to submission as part of the annual review of the Constitution to Council for adoption.

The Standards Committee mostly the Constitution Working Group had previously considered a number of areas within the Councils Constitution and it was noted that

STANDARDS COMMITTEE

proposals in relation to each of those areas were supported by the Committee and would be recommended to Council for approval.

The report presented outline proposals in respect of areas previously identified, as well as additional matters that had arisen in the course of the review which detailed the scheme of delegation to Officers.

The Governance Manager tabled some additional items for review which had been drawn up in the period between dispatch of papers and the date of the meeting which covered:-

- Public questions;
- JEC Membership; and
- Correction of numbering in the Council Procedure Rules.

Members debated each area in detail and considered the rationale behind each proposal.

Members noted that amendments would be proposed during the final report to Council to correct and update terminology, numbering issues and reference to job titles, none of which would amount to substantive changes to the Rules or Articles.

In reference to public questions Members wished to monitor the effectiveness of the additional limits and a review was requested in twelve months' time as part of the Annual review of the constitution.

Moved by Councillor T. Munro and Seconded by C. Moesby

RESOLVED that (1) the proposals for amendments to the Councils Constitution be supported,

(2) the amendments be submitted to Council as part of the Constitutional Review.

(Monitoring Officer/Governance Manager)

0813. COMPLAINTS OF BREACH OF THE CODE OF CONDUCT

The Monitoring Officer gave a verbal update to the Committee on the current status of complaints received in the breach of Code of Conduct. A formal report on this matter would be submitted to the following meeting.

Moved by Councillor C. Moesby and Seconded by Councillor T. Munro

RESOLVED that the update be noted.

(Monitoring Officer/Governance Manager)

0814. WORK PLAN FOR 2018/19

The Committee considered their work plan for the 2018/19 Municipal year. Amendments would be made resulting from discussions in the meeting and submitted to each Meeting of the committee as a forward planning tool.

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Moved by Councillor C. Moesby and Seconded by Councillor T. Munro
RESOLVED that the work plan be noted.

0815. GIFTS AND HOSPITALITY

The Monitoring Officer brought Members attention to an audit recommendation to align Members limits for registering gifts and hospitality with that of employees. The Committee wished to give consideration for arrangements for this at other authorities and requested a report to a future meeting.

Moved by Councillor T. Munro and Seconded by Councillor H. Gilmour
RESOLVED that an item on Gifts and Hospitality be added to the 2018/19 work plan.

The meeting closed at 15:36 hours

Bolsover District Council

Standards Committee

2nd July 2018

High Court Case - Ledbury Town Council

Report of the Monitoring Officer

This report is public

Purpose of the Report

- To advise the Standards Committee on a recent High Court ruling on the obligation of Local Authorities to discipline Councillors under the Code of Conduct procedure.

1. Report Details

- 1.1 The High Court has handed down an important ruling which clarifies how a Council should deal with complaints against a Councillor and has implications for Town and Parish Councils throughout England. Any Local Authority will be acting unlawfully if it tries to bypass the Code of Conduct procedure under the Localism Act 2011 when addressing alleged misconduct of Councillors.
- 1.2 This ruling followed a claim brought by a Councillor of Ledbury Town Council in Herefordshire, Complaints of bullying and harassment were made against the Councillor by the Town Clerk and Deputy.
- 1.3 The Town Council decided to follow guidance adopted by at least one county association of local councils, which said that it was appropriate to deal with allegations of bullying under a grievance procedure because issues concerning employee relations should be addressed more expeditiously than the Code of Conduct process contemplated.
- 1.4 The Councillor disagreed that this was the appropriate way to deal with complaints and self-referred a Code of Conduct complaint to the Monitoring Officer of Herefordshire Council (the principal authority for the area).
- 1.5 The Town Council continued to proceed under its grievance and appeals procedure, found against the Councillor and imposed various disciplinary sanctions including preventing the Councillor from serving on a committee, sub-committee panels or working/steering groups and that she could not represent the Council on any outside body.
- 1.6 These measures were maintained even after external investigators instructed by Herefordshire Council's Monitoring Officer found that the councillor **had not** breached the Town Council's Code of Conduct. The Councillor brought judicial review proceedings claiming that the Town Council was acting *ultra vires*.

- 1.7 Section 28 of the Localism Act 2011, makes detailed provision for the Code of Practice procedure. The Councillor argued that the 2011 Act required that allegations under s 28(9)(b) must only be dealt with under “*arrangements*” made under s 28(6), so that a complaint made against her had to be addressed exclusively under the local authority arrangements. The Judge in the High Court case found for the Councillor.
- 1.8 The Judge’s decision in this case was consistent with previous decisions and Members may recall at Standards Committee on 9th February 2017, considering the High Court case into Honiton Town Council. The Judge in the Honiton case held that the important safeguard of involving Independent Persons in the process would be frustrated if a Parish/Town Council could reconsider the principal authority’s decision and substitute its own decision if it chose to do so.
- 1.9 In the Ledbury case, the Judge emphasised that the s 28 process contemplates a potentially four stage process;
- (i) making an allegation
 - (ii) optionally) a non-formal investigatory or mediation stage or other relevant steps being taken (e.g. criminal proceedings)
 - (iii) a formal stage, involving an independent person, leading to a decision on breach
 - (iv) (if breach is found) a formal stage, again involving the independent person, dealing with action.

The Judge stressed that that an Independent Person must be involved and consulted under the 2011 Act procedure, both at the decision-making (breach finding) stage and the sanction stage. This was essential to ensure the safeguard at the key stages of decision-making and action, while leaving the possibility of more flexible approaches in appropriate cases.

- 1.10 The decision in this case shows that Local Authority’s governance arrangements are centre stage when imposing disciplinary sanctions on councillors. A Local Authority would be acting unlawfully if it tried to by-pass the Code of Practice Procedure under the Localism Act 2011 when seeking to address alleged misconduct by members.

2 Conclusions and Reasons for Recommendation

- 2.1 The judgement delivers a key message to Local Authorities that they will be at risk of challenge if they depart from procedures set out in the Localism Act. It is important for the Standards Committee to consider the report and the judgement with regards to how the Monitoring Officer and the Council Conducts investigations into breaches of Code of Conduct.

3 Consultation and Equality Impact

3.1 N/A

4 Alternative Options and Reasons for Rejection

4.1 N/A

5 Implications

N/A

6 Recommendations

6.1 That Standards Committee notes the report and Judgement.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	N/A
Links to Corporate Plan priorities or Policy Framework	

8 Document Information

Appendix No	Title
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
The report of the Case	
Report Author	Contact Number
Alison Bluff	2528

Bolsover District Council

Council

2nd July 2018

Annual Report of the Standards Committee 2017/18

Report of the Chair of the Standards Committee

This report is public

Purpose of the Report

- The purpose of the Annual Report is to enable Council to review the work that has been undertaken by the Standards Committee during the municipal year 2017/18.

1 Report Details

- 1.1 The Standards Committee is chaired by an Independent Member, Mrs Ruth Jaffray who has been a co-optee on Standards Committee for a number of years and was appointed as Chair by Council on 30th November 2016.
- 1.2 The Annual Report is attached as **Appendix 1** to this report.

2 Conclusions and Reasons for Recommendation

- 2.1 To enable the Council to consider an Annual Report from the Standards Committee on its work during the municipal year 2017/18.

3 Consultation and Equality Impact

- 3.1 Not applicable.

4 Alternative Options and Reasons for Rejection

- 4.1 This report is to inform the Council of the work of the Standards Committee therefore there are no alternative options.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 None arising from this report.

5.2 Legal Implications including Data Protection

- 5.2.1 None arising from this report.

5.3 Human Resources Implications

5.3.1 None arising from this report.

6 Recommendations

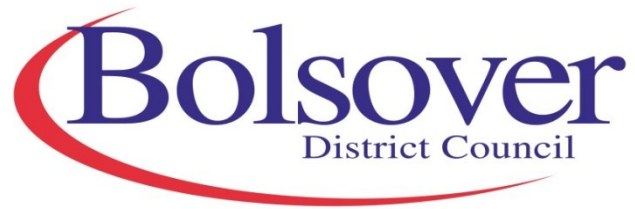
6.1 That Council receive the Annual Report of the Standards Committee on its work during the municipal year 2017/18.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
1	Annual Report of the Standards Committee 2017/18
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Alison Bluff, Governance Officer	01246 242528



Standards Committee
Annual Report 2017/18

Standards Committee Annual Report 2017/18

Foreword from the Chair of the Standards Committee

I would like to take the opportunity to thank the Members on the Committee and the Independent Persons for their continued hard work and support in the work of the Committee during the year. The work of the Standards Committee remains central to the ethical and governance responsibilities of the Council which are an essential element in local government continuing to retain the trust of the public which it serves.

Signature here

Mrs Ruth Jaffray, Co-opted Member

The Annual Report outlines the work of the Standards Committee during the municipal year 2017/18 and covers the following subjects:

- 1 Chair and Co-optees of the Committee 2017/18
- 2 Independent Persons
- 3 Complaints received during 2017/18
- 4 Policy and Constitution Review Work
- 5 Gifts and Hospitality
- 6 Guidance, reports and articles considered by the Committee
- 7 Consultations and survey results related to Standards

1 Chair and Co-optees of Standards Committee 2017/18

- 1.1 The Articles of the Constitution required that a co-opted member be appointed Chair of the Standards Committee. The Council therefore approved the appointment of Mrs Ruth Jaffray in November 2016, following the sad passing of Mr John Yates, former co-opted member and chair of the Committee.

2 Independent Persons

- 2.1 The Council had previously appointed Mr Stephen Wainwright and Mr Mike Wood to fulfil the roles as independent persons, who advise the Monitoring Officer on complaints against District or Parish Councillors and also advise Councillors who were the subject of complaints. Mr Mike Wood sadly passed away in August 2016.
- 2.2 Although the legislation allowed for only one independent person, the Council had agreed that a second appointment ensured flexibility and resilience. It was therefore agreed that a recruitment process would take place to appoint a second independent person and Mr Ian Kirk was selected as a suitable candidate for the vacant position for a 4 year term in August 2017.

3 Complaints received during 2017/18

- 3.1 11 complaints were received during the 2017/2018 municipal year with 9 resulting in no further action being taken.

4 Policy and Constitution Review Work

Constitution Review

Protocol on Member/Officer Relations

- 4.1 The purpose of the protocol was to provide guidance to Members and officers in their relations with one another, providing principles to be followed to achieve the shared aim of enhancing and maintaining the integrity of local government through high standards of personal conduct.

Earlier this year, Standards Committee had consulted with all Members of the Council and the Strategic Alliance Management Team on the protocol and these were considered as part of the review.

Revisions were supported by the Committee and approved at Annual Council.

Whistle-blowing Policy Review

The Council had a joint Whistle-blowing Policy with North East Derbyshire District Council and a commitment to updating the policy on a regular basis to ensure it was fit for purpose. Minor changes had been made to the policy in relation to changes of various officer titles following the recent review of the management structure at the councils and also to clarify the form of Register.

RIPA Policy Review

The Standard Committee received an annual report on the use of RIPA powers as well as the review of the policy. Training was provided to officers on a regular basis to ensure awareness and the RIPA Policy had been amended to ensure it remained accurate and up to date in terms of working practices and named officers. There had been no changes in the relevant legislation or Codes of Practice since the last review.

5 Gifts and Hospitality

The Monitoring Officer had brought Standards Committee's attention to an audit recommendation to align Members limits for registering gifts and hospitality with that of the Council's employees. The Committee would consider the arrangements for this at a future meeting in 2018/19.

Advice was available from the Monitoring Officer, Deputy Monitoring Officer and Legal services in relation to any offer. Members and officers were encouraged to seek this advice where they had an issue.

6 Guidance, reports and articles considered by the Committee

Parliamentary Review on Intimidation in Elections

The Standards Committee had considered a report which provided details of a review undertaken by the Parliamentary Committee on Standards in Public Life on Intimidation in Elections.

The review had been commissioned by the Prime Minister following reports of a significant proportion of candidates and their supporters experiencing harassment, abuse and intimidation during the 2017 General Election and it was believed that the widespread use of social media platforms had been the most significant factor driving the behaviour. Social media companies and Government had met to consider how they may proactively address the issue and the Parliamentary Committee had made several recommendations to be implemented. Political parties also had key responsibilities in tackling intimidatory behaviour undertaken by their members. The Parliamentary Committee had called for a Joint Cross Party Code of Conduct backed up by sanctions for intimidatory behaviour during Election campaigns to be ready by December 2018.

On a more local level, the Parliamentary Committee noted that candidates standing for election as County / District / Parish Councillors were required to publish their home addresses on ballot papers and this had been a significant factor in receipt of intimidatory behaviour. The Parliamentary Committee felt that candidates standing as local Councillors should have the option to publish only the Ward in which they lived on the ballot paper.

The Parliamentary Committee decided that a health check of Local Government would be timely and therefore it commissioned a review of Ethical Standards in Local Government. The two reviews were indeed connected and the Standards Committee at a previous meeting had formulated its collective response to the Parliamentary Committee.

The Full Review of the Parliamentary Committee is available to Members on request from the Governance Manager or Monitoring Officer.

Consultations and survey results related to Standards

Consultation on Ethical Standards by Committee on Standards in Public Life

The Committee on Standards in Public Life were undertaking a review of local government ethical standards.

The review would consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority (including the Mayor of London).

Standards Committee Members had fed into the consultation by providing a collective response to the consultation questions and had felt that it had offered them the opportunity to discuss ethical standards on a local and national basis. Standards Committee would revisit the questions and responses in April/May 2019.

The consultation questions and Standards Committee's collective response is available to Members on request from the Governance Manager or Monitoring Officer.

End of Report

Bolsover District Council

Standards Committee

2nd July 2018

Review of Joint RIPA Policy

Report of the Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To update the Committee on the use of RIPA powers in the last year.
- To advise the Committee of a review of the joint policy and procedures covering the Council's activities under the Regulation of Investigatory Powers Act 2000 (RIPA).
- To recommend a revised Joint RIPA Corporate Policy and Procedures be approved.

1 Report Details

- 1.1 The Regulation of Investigatory Powers Act (RIPA) enables the Council to use covert surveillance, covert human intelligence sources (CHIS) and the acquisition of service use or subscriber information in relation to communications data in a manner that is compatible with Article 8 of the European Convention on Human Rights governing an individual's right to respect for their private and family life, home and correspondence. There are various criteria which must be met, including a 'seriousness threshold' for the use of directed surveillance, and any requests by the Council to use the RIPA powers must be approved by a Magistrate.
- 1.2 Local authorities are sparing users of RIPA legislation and neither Bolsover nor North East Derbyshire District Councils have used them since the last update to Committee in July 2017. The last time RIPA powers have been used by either Council was in 2012.
- 1.3 The Council has been periodically inspected by the Office of Surveillance Commissioners. The last inspection was in 2015/2016. Inspections of local authorities are scheduled for every three years so an inspection is due to take place during 2018/19.
- 1.4 The Office of Surveillance Commissioners has been superseded by the Investigatory Powers Commissioner's Office (IPCO).
- 1.5 Since the last inspection, the policy has been reviewed annually to ensure that post-holders are up to date, and to improve wording and clarity of the information. There have been no changes in the official guidance, and no changes in legislation have yet been brought into force regarding the use of the RIPA Powers.

- 1.6 The Investigatory Powers Act 2016, however, makes many changes to the power to acquire communications data. These changes are yet to be brought into force, but in anticipation of the changes, the policy has been adapted to separate out the sections relating to the different powers. There is now a section relating to covert directed surveillance and covert human intelligence sources (covered by Part 2 of RIPA) and a separate section on the acquisition of communications data (Part 1, Chapter 2 of RIPA).
- 1.7 The main change within the legislation is that applications for the acquisition and disclosure of communications data would be submitted to the Investigatory Powers Commissioner for approval.
- 1.8 Further changes to these provisions are expected in order to bring the rules in line with European legislation. The government has been given a deadline of 1 November 2018 to make the changes. A further review will be undertaken at this stage to implement the changes to this part of the procedure.
- 1.9 One further change expected is the creation an Office for Communications Data Authorisations (OCDA) which would oversee requests to obtain data from public bodies such as the Council, rather than the Investigatory Powers Commissioner, separating the functions of oversight and approval of applications. The requirement for Magistrates approval would be removed (for communications data only) as this would be unnecessary in light of the new independent arrangements and the role of the OCDA. Internal approval by a senior designated officer would still be required prior to an application being submitted to the OCDA for authorisation. Local authorities will still not be permitted to authorise urgent applications internally; independent authorisation will be required in all cases.
- 1.10 Much of the public concern regarding these powers in relation to communications, is in the interception of the content of communications, i.e. listening to phone-calls and reading emails. Local authorities are only permitted to access limited data regarding service use and subscriber information (e.g. the use of a forwarding or re-direction service.) Neither Bolsover District Council nor North East Derbyshire District Council has applied for or used the powers to acquire communications data under the current regulations.

Training

- 1.11 Previous inspections have focused on the need for regular training and refreshers for officers involved in investigations as well as senior officers appointed as authorising officers and designated persons.
- 1.12 The last training at both Councils took place in November 2015. Training was deferred in the last 12 months due to the on-going SAMT restructure and the uncertainty regarding the amendments due to the Investigatory Powers Act.
- 1.13 Training sessions for the Strategic Alliance Management Team, including those officers appointed as authorising officers and designated persons, and officers in planning enforcement, licensing, environmental health and the benefits team will be scheduled over the next few months.

2 Conclusions and Reasons for Recommendation

- 2.1 The review of the Joint RIPA Policy has revised the structure of the policy in order to create a separate section for the powers to acquire communications data. When the amendments arising from the Investigatory Powers Act are brought into force, a further review will take place focused on this section of the policy only.

3 Consultation and Equality Impact

- 3.1 An Equality Impact Assessment has been completed in 2017, which concluded that there were no concerns raised and no actions to take. No amendments have been proposed that require a further assessment to be carried out.

4 Alternative Options and Reasons for Rejection

- 4.1 The Council is recommended to review and update its RIPA policy regularly as failure to do so could result in the policy failing to comply with legislative changes and lead to unlawful investigatory actions taking place.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 Failure of the Council to adhere to the legal requirements of RIPA could lead to unlawful investigatory activity being undertaken, making the Council vulnerable to complaints, legal challenge and reputational damage and costs. It is important therefore that the policy is regularly reviewed and that officers receive sufficient training which will mitigate the likelihood of this risk occurring.

5.2 Legal Implications including Data Protection

- 5.2.1 The legal implications are addressed within the policy.

5.3 Human Resources Implications

- 5.3.1 None arising from this policy.

6 Recommendations

- 6.1 That Standards Committee:

- (1) note the update provided on the use of the policy.
- (2) consider and comment on the revised Joint Policy and Procedure document
- (3) recommend the revised Joint RIPA Policy and Procedure document for approval by Executive at Bolsover District Council and Cabinet at North East Derbyshire District Council, following consideration by the Strategic Alliance Joint Committee.

- (4) note that a further review will take place once the provisions of the Investigatory Powers Act 2016 relating to the acquisition and disclosure of communications data are brought into force

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: BDC: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	None Directly
Links to Corporate Plan priorities or Policy Framework	Demonstrating Good Governance

8 Document Information

Appendix No	Title
Appendix 1	Revised Joint RIPA policy and procedures document
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Donna Cairns Senior Governance Officer (NEDDC)	01246 217045

REGULATION OF INVESTIGATORY POWERS ACT 2000 (“RIPA”)

CORPORATE POLICY AND PROCEDURES

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CONTROL SHEET FOR REGULATION OF INVESTIGATORY POWERS ACT 2000 ("RIPA") – CORPORATE POLICY AND PROCEDURES

Policy Details	Comments / Confirmation (To be updated as the document progresses)
Policy title	RIPA Corporate Policy and Procedures
Current status – i.e. first draft, version 2 or final version	First draft
Policy author	Governance Manager
Location of policy – i.e. L-drive, shared drive	S Drive
Member route for approval	Strategic Alliance Joint Committee and Standards
Cabinet Member (if applicable)	Cllr D McGregor (BDC) and Cllr R Smith (NEDDC)
Equality Impact Assessment approval date	July 2017
Partnership involvement (if applicable)	N/A
Final policy approval route i.e. Executive/ Council /Planning Committee	Cabinet / Executive
Date policy approved	
Date policy due for review (maximum three years)	Autumn 2018
Date policy forwarded to Strategy and Performance (to include on Intranet and Internet if applicable to the public)	

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TO BE COMPLETED

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Abbreviations

CCTV	Closed Circuit Television
CSP	Communications service provider
Council	Bolsover/North East Derbyshire District Council
CHIS	Covert Human Intelligence Sources
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms agreed on 2 November 1950
HRA	Human Rights Act 1998
ICCO	The Interception of Communications Commissioner's Office
NAFN	The National Anti Fraud Network
OSC	Office of Surveillance Commissioners
PFA	Protection of Freedoms Act 2012
RIPA	Regulation of Investigatory Powers Act 2000
SPoC's	Single Points of Contact for Acquisition and Disclosure of Communications Data

1.1 Introduction

- 1.1.1 This Corporate Policy and Procedures document is based upon the requirements of the Regulation of Investigatory Powers Act 2000 and the Home Office's Codes of Practice on Covert Surveillance and Property Interference, Covert Human Intelligence Sources and Acquisition and Disclosure of Communications Data.
- 1.1.2 The use of covert surveillance, covert human intelligence sources and the acquisition of service use or subscriber information in relation to communications data is sometimes necessary to ensure effective investigation and enforcement of the law. However, they should be used only rarely and in exceptional circumstances. RIPA requires that public authorities follow a clear authorisation process prior to using these powers. Authorisations granted under Part II of RIPA are subject to all the existing safeguards considered necessary by Parliament to ensure that investigatory powers are exercised compatibly with the ECHR.
- 1.1.3 **Any potential use of RIPA should be referred to the Monitoring Officer, Sarah Sternberg, for preliminary advice at the earliest possible opportunity. Her telephone number is 01246 242414. In her absence, advice should be sought from the Governance Team on 01246 217753.**

Consequences of Failing to Comply with this Policy

- 1.1.4 Where there is interference with Article 8 of the ECHR, and where there is no other source of lawful authority for the interference, the consequences of not following the correct authorisation procedure set out under RIPA and this Policy may result in the Council's actions being deemed unlawful by the Courts under Section 6 of the HRA or by the Investigatory Powers Tribunal, opening up the Council to claims for compensation and loss of reputation. Additionally, any information obtained that could be of help in a prosecution will be inadmissible.

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1.2 Background

1.2.1 On 2 October 2000 the Human Rights Act 1998 ("HRA") made it unlawful for a local authority to breach any article of the ECHR. An allegation that the Council or someone acting on behalf of the Council has infringed the ECHR is dealt with by the domestic courts rather than the European Court of Justice.

1.2.2 The ECHR states:-

- (a) individuals have the right to respect for their private and family life, home and correspondence (Article 8 ECHR); and
- (b) there shall be no interference by a public authority with the exercise of this right unless that interference is:-
 - **in accordance with the law;**
 - **necessary; and**
 - **proportionate**

1.2.3 RIPA, which came into force on 25 September 2000, provides a lawful basis for three types of covert investigatory activity to be carried out by local authorities which might otherwise breach the ECHR. These activities are:-

- covert directed surveillance;
- covert human intelligence sources ("CHIS"); and
- acquisition and disclosure of communications data

1.2.4 RIPA sets out procedures that must be followed to ensure the investigatory activity is lawful. Where properly authorised under RIPA the activity will be a justifiable interference with an individual's rights under the ECHR. If the interference is not properly authorised an action for breach of the HRA could be taken against the Council, a complaint of maladministration made to the Local Government Ombudsman or a complaint made to the Investigatory Powers Tribunal. In addition, if the procedures are not followed any evidence collected may be disallowed by the courts. RIPA seeks to balance the rights of individuals against the public interest in the Council being able to carry out its statutory duties.

1.2.5 A flow chart attached at **Appendix A** to this policy sets out the process for covert directed surveillance and cover human intelligence sources (CHIS) in pictorial form.

What RIPA Does and Does Not Do

1.2.6 RIPA does:-

- require prior authorisation of covert directed surveillance;
- prohibit the Council from carrying out intrusive surveillance;
- compel disclosure of communications data from telecom and postal service providers;
- permit the Council to obtain communications records from communications service providers;

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- require authorisation of the conduct and use of CHIS;
- require safeguards for the conduct of the use of a CHIS.

1.2.7 RIPA does not:-

- make unlawful conduct which is otherwise lawful;
- prejudice any existing power to obtain information by any means not involving conduct that may be authorised under RIPA. For example, it does not affect the Council's current powers to obtain information via the DVLA or to obtain information from the Land Registry as to the owner of a property;
- apply to activities outside the scope of Part II of RIPA. A public authority will only engage RIPA when in performance of its "core functions" – i.e. the functions specific to that authority as distinct from all public authorities.
- cover overt surveillance activity.

1.2.8 Under no circumstances can local authorities be authorised to obtain communications traffic data under RIPA. Local authorities are not permitted to intercept the content of any person's communications and it is an offence to do so without lawful authority.

1.3 Policy Statement

1.3.1 The Council is determined to act responsibly and in accordance with the law. To ensure that the Council's RIPA activity is carried out lawfully and subject to the appropriate safeguards against abuse, Bolsover and North East Derbyshire District Council adopted separate RIPA Policies in 2013, which have subsequently been combined into a single Corporate Policy and Procedures document as detailed below.

1.3.2 All staff who are considering undertaking RIPA activity should be aware that where that activity may involve handling confidential information or the use of vulnerable or juvenile persons as sources of information, a higher level of authorisation is required. Please see paragraphs 2.7 (in respect of handling confidential information) and 2.9 (in respect of using information sources who are vulnerable or juvenile persons) below.

1.3.3 The following documents are available on the Council's intranet:-

- 2014/15 Home Office Statutory Codes of Practice on:-
 - Covert Surveillance and Property Interference
 - Covert Human Intelligence Sources
 - Acquisition and Disclosure of Communications Data
- Office of the Surveillance Commissioners' Guidance Procedures
- Home Office Guidance on Protection of Freedoms Act 2012 – changes to RIPA;
- RIPA forms for covert surveillance; CHIS and acquisition and disclosure of communications data;
- Application for Judicial approval and Order made for Judicial approval;
- Surveillance camera training;

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- Corporate RIPA Training.

1.3.4 The Monitoring Officer is the Council's Senior Responsible Officer (SRO) and is responsible for the following roles:-

- Appointing Authorising Officers (see 2.11);
- Appointing Designated Persons (see 3.4);
- Maintaining a central record for all RIPA authorisations;
- Arranging training to individuals appointed as Authorising Officers and Designated Persons, and
- Carrying out an overall monitoring function as the SRO for the Council's use of RIPA powers.

1.3.5 Any officers who are unsure about any RIPA activity should contact the Monitoring Officer for advice and assistance.

1.4 Social Media

1.4.1 The use of the internet may be required to gather information prior to and/or during an operation, which may amount to directed surveillance. Whenever a public authority intends to use the internet as part of an investigation, they must first consider whether the proposed activity is likely to interfere with a person's Article 8 rights, including the effect of any collateral intrusion. Advice should be sought.

1.4.2 Any activity likely to interfere with an individual's Article 8 rights should only be used when necessary and proportionate to meet the objectives of a specific case. Where it is considered that private information is likely to be obtained, an authorisation (combined or separate) must be sought as set out elsewhere in this code. Where an investigator may need to communicate covertly online, for example, contacting individuals using social media websites, a CHIS authorisation should be considered.

1.5 Training & Advice and Departmental Policies, Procedures and Codes of Conduct

1.5.1 The Monitoring Officer will arrange regular training on RIPA. All authorising officers, designated persons and investigating officers should attend at least one session every two years and further sessions as and when required.

1.5.2 Training can be arranged on request and requests should be made to the Governance Team. In particular training should be requested for new starters within the Council who may be involved in relevant activities.

1.5.3 If officers have any concerns, they should seek advice about RIPA from the Monitoring Officer.

1.5.4 Where in practice, departments have any policy, procedures or codes of practice in relation to RIPA that are different from or in addition to this Code, they must immediately seek advice from the Monitoring Officer.

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1.6 Complaints

1.6.1 Any person who believes they have been adversely affected by surveillance activity by or on behalf of the Council may complain to the authority.

1.6.2 They may also complain to the Investigatory Powers Tribunal at:-

Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

1.7 Monitoring of Authorisations

1.7.1 The Monitoring Officer, Sarah Sternberg, is the senior responsible officer in relation to RIPA and is responsible for:-

- The integrity of the process in place to authorise directed surveillance, the use of CHIS and the acquisition and disclosure of communications data;
- Compliance with Part II of RIPA and this Policy;
- Engagement with the Commissioners of the OSC and ICCO when they conduct inspections; and
- Where necessary, overseeing the implementation of any post-inspection plans recommended or approved by a Commissioner.

1.7.2 The Monitoring Officer is also required by law to ensure that the Council does not act unlawfully and will undertake audits of files to ensure that RIPA is being complied with and will provide feedback to the authorising officer/designated person where deficiencies in the RIPA process are noted.

1.7.3 The Monitoring Officer will invite the Standards Committee to review the Council's RIPA Policy on an annual basis and to recommend any changes to the Council's Policy or Procedures and will also provide members with an annual update on use.

Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

RIPA PART 2

COVERT SURVEILLANCE AND THE USE OF COVERT HUMAN INTELLIGENCE SOURCES

2.1 Types of Surveillance

2.1.1 Surveillance can be overt or covert and includes:-

- Monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
- Recording anything monitored, observed or listened to in the course of surveillance; and
- Surveillance by or with the assistance of a device.

2.2 Overt Surveillance

2.2.1 The majority of the Council's surveillance activity will be overt surveillance, i.e. will be carried out openly. For example (i) where the Council performs regulatory checks on licensees to ensure they are complying with the terms of any licence granted; and (ii) where the Council advises a tenant that their activities will be monitored as a result of neighbour nuisance allegations. This type of overt surveillance is normal Council business and is not regulated by RIPA.

2.3 Covert Surveillance

2.3.1 This is where surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware it is taking place. Covert surveillance can be intrusive or directed. **The Council is not permitted to carry out covert intrusive surveillance.** Para 2.4 below explains when covert surveillance is intrusive and therefore not permitted. The Council is permitted to carry out covert directed surveillance subject to strict compliance with RIPA. Paragraph 2.5 below explains when covert surveillance is directed.

2.4 Covert Intrusive Surveillance

2.4.1 Covert intrusive surveillance takes place when covert surveillance is carried out in relation to anything taking place on residential premises or in a private vehicle and which involves the presence of an individual or surveillance device on the premises or in the vehicle, or which uses a device placed outside the premises or vehicle which consistently provides information of the same quality and detail as expected of a device placed inside. Additionally, the Regulation of Investigatory Powers (Extension of Authorisations Provisions: Legal Consultations) Order 2010 states that covert surveillance carried out in relation to anything taking place in certain specified premises is intrusive when they are being used for legal consultation.

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2.5 Covert Directed Surveillance

2.5.1 This is surveillance that is:-

- Covert;
- Not intrusive;
- For the purposes of a specific investigation or operation;
- Likely to obtain private information* about a person (whether or not that person was the target of the investigation or operation); and
- Not carried out as an immediate response to events or circumstances which could not have been foreseen prior to the surveillance taking place.

* Private information includes any information relating to a person's private and family life, home and correspondence (whether at home, in a public place or in the work place).

2.6 Directed Surveillance Crime Threshold

2.6.1 Following the changes to RIPA introduced by the Protection of Freedoms Act 2012, a crime threshold applies to the authorisation of covert directed surveillance by local authorities. (*Article 7A of Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010*)

2.6.2 Local Authority Authorising Officers may not authorise covert directed surveillance unless it is for the purpose of preventing or detecting a criminal offence **and** meets the following test:-

- The criminal offence is punishable by a maximum term **of at least six months imprisonment**, or
- It would constitute an offence under Sections 146, 147A of the Licensing Act 2003 or Section 7 of the Children and Young Persons Act 1993 (**offences involving sale of tobacco and alcohol to underage children**) regardless of length of prison term.

2.6.3 The crime threshold **only** applies to covert directed surveillance, not to CHIS or Communications Data.

2.6.4 The Home Office Statutory Covert Surveillance and Property Interference Code of Practice can be found on the Home Office website and on the intranet.

2.7 Confidential Information

2.7.1 A higher level of authorisation to apply to the Magistrates Court is required in relation to RIPA activity when the subject of the investigation might reasonably expect a high degree of privacy, or where "confidential information" might be obtained. For the purpose of RIPA this includes:-

- Communications subject to legal privilege (see below);

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- Communications between a member of parliament and another person on constituency matters;
- Confidential personal information (see below); and
- Confidential journalistic material (see below).

2.7.2 The authorising officer and the person carrying out the surveillance must understand that such information is confidential and is subject to a stringent authorisation procedure. **Authorisation can only be granted by the Chief Executive or in their absence by an officer acting as Head of Paid Service.**

2.7.3 **Legal privilege** is defined in Section 98 of the Police Act 1997 as:-

- communications between a professional legal adviser and his client, or any person representing his client which are made in connection with the giving of legal advice to the client.
- communications between a professional legal adviser and his client or any person representing his client, or between a professional legal adviser or his client or any such representative and any other person which are made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- items enclosed with or referred to in communications of the kind mentioned above and made in connection with the giving of legal advice, or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

2.7.4 Communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them, and communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege.

2.7.5 If advice is required on this point, officers should contact the Monitoring Officer.

2.7.6 **Confidential personal information** is described at paragraph 4.28 of the Home Office Covert Surveillance and Property Interference Code of Practice.

2.7.7 **Confidential journalistic material** is described at paragraph 3.40 of the Home Office Covert Surveillance and Property Interference Code of Practice.

2.7.8 **Any officer contemplating RIPA activity where the above circumstances may apply must seek advice from the Monitoring Officer prior to making any application.**

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2.8 Covert Human Intelligence Sources (“CHIS”)

2.8.1 The Council is permitted to use CHIS subject to strict compliance with RIPA.

A CHIS is a person who establishes or maintains a personal or other relationship with a person for the covert purposes of facilitating:-

- (a) covertly using the relationship to obtain information or provide access to information to another person, or
- (b) covertly disclosing information obtained by the use of the relationship or as a consequence of the existence of such a relationship.

2.8.2 A RIPA authorisation and order from a magistrate is required for the above activity and should be obtained whether the CHIS is a Council officer or another person who is asked to be a CHIS on the Council’s behalf. Authorisation for CHIS can only be granted if it is for the purposes of “preventing or detecting crime or of preventing disorder”.

2.8.3 Members of the public who volunteer information to the Council and those engaged by the Council to carry out test purchases in the ordinary course of business (i.e. they do not develop a relationship with the shop attendance and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

2.8.4 However, by virtue of Section 26(8) of RIPA, there may be instances where an individual, covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship. In such circumstances where a member of the public, though not asked to do so, gives information (or repeated information) about a suspect, then serious consideration should be given to designating the individual as a CHIS, particularly if the Council intends to act upon the information received. It is recommended that legal advice is sought in any such circumstances.

2.9 Vulnerable Individuals/Juvenile CHIS

2.9.1 A vulnerable individual is a person who by reason of mental disorder or vulnerability, other disability, age or illness, is or may be unable to take care of themselves or protect themselves against significant harm or exploitation.

2.9.2 Additional requirements apply to the use of a vulnerable adult or a person under the age of 18 as a CHIS. In both cases **authorisation for an application to the Magistrates Court can only be granted by the Chief Executive or in their absence by an officer acting as Head of Paid Service. Any officer contemplating the use of a juvenile or a vulnerable person as a CHIS must seek advice from the Monitoring Officer prior to making the application.**

2.9.3 The use or conduct of a CHIS under 16 years of age **must not** be authorised to give information against their parents or any person who has parental responsibility for them. In other cases authorisations should not be granted unless the special provisions contained in The Regulation of Investigatory Powers

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(Juveniles) Order 2000 are satisfied. This set out rules about parental consent, meetings, risk assessments and the duration of the authorisation.

2.10 CCTV

- 2.10.1 The installation and use of unconcealed CCTV cameras for the purpose of generally observing activity in a particular area is not surveillance requiring RIPA authorisation. There are specific provisions relating the use of CCTV cameras in public places and buildings. However, if CCTV cameras are being used in such a way that the definition of covert directed surveillance is satisfied, RIPA authorisation should be obtained.
- 2.10.2 For instance the use of town centre CCTV systems to identify those responsible for a criminal act immediately after it happens will not require RIPA authorisation. However, the use of the same CCTV system to conduct planned surveillance of an individual and record their movements is likely to require authorisation.
- 2.10.3 Protocols should be agreed with any external agencies requesting the use of the Council's CCTV system. The protocols should ensure that the Council is satisfied that authorisations have been validly granted prior to agreeing that the CCTV system may be used for directed surveillance.
- 2.10.4 CCTV systems cannot be used without prior production of an authorisation and such authorisations must be retained.

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2.11 Authorisation Procedures

Authorisations given by Authorising Officers are subject to approval by the Magistrates Court (See para 2.15 below)

2.11.1 Authorising Officers are responsible for assessing and authorising covert directed surveillance and the use of a CHIS.

2.11.2 It is the responsibility of Authorising Officers to ensure that when applying for authorisation the principles of necessity and proportionality (see 2.13 below) are adequately considered and evidenced; and that reviews and cancellations of authorisations are carried out as required under this Policy (2.20 – 2.22 below).

2.11.3 Lists of authorising officers are set out below. Any requests for amendments to the lists must be sent to the Monitoring Officer.

2.11.4 The authorising officers for Bolsover and North East Derbyshire District Councils are as follows:

Chief Executive – Dan Swaine (01246 242401/217155)

Strategic Director – Lee Hickin (01246 217218)

Strategic Director – Karen Hanson (01246 217053)

Head of Finance and Resources – Dawn Clarke (01246 217658)

2.11.5 Schedule 1 of statutory instrument No 521 (2010) prescribes the rank or position of authorising officers for the purposes of Section 30(1) of RIPA (covert surveillance and CHIS). For Local Authorities they prescribe a “Director, Head of Service, Service Manager or equivalent”.

2.11.6 The Monitoring Officer designates which officers can be authorising officers. Only these officers can authorise directed surveillance and the use of CHIS. **All authorisations must follow the procedures set out in the Policy.** Authorising officers are responsible for ensuring that they have received RIPA training prior to authorising RIPA activity. When applying for or authorising RIPA activity under the Policy, officers must also take into account the corporate training and any other guidance issued from time to time by the Monitoring Officer.

2.12 **Authorisation Of Covert Directed Surveillance And Use Of A Chis**

2.12.1 RIPA applies to all covert directed surveillance and the use of CHIS whether by Council employees or external agencies engaged by the Council. Council officers wishing to undertake covert directed surveillance or use of a CHIS must complete the relevant application form and forward it to the relevant (para 2.11.4) authorising officer.

2.12.2 Any potential use of RIPA should be referred to the Monitoring Officer for preliminary advice.

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2.13 Criteria For The Authorisation Of The Use Of RIPA Powers

2.13.1 Covert directed surveillance and/or the use of a CHIS can only be authorised if the authorising officer is satisfied that the activity is:-

- (a) **in accordance with the law** i.e. it must be in relation to matters that are statutory or administrative functions of the Council. As such the Council is unable to access communications data for disciplinary matters.
- (b) **necessary** for the purpose of preventing or detecting crime or preventing disorder. This is the only ground available to the Council for authorising RIPA activity and for directed surveillance only, there is a crime threshold as described in paragraph 2.6 above;
- (c) **proportionate** to what it seeks to achieve. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person as may be affected) against the need for the activity in investigative operational terms. Any conduct that is excessive as to the interference and the aim of the conduct, or is in any way arbitrary will not be proportionate. Serious consideration must be given to identifying the least intrusive method of obtaining the information required.

2.13.2 Applicants should ask the following types of questions to help determine whether the use of RIPA is necessary and proportionate:-

- why it is believed the proposed conduct and use is necessary for the prevention of crime or the prevention of disorder (as appropriate);
- how the activity to be authorised is expected to bring a benefit to the investigation;
- how and why the proposed conduct and use is proportionate to the intelligence dividend it hopes to achieve, having regard to the gravity and extent of the activity under investigation;
- how and why the methods to be adopted will cause the least possible intrusion to the subject/s i.e. interfere with their rights under the ECHR;
- what other reasonable methods of obtaining information have been considered and why they have been discounted.

2.13.3 Authorising officers should not be responsible for authorising their own activities, i.e. those operations/investigations in which they are directly involved. However, it is recognised that in exceptional circumstances this may sometimes be unavoidable. The Monitoring Officer should be informed in such cases.

2.13.4 Particular consideration should be given to **collateral intrusion on or interference with the privacy of persons who are not the subject(s) of the investigation**. Collateral intrusion occurs when an officer undertaking covert surveillance on a subject observes or gains information relating to a person who is not the subject of the investigation. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference and measures must be taken to avoid or minimise it. This must be taken into account by the authorising officer, particularly when considering the proportionality of the surveillance.

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2.13.5 Particular care must be taken in cases where **confidential information** is involved e.g. matters subject legal privilege, confidential personal information, confidential journalistic material, confidential medical information, and matters relating to religious leaders and their followers. In cases where it is likely that confidential information will be acquired, officers must specifically refer this to the Monitoring Officer for advice.

2.14 Processing the authorisation

2.14.1 At the time of authorisation the authorising officer must set a date for review of the authorisation and review it on that date (see 2.19), prior to authorisation lapsing as it must not be allowed to lapse

2.14.2 The original completed application and authorisation form must be forwarded to the Monitoring Officer as soon as possible. The Monitoring Officer will maintain a central register of the Council's RIPA activity and a unique reference number will be allocated to each application.

2.15 Approval by Magistrates Court

2.15.1 Under the Protection of Freedoms Act 2012, there is an additional stage in the process for investigatory activities (covert directed surveillance and CHIS). After the authorisation form has been countersigned by the authorising officer, the Council is required to obtain judicial approval for either the authorisation or a renewal of an authorisation.

2.15.2 The Council has a protocol for the Magistrates' approval process, including out of hours procedures, which is held by the Governance Team.

2.15.3 The magistrate will have to decide whether the Council's application to grant or renew an authorisation to use RIPA should be approved and it will not come into effect unless and until it is approved by the Magistrates Court.

2.15.4 *A separate application should be completed when the Council is requesting judicial approval for the use of more than one of the surveillance techniques (i.e. Directed Surveillance, CHIS and Communications Data) at the same time.*

2.15.5 It should be noted that only the initial application and any renewal of the application require magistrates' approval.

2.15.6 There is no requirement for officers presenting authorisations to the Magistrates Court to be legally qualified but they do need to be authorised by the Council to represent it in court. **Generally the applicant should be accompanied to Court by the authorising officer and a member of the legal team.**

2.16 The Role of the Magistrates Court

2.16.1 The role of the Magistrates Court is set out in Section 32A RIPA (for directed surveillance and CHIS).

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2.16.2 This section provide that the authorisation shall not take effect until the Magistrates Court has made an order approving such authorisation. The matters on which the Magistrates Court needs to be satisfied before giving judicial approval are that:-

- There were reasonable grounds for the local authority to believe that the authorisation or notice was necessary and proportionate;
- In the case of a CHIS authorisation, that there were reasonable grounds for the local authority to believe that:
 - arrangements exist for the safety and welfare of the source that satisfy Section 29(5) RIPA;
 - the requirements imposed by Regulation of Investigatory Powers (Juveniles) Order 2000 were satisfied;
- The local authority application has been authorised by an authorising officer;
- The grant of the authorisation was not in breach of any restriction imposed by virtue of an order made under the following sections of RIPA:
 - 29(7)(a) (for CHIS),
 - 30(3) (for directed surveillance and CHIS).

Summary of procedure for applying for covert directed surveillance or use of a CHIS is:

- Applicant obtains preliminary legal advice from Monitoring Officer;
- Applicant completes an application;
- Monitoring Officer quality checks the completed application before organising it to go to the Authorising Officer;
- Approval is sought from the Authorising Officer;
- Authorising Officer completes authorisation form in long-hand;
- Monitoring Officer organises paperwork for court and the applicant, the Authorising Officer proceeds to court, accompanied by a member of the legal team wherever possible;
- If approval given, applicant organises the covert directed surveillance or use of a CHIS to take place;
- Original copy of application lodged with Governance Team.

Additional Requirements for Authorisation of a CHIS

A CHIS must only be authorised if the following arrangements are in place:-

- There is a Council officer with day-to-day responsibility for dealing with the CHIS and a senior Council officer with oversight of the use made of the CHIS;
- A risk assessment has been undertaken to take account of the CHIS security and welfare;
- A Council officer is responsible for maintaining a record of the use made of the CHIS;
- Any adverse impact on community confidence or safety regarding the use of a CHIS has been considered taking account of any particular sensitivities in the local community where the CHIS is operating; and
- Records containing the identity of the CHIS will be maintained in such a way as to preserve the confidentiality or prevent disclosure of the identity of the CHIS.

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2.17 Urgent Authorisations

- 2.17.1 By virtue of the fact that an authorisation under RIPA is not approved until signed off by a Magistrates Court, urgent oral authorisations are not available.

2.18 Application Forms

- 2.18.1 Only the RIPA Forms listed below can be used by officers applying for RIPA authorisation.

(a) Directed Surveillance

- Application for Authority for Directed Surveillance
- Review of Directed Surveillance Authority
- Cancellation of Directed Surveillance
- Renewal of Directed Surveillance Authority

(b) CHIS

- Application for Authority for Conduct and Use of a CHIS
- Review of Conduct and Use of a CHIS
- Cancellation of Conduct and Use of a CHIS
- Renewal of Conduct and Use of a CHS

2.19 Duration of the Authorisation

- 2.19.1 Authorisation/notice durations are:-

- for covert directed surveillance the authorisation remains valid for three months after the date of authorisation;
- for a CHIS the authorisation remains value for 12 months after the date of authorisation (or after one month if a juvenile CHIS is issued);

- 2.19.2 Authorisations should not be permitted to expire, they must be either renewed or cancelled when the activity authorised has been completed or is no longer necessary or proportionate in achieving the aim for which it was originally authorised. This is a statutory requirement which means that all authorisations must be reviewed to decide whether to cancel or renew them.

2.20 Review of Authorisations

- 2.20.1 As referred to at 2.11.2 and 2.14.1 authorising officers must make arrangements to periodically review any authorised RIPA activity. Officers carrying out RIPA activity, or external agencies engaged by the Council to carry out RIPA activity, must periodically review it and report back to the authorising officer if there is any doubt as to whether it should continue. Reviews should be recorded on the appropriate Home Office Form (see 2.18).

- 2.20.2 A copy of the Council's notice of review of an authorisation must be sent to the Monitoring Officer as soon as possible to enable the central record on RIPA to be authorised.

Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

2.21 Renewal of Authorisations

2.21.1 If the authorising officer considers it necessary for an authorisation to continue they may renew it for a further period, beginning with the day when the authorisation would have expired but for the renewal. They must consider the matter again taking into account the content and value of the investigation and the information so far obtained. Renewed authorisations will normally be for a period of up to three months for covert directed surveillance or 12 months in the case of CHIS, one month in the case of juvenile CHIS. Authorisations may be renewed more than once, provided they are considered again and continue to meet the criteria for authorisation. Applications for the renewal of an authorisation for covert directed surveillance or CHIS authorisation must be made on the appropriate form (see 2.18).

2.21.2 All renewals will require an order of the Magistrates Court in accordance with the requirements in para 8.2 above.

2.21.3 A copy of the Council's notice of renewal of an authorisation must be considered by the Monitoring Officer before it is made and all original copies lodged with the Governance Team together with a copy of the Magistrates Court order renewing the authorisation to enable the central record on RIPA to be updated.

2.22 Cancellation of Authorisations

2.22.1 The person who granted or last renewed the authorisation must cancel it when they are satisfied that the covert directed surveillance or CHIS no longer meets the criteria for authorisation. Cancellations must be made on the appropriate Home Office Form (see 2.18).

2.22.2 A copy of the Council's notice of cancellation of an authorisation must be sent to the Monitoring Officer within one week of the cancellation to enable the central record on RIPA to be updated.

2.23 What happens if the surveillance has unexpected results?

2.23.1 Those carrying out the covert surveillance should inform authorising officer if the investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation. In some cases the original authorisation may not be sufficient to cover the activity required or information likely to be gathered and in such cases, consideration should be given as to whether a separate authorisation is required.

2.24 Records and Documentation

Departmental Records

2.24.1 Applications, renewals, cancellations, reviews and copies of notices must be retained by the Council in written or electronic form, and physically attached or cross-referenced where they are associated with each other. These records will be confidential and should be retained for a period of at least five years from the ending of the authorisation. Where it is believed that the records could be relevant

Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

to pending or future court proceedings, they should be retained and then destroyed five years after last use.

Central Record of Authorisations, Renewals, Reviews and Cancellations

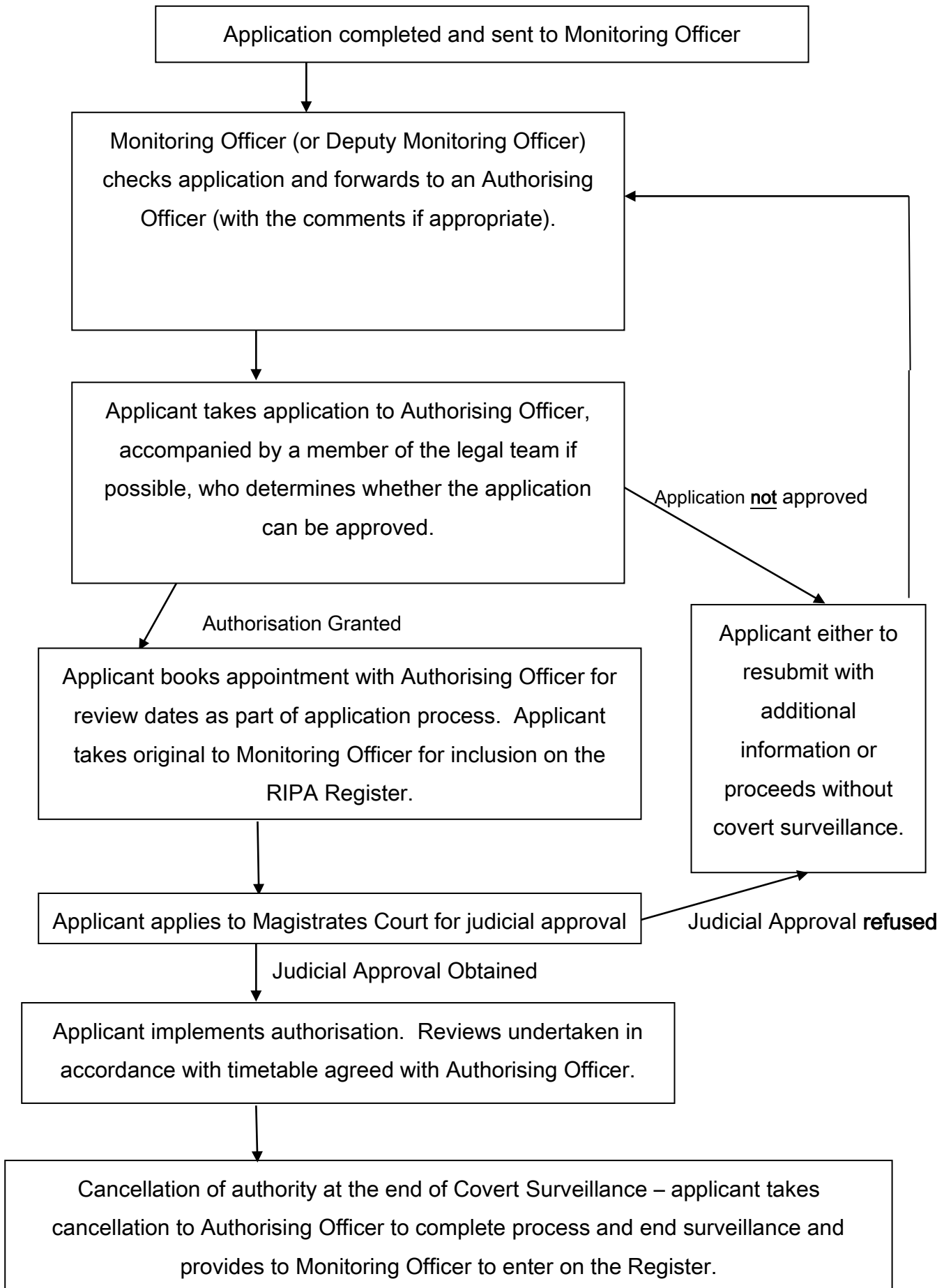
- 2.24.2 A joint central record of directed surveillance and CHIS is maintained by the Monitoring Officer at the District Council Offices, Mill Lane, Wingerworth for both Bolsover and North East Derbyshire District Councils.
- 2.24.3 The central record is maintained in accordance with the requirements set out in the Home Office Codes of Practice. In order to keep the central record up-to-date authorising officers must, in addition to sending through the Home Office application, authorisation form and Magistrates Court order as soon as possible following the authorisation being approved by the Magistrates Court (see 2.15) send notification of every renewal, cancellation and review on the Council's notification forms (see 2.19 – 2.22).
- 2.24.4 Using the information on the central record the Monitoring Officer will:-
- remind authorising officers in advance of the expiry of authorisations;
 - remind authorising officers of the need to ensure surveillance does not continue beyond the authorised period;
 - remind authorising officers to regularly review current authorisations;
 - on the anniversary of each authorisation, remind authorising officers/delegated persons to consider the destruction of the results of surveillance operations.

2.25 Surveillance products

- 2.25.1 Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review.
- 2.25.2 Particular attention is drawn to the requirements of the Code of Practice issued under the Criminal Procedure and Investigations Act 1996. This requires that material which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.
- 2.25.3 There is nothing in RIPA which prevents material obtained from properly authorised surveillance from being used in other investigations. The Council will ensure that adequate arrangements are in place for the handling and storage of material obtained through the use of covert surveillance to facilitate its use in other investigations.
- 2.25.4 Material obtained through the use of directed surveillance or CHIS containing personal information will be protected by the Data Protection Act 1998 (DPA) and in addition to the considerations above must be used, stored and destroyed in compliance with the appropriate requirements of the DPA and the Council's Data Protection, Information Security and Records Management Policies.

Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

APPENDIX A - RIPA PROCESS



Section: Acquisition and Disclosure of Communications Data

RIPA PART 1 – CHAPTER 2 ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

3.1 Communication Service Providers (“CSPs”)

- 3.1.1 CSPs are organisations that are involved in the provision, delivery and maintenance of communications such as postal, telecommunication and internet service providers but also, for example, hotel or library staff involved in providing and maintaining email access to customers. The Council must obtain communications data from CSPs in strict compliance with RIPA.

3.2 Types of Communications Data

- 3.2.1 Communications data is the “who”, “where”, “when” and “how” of a communication such as a letter, phone call or email but not the content, not what was said or written. The Council is not able to use RIPA to authorise the interception or acquisition of the content of communications. There are three types of communication data:-

Service Use Information

- 3.2.2 This is data relating to the use made by any person of a postal or telecommunications, internet service, or any part of it. For example itemised telephone call records, itemised records of connection to internet services, itemised timing and duration of calls, connection/disconnection/reconnection data, use of forwarding or re-direction services, additional telecom services and records of postal items.

Subscriber information

- 3.2.3 This is information held or obtained by the CSP about persons to whom the CSP provides or has provided a communications service. For instance, subscribers of email and telephone accounts, account information including payment details, address for installing and billing, abstract personal records and sign up data.

Traffic Information

- 3.2.4 This is data that is comprised in or attached to a communication for the purpose of transmitting it and which identifies a person or location to or from which it is transmitted. **The Council is not permitted to access traffic data.**

3.3 Authorisation and Notices

- 3.3.1 RIPA provides for acquisition and disclosure of communications data by two alternative means:-
- authorisation of a person within the Council to engage in specific conduct, in order to obtain communications data (a section 22(3) RIPA authorisation); and

Section: Acquisition and Disclosure of Communications Data

- a notice issued to a CSP requiring them to collect or retrieve and then provide the communications data (a section 22(4) RIPA notice).

3.3.2 A Section 22(3) RIPA authorisation is appropriate where (for instance) there is an agreement in place between the Council and the relevant CSP regarding the disclosure of communications data which means a notice is not necessary (currently the Council does not have any such agreements in place); or the Council needs to identify an individual to whom communication services are provided but the relevant CSP is not yet known to the Council, making it impossible to issue a notice.

3.3.3 A Section 22(4) RIPA notice is appropriate where the Council receives specific communications data from a known CSP. A notice may require a CSP to obtain any communications data, if that data is not already in its possession. However, a notice must not place a CSP under a duty to do anything which is not reasonably practicable for the CSP to do.

3.3.4 As a local authority the Council must fulfil two additional requirements when acquiring communications data. Firstly, the request must be made through a SPoC at NAFA (see more about NAFA at [3.5](#) and [3.9](#)). Secondly, the request must receive prior judicial approval.

3.3.5 Under Sections 23A and 23B of RIPA the Council must also obtain judicial approval for all requests for communications data. Judicial approval must be requested once all the Council's internal authorisation processes have been completed, including consultation with a NAFN SPoC, but before the SPoC requests the data from the CSP. The authorisation must be provided by a magistrate.

3.3.6 The Home Office Acquisition and Disclosure of Communications Data Code of Practice can be found on the Home Office website and on the intranet.

3.4 Authorisation Procedures

Authorisations given by Designated Persons are subject to approval by the Magistrates Court (See para 3.10 below)

3.4.1 Designated Persons are responsible for considering applications for obtaining communications data, assessing and approving authorisations and notices.

3.4.2 It is the responsibility of Designated Persons to ensure that when applying for authorisation the principles of necessity and proportionality (see 3.8.2 and 2.13 below) are adequately considered and evidenced; and that reviews and cancellations of authorisations are carried out as required under this Policy (3.14 – 3.17 below).

3.4.3 The list of designated persons is set out below. Any requests for amendments to the lists must be sent to the Monitoring Officer.

Section: Acquisition and Disclosure of Communications Data

- 3.4.4 The designated persons for Bolsover and North East Derbyshire District Councils are as follows:

Joint Chief Executive Officer – Dan Swaine (01246 242401/217155)

Joint Strategic Director – Lee Hickin (01246 217218)

Joint Strategic Director – Karen Hanson (01246 217053)

Joint Head of Finance and Resources – Dawn Clarke(01246 217658)

- 3.4.5 Schedule 2 of statutory instrument No 480 (2010) prescribes the rank or position of designated person for the purposes of Section 25(2) of RIPA (access to communications data). For Local Authorities they prescribe a “Director, Head of Service, Service Manager or equivalent”.

- 3.4.6 The Monitoring Officer designates which officers can be designated persons. Only these officers can authorise the acquisition and disclosure of Communications data. **All authorisations must follow the procedures set out in the Policy.** Designated persons are responsible for ensuring that they have received RIPA training prior to authorising RIPA activity. When applying for or authorising RIPA activity under the Policy, officers must also take into account the corporate training and any other guidance issued from time to time by the Monitoring Officer.

3.5 Single Point of Contact (SPoC)

- 3.5.1 SPoCs are responsible for advising officers within the Council on how best to go about obtaining communications data, for liaising with CSPs, and advising whether applications and notices are lawful. As required under the latest Acquisition and Disclosure of Communications Data Code of Practice, the Council has engaged the National Anti-Fraud Network (NAFN). NAFN’s SPoC services relate only to communications data. For information on using NAFA, see 3.9 below.

3.6 Authorisation of Acquisition and Disclosure of Communications Data

- 3.6.1 RIPA applies to all acquisition and disclosure of communications data whether by Council employees or external agencies engaged by the Council. Authorisations or notices in relation to communications data should be referred to NAFN.

- 3.6.2 Any potential use of RIPA should be referred to the Monitoring Officer for preliminary advice.**

- 3.6.3 The rules on the granting of authorisations for the acquisition of communications data are slightly different from directed surveillance and CHIS authorisations and involve three roles within the Council. The roles are:-

- Applicant
- Designated Person
- Single Point of Contact

Section: Acquisition and Disclosure of Communications Data

3.7 Applicant

3.7.1 This is the officer involved in conducting an investigation or operation who makes an application in writing for the acquisition of communications data. The application form must:-

- Set out the legislation under the operation or investigation is being conducted. This must be a statutory function of the Council for the prevention or detection of crime or preventing disorder;
- Describe the communications data required i.e. the telephone number, email address, the specific date or period of the data and the type of data required. If the data will or may be generated in the future, the future period is restricted to no more than one month from the date on which the authorisation is granted.
- Explain why the conduct is necessary and proportionate.
- Consider and describe any meaningful collateral intrusion. For example, where access is for “outgoing calls” from a “home telephone” collateral intrusion may be applicable to calls made by family members who are outside the scope of the investigation. The applicant therefore needs to consider what the impact is on third parties and try to minimise it.

3.8 Designated Person

3.8.1 This is the person who considers the application. A designated person’s role is the same as an authorising officer’s role in relation to directed surveillance and CHIS authorisations. The designated person assesses the necessity for any conduct to obtain communications data taking account of any advice provided by the single point of contact (SPoC). If the designated person believes it is necessary and proportionate in the specific circumstances, an authorisation is granted or a notice is given.

3.8.2 The Designated Person must refer the criteria set out at paragraph 2.13, as the same principles of necessity and proportionality apply to the use of cover directed surveillance and CHIS.

3.8.3 Designated persons should not be responsible for authorising their own activities, i.e. those operations/investigations in which they are directly involved. However, it is recognised that in exceptional circumstances this may sometimes be unavoidable. The Monitoring Officer should be informed in such cases.

3.8.4 Particular consideration should be given to **collateral intrusion on or interference with the privacy of persons who are not the subject(s) of the investigation**. Collateral intrusion occurs when an officer gains information relating to a person who is not the subject of the investigation. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference and measures must be taken to avoid or minimise it. This must be taken into account by the designated person, particularly when considering the proportionality of the surveillance.

3.8.5 Particular care must be taken in cases where **confidential information** is involved e.g. matters subject legal privilege, confidential personal information, confidential journalistic material, confidential medical information, and matters relating to

Section: Acquisition and Disclosure of Communications Data

religious leaders and their followers. In cases where it is likely that confidential information will be acquired, officers must specifically refer this to the Monitoring Officer for advice.

3.8.6 At the time of authorisation the designated person must set a date for review of the authorisation and review it on that date (see 3.14), prior to authorisation lapsing as it must not be allowed to lapse.

3.8.7 The original completed application and authorisation form must be forwarded to the Monitoring Officer as soon as possible. In the case of a section 22(4) RIPA notice requiring disclosure of communications data a copy of the notice must be attached to the application form. The Monitoring Officer will maintain a central register of the Council's RIPA activity and a unique reference number will be allocated to each application.

3.9 Single Point of Contract (SPoC)

3.9.1 The accredited SPoCs at NAFN scrutinise the applications independently, and provide advice to applicant officers and designated persons ensuring the Council acts in an informed and lawful manner.

3.10 Approval by Magistrates Court

3.10.1 Under the Protection of Freedoms Act 2012, there is an additional stage in the process for the acquisition of communications data. After the authorisation form has been countersigned by the designated person, the Council is required to obtain judicial approval for either the authorisation or a renewal of an authorisation.

3.10.2 The Council has a protocol for the Magistrates' approval process, including out of hours procedures, which is held by the Governance Team.

3.10.3 The magistrate will have to decide whether the Council's application to grant or renew an authorisation to use RIPA should be approved and it will not come into effect unless and until it is approved by the Magistrates Court.

3.10.4 *A separate application should be completed when the Council is requesting judicial approval for the use of more than one of the surveillance techniques (i.e. Directed Surveillance, CHIS and Communications Data) at the same time.*

3.10.5 It should be noted that only the initial application and any renewal of the application require magistrates' approval.

3.10.6 There is no requirement for officers presenting authorisations to the Magistrates Court to be legally qualified but they do need to be authorised by the Council to represent it in court. **Generally the applicant should be accompanied to Court by the designated person and a member of the legal team.**

Section: Acquisition and Disclosure of Communications Data

3.11 The Role of the Magistrates Court

3.11.1 The role of the Magistrates Court is set out in Section 23A RIPA (for communications data).

3.11.2 These sections provide that the notice, shall not take effect until the Magistrates Court has made an order approving such notice. The matters on which the Magistrates Court needs to be satisfied before giving judicial approval are that:-

- There were reasonable grounds for the local authority to believe that the authorisation or notice was necessary and proportionate;
- The local authority application has been authorised by a designated person;
- The grant of the notice was not in breach of any restriction imposed by virtue of an order made under sections 25(3) (for communications data) of RIPA:

Summary of procedure for applying for acquisition of communications data:

- Applicant obtains preliminary legal advice from Monitoring Officer;
- Applicant officer creates an application using the Cycomms Web Viewer on the NAFN website;
- SPoC Officer at NAFA triages and accepts the application into the Cyclops system;
- SPoC Officer uses Cyclops to update the application details and completes the SPoC report;
- Approval is sought from the Designated Person (DP);
- If approval given, Monitoring Officer organises paperwork for court and the applicant and the DP proceeds to court, accompanied by a member of the legal team wherever possible;
- SPoC receives signed court documents and sends requests to Communications Service Provider (CSP);
- SPoC receives results back from CSP and returns results to Applicant;
- Applicant accesses the Web Viewer and downloads results;
- Original copy of application lodged with Governance Team.

3.12 Urgent Authorisations

3.12.1 By virtue of the fact that an authorisation under RIPA is not approved until signed off by a Magistrates Court, urgent oral authorisations are not available.

3.13 Application Forms – Acquisition and Disclosure of Communications Data

3.13.1 Only the RIPA Forms listed below can be used by officers applying for RIPA authorisation.

- Application for a Section 22(4) RIPA Notice
- Notice under Section 22(4) RIPA requiring Communications Data to be Obtained and Disclosed

Section: Acquisition and Disclosure of Communications Data

3.14 Duration of the Authorisation

- 3.14.1 A communications data notice remains valid for a **maximum of one month**.
- 3.14.2 Notices should not be permitted to expire, they must be either renewed or cancelled when the activity authorised has been completed or is no longer necessary or proportionate in achieving the aim for which it was originally authorised. This is a statutory requirement which means that all notices must be reviewed to decide whether to cancel or renew them.

3.15 Review of Authorisations

- 3.15.1 As referred to at 3.8.6, designated persons must make arrangements to periodically review any authorised RIPA activity. Officers carrying out RIPA activity, or external agencies engaged by the Council to carry out RIPA activity, must periodically review it and report back to the designated person if there is any doubt as to whether it should continue. Reviews should be recorded on the appropriate Home Office Form (see 3.13).
- 3.15.2 A copy of the Council's notice of review of an authorisation must be sent to the Monitoring Officer as soon as possible to enable the central record on RIPA to be authorised.

3.16 Renewal of Authorisations

- 3.16.1 If the designated person considers it necessary for an authorisation to continue they may renew it for a further period, beginning with the day when the authorisation would have expired but for the renewal. They must consider the matter again taking into account the content and value of the investigation and the information so far obtained. Renewed authorisations will normally be for a period one month in the case of a communications data authorisation or notice. Authorisations may be renewed more than once, provided they are considered again and continue to meet the criteria for authorisation. The reasoning for seeking renewal of a communications data authorisation or RIPA notice should be set out by the applicant in an addendum to the application form which granted the initial authorisation.
- 3.16.2 All renewals will require an order of the Magistrates Court in accordance with the requirements in para 3.10 above.**
- 3.16.3 A copy of the Council's notice of renewal of an authorisation must be considered by the Monitoring Officer before it is made and all original copies lodged with the Governance Team together with a copy of the Magistrates Court order renewing the authorisation to enable the central record on RIPA to be updated.

3.17 Cancellation of Authorisations

- 3.17.1 The person who granted or last renewed the authorisation must cancel it when they are satisfied that the communications data authorisation or notice no longer meets the criteria for authorisation. Cancellations must be made on the appropriate Home Office Form (see 8.6). In relation to a Section 22(4) notice to a

Section: Acquisition and Disclosure of Communications Data

CSP, the cancellation must be reported to the CSP by the designated person directly or by the SPoC on that person's behalf.

- 3.17.2 A copy of the Council's notice of cancellation of an authorisation must be sent to the Monitoring Officer within one week of the cancellation to enable the central record on RIPA to be updated.

3.18 What happens if the acquisition of communications data has unexpected results?

- 3.18.1 Those involved in the acquisition of communications data should inform the designated person if the investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation. In some cases the original authorisation may not be sufficient to cover the activity required or information likely to be gathered and in such cases, consideration should be given as to whether a separate authorisation is required.

3.19 Records and Documentation

Departmental Records

- 3.19.1 Applications, renewals, cancellations, reviews and copies of notices must be retained by the Council in written or electronic form, and physically attached or cross-referenced where they are associated with each other. These records will be confidential and should be retained for a period of at least five years from the ending of the authorisation. Where it is believed that the records could be relevant to pending or future court proceedings, they should be retained and then destroyed five years after last use.
- 3.19.2 In relation to communications data, records must be held centrally by the SPoC. These records must be available for inspection by ICCP and retained to allow the Investigatory Powers Tribunal, established under Part IV of the Act, to carry out its functions.

Central Record of Authorisations, Renewals, Reviews and Cancellations

- 3.19.3 A joint central record of access to communications data authorisations is maintained by the Monitoring Officer at the District Council Offices, Mill Lane, Wingerworth for both Bolsover and North East Derbyshire District Councils.
- 3.19.4 See paragraph 2.24 for more information on the central records, which also applies relation to covert surveillance and CHIS.

3.20 Communications data related to pending of future proceedings

- 3.20.1 Where the communications data acquired could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review.

Section: Acquisition and Disclosure of Communications Data

- 3.20.2 Particular attention is drawn to the requirements of the Code of Practice issued under the Criminal Procedure and Investigations Act 1996. This requires that material which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.
- 3.20.3 There is nothing in RIPA which prevents material obtained from properly authorised surveillance from being used in other investigations. The Council will ensure that adequate arrangements are in place for the handling and storage of material obtained through the use RIPA to facilitate its use in other investigations.
- 3.20.4 Material obtained through acquisition of communications data containing personal information will be protected by the Data Protection Act 1998 (DPA) and in addition to the considerations above must be used, stored and destroyed in compliance with the appropriate requirements of the DPA and the Council's Data Protection, Information Security and Records Management Policies.

Bolsover District Council

Standards Committee

2nd July 2018

Strategic Alliance Joint Committee – Terms of Reference
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Report of the Chief Executive Officer

This report is public

Purpose of the Report

- To set out proposed revised Terms of Reference for the Strategic Alliance Joint Committee in order that Standards Committee can recommend them to each respective Council for approval.

1 Report Details

- 1.1 At its meeting on 21 May 2018 Bolsover District Council's Executive considered a Scrutiny report undertaken by the Customer Service & Transformation Scrutiny Group. This Scrutiny report set out recommendations arising from a Scrutiny review of the Strategic Alliance, and these recommendations were endorsed by Bolsover's Executive at its meeting on 21 May. One of the recommendations within the Scrutiny review was that the Terms of Reference for the Strategic Alliance Joint Committee be reviewed. This was in order to ensure that the Committees remit remained fit for purpose and was monitoring and developing the work of the Alliance.
- 1.2 Consequently at its meeting on 12 June 2018 the Strategic Alliance Joint Committee considered the Scrutiny recommendation. As part of this consideration the Chief Executive provided a presentation setting out the background to the Strategic Alliance, the principles that it was based around, the efficiencies and benefits that both Authorities had secured from it and also details of services that were fully shared, part-shared or not shared across the Alliance. As a consequence of the Strategic Alliance Joint Committee's consideration of the Terms of Reference it recommended that it be revised. A copy of the proposed revised Terms of Reference is attached to the report as **Appendix A**.
- 1.3 The Strategic Alliance Joint Committee requested that the composition of the Committee remain the same and that it continue to comprise of 9 Councillors from each Council including the Leader and Deputy Leader, and that each block of 9 seats per Council be assigned on the political proportionality basis. The Strategic Alliance Joint Committee also requested that the quorum of the Committee remain at 4 or more Members from each Council being in attendance at the meeting.
- .4 When considering its Terms of Reference the Strategic Alliance Joint Committee did make a number of amendments and these are reflected in **Appendix A** as

striked out text. Additionally, the Committee sought to implement new text into the Terms of Reference, and this is reflected in **Appendix A** as those points marked in “red”.

2 Conclusions and Reasons for Recommendation

- 2.1 As set out previously in the report at its meeting on 12 June 2018, the Strategic Alliance Joint Committee considered it's Terms of Reference and if these needed to be revised. Consequently, the Committee made a number of amendments to the Terms of Reference and these are reflected in **Appendix A**.
- 2.2 In line with the established procedure for amending Terms of Reference for Council Committees, these have been referred to the Standards Committee for consideration prior to reporting to full Council for approval.

3 Consultation and Equality Impact

- 3.1 There are no direct equality impact issues arising from the review of the Terms of Reference for the Strategic Alliance Joint Committee. In terms of consultation, the Committee has been engaged in the process of considering its own Terms of Reference and has consequently made suggestions or revisions as per **Appendix A** of the report.

4 Alternative Options and Reasons for Rejection

- 4.1 Not to change the Terms of Reference. This was rejected as the Terms of Reference need updating to reflect the Joint Committee's current role in relation to the Strategic Alliance

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 There are none arising directly from this report.

5.2 Legal Implications including Data Protection

- 5.2.1 There are no direct legal implications arising from this report. It is good practice regularly to review a Committee's Terms of Reference. However, in line with established practices the revised Terms of Reference are reported through the Council's Standards Committee prior to consideration by each of the respective Councils for approval.

5.3 Human Resources Implications

- 5.3.1 There are none arising directly from the report.

6 Recommendations

- 6.1 That the Standards Committee note the proposed changes to the Terms of Reference for the Strategic Alliance Joint Committee and recommend them to the Council for approval.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: BDC: <i>Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> NEDDC: <i>Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	Yes/No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	Yes/No
District Wards Affected	All indirectly
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title	
Appendix A	Proposed revised Terms of Reference	
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)		
Report Author		Contact Number
Dan Swaine		7001/2462

Strategic Alliance Joint Committee

Composition and Structure

- The Alliance Joint Committee is a joint committee of both North East Derbyshire District Council and Bolsover District Council
- Membership of the Committee comprises of 9 Councillors from each Council including the Leader and Deputy Leader of each Council. Each block of 9 seats per Council will be assigned on the political proportionality of that Council
- The Committee shall be quorate if 4 or more Members from each Council are in attendance at the meeting
- Unless determined otherwise by both Councils the Alliance Joint Committee will not be a decision-making body save where specific delegations have been made to it by the Councils. At present, the Council have delegated to the Alliance Joint Committee the power to form panels for the interview and appointment of Joint Directors
- Either Leader of the Council will Chair the Committee. Chairmanship will normally rotate annually. In the event of the absence of both Leaders the Committee will elect a Chairman for that meeting alone by a majority show of hands
- Voting will be by a simple majority of those present on a show of hands. The Chair of the Committee will not have a casting vote on any matter. In the event of an equality of votes, the matter will be referred to each Council
- The frequency and scheduling of meetings will be as determined by the Committee

Strategic Alliance Joint Committee

Terms of Reference

- ~~To develop a Strategic Transformation Programme for approval by the Councils~~
- ~~To monitor the implementation of the Strategic Transformation Programme~~
- ~~To develop an Action Plan for the implementation of the Strategic Transformation Programme for approval by the Councils~~
- To monitor the delivery and performance of joint services within the Strategic Alliance
- To monitor the cash and non – cash efficiencies delivered by the Strategic Alliance
- To consider options for further development of the Strategic Alliance and make recommendations to the Executives or full Council meetings of each Council where appropriate
- To be the primary body for resolving any disputes that may arise over the interpretation of the Strategic Transformation Programme or over any joint arrangements within the Alliance
- To deal with any matter in relation to the Alliance or joint working arrangements and to take such decisions under any power delegated to it by the Councils including decisions in respect of the appointment and terms and conditions of joint employees of the Council
- To appoint such sub-committees, working groups or panels as it considers appropriate to carry out these functions and to decide the terms of reference and membership of such sub-committees, working groups or panels

Bolsover

Standards Committee

2nd July 2018

Annual Review of Gifts and Hospitality Register – 2016, 2017

Report of the Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

To advise the Committee of the details of all entries in the Councils Gifts and Hospitality Register in respect of offers of gifts and hospitality made to members and officers for the period January 2016 to December 2016 and January 2017 to December 2017.

1 Report Details

- 1.1 The Councils Constitution at Part 5 specifies detailed arrangements for the recording and reporting of gifts and offers of hospitality offered to members and officers of the Council.
- 1.2 The annual reporting of offers of gifts and hospitality made to members and officers ensures that the Council's performance on this matter is monitored on a regular basis and that any changes in procedure can be introduced if necessary.
- 1.3 The results of the review are contained on the attached spreadsheets at Appendix 1 and Appendix 2.
- 1.4 The 2016 review shows that the majority of offers were accepted with the exception of one that was declined and one that was donated to the Namibia expedition fund raiser.
- 1.5 Most of the gifts were relatively small in value but there was two declarations that state the amount as £50. These entries were donated to the Namibia expedition fund raiser. Members registered on 11 occasions. All the individual entries were £50 or less.
- 1.6 The following departments showed no registrations: - CEPT; Economic Growth, Planning & Environmental Health, Street Scene, Community Safety, ICT, Health & Wellbeing, Shirebrook Contact Centre, Bolsover Contact Centre and South Normanton Contact Centre.
- 1.7 The 2017 review shows that the majority of offers were accepted with the exception of the offer of lunch at EEM awards ceremony for members, housing officers,

estates and property officers and customer services and improvement the offer of a meal for 3 officers made to the Chief Executive.

- 1.8 Most of the gifts are relatively small in value but there was three declarations that were £100 or more. Two of which were £120 vouchers for Massey Ferguson gifted to Street Scene. Members recorded gifts and hospitality on 10 occasions, the individual entries were £100 or less.
- 1.9 A £100 charitable donation was made via the Just giving page for 'Movember' Challenge.
- 1.10 The following departments showed no registrations: - CEPT; Economic Growth, Planning & Environmental Health, Finance, Revenues, Street Scene, Community Safety, ICT, Health & Wellbeing, Leisure, Human Resources Shirebrook Contact Centre, Bolsover Contact Centre and South Normanton Contact Centre.
- 1.11 Members are also asked to consider the inclusion of any charitable donations that are made on behalf of the Council by members of the public or businesses via the Just Giving system etc. The Monitoring Officer considers that to ensure transparency in light of no specific register or system being in place to document these types of gifts it should be included within the Register to enable there to be a record of the donation on the Council's behalf.
- 1.12 Members are requested to consider publishing the Gifts and Hospitality register (in the format that is provided on the attached spreadsheet) for public viewing. Within the Council's Publication Scheme it is stated that members of the public can access the Gifts & Hospitality Register via the Council's website. Unfortunately this information is not placed on the website at the moment and has never been. To rectify this members should consider whether the publication of this document is appropriate. We do release this report to members of the public when a request is made to the legal team.
- 1.13 In accordance with the recent Gifts and Hospitality Audit it has been recommended that the Standards Committee approve that employees and Members are required to declare any gift or hospitality above £100 in value. Members are asked to confirm that they feel this level is still appropriate.
- 1.14 Following the consideration of the annual review of the gifts and hospitality register by the Standards Committee the Monitoring Officer will write out to members and staff with regards to the Gifts and Hospitality Guidance.

2 Conclusions and Reasons for Recommendation

- 2.1 It is important that there is a clear process for the recording and reporting of gifts and offers of hospitality offered to members and officers of the Council.
- 2.2 The annual reporting of offers of gifts and hospitality ensures that that the Councils performance on this matter is monitored on a regular basis and that changes can be introduced if needed.

- 2.3 It also allows us to ensure that the register is being used and that entries are appropriate.
- 2.4 Members are being asked to consider whether the Gifts & Hospitalities Central Register should include the requirement that any charitable donations should be registered via the Gifts & Hospitalities system.
- 2.5 In relation to allowing the register to be published on the Council's website this shows transparency and enables the public to access the information freely, without having to visit the offices for inspection. There is no legal requirement for the Council to publish this information but we are required to allow access to the register by members of the public when requested.

3 Consultation and Equality Impact

- 3.1 The annual reporting of offers of gifts and hospitality made to members and officers, should, together with other measures undertaken by the Council support the clarity of the reporting process.

4 Alternative Options and Reasons for Rejection

- 4.1 There were no alternative options considered and rejected.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 No financial implications arising directly from the content of this report.

5.2 Legal Implications including Data Protection

- 5.2.1 as outlined within the report.

5.3 Human Resources Implications

- 5.3.1 No Human Resources implications arising directly from the content of this report.

6 Recommendations that

- 6.1 Members consider whether the Gifts and Hospitality Register should be published on the website.
- 6.2 Members consider whether the Gifts & Hospitalities Central Register should include the requirement that any charitable donations should be registered via the Gifts & Hospitalities system.
- 6.3 Members reconfirm the threshold for registering gifts and hospitality over £100.
- 6.3 That the Standards Committee note the contents of this Annual report and the for the period January 2016 to December 2016, and January 2017 to December 2017 in respect of offers of Gifts and Hospitality made to members and officers.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: BDC: <i>Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> NEDDC: <i>Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
1.	Schedule of Gifts and Hospitality January 2016 – December 2016
2.	Schedule of Gifts and Hospitality January 2017 – December 2017
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Not applicable	
Report Author	Contact Number
Victoria Dawson	2231

Gifts & Hospitality Inspection - January 2016 to December 2016

Department	Total amount of declared gifts	Description of gifts/hospitalities	Electronic Declarations - Total	Paper Declarations - total
Members	11	Meal with drinks (£50); Mugs, Pens, Notepads, Ruler, Various Bags sweets; Evening Meal & Drink (£30); Early Evening Drinks (£10); Lunchtime Meal and Drinks (£50); Breakfast Meeting & Presentation (£10); Bunch of Roses £10;	7	7
GROWTH DIRECTORATE				
		2 x Debenhams Gift Cards worth £50 (DONATED TO NAMIBIA EXPEDITION FUND RAISER); Invitation to attend a Charity Fundraising golf day at Royal Porthcawl golf course in Wales on 15th September 2016 (REFUSED).	3	3
CEO	3			
CEPT	0		0	0
Economic Growth	0		0	0
Planning & Env. Health	0		0	0
Legal & Governance	3	Gusto Meal Voucher (£25); Bunch of Flowers (£5); Small box of Heroes.	3	3
OPERATIONS				
Finance	5	2x A5 Hardback Note Pads; 2 x Biro's and 1 4GB USB stick.	1	1
Revenues	5	Box of Chocolates (£16); Roses Chocolates ; Desk Calendars; Post-it Notes ; Pens (£25).	2	2
Street Scene	0		0	0
Housing	20	1 box of Thorntons Classic Selection chocolates (£6); Tray of 12 cupcake buns (£5) ; 2 A4 Diaries; 6 pens ; 3 A5 Notepads; A5 Calendar ; 2 boxes of Foxes Biscuits and 4 boxes of chocolates	4	4
Community Safety	0		0	0
Estates & Properties	2	Bottle of Hardy's Wine (Approx £6); Tub of Quality Street (Approx £4)	1	1

TRANSFORMATION					
ICT	0			0	0
Health & Wellbeing	0			0	0
Leisure	1	Glass engraved ornament (£25)		1	1
Human Resources	1	Invite to attend the Nottingham Post Women in Business Awards 23rd November 2016.		1	1
Shirebrook Contact Centre	0			0	0
Bolsover Contact Centre	0			0	0
Clowne Contact Centre	4	Small bunch of roses (£3-£4); Tin of Quality Street Chocolates; Roses Chocolates; Tin of Quality Street Chocolates.		4	4
South Normanton Contact Centre	0			0	0
Customer Service & Improvement	4	Cadbury's Hero Chocolates (£5); Tin of Quality Street Chocolates; Tin of Quality Street Chocolates; Roses Chocolates.		4	4

Appendix 2

Gifts & Hospitalitys Inspection - January 2017 to December 2017				
Department	Total amount of declared gifts	Description of gifts/hospitalities	Electronic Declarations - Total	Paper Declarations - Total
Members	10	Attendance to EEM awards ceremony (£60 per head); Offer of lunch (£8 per head (DECLINED)) ; Attendance to East Midlands Construction Awards (£20 per head); 2 Day Seminar to Envirovent as a guest of EEM (Efficiency East Midlands) (Hotel £70 & Meal £20);	4	4
GROWTH DIRECTORATE				
CEO	1	Invitation for meal - 3 Officers (Excess £100) (DECLINED)	1	1
CEPT	0		0	0
Economic Growth	0		0	0
Planning & Env. Health	0		0	0
Legal & Governance	14	4 Calendar's (Desktop) 2017; 2 Silver Coloured necklaces; Whisky (£25) and chocolates (£5); 6x boxes of Cadburys Chocolate bars (approx £30)	3	3
OPERATIONS				
Finance	0		0	0
Revenues	0		0	0
Street Scene	2	2x £120 vouchers to spend at Massey Fergusson	1	1

		Attendance to EEM awards ceremony (£60 per head); Offer of lunch (£8 per head (DECLINED)) ; Two Mugs; Dozen Krispy Kreme Doughnuts ; Charitable donation of £100 for the 'Movember Challenge' - donated via - Just giving page direct to charity ; Case of 12 bottles of Becks - Case of 12 bottles of Stella - Box of Ferrero Rocher - Parker Pen - 2018 A4 Diary and 5 x 2018 calendars (Donated to Chairman's Charity); small bunch of flowers (£5) ; Pot Pourri (Approx £5); Pot Pourri (Approx £5) ; Pot Pourri (Approx £5); Pot Pourri (Approx £5) ; Pot Pourri (Approx £5); £10 Cash ; 4 boxes of chocolates (£5 each); Foxes Biscuits - selection box - Quality Streets - Thorntons box chocolates - Tesco Shortbread - Celebrations chocolates - Tin of Roses - Teabags - Coffee and Sugar ; Desk Calendar - Pen and diary; small owl with Christmas hat ornament (Less than £10) ; Bunch of flowers (Approx £10); 6 boxes of Milk Tray chocolates, bottle of wine, 6 boxes of biscuits, Celebrations chocolates, 2 boxes of Quality Street Chocolates, After Eight Mints, bottle of wine, bottle of sherry, box of Heroes chocolates, 2 x chocolates, 1 Box Roses and a Box of Quality Street ; Box of Hero's a Box of Quality Street and 2 Boxes of Morrison's Mega Mix.		
Housing	75		21	21
Community Safety	0		0	0
Estates & Properties	9	(X3) Attendance to EEM awards ceremony (£60 per head); Offer of lunch (£8 per head (DECLINED)) ; Attendance to RLB's Summer BBQ Event;	3	3
TRANSFORMATION				
ICT	0		0	0
Health & Wellbeing	0		0	0

Leisure	0		0	0
Human Resources	0		0	0
Shirebrook Contact Centre	0		0	0
Bolsover Contact Centre	0		0	0
Clowne Contact Centre	3	Chocolates; Chocolates ; Tin of Roses Chocolates.	3	3
South Normanton Contact Centre	0		0	0
Customer Service & Improvement	4	Offer of lunch (£8 per head (DECLINED)) ; Box of all Gold Chocolates (£4); 2 Boxes of biscuits (approx £7);	3	3

Bolsover District Council

Standards

2nd July 2018

Councillor Complaint Procedure

Report of the Head of Service Corporate Governance and Monitoring Officer

This report is open

Purpose of the Report

- To recommend for approval a Councillor Complaint Procedure.

1 Report Details

- 1.1 The Localism Act 2011 sets out the revised Standards Regime. A Local Authority must adopt a Member Code of Conduct and have arrangements with regards to how they deal with member complaints.
- 1.2 Bolsover District Council do have a Councillor Complaint Summary document available on the website but it was felt this could be improved and provide individuals with more specific information as to how the Council deals with member complaints. This is attached at appendix A.
- 1.3 The Draft Councillor Complaint Procedure sets out the standard arrangements introduced as a result of the Localism Act 2011.
- 1.4 It is a simple procedure aimed at those who may wish to make a formal complaint about the conduct of a District or parish councillor. It sets out its basic terms, what the complainant can expect, including the role of the Monitoring Officer, what they will do and within what time frames. It is also a useful document for Members who may be the subject of a complaint.
- 1.5 The Procedure lists at paragraph 8 a range of sanctions that could be imposed by the Standards Committee in the event of misconduct by a councillor being found. It should be noted that whilst this is not necessarily an exhaustive list, there are no statutory sanctions provided for in the Localism Act in relation to general breaches of the Code. However, Members are reminded that a failure to declare a Disclosable Pecuniary Interest constitutes a criminal offence with the potential sanction of a fine and/or disqualification.
- 1.6 Following formal approval by Council, the Procedure and a complaint form will be published on the Council's website. Hard copies will also be available from the Monitoring Officer.

- 1.7 The draft Councillor Complaint Procedure Documents is attached to this report at Appendix B.

2 Conclusions and Reasons for Recommendation

- 2.1 The Councillor Complaint Procedure provides a guide as to how a Member Complaint will be dealt with, what the complainant can expect, the role of the monitoring officer what they will do and within what time frame. It is considered good practice to adopt the procedure to aid complaints and Members through the process.

3 Alternative Options and Reasons for Rejection

- 3.1 None.

4 Implications

5 Finance and Risk Implications

- 5.1 None.

6 Consultation and Equality Impact

- 6.1 Consultation is taking place through Standards Committee and Council.
- 6.2 Equality issues have been taken into account in the review of the policy.

7 Legal Implications including Data Protection

- 7.1 The legal implications in relation to councillor complaints are set out within the policy

8 Human Resources Implications

- 8.1 None.

9 Recommendations

- 9.1 That the draft Councillor Complaint Procedure be approved.

10 Decision Information

Is the decision a Key Decision? (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
District Wards Affected	None directly
Links to Corporate Plan priorities or Policy Framework	All

11 Document Information

Appendix No	Title	
A	Councillor Complaint Procedure	
Report Author		Contact Number
Victoria Dawson – Solicitor - Team Manager (Contentious)		Ext 2231

Bolsover District Council
Councillor Complaints Procedure

**Arrangements for dealing with standards allegations under the Localism Act
2011**

1 Introduction

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of Bolsover District Council, or of a parish or town council within the District, has failed to comply with the Authority’s Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the Council or parish or town council within its area has failed to comply with that Authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by the member against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix 1 to these arrangements and is available for inspection on the Authority’s website or on request from the Monitoring Officer.

Each parish or town council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish or town council and request the parish clerk to allow you to inspect the parish or town council’s Code of Conduct.

3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
Bolsover District Council
The Arc
High Street
Clowne
S43 4JY

Or email sarah.sternberg@bolsover.gov.uk

The Monitoring Officer is a senior officer of the Authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be found on the Council's website, or obtained from the Monitoring Officer. If you need help to complete the form or make a complaint, please contact a member of the Legal Services Team on 01246 242428.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress.

If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form together with the reason why you feel your identity should not be disclosed. However, only in exceptional cases will it be possible not to disclose your identity. As a matter of fairness and natural justice, the member should be told who has complained about them. The Authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so, for example:

- a) The complainant has reasonable grounds for believing that they will be at risk of intimidation, victimisation or physical harm if their identity is disclosed;
- b) The complainant is an officer who works closely with the member and they are afraid of the consequences to their employment if their identity is disclosed;
- c) The complainant suffers from a serious health condition, which may be adversely affected if their identity is disclosed.

If the Monitoring Officer decides to refuse a request for confidentiality, she/he will offer the complainant the option to withdraw the complaint rather than proceed with disclosure of the complainant's identity.

If the Monitoring officer considers that the disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring officer can agree to delay notifying the member until consideration of the complaint has progressed sufficiently.

The Monitoring Officer will acknowledge receipt of your complaint within 10 working days of receiving it, and will keep you informed of the progress of your complaint. The Monitoring Officer will also normally inform the member who is subject of the complaint and invite their initial response at this stage.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person (see paragraph 11 below), take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint. A flowchart setting out the full procedure is set out at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his decision and the reasons for that decision.

Before assessment of the complaint begins the Monitoring Officer must be satisfied that the complaint:

- is against one of more named members of the Authority or an authority within their jurisdiction, and
- is about a member who was in office at the time of the alleged conduct and the Code of Conduct was in force at the time,
- is about the behaviour of the councillor when the councillor is carrying out their duties as councillor (the Code of Conduct does not apply to a Councillor's private life) and
- if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

If the complaint meets each of these criteria it may be assessed for investigation through the Council's standards framework. In that event the Monitoring Officer has three options:

1. Refer the matter for investigation, or
2. Resolve the complaint informally with other action, or
3. Take no further action.

When deciding whether an investigation is necessary the Monitoring Officer must have regard to the duty to promote and maintain high standards of member conduct. Relevant factors include but are not limited to:

- Whether the available evidence suggests that the member was acting in their official capacity when the alleged conduct took place.
- Whether the information provided is sufficient to justify a referral for investigation.
- Is the complaint too trivial to warrant further action?
- Is the complaint best dealt with in other ways, by for example training
- Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- Is the complaint already the subject of an investigation or other action related to either the Code of Conduct or another disciplinary process?
- Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?
- Is the complaint anonymous?
- Would an investigation serve any public benefit?

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Parish or Town Councillor, the Monitoring Officer will normally also inform the Parish Council of your complaint before deciding whether the complaint merits formal investigation.

Wherever possible, the Monitoring Officer will seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an

apology, or other remedial action by the Authority. Where the member or the Authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

It should be noted that a decision to refer a complaint for other action does not involve making any findings of fact; no conclusions are reached about what happened and no decision is made about whether the member failed to comply with the Code of Conduct. In addition, an investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

A decision to take 'other action' might also involve a member/members being asked to attend a relevant training course or engage in a process of conciliation. This form of other action is most beneficial where a complaint exposes systemic problems rather than individual ones; indeed other action does not have to be limited to the subject of the complaint. Matters that a Monitoring Officer might consider referring for "other action" include complaints that demonstrate:

- A need for a better understanding of procedures
- Lack of experience or training
- Tit-for-tat allegations between the same members
- A general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect/bullying
- Allegations that may be symptomatic of governance problems that are more significant than the allegations themselves.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

In some cases, at his/her discretion, the Monitoring Officer may refer the complaint to the Standards Committee to decide whether or not it should be investigated or other action taken.

Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the Authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member

to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

Where a complaint is raised by an officer regarding a member and while it is being investigated, the member must comply with any measures deemed appropriate by the Monitoring Officer in consultation with the Independent Person.

These measures may include, but are not limited to,

- Members not having contact with officer who has raised a complaint for the duration of the investigation and until an outcome is decided;
- Members contacting a nominated person if they wish to have contact with the officer who made a complaint;
- Officers not attending meetings with the member on their own;
- Members being required to copy in specified people in their email correspondence with the officer;
- Members being required to communicate with the officer in a specified form (for example, by email);
- Member's group leader being informed if one of their Members is the subject of a complaint.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned, and if appropriate to the Parish or Town Council where the complaint relates to a Parish or Town Councillor, notifying you that he/she is satisfied that no further action is required, and giving you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report. The Monitoring Officer will consult the Independent Person before making any decision following the investigation.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a Sub-Committee of the Standards Committee) or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing to formally determine whether a breach had in fact been committed. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee, and the Parish Council where applicable, for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Sub-Committee which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chairman of the Sub-Committee may explain and give guidance as to the manner in which the hearing will be conducted.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Sub-Committee, with the benefit of any advice from the Independent Person, concludes that the member did not fail to comply with the Code of Conduct, it will dismiss the complaint.

If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Sub-Committee

will then consider what action, if any, it should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the member an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

Referral to Standards Committee

In certain more serious or sensitive cases, the Monitoring officer may refer the case to the full Standards Committee rather than the Sub-Committee. The criteria for determining whether to refer the case to the full Committee are set out in Appendix 3 and such a decision shall be at the sole discretion of the Monitoring Officer based on those criteria.

8 What actions can the Standards Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Standards Committee and the Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may –

- 8.1 Censure or reprimand its member or recommend that the council does so;
- 8.2 Publish its findings in respect of the member's conduct;
- 8.3 Report its findings to Council (or to the relevant Parish Council) for information;
- 8.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committee s of the Council;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.6 Recommend to the Council that the member be replaced as Executive Leader;
- 8.7 Instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the member;
- 8.8 Recommend to full Council (or recommend to the Parish Council) that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the Authority (or by the Parish Council);
- 8.9 Withdraw (or recommend to the Parish or Town Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.10 Exclude (or recommend that the Parish or Town Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms and public areas as necessary for attending Council, Committee and Sub-Committee meetings.

There is no power to suspend or disqualify the member or to withdraw a member's basic or special responsibility allowance.

9 What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the member (and to the Parish Council where applicable), and make that decision notice available for public inspection.

10 What is the Sub-Committee?

The Sub-Committee of the Council's Standards Committee will comprise at least three members of the Council. The Sub-Committee will contain members from more than one political party depending on the political balance of the Council as a whole.

The Independent Person is invited to attend all meetings of the Standards Committee or Sub-Committee when a decision is being taken on whether the member's conduct constitutes a failure to comply with the Code of conduct or on any action to be taken following a finding of failure to comply with the Code of Conduct. His/her views will be sought and taken into consideration before any decision is taken on these matters.

The Standards Committee may also contain non-councillor or parish or town council members who may attend and participate in discussions at meetings of either the full Committee or the Sub-Committee, but they are not entitled to *vote* on any matter under discussion.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council. There are a number of statutory restrictions on eligibility for this role to ensure that the post-holder has no close associations with the Council and is therefore truly independent. They are not a member of the Standards Committee but they must be consulted by the Monitoring Officer prior to any decisions or findings on alleged breaches of the Code and *may* be consulted at other stages of the complaints process.

The Independent Person may also be consulted by a member who is the subject of a complaint under this procedure. Any such consultation shall be arranged through the Monitoring Officer and the subject member will be advised by the Monitoring Officer as to the procedure for doing so at the relevant time.

Currently there are 2 Independent Persons

12 Revision of these arrangements

The Standards Committee may by resolution agree to amend these arrangements, and has delegated to the Chief Executive Officer the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee or Sub Committee.

If you feel that the Authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One - Bolsover District Council's Code of Conduct

Appendix Two – Standards Procedure Flow chart

Appendix Three - Criteria for referral of cases to the full Standards Committee

Appendix One

Members' Code of Conduct

As a member or co-opted member of the Parish Council I have a statutory responsibility to have regard to the following principles when representing the community and working constructively with staff and partner organisations to secure better social, economic and environmental outcomes for all.

The Seven Statutory Principles

In accordance with the Localism Act provisions, when acting or appearing to act in my capacity as a councillor I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in the Council.

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, Naps, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest.

INTEGRITY: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their families, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

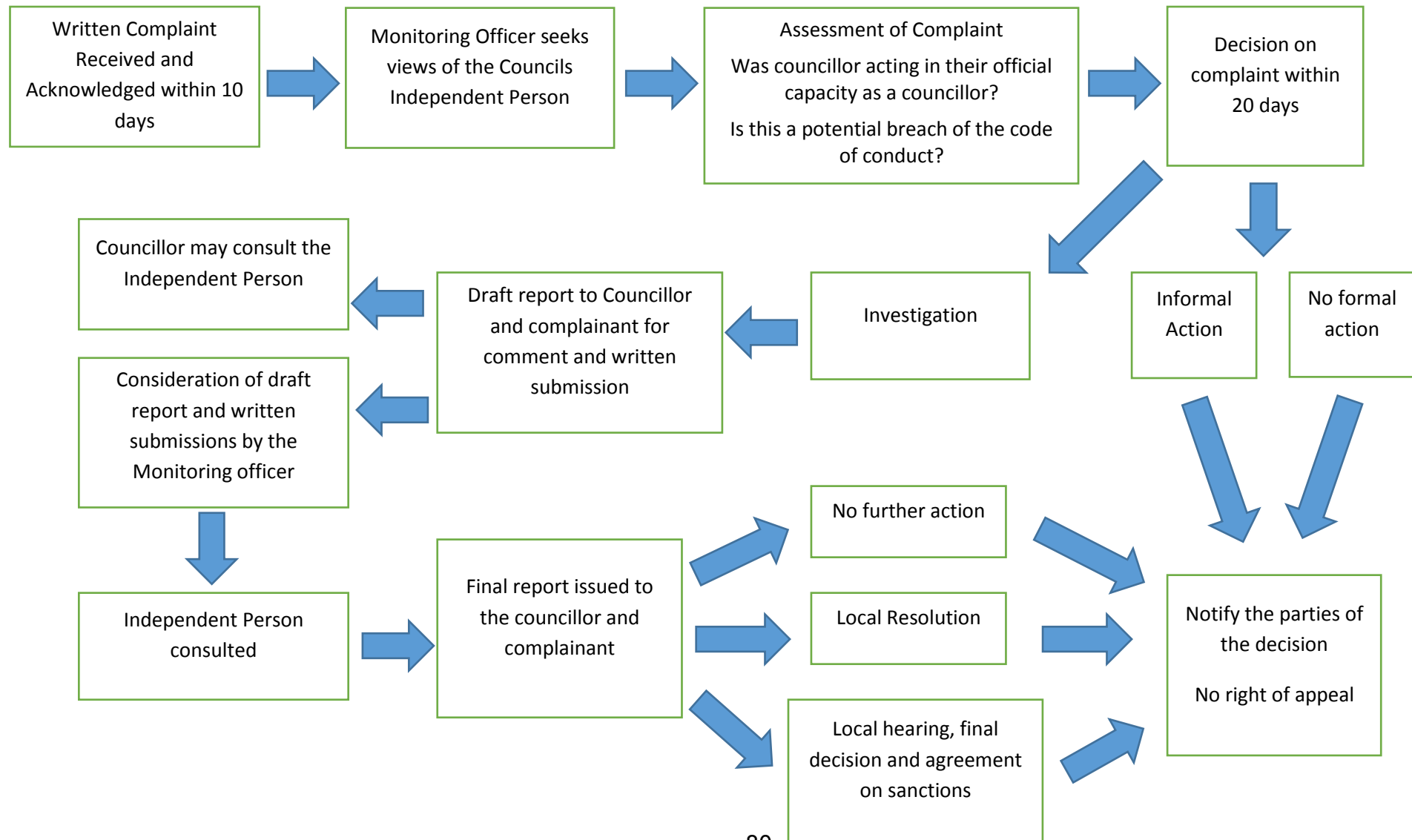
ACCOUNTABILITY: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY: Holders of public office should be truthful.

LEADERSHIP: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix Two Standards Procedure Flow Chart



Appendix Three

Proposed Terms of Reference for Standards Committee

- a. promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- b. assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- c. advising the Council on the adoption or revision of the Members' Code of Conduct;
- d. monitoring the operation of the Member's Code of Conduct;
- e. advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- f. dealing with complaints about Councillors in accordance with the published Members' Complaints Procedure approved under section 28(6) of the Localism Act 2011;
- g. the exercise of (a) to (f) above in relation to parish councils wholly or mainly in its area and the members of those parish councils;
- h. granting dispensations to Councillors and co-opted Members from requirements relating to disclosable pecuniary interests;

BDC STANDARDS COMMITTEE WORK PROGRAMME 2018/19		
Meeting date	Item	Comments
2 July 2018	RIPA Policy Review Complaints Update Work Programme	
15 October 2018	Public Perception of the Standards Regime in Local Government Local Government Ombudsman Annual Report Complaints Update Work Programme	
14 January 2019	Review of Constitution Part 1 Gifts & Hospitality Review Complaints Update Work Programme	
15 April 2019	Whistleblowing Review of Constitution Part 2 Complaints Update Work Programme 2019/2020 Work Programme	