



# Agenda

Meeting: **Council**  
Date: **20 September 2023**  
Time: **7.00 pm**  
Place: **Council Chamber - Civic Centre Folkestone**

To: **All Members of the Council**

**YOU ARE HEREBY SUMMONED** to attend a meeting of the Council on the date and at the time shown above.

Anyone who wishes to have information on any matter arising on the Agenda which is not fully covered in these papers is requested to give notice prior to the meeting to the Chairman or appropriate officer.

This meeting will be webcast live to the council's website at <https://folkestone-hythe.public-i.tv/core/portal/home>.

Please note there will be 37 seats available for members of the public, which will be reserved for those speaking or participating at the meeting. The remaining available seats will be given on a first come, first served basis.

Dr Susan Priest  
Chief Executive

1. **Apologies for Absence**
2. **Declarations of Interest (Pages 7 - 8)**

## Queries about the agenda? Need a different format?

Contact Jemma West – Tel: 01303 853369  
Email: [committee@folkestone-hythe.gov.uk](mailto:committee@folkestone-hythe.gov.uk) or download from our  
website  
[www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)

Members of the Council should declare any discloseable pecuniary interest or any other significant interests in any item/s on this agenda.

3. **Minutes (Pages 9 - 14)**

To receive the minutes of the meeting of the council held on 26 July 2023 and to authorise the Chair of the Council to sign them as a correct record.

4. **Chair's Communications**

5. **Petitions**

There are no petitions to be presented.

6. **Questions from the Public**

1. **From Mr D Turner to Councillor Jim Martin, Leader of the Council and Portfolio holder for Otterpool Park and Planning Policy**

How will the new boundary changes effect the council in particular with regards Otterpool? Westenhanger and the old race course now fall into Ashford Parliamentary constituency.

2. **From Mr P Gane to Councillor Jim Martin, Leader of the Council and Portfolio holder for Otterpool Park and Planning Policy**

The White Lion Public House building on Cheriton High Street has long been an iconic part of Cheriton's street scene. However, over the last 15 years it has been unused and fallen into disrepair and is now seemingly at risk of collapse. Most residents would like to see any development keep the previously impressive frontage of the building. The Cheriton Town Ward Councillors believes that any such redevelopment should retain the historic frontage if technically feasible, be of an appropriate scale, utilise the ground floor for a community or retail use and the upper parts for social housing to help the community at large.

Cheriton West Town Councillors on behalf of Local residents therefore ask will Folkestone and Hythe District Council use compulsory purchase powers, or any other powers available and appropriate, to buy the building and redevelop the site?

3. **From Mrs M Lawes to Councillor P Blakemore, Cabinet Member for Transport, Regulatory Services and Building Control**

Please can all 1 hour parking be reduced or removed in Burrow Road (none), Southbourne Road (none), Dudley Road (bottom of

road), East Cliff (none) Penfold (2 spaces top and 2 spaces bottom of road) and Warren Road (none), with 1 hour to remain in other roads and enforced?

**7. Questions from Councillors**

(Questions can be found on [www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk) from noon 2 days before the meeting, on Modern.gov, under the agenda for this meeting).

Up to 45 minutes is allowed for questions from councillors.

**8. Announcements of the Leader of the Council**

To receive a report from the Leader of the Council on the business of the cabinet and on matters that the leader considers should be drawn to the council's attention. The leader shall have 10 minutes to make his announcements.

The opposition groups will have an opportunity to reply to the leader's remarks. The opposition group leaders shall each have 5 minutes to respond after which the Leader of the Council will have a right of reply. Any right of reply will be for a maximum duration of 5 minutes.

**9. Portfolio Holder reports to Council (Pages 15 - 22)**

**10. Opposition Business**

The Labour Group has raised the following matter:

Council Notes:

The dumping of sewage into the sea continues to be a matter of grave concern. Unless you have checked in advance on the internet, there is no public information at the main beaches in our District telling people whether the sea is safe to swim in on a given day.

Annual information regarding the quality of bathing water is provided by the environment agency and available on the council's website.

Information about the bathing water must be actively disseminated and promptly made available to the public during the bathing season in an easily accessible place in the near vicinity of the bathing water. As required by law.

Council believes:

That all the main coastal bathing areas across the district should have prominent signage displaying:

- The current status of the seawater, and pollution incidents; and

- The bathing water quality in general.

Council Resolves:

To make it known to full council what, if any, system is currently in place across the District to provide information about bathing water – including pollution incidents, both on the councils digital platforms and in an easily accessible place in the near vicinity of the bathing water.

If no system is currently in place, then to refer to cabinet to approve a system which delivers these outcomes.

This system should consider but not be limited to: Digital displays in the vicinity of bathing sites which access real time data from Southern Water's Beachbouy software. A system of flags which is clearly identifiable.

Before implementing this proposal, funding would need to be agreed and secured for this initiative.

To refer this to cabinet to determine a report looking at options to deliver this outcome. Either through:

- Solely council funded
- In partnership with Southern Water, the Environment Agency or a collaboration of all parties.

Debates on opposition business shall be limited to 30 minutes. If the time limit is reached or the debate concludes earlier, the leader of the group raising the item shall have a right of reply.

The Council shall:

- a) Note the issue raised and take no further action;
- b) Refer the issue to the cabinet or relevant overview and scrutiny committee, as the case may be for their observations before deciding whether to make a decision on the issue;
- c) Agree to examine the matter as part of a future scrutiny programme;
- d) Adopt the issue raised by opposition business provided that the decision so made is within the policy framework and budget.

## 11. **Motions on Notice**

The following motions have been placed on the agenda in the order received; up to 60 minutes shall be allowed for debates on motions on notice:

### 1. **From Councillor McConville, Leader of the Labour Group**

Council Notes

- Since 2010, toilet twinning has been providing sanitation assistance to communities in countries in extreme poverty, often affected by conflict and/or natural disasters.
- Many residents, businesses and organisations across the UK have twinned toilets to generate funds to provide facilities in these communities.
- Many councils of all levels across the UK have twinned their public toilets within this scheme.

Council Believes

That by leading by example, many more residents, business and organisations within the district may be open to making a similar commitment.

Council Resolves

- To twin the 3 new changing places toilets with the charity “Toilet Twinning”.
- To pay £180, £60 per toilet, to achieve this.
- To display the certificates received within the changing places toilets once opened

12. **Regulation of Investigatory Powers Act 2000 (RIPA) (Pages 23 - 64)**

This report sets out the Council’s policy on the use of directed surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

13. **Members' Allowances - Independent Remuneration Panel (Pages 65 - 68)**

This report recommends that the term of the current three Members of the Independent Remuneration Panel (IRP) be extended a further four years to November 2023, and also that recruitment be commenced to fill the vacant fourth IRP position.

14. **Transformation - 2023-25 (Pages 69 - 76)**

This report sets out an approach to transformation spanning a two-year period. The transformation seeks to reduce management duplication, improve efficiency, ensure that organisation capacity is focused on the Council’s priorities, and deliver financial savings by making the best use of IT, Premises, Asset & Contract Management and reducing the overall number of staff across the Council.

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## **Declarations of Interest**

### **Disclosable Pecuniary Interest (DPI)**

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

### **Other Significant Interest (OSI)**

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

### **Voluntary Announcement of Other Interests (VAOI)**

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

#### **Note to the Code:**

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

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# Minutes

## Council

Held at:	Council Chamber - Civic Centre Folkestone
Date	Wednesday, 26 July 2023
Present	Councillors Abena Akuffo-Kelly, Mike Blakemore, Polly Blakemore, James Butcher, Bridget Chapman, Tony Cooper, Laura Davison, Gary Fuller, Clive Goddard, David Godfrey, Liz Grant, Rich Holgate, Mrs Jennifer Hollingsbee, Anita Jones, Nicola Keen, Alan Martin, Elaine Martin, Jim Martin, Connor McConville, Liz McShane, Jackie Meade, Tim Prater, Stephen Scoffham, Rebecca Shoob, Jeremy Speakman, Paul Thomas, Belinda Walker, David Wimble and John Wing
Apologies for Absence	Councillor Adrian Lockwood
Officers Present:	Amandeep Khroud (Assistant Director), Susan Priest (Chief Executive) and Jemma West (Democratic Services Senior Specialist)

### 26. **Declarations of Interest**

Councillor Fuller made a voluntary declaration in respect of Minute No 34 (Opposition Business) in that he lived in a HRA owned property.

### 27. **Minutes**

The minutes of the meeting held on 21 June 2023 were submitted, approved and signed by the Chair.

### 28. **Chair's Communications**

The Chair made the following communications:

“Canada day, Armed forces day and Battle of Britain Memorial celebrations provided me with an opportunity to commemorate both the past and present service personnel of this district and beyond. At each service it was my great honour to lay a wreath on behalf of our district.

I attended a charity event in Peene, the civic Church services for both Hythe and Folkestone Mayor's. Welcomed Princess Anne to the district and met the tall ships and it's crew of both British and French children in Boulogne at the end of their voyage from Folkestone Harbour. It was wonderful to see the joy and jubilation of the children, parents and guardians after being reunited. Joy is truly international and nobody could distinguish between the nationalities when they arrived. I'm sure the children who took part will remember the skills they gained and the friends they made for the rest of their lives.

My focus is representing the whole district to the best of my ability and making the role of chair as transparent and as inclusive as possible. Thus instead of having one consort I am inviting local charities and charitable organisations to attend with me as a means of signposting their work and services but also allowing them to network with people who may be able to advance their aims. I would also like to extend the invitation to councillors of any political group. Please feel free to invite me to events local to you and come with me to share the history, traditions and delights of your towns and villages.

Finally I now have an Instagram and Twitter @FstoneHytheChr account where I share all of my engagements. You can use that to see what events I've attended and which causes I've been celebrating and supporting. Please direct message or post about any events you'll like me to attend along with contact details and I'll send your details on to my PA to confirm my attendance. If it's important to the people of our Town or village then is important to me".

29. **Petitions**

There were no petitions.

30. **Questions from the Public**

There were no questions from members of the public.

31. **Questions from Councillors**

The questions asked, including supplementary questions, and the answers given are set out in Schedule 2, appended to these minutes.

32. **Announcements of the Leader of the Council**

The Leader made the following announcements:

"I have been very busy since my last update. I have had many meetings with representatives of Government, Kent County Council, Parish Councils and local stakeholders groups. I have held many meetings with Otterpool Park LLP.

I joined many other runners in the regular, weekly Park Run on the fantastic Folkestone Lees, which must rate as the Park Run with the most far reaching views in the Country.

I attended the flag raising ceremony at the Civic Centre on Monday the 19th June. On Saturday the 24th June, I was proud and honoured to be invited by the Mayor of Hythe to join her in the celebration of the incredible men and women of our Armed Services during Armed Forces Day. I was equally please to attend the Armed Forces Day celebration on Sunday the 25th June, with the Mayor of Folkestone.

Following their announcement of cuts to local bus services I convened a meeting with Stagecoach to discuss. I can report a positive response and discussions continue. The Stagecoach Managing Director will be considering my further views and coming back to me.

I attended the Local Government Association Conference to learn what other local Councils are doing to overcome very similar problems to those we have in Folkestone and Hythe.

I have visited Dungeness Power station twice to join the discussions regarding the government's competition to find sites for 10 Small Modular Reactors.

I attended the Tall Ships Event at Folkestone Harbour. I have attended two meetings of the Kent Leaders Forum and also the meeting of the East Kent Leaders.

Finally, I have an appeal. This I hope will be an inclusive Council, and we all know that the problems of our district are often complex and multilayered. I therefore have a plea or a call for ideas, from individual Councillors to make propositions, suggestions or proposals that can advance our objective in making the district the best place to live or visit. I want to cut across political boundaries and ask members from all parties to make your suggestions to the relevant Portfolio holders, so they can be properly discussed with officers and I'm sure the resulting improvements, however small, will benefit everyone in the district".

Councillor McConville, Leader of the Labour group responded to the communications and stated the following:

"I'm very happy to engage with you on that last point, hopefully we can all work together to do what is needed. Obviously you have been very busy, it's good that you are earning your pennies! While your meetings are very important, there is a lot more going on in our town, and I thought I'd share a couple of fantastic things that are going on that you might have missed due to pressing engagements. The fantastic Charivari, which this council supports year on year. Probably the best community engagement for the district, in terms of its noise and it's colour. There were more people than I've seen at the event in the last 6 or 7 years, easily, maybe even 10,000, the streets were full. On Sunday we had another fantastic community day on the Leas, filmed by the BBC, so hopefully everyone will look forward to seeing this on the television later this year/early next year, the great work that local community people do in putting these events together. Just last night the fantastic Turner Schools students put on an art exhibition. It's clear we have some really good emerging talent coming up in the district.

There has also been a number of consultation events. I think it's great that we as a council do whatever we can to try and continue to facilitate and allow residents to engage in the many proposals either by us or our partners that are impacting the district".

Councillor Mrs Hollingsbee, Leader of the Conservative Group also responded and stated:

"I'd like to welcome your last point in terms of members taking part and offering suggestions, and I'm sure my small group will be willing to do that. I was delighted that the toilets in the country park have now been opened which was a project started by the previous administration. I also like to say in terms of the Tall Ships Project, this is close to my heart and a very important project for the district. I echo the Chair's comments. Of course, you have been very busy, as have many of us, and it's great to hear that you are again meeting a number of stakeholders and partners. I think that is important for this district."

The Leader then responded to the comments of both opposition group leaders and stated "I have nothing to add, except that I'm sure with the experience and expertise in this room, we can come together to make small incremental improvements or large significant improvements. If we all work together, the synergy we have will be extraordinary".

Proposed by Councillor Jim Martin,  
Seconded by Councillor Prater; and

**RESOLVED:**

That the Leaders announcements be noted.

(The recommendations were agreed by affirmation of the meeting).

**33. Portfolio Holder reports to Council**

The Portfolio Holder reports had been circulated within the agenda packs and noted by Members.

**34. Opposition Business**

Councillor McConville, Leader of the Labour Group, outlined his opposition business which asked for consideration of a council owned service for maintenance and compliance of council owned homes.

Proposed by Councillor McConville,  
Seconded by Councillor Godfrey; and

**RESOLVED:**

That Option (b) (Refer the issue to the Cabinet or relevant Overview and Scrutiny Committee, as the case may be, for their observations before deciding whether to make a decision on the issue) be applied to the business below:

- To consider as an option, the delivery of maintenance and compliance for council owned housing, as a council owned service. As opposed to the awarding of an outsourced contract.
- That any such paper which looks to tender for a new contract includes this option in both its planning and decision making.

(The recommendations were agreed by affirmation of the meeting).

### 35. **Motions on Notice**

Councillor Chapman, Labour Group, outlined her motion which sought approval on various actions relating to the Elections Act.

Proposed by Councillor Chapman,  
Seconded by Councillor McConville; and

#### **RESOLVED:**

- That the Leader of the Council write to the Minister of State at the Department for Levelling Up, Housing and Communities requesting that the franchise for local elections in England and Northern Ireland be extended to all qualifying foreign nationals in line with eligibility criteria in Scotland and Wales. This would ensure a UK-wide and fair approach so that all our residents, who are also our council taxpayers, are enfranchised.
- That this council work collaboratively with other local authorities and voluntary sector organisations to develop a strategy of communications about voter eligibility following the Elections Act.
- Ensure council officers in Democratic Services have a strategy in place to ensure that the implementation of the Elections Act, including the removal of some EU citizens from the register, does not wrongfully remove eligible voters from the register.

(Voting figures: 24 for, 0 against, 5 abstentions).

### 36. **Committee Membership Changes**

Under the Folkestone and Hythe District Council Constitution, Part 8.1 'Delegation to Officers', paragraph 3.18, the Head of Paid Service is authorised to make appointments to committees or sub-committees at the request of the relevant political group leader. This report sets out the appointments made, under these powers, on the instruction of the Leader of the Conservative Group.

Proposed by Councillor Prater,  
Seconded by Councillor J Martin; and

**RESOLVED:**

**That report A/23/11 be received and noted.**

(Voting figures: 29 for, 0 against, 0 abstentions).

**37. Urgent item of business - Extension of term of office of Independent member of the Audit and Governance Committee**

In December 2019, Full Council agreed to the recommendations of the Audit and Governance Committee to appoint an Independent member to the Audit and Governance Committee. It had been envisaged the appointment would run until May 2023. However, due to the pandemic, the recruitment exercise was delayed, and an appointment was not made until November 2020. On 20 July, the Audit and Governance Committee considered Aug/23/02 and made a recommendation to Full Council that Andy Vanburen's term be extended until November 2024.

Proposed by Councillor Wimble,  
Seconded by Councillor McShane; and

**RESOLVED:**

- 1. That report A/23/12 be received and noted.**
- 2. That the appointment of Andy Vanburen be extended to November 2024.**

(Voting figures: 29 for, 0 against, 0 abstentions).

**Council 20 July 2023**

**Agenda item 9 (Portfolio Holder reports)**

## **1. Report of the Leader and Cabinet Member for Otterpool Park and Planning Policy**

- I have regularly held meetings with all directors and heads, internally.
- I have discussed with officers a variety of services, projects and initiatives.
- I have regularly attended leadership meetings with other party leaders.
- I have met regularly with Damien Collins MP and Roger Gough Leader of KCC.
- I have attended Kent Leadership Forum and the East Kent Leaders Group.
- I have held many meetings with local businesses and local community groups.
- I have attended the Constitutional Working Group.
- I attended a meeting of the 5 Parish Councils involved in Otterpool Park
- I attended the Royal British Legion's Freedom of the Town Celebration.
- I joined Kate Strong on her cycle around Britain (Hythe to Folkestone) highlighting some of our environmental projects.
- I attended meeting with Homes England regarding their future involvement in Otterpool Park - these discussions are on-going.
- I attended meetings with Otterpool Park LLP and potential Joint Venture Partners.
- I attended the Green Business Grants committee that awards grants to local business for environments improvements.
- I attended a briefing by KCC on the future of Family Hubs.
- I attended a meeting of Cycle Shepway.
- I attended the Community Planning Day at Sellindge on Phase 1b.
- I have met with Stagecoach, the bus service provider and had a great deal of correspondence.

## **2. Report of the Deputy Leader and Cabinet Member for Finance and Governance**

In late August I attended an "Owners / Members" meeting for Otterpool led by the leader as portfolio holder for Otterpool Park. This was a part of the review of the management, structure, accountability, funding and targets of Otterpool Park and the LLP set up to run it. This will lead to a series of reports and discussions and decisions through the Autumn which will reshape the oversight and financing of the project and clarify its impact on the budget for coming years.

Meetings of the Constitution Work Group have continued. There is now a page live with details of the process, including future meeting dates and how members of the public can watch the meetings <https://www.folkestone-hythe.gov.uk/democracy/change-cabinet-committee-system> There has been reasonable consensus (I think!) at the meetings to date, which a streamlined committee structure emerging, and considering how that aligns against the Council staffing structure. All Group Leaders are on the Working Group, and I'd

hope that we will start to be able to discuss some more detailed outline proposals with all Councillors at least before the end of October.

At my most recent catch-up with Andrew Hatcher, who leads the Welfare and Benefits team, Andrew also outlined a new leaflet the team had put together explaining the help they can offer in the most accessible way possible: I think its really helpful. There are also additional schemes that appear regularly the team can point people to, such as the current Kent County Council scheme offering a £100 food voucher to eligible households.

**The Welfare and Benefits team is one of the most frontline of services. In difficult times for many of us, although Council budgets are really tight, we know the budgets of our residents are even tighter. The support our Welfare team offers makes people's lives just that little easier, and that has to be the overwhelming priority where we can over the coming months.**

### **3. Report of Councillor Mike Blakemore, the Cabinet Member for Community and Collaboration**

FHDC and other agencies were given the opportunity in late July to bid for up to £300,000 of 'safer streets' funding from the Police & Crime Commissioner for improvements to the area around Folkestone town centre but with an extremely tight deadline. I attended two meetings with partners involved in putting together the bid, which was submitted on 14 August, and a subsequent meeting to discuss communications. Led by FHDC this was a tremendous piece of joint working completed at speed and we will hear on 1 October whether the bid was successful.

Like many Members I have been concerned about some of the implications for youth services of Kent County Council's plans to introduce family hubs, especially the removal of funding for commissioned services including youth clubs in Hythe. I attended a members' briefing and worked with officers on a response to the formal consultation on the proposals as well as an open letter to the leader of KCC.

With Cllr Jim Martin, I visited Academy FM to meet the Station Manager to discuss his ideas for profiling ward councillors and the work of the council.

I also attended two meetings of Folkestone & Hythe District and Parish Councils Liaison Committee as well as Cabinet and Planning Committee meetings and chaired my first Licensing Sub-Committee.

### **4. Report of Councillor Polly Blakemore, the Cabinet Member for Transport, Regulatory Services & Building Control**

The two months since the last full council have been as busy as ever in all areas of my portfolio.



On 20<sup>th</sup> July 2023 an outbreak of highly pathogenic avian influenza was confirmed in a commercial poultry flock near Elham. The disease control zones with enhanced biosecurity measures around the premises included a 3km Protection Zone and a 10km Surveillance Zone. It was unfortunately necessary to humanly destroy the flock and the premises were disinfected. FHDC's Food & Safety Team were quick to contact both the affected farm and businesses who had been supplied by the farm and establish that there was minimal risk to public health. This information was fed back to the Food Standards Agency. Following successful completion of disease control activities, both the surveillance and protection zone were lifted on 23<sup>rd</sup> August 2023. Many thanks to Nicola Wilson and her team for her speedy response to this situation.

Alongside their regular enforcement activities, Karen Weller's team have been working hard all summer on the Beach Safety and Paws for Thought campaign right across the district.

The Planning Enforcement team are flat out on a multitude of cases. As much of their work is not dealt with publicly, there is a plan to publicise the numbers of ongoing cases, successful prosecutions etc so that residents can be aware of the extent of the portfolio of work in progress. Recruitment is ongoing in Building Control to bring this team up to full strength.

After returning to informal consultation on the extension of the CPZ B to confirm that a majority of residents supported the application, Turketel Road will now be incorporated into the zone. We also consulted on amendments to Zone C on The Stade to try and help ease the ongoing parking issues and the resultant effect on residents. Amendments were made following the consultation and two loading bays will be installed. Blue badge holders will not be permitted to park in these loading bays.

Stagecoach have now introduced their revised timetables reflecting many of the service cuts and reductions announced in the summer despite Kent County Councillor Jenni Hawkins' petition, which was signed by 1600 local bus users, and the pressure brought by local councillors not least Cllr Jim Martin. These cuts continue to be a cause for real distress and concern for many residents, affecting the elderly, school children, people trying to access hospitals and our commercial centres. Rural areas are particularly badly affected, for example the village of Lympne has been removed from the No 10 route. As a council, we will continue to make representations to Kent County Council as our Local Transport Authority in a bid to restore a decent public transport service for our residents.

In the context of these Stagecoach cuts I have been in conversation with Linda Marsh, Romney Marsh Partnership Senior Specialist, regarding the various community bus projects she has been championing. This is a now an issue for consideration right across the district.

I have continued to engage with Cycle Shepway and have a meeting scheduled with Click2Cycle, the app-led bike hire service, to see how the council can better support their ambitions in the district. Cycle Shepway are actively involved in

infrastructure regeneration projects for the district such as the Town Centre Levelling Up plan. They are making a timely push in schools to get students on to bikes to ease the pressure on roads and the reduced Stagecoach services. This is backed by an emphasis on education on the practicalities of cycling as a means of transport for children and their families to encourage people onto bikes.

Linked to all the above the Joint Transportation Board are considering reports on KCC's Bus Service Improvement Plan and the Active Travel Cheriton Road consultation at their September meeting.

On 1<sup>st</sup> August, I attended my first meeting with the enterprising White Cliffs Community Rail Partnership, bringing together district and town councils between Westenhanger and Sandwich with the aim to provide a voice for communities and promote sustainable travel. I have also been in touch with Richard Moffatt of the ambitious Remembrance Line Association and the council has facilitated contact with Network Rail to allow access for a community clean-up of the disused railway line adjacent to Tram Road.

## **5. Report of Councillor Gary Fuller, the Cabinet Member for Resident Engagement and Accountability**

The council continues to improve access for residents to online services via My Account, with the IT team working hard to improve our infrastructure and reduce the need to make use of paper-based forms, phone calls, and emails. With so many services moving online, cyber security and data protection are key issues for the Council. Over the past few months, and going forwards, the IT team have put in place various new systems that will improve our resilience and ensure that any potential attacks are dealt with quickly and effectively. Many thanks to the team for all their efforts in getting these in place.

Underpinning the above is the excellent work by the customer services team and wider service areas to understand and improve the customer journey, taking every opportunity to introduce quicker online options and to identify any areas for improvement. A key strength has been training team members to manage a range of query types and identifying opportunities for service areas to deal with more complex queries. This is ongoing work and, along with the increased take up of My Account, I expect the Council and the public to reap the benefits over the coming years.

The council has also recently received an audit report on waste services. This report outlines areas for improvement in the management of street cleansing. I'm pleased to note that officers have responded positively and proactively to put in place the necessary actions and processes to ensure that we maximise the opportunity to improve the services we offer.

## **6. Report of Councillor Rich Holgate, the Cabinet Member for Place Plan, Heritage, Tourism and District Economy**

A typically quieter August has given me the opportunity to reflect on our efforts and think about some of the more pressing challenges ahead.

I have spent time at some of our fantastic Summer events and spoken to a huge variety of residents on what events do well, what they would like to see more of and what events they enjoy less.

Elsewhere it was a pleasure to finally meet and discuss with Heritage groups to understand how and where we can return some focus to the wonderful Heritage we have across our district. Look forward to furthering this in the weeks ahead.

Finally, having seen such fantastic engagement at our recent levelling up consultations we have begun to consolidate this feedback into meaningful changes and alterations to the plans. I look forward to sharing more in due course.

## **7. Report of Councillor Stephen Scoffham, the Cabinet Member for Climate Change, Environment and Biodiversity**

I have been working on a broad front both to support sustainability related initiatives across the District and working to identify options and priorities for the months ahead. The importance of focussing on the chalk downlands has become increasingly apparent.

### **Site visits**

- Attended a briefing session at Dungeness Power Station (7<sup>th</sup> July)
- Toured the new housing development at Sellindge at the invitation of Quinn Homes (20<sup>th</sup> July)
- Supported plans to introduce new plastic recycling bins at Sunny Sands (15<sup>th</sup> August)
- Inspected the sea defences at Hythe Firing Range (25<sup>th</sup> August)
- Met with Kate Strong as she passed through Folkestone on her Climate Cycle round Britain (30<sup>th</sup> August)

### **Green and Blue Infrastructure Strategy**

Cabinet adopted the Green and Blue Infrastructure Strategy on July 12<sup>th</sup>. This identifies over 100 needs, opportunities and priorities for the District. Work is now being undertaken to identify actions which are within the control of the Council that might usefully be pursued. At the same time, the opportunity to implement the strategy in conjunction with external bodies and organisations such as the White Cliffs Partnership and the North Downs Area of Outstanding is being considered.

### **District Wide Carbon Reduction Strategy**

The strategy is now being prepared for public consultation. A meeting of the Carbon Innovation Lab which forms one element of the carbon reduction strategy was held on 4<sup>th</sup> September.

### **Community Liaison and Engagement**

A joint meeting organised by Cllrs James Butcher, Elaine Martin and myself was held at Elham Village Hall on 2<sup>nd</sup> September to explore local concerns and priorities. This was an informal and open event, which was designed to gather opinions from across the rural community.

### **Planning issues**

There have been a considerable number of planning issues within the North Downs East ward which I represent together with James Butcher and David Godfrey. Several of these involve camp and caravan sites. One of them involves motor sports. Traffic speeds on the A260 in Densole is another issue. Further afield and after several site visits and research into the issues involved, I have asked for the proposal for a photovoltaic solar array at Pent Farm, Postling to be called in for consideration by the Planning Committee as it is a matter of public interest.

## **8. Report of Councillor Rebecca Shoob, the Cabinet Member for Housing and Homelessness**

Since the last report, I have been on further neighbourhood inspections across the district and seen more of the work the teams do on the ground with tenants and with looking after our homes.

I was delighted to attend the official opening of the newly refurbished and retrofitted Ross House and to hear positive feedback from tenants on how they are finding it. It was great to see the solar panels, heat pumps and the high level of insulation now in place that I hope will make them appreciably more comfortable homes to live in.

I've had various briefings from officers. In particular, I was very pleased that we have been awarded government funding for 5 additional council homes, under a scheme to provide homes for Afghan refugees.

Finally, I joined officers, tenants and procurement advisers to hear presentations from potential providers to replace the current analogue telecare system.

## **9. Report of Councillor Jeremy Speakman, the Cabinet Member for Assets and Operations**

Assets and Operations teams continue to maintain a busy schedule including the following:

Connect 38 - preparing for letting and following up expressions of interest.

Biggins Wood site – resolved issues that were holding up sale to the developer.  
Ship Street and High View sites progressing towards being marketable.

The Varne site ready to exchange contracts for sale.

Coast Drive Beach Huts ongoing with some issues to resolve with Crown Estates.

Shorncliffe Pavilion handover issues with Taylor Wimpey remain unresolved and the matter is being escalated.

Grounds maintenance have had a challenging year with extended mowing season and staff recruitment issues.

Coastal Park play area being assessed for repairs to towers.  
Resurfacing of Royal Military Canal path completed.

Toilet handwash units have been replaced in all toilets and electrical inspections of facilities are underway; the roof is being replaced in High Knock toilets and graffiti removed from Radnor Park toilets.

#### Veolia Contract for Waste Services

Since the Spring when there were significant issues with street cleansing, Veolia's performance did start to improve. At that time The East Kent Partnership audit of the Council's joint contract with Dover District Council took place mainly in the Dover area. I am pleased that the report acknowledges the improvement in the waste collection service, which is running well after a difficult start to the contract.

The Audit report has however, also identified the need for improvements in the street cleansing, how this is monitored, and the effectiveness of the Waste Team. I am particularly concerned with the robustness of the cleansing arrangements over the weekends and along the coast. As you may know, the Waste Team is managed on our behalf by DDC, and I am pleased that the Auditors have accepted our Action Plan to address these issues. However, if more fundamental changes are needed to how the waste team operates then I am also willing to consider these. I am meeting shortly with my counterpart at DDC to discuss the recent audit and other issues.

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This Report will be made public on 12 September 2023



Report Number **A/23/14**

**To:** Council  
**Date:** 20<sup>th</sup> September 2023  
**Status:** Non Executive Decision  
**Responsible Officer:** Amandeep Khroud – Assistant Director – Governance and Law

**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 – POLICY**

**SUMMARY:** This report sets out the Council's policy on the use of directed surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

**REASON FOR RECOMMENDATIONS:**

Full Council is asked to agree the recommendations set out below to and to approve the policy. This policy forms part of the Policy Framework as set out in the constitution.

**RECOMMENDATIONS:**

1. To receive and note report A/23/14.
2. To approve the RIPA policy and procedure in appendix 1 to this report.

## **1. INTRODUCTION**

- 1.1 Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) puts covert surveillance on a statutory basis enabling public authorities identified in the legislation to carry out surveillance operations without breaching the Human Rights Act 1998.
- 1.2 A number of statutory instruments and codes of practice published by the Home Office govern the operation of RIPA; the most recent came into effect in October 2012.
- 1.3 Organisations using RIPA are subject to regular inspection by the Investigatory Powers Commissioner's Office. Previously this was undertaken by the Office of Surveillance Commissioners (OSC) however on 1 September 2017 the OSC were merged with the Interception of Communications, and Intelligence Services Commissioners to form the new regulator.
- 1.4 The most recent onsite RIPA inspection was carried out on 29<sup>th</sup> August 2023 which demonstrated that Folkestone and Hythe District Council was compliant with the requirements of RIPA legislation.

## **2. REPORTING REQUIREMENTS**

- 2.1 The guidance states:

“elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.”

- 2.2 This report sets out the policy and seeks Full Council's endorsement of it.

## **3. BRIEF OVERVIEW OF RIPA**

- 3.1 The Act enables senior officers within public authorities to authorise Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS). These authorisations can however only take effect once approved by a Magistrate.
- 3.2 The following sections give a brief overview of the types of surveillance:-

- a) Directed Surveillance

RIPA defines Directed Surveillance as surveillance that is covert but not intrusive. Directed Surveillance must relate to a specific investigation or operation and is surveillance that is likely to result in obtaining private information about someone, including the target of the investigation or operation. Private information includes any aspect of a person's private or



personal relationships with others, including family and professional/business relationships.

Directed Surveillance is usually planned surveillance. There is provision, in urgent cases, for an authorisation to be applied for and granted in exceptional circumstances (i.e. where the time taken to apply in writing would, in the judgment of the Authorising Officer, be likely to jeopardise the operation). In such circumstances unless renewed, the authorisation will cease to have effect after seventy-two hours.

b) Covert Human Intelligence Sources (CHIS).

RIPA defines a Covert Human Intelligence Source (CHIS) as a person (source) who establishes and/or maintains a personal or other relationship with a person for the purpose of: covertly using the relationship to obtain information or to provide another person with access to information or, covertly disclosing information obtained through the relationship. A CHIS is deployed in a manner intended to ensure that the target is unaware of the investigation or the purpose of the relationship between the source and the target.

The Council has never sought to make use of the CHIS provision. The Policy requires that if the use of CHIS is being contemplated, the officers concerned should seek the appropriate advice from other organisations that more commonly use CHIS surveillance, such as the Police.

3.3 The council can only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. These latter offences would, in any event, be matters for Kent County Council trading standards.

3.4 The Council may only authorise directed surveillance where it is both necessary and proportionate to the investigation or operation being undertaken and to what is being sought to achieve in terms of evidence gathering. The Authorising Officers have a key role in carefully scrutinising all applications for the use of RIPA powers under a specific authorisation. Authorising Officers must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.

3.5 The last authorisation for directed surveillance was granted on 1 June 2012.

#### **4. THE POLICY**

4.1 The policy has been reviewed and updated as necessary and is attached as shown in the Appendix 1.

#### **5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

### 5.1 **Legal Officer's Comments**

The RIPA codes of practice advises that the elected members of a local authority should set the RIPA policy at least once a year. This is reflected in the council's RIPA policy.

### 5.2 **Finance Officer's Comments (CS)**

There are no direct financial implications arising from this report

### 5.3 **Diversities and Equalities Implications**

No implications arising directly from this report.

## 6. **CONTACT OFFICER AND BACKGROUND DOCUMENTS**

Councillors with any questions arising from this report should contact the following officer prior to the meeting:

Amandeep Khroud – Assistant Director – Governance, Law and Regulatory Services

Telephone: 01303 853253

E-mail: [Amandeep.khroudl@folkestone-hythe.gov.uk](mailto:Amandeep.khroudl@folkestone-hythe.gov.uk)

The following background documents have been relied upon in the preparation of this report:

None

#### **Appendices:**

Appendix 1: RIPA Policy and Procedure

FOLKESTONE & HYTHE DISTRICT  
COUNCIL

Regulation of Investigatory Powers Act  
2000 (RIPA) &  
Investigatory Powers Act 2016

RIPA Policy and Procedures

Issue [17]

Assistant Director (Governance, Law and Regulatory Services)  
The Civic Centre  
Castle Hill Ave  
Folkestone  
Kent CT20 2QY



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## 1. Introduction

This Policy is the framework on which the Council applies the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA) as it relates to covert surveillance. Certain covert powers under RIPA and the Investigatory Powers Act 2016 (IPA) are available to local authorities and can be used in appropriate circumstances in accordance with the requirements of the legislation to support the delivery of their functions. The Investigatory Powers Commissioner's Office (IPCO) oversees the use of covert powers under RIPA by local authorities.

This Policy must be read in conjunction with the Home Office Codes of Practice on Covert Surveillance and Property Interference, the Code of Practice on Covert Human Intelligence Sources and the Code of Practice on Communications Data.

Covert surveillance should be used only when required and it can be justified in an investigation. This will normally be as a last resort. Copies of the Home Office Codes of Practice are available on their [website](#). The Home Office website should be consulted regularly from time to time to ensure that the correct versions of the Codes of Practice are being used.

RIPA and this Policy are important for the effective and efficient operation of the Council's actions with regard to covert surveillance and Covert Human Intelligence Sources. The RIPA Monitoring Officer will therefore keep this Policy under annual review.

The RIPA Monitoring Officer is responsible for keeping the RIPA forms up to date and for checking the Home Office website and Codes of Practice. The RIPA Monitoring Officer will also be responsible for submitting a report on a three monthly basis to the Cabinet on the Council's use of RIPA if the Council has used RIPA during the previous three months. The RIPA Monitoring Officer is also responsible for submitting an annual report to Cabinet on this Policy and, if relevant, the Council's use of RIPA. They will also keep the Centrally Recordable Record as required by the Codes of Practice.

**Authorising Officers must bring any suggestions for continuous improvement of this Policy to the attention of the RIPA Monitoring Officer at the earliest possible opportunity.** If any of the Home Office Codes of Practice change, this Policy will be amended accordingly.

## 2. Policy Statement

The Council takes seriously its statutory responsibilities and will, at all times, act in accordance with the law and take necessary and proportionate action in these types of matters. In that regard, the Corporate Leadership Team is duly authorised by the Council to keep this Policy up to date and to amend, delete, add or substitute relevant provisions as necessary. The Cabinet will, if the Council has used RIPA, receive the RIPA Monitoring Officer's report every three months. The report will set out the covert surveillance carried out (though without revealing details of specific operations) and, if appropriate, reporting alterations to this Policy. An annual report will be submitted to Cabinet on this Policy setting out any alterations since the last report.

It is the policy of the Council that where RIPA applies (see below) surveillance should only be carried out in accordance with this Policy. This Policy covers the use of directed surveillance, intrusive surveillance and the deployment of Covert Human Intelligence

Sources by the Council. These types of surveillance are set out in greater detail in paragraph 7 (Types of Surveillance) below.

Where RIPA does not apply, surveillance may properly be carried out provided that the appropriate rules and procedures are followed. For example, surveillance connected with an employment issue will have to be carried out in accordance with the Data Protection Act 2018 and the various HR policies. The Council has also adopted a Non-RIPA Authorisation Policy<sup>1</sup> which Officers must follow for covert surveillance which falls outside of RIPA. Advice on non-RIPA surveillance should be sought from legal services or HR as appropriate.

### **Roles and Responsibilities of Corporate Directors, Assistant Directors, Chief Service Officers, Senior Authorising Officers, Authorising Officers, Senior Responsible Officer and the RIPA Monitoring Officer**

This section sets out the various roles and responsibilities in relation to the use of RIPA.

It is essential that Corporate Directors, Assistant Directors, Chief Service Officers and Authorising Officers take personal responsibility for the effective and efficient operation of this Policy and the implementation of RIPA in their departments.

#### ***Roles***

##### Authorising Officer

An Authorising Officer is a person who considers whether or not to grant an application to use directed surveillance. They must believe the activities to be authorised are necessary for the purposes of preventing or detecting crime and that they are proportionate to what is sought to be achieved by carrying them out. The authorisation is then subject to judicial approval.

**An Authorising Officer may not, except in case of urgency, consider an application to use directed surveillance if the Applying Officer is an Officer in his/her service area or the Authorising Officer has direct involvement with the operation.**

##### Senior Authorising Officer

A Senior Authorising Officer is a person responsible for considering whether or not to grant an authorisation where confidential information is likely to be obtained or for use of a juvenile CHIS or a vulnerable adult as a CHIS.

##### Senior Responsible Officer

The Senior Responsible Officer has overall responsibility for the governance and oversight, use and operation of RIPA within the Council, oversees the competence of Authorising Officers and the processes in use in the Council. The Senior Responsible Officer is not an Authorising Officer as it would be inappropriate to oversee his / her own authorisations. The Senior Responsible Officer should be a member of the Corporate Leadership Team.

Specifically, the Senior Responsible Officer will be responsible for:

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- The integrity of the processes in place within the Council for the management of CHIS and directed surveillance;
- Compliance with the statutory provisions and Codes of Practice;
- Training or arranging training for Authorising Officers, together with the RIPA Monitoring Officer;
- Ensuring Officers generally understand provisions relating to covert surveillance and Covert Human Intelligence Sources and communications data;
- Engagement with the IPCO inspectors when they conduct their inspections;
- Overseeing the implementation of any post-inspection action plans approved by the relevant oversight Commissioner;
- Ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in IPCO inspection reports; and
- Addressing any concerns raised within an IPCO inspection report.

### RIPA Monitoring Officer

The RIPA Monitoring Officer has:

- The duty to maintain the list of Authorising Officers;
- The power to suspend from the list of Authorising Officers any Authorising Officer who does not follow the procedure or who does not attend training sessions; and
- Offer advice to the Authorising Officer where there are deficiencies in the application that have not been able to be resolved with the applying officer.

### **Responsibilities**

Assistant Directors and Chief Service Officers are responsible for ensuring their relevant members of staff are suitably trained as 'Applying Officers' so as to avoid common mistakes appearing on forms for RIPA authorisations.

Assistant Directors and Chief Service Officers will also ensure that staff who report to them follow this Policy and do not undertake or carry out any form of surveillance governed by RIPA without first obtaining the relevant authorisations in compliance with this Policy. Wilful failure to follow this Policy will constitute gross misconduct under the Council's HR policies.

Corporate Directors, Assistant Directors, Chief Service Officers, Senior Authorising Officers and Authorising Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances should Assistant Directors or Chief Service Officers permit an application to be made unless, and until, s/he is satisfied that the health and safety of Council employees/agents is suitably addressed and/or risks minimised, so far as is possible, and proportionate to/with the surveillance being proposed. It is the responsibility of the Applying Officer (i.e. the person who applies to the Authorising Officer to use the Council's RIPA powers) to carry out any risk assessment and complete a written risk assessment if necessary. **If a Head of Service is in any doubt s/he should obtain prior guidance on the same from a Corporate Director, the Council's Health & Safety Officer or the RIPA Monitoring Officer.**

Authorising Officers must acquaint themselves with the relevant Codes of Practice issued by the Home Office regarding RIPA. Any failure to comply exposes the Council to unnecessary legal risks and criticism from the IPCO. All stages of the process (application, review, renewal and cancellation) must be promptly dealt with.



Coming across **confidential information** during surveillance must be given prior thought before any applications are made or authorised, as failure to do so may invalidate the admissibility of any evidence obtained. Furthermore, thought must be given before any forms are signed to the retention and disposal of any material obtained under a RIPA authorisation. Where confidential information is likely to be obtained through covert surveillance, the application must be authorised by a Senior Authorising Officer.

The Authorising Officer must ensure proper regard has been given to **necessity and proportionality** before any applications are authorised. 'Stock phrases' or cut and paste narrative must be avoided at all times as the use of the same may suggest that insufficient detail had been given to the particular circumstances of any person likely to be the subject of the surveillance. Any **equipment** to be used in any approved surveillance must also be properly controlled, recorded and maintained for audit purposes.

Authorising Officers must ensure that reviews are conducted in a timely manner and that cancellations and renewals are effected before the authorisation ceases to have effect. Best practice for Directed Surveillance is that a review should be carried out at a frequency specified by the Authorising Officer, based on the activity being authorised but in any event no more than 4 weeks after the grant of authorisation.

The RIPA Monitoring Officer shall have responsibility for maintaining, updating and enforcing this Policy. S/he, in conjunction with the Senior Responsible Officer, shall also be responsible for the provision of adequate training to Authorising Officers and Applying Officers and for ensuring that no authorisations shall be granted unless the Authorising Officer has received such training.

The RIPA Monitoring Officer shall also ensure that adequate records are maintained in accordance with the relevant and current Codes of Practice and also to check that reviews are conducted in a timely manner and that cancellations and renewals are effected before the authorisation ceases to have effect.

The RIPA Monitoring Officer's contact details are set out in Appendix 1 of this Policy.

#### **4. RIPA – General Information**

The Human Rights Act 1998 (which brought much of the European Convention on Human Rights and Fundamental Freedoms 1950 into UK domestic law) requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, his/her home and his/her correspondence.

The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council **may** interfere in the citizen's right mentioned above, **if** such interference is:

- (a) **In accordance with the law;**
- (b) **Necessary** (see below); **and**
- (c) **Proportionate** (see below).

RIPA provides a statutory mechanism (i.e. in accordance with the law) for authorising **covert surveillance** and the use of a '**Covert Human Intelligence Source**' (**CHIS**) e.g. undercover operatives. It now also permits public authorities to compel telecommunications and postal companies to obtain and release communications data to themselves in certain

circumstances. It works to ensure that **any** interference with an individual's right under Article 8 of the European Convention is **necessary** and **proportionate**. In doing so, RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

Directly employed Council staff and external agencies working for the Council are covered by RIPA while they are working for the Council. All external agencies must therefore comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised by one of the **Council's Authorising Officers**. It is the responsibility of the contracts manager to ensure that external agencies comply with this Policy. Authorising Officers are listed in **Appendix 1** to this Policy.

If the correct procedures are **not** followed, the courts may disallow evidence; a complaint of maladministration could be made to the Investigatory Powers Tribunal (IPT); the Council could be the subject of an adverse report made by the IPCO; and the Human Rights Act 1998 provides a cause of action for damages and/or an injunction against the Council should it be proven that the Council's actions amount to an unwarranted interference with human rights. Such action would not, of course, promote the good reputation of the Council and will, undoubtedly, be the subject of adverse press and media interest. In addition, wilful failure to follow this Policy could constitute gross misconduct under the Council's HR policies. **It is essential, therefore, that all involved with RIPA comply with this Policy and any further guidance that may be issued.**

Flowcharts of the procedures to be followed appear at **Appendix 2** for Directed Surveillance and for CHIS.

## **5. When is RIPA authorisation available?**

RIPA authorisation is only appropriate for surveillance which relates to the "core functions" of the Council and is for the purpose of preventing or detecting crime.

The core functions of the Council are defined as its "specific public functions" as opposed to its "ordinary functions". The ordinary functions are those functions which any public authority carries out e.g. employment of staff or entering into contractual agreements.

Surveillance, whether overt or covert, related to ordinary functions is not governed by RIPA and RIPA does not prohibit such activity. The Council has adopted a policy covering the authorisation of surveillance which is not covered by RIPA. The policy can be found [here](#). Advice on such surveillance should be sought from Legal Services and HR as appropriate.

Authorisations for both directed surveillance and CHIS are also subject to judicial approval, meaning that the Council must obtain the approval of the Magistrates' Court for any grant or renewal of a RIPA authorisation. The Magistrates' Court will only approve an authorisation where satisfied that the statutory tests have been met, and that the use of the technique is necessary and proportionate. Surveillance cannot commence until this approval has been obtained (see paragraph 10 below for further detail).

Through the application of authorisation procedures and Magistrates' Court approval, RIPA ensures that a balance is maintained between the public interest and the human rights of individuals.

## 6. What RIPA does and does not do:

### RIPA does:

- require prior authorisation of directed surveillance;
- prohibit the Council from carrying out intrusive surveillance;
- compel disclosure of communications data from telecom and postal service providers;
- require authorisation of the conduct and use of a CHIS;
- require safeguards for the conduct and use of a CHIS; and
- permit the Council to obtain communications records from communications service providers.

### RIPA does not

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

**If the Authorising Officer or any Applying Officer is in any doubt, s/he should ask the RIPA Monitoring Officer BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.**

## 7. Types of Surveillance

'Surveillance' includes:

- Monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications.
- Recording anything mentioned above in the course of authorised surveillance.
- Surveillance, by or with, the assistance of appropriate surveillance device(s).

**Surveillance can be overt or covert.**

### ***Overt Surveillance***

Most of the surveillance carried out by the Council will be done overtly; there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be going about Council business openly (e.g. a market inspector walking through markets).

Similarly, surveillance will be overt if the subject has been **told** it will happen, for example where a noisemaker is warned, (preferably in writing) that noise will be recorded if the noise continues or where an entertainment licence is issued subject to conditions and the licensee is told that officers may visit without notice or identifying themselves to the owner/proprietor to check that the conditions are being met.

### ***Covert Surveillance***

Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place (section 26(9) (a) of RIPA). Generally covert surveillance cannot be used if there is reasonably available an overt means of finding out the information desired. However, if those overt means might seriously undermine the conduct of any investigation or put innocent persons at risk then covert surveillance can be used.

RIPA regulates **two types of covert surveillance, (directed surveillance and intrusive surveillance)** and the use of **Covert Human Intelligence Sources (CHIS)**.

### ***Directed Surveillance***

Directed surveillance is surveillance which:

- is covert, but not intrusive surveillance;
- is conducted for the purposes of a specific investigation or operation;
- is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation);
- is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable to seek authorisation under the Act

### ***Intrusive Surveillance***

Intrusive surveillance is surveillance which:

- Is covert;
- Relates to residential premises and/or private vehicles; and
- Involves the presence of a person **in the premises or in the vehicle** or is carried out by a surveillance device **in** the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

“Residential premises” means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation. This includes a hotel room or prison accommodation that is occupied or used for residential purposes, but does not include common areas that a person has access to in common with others and in connection with their use of accommodation.

The 2010 Legal Consultations Order also provides that any directed surveillance that is carried out on premises ordinarily used for legal consultations, at a time when they are being so used, is to be treated as intrusive surveillance.

**Intrusive Surveillance cannot be authorised under RIPA for the Council. Only the police and other law enforcement agencies can use RIPA to authorise intrusive surveillance. Likewise, the Council has no statutory powers to interfere with private property.**

### ***Covert Human Intelligence Source***

A Covert Human Intelligence Source (“CHIS”) is someone who establishes or maintains a personal or other relationship for the covert purpose of using the relationship to obtain or covertly disclose information (see below)

**Private Information** in relation to a person includes any information relating to his/her private or family life. Private information is generally taken to include any aspect of a person’s private or personal relationship with others including family and professional or business relationships. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her **and others** that s/he comes into contact or associates with.

To take an example: although overt town centre CCTV cameras do not normally require authorisation, if the camera(s) are to be directed for a specific purpose to observe particular individual(s), authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. This example does not apply in Folkestone & Hythe as the Council no longer owns nor manages a town / city CCTV system.

### **Social media**

Social media can provide useful information as part of an investigation. However, Council Officers must consider if a RIPA authorisation is required if they are accessing social media for this purpose before undertaking any monitoring of a site.

Whilst initial research of social media to establish a fact or collate an intelligence picture is unlikely to require an authorisation for directed surveillance, persistent viewing of ‘open source’ sites may constitute directed surveillance on a case-by-case basis. This should be borne in mind e.g. if someone is being monitored through, for example, their Facebook profile for a period of time and a record of the information is kept for later analysis, this is likely to require a RIPA authorisation for directed surveillance. The key consideration is whether there is a persistent activity or systematic collection of personal information.

Where it is intended to access a social media or other online account to which the Council has been given access with the consent of the owner, the Council will still need to consider whether the account(s) may contain information about others who have not given their consent. If there is a likelihood of obtaining private information about others, the need for a directed surveillance authorisation should be considered, particularly (though not exclusively) where it is intended to monitor the account going forward.

In addition, Council Officers must be aware that the fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the social networking site being used works. Authorising Officers must not assume that one service provider is the same as another or that the services provided by a single provider are the same

Where information about an individual is placed on a publicly accessible database, for example the telephone directory or Companies House, which is commonly used and known to be accessible to all, they are unlikely to have any reasonable expectation of privacy over the monitoring by public authorities of that information. Individuals who post information on social media networks and other websites whose purpose is to communicate messages to a wide audience are also less likely to hold a reasonable expectation of privacy in relation to that information.

Depending on the nature of the online platform, there may be a reduced expectation of privacy where information relating to a person or group of people is made openly available within the public domain, however in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.

If it is necessary and proportionate for the Council to covertly breach access controls, an authorisation for directed surveillance is required. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a Council Officer or by a person acting on the Council's behalf (i.e. the activity is more than mere reading of the site's content). It is not unlawful for a Council Officer to set up a false persona, but this must not be done for a covert purpose without authorisation. Using photographs of other persons without their permission to support the false identity infringes other laws and such photographs must not be used.

In order to determine whether an authorisation should be sought for accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

- Whether the investigation or research is directed towards an individual or organisation;
- Whether it is likely to result in obtaining private information about a person or group of people;
- Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;
- Whether the information obtained will be recorded and retained;
- Whether the information is likely to provide an observer with a pattern of lifestyle;
- Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;
- Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
- Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.

To avoid the potential for inadvertent or inappropriate use of social network sites in investigative and enforcement roles, Council Officers should be mindful of the following:

- do not create a false identity in order to 'befriend' individuals on social networks without authorisation under RIPA;

- when viewing an individual's public profile on a social network, do so only to the minimum degree that is necessary and proportionate in order to obtain evidence to support or refute an investigation;
- persistent viewing of open profiles on social networks to gather evidence or to monitor an individual's status must only take place under a RIPA authorisation;
- be aware that it may not be possible to verify the accuracy of information on social networks and if such information is to be used as evidence, take reasonable steps to ensure its validity.

**For the avoidance of doubt, only those Officers designated and certified to be Authorising Officers for the purpose of RIPA can authorise directed surveillance IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Policy are followed. Authorisation for directed surveillance can only be granted if it is for the purpose of preventing or detecting crime and the criminal offence is punishable by at least six months' imprisonment or it is an offence under sections 146, 147, 147A of the Licensing Act 2003, section 7 of the Children and Young Persons Act 1933 (sale of alcohol and tobacco to underage children), section 91 of the Children and Families Act 2014, (purchase of tobacco, nicotine products etc. on behalf of persons under 18) or section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to persons under 18).**

The [Home Office Codes of Practice](#) on covert surveillance and CHIS contain essential guidance in relation to online covert activity and must be consulted.

If you are in doubt as to whether or not you can use directed surveillance for the crime you are investigating, you should contact Legal Services for advice to ensure that no unauthorised online covert activity takes place within the Council.

### Necessary

RIPA stipulates that the person granting an authorisation for directed or intrusive surveillance must believe that the activities to be authorised are necessary on one or more statutory grounds. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 has the following effects:

Local authorities in England and Wales can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or are related to the underage sale of alcohol and tobacco or nicotine inhaling products. The offences relating to the latter are in article 7A of the 2010 RIPA Order.

Local authorities cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.

### Proportionality

The authorised conduct will not be proportionate if it is excessive in the overall circumstances of the case. Each authorised action should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

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

**In other words**, this means balancing the intrusiveness of the activity on the subject of the covert activity and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances - each case will be unique and will be judged on its merits - or if the information that is sought could reasonably be obtained by other less intrusive means. **All such activity must be carefully managed to meet the objective in question and must not be arbitrary or unfair.** Extra care should also be taken over any publication of the product of the surveillance.

**Put very simply, it means not using a sledgehammer to crack a nut.**

As well as being proportionate, the covert surveillance must be necessary in all the circumstances.

### ***Examples of different types of Surveillance***

Type of Surveillance	Examples
Overt	<ul style="list-style-type: none"> <li>- Police Officer or Environmental Enforcement Officer on patrol</li> <li>- Signposted town centre CCTV cameras (in normal use)</li> <li>- Recording noise coming from outside the premises after the occupier has been warned that this will occur if the noise persists.</li> <li>- Most test purchases (where the officer behaves no differently from a normal member of the public).</li> </ul>
Covert but not requiring prior authorisation	<ul style="list-style-type: none"> <li>- CCTV cameras providing general traffic, crime or public safety information.</li> </ul>



Directed surveillance (must be RIPA authorised)	<ul style="list-style-type: none"> <li>- Officers follow an individual or individuals over a period, to establish whether s/he is working when claiming benefit or off long-term sick from employment.</li> <li>- Test purchases where the officer has a hidden camera or other recording device to record information which might include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner.</li> </ul>
Intrusive surveillance or interfering with private property – <b>Note: The Council cannot use RIPA to authorise this</b>	<ul style="list-style-type: none"> <li>- Planting a listening or other electronic device (bug) or camera in a person’s home or in/on their private vehicle.</li> </ul>

**Further Information**

Further guidance on surveillance which can be found in the Home Office Codes of Practice is set out in Appendix 5.

**Confidential Information**

Special safeguards apply with regard to confidential information relating to:

- confidential personal information;
- confidential constituent information; and
- confidential journalistic material.

The Authorising Officer for directed surveillance where confidential information is likely to be obtained or for the use of a CHIS must be a Senior Authorising Officer. Further guidance is available in the Home Office Codes of Practice.

**Legal Privilege**

Surveillance that is intended to result in knowledge of matters subject to legal privilege CANNOT be authorised. Where surveillance is not intended to result in knowledge of matters subject to legal privilege, but acquisition of such matters is likely, then the Authorising Officer must consider carefully whether such surveillance is appropriate. In particular, such surveillance can only be authorised in a limited number of circumstances and particular safeguard apply. The Authorising Officer in these circumstances must be a Senior Authorising Officer. Further guidance is available in the Home Office Codes of Practice.

**Collateral Intrusion**

Before authorising surveillance, the Authorising Officer must also take into account the risk

of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

Those carrying out the surveillance should inform the Authorising Officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation. When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised or a new authorisation is required.

Further guidance is available in the Home Office Codes of Practice.

## **Retention and Destruction of Products of Surveillance**

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 period and subject to review. Authorising Officers must make sure that they have regard to the [Code of Practice](#) (2020 edition) made under S23 Criminal Procedure and Investigations Act 1996.

There is nothing in RIPA that prevents material obtained from properly authorised surveillance from being used in other investigations. Authorising Officers must ensure, therefore, that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising Officers must also ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities relating to the handling and storage of material.

Material acquired under RIPA and IPA and RRD (Retain, Review & Destroy)  
All material obtained under an authorisation must be reviewed to determine if it needs to be retained or destroyed. Covertly obtained material can be retained if there are 'relevant grounds' for doing so or destroyed if the material acquired is no longer needed.

If an initial decision is made to retain the material, then a rolling three-year review period will be used to consider whether the material should be retained or destroyed.

All covertly obtained must be managed in accordance with the relevant Code of Practice. IPCO have also introduced their Data Assurance Programme, which will form part of all future inspections by them. The purpose of the IPCO Data Assurance Programme applies to data obtained under the Investigatory Powers Act (IPA) 2016 and the Regulation of Investigatory Powers Act (RIPA) 2000 and which is therefore the subject of oversight by IPCO. This programme is intended to promote compliance with the IPA and RIPA and the Codes of Practice, and with other legal obligations including the Data Protection Act (DPA) 2018.

IPCO have set six areas which will be inspected upon and the council will ensure that these are all considered when undertaking covert activity. These are:

1. Review the safeguarding obligations in the relevant Code of Practice for any powers used by your authority.
2. Ensure that internal safeguard policies for retaining, reviewing and disposing of any relevant data are accurate and up-to-date.
3. Ensure that the authorising officer for your authority has a full understanding of any

data pathway used for RIPA or IPA data.

4. Ensure that all data obtained under IPA and RIPA is clearly labelled and stored on a data pathway with a known retention policy.
5. Review the wording of safeguards in any applications to obtain data under IPA and RIPA and ensure that they accurately reflect the retention and disposal processes at your authority.
6. Review whether data obtained under previous authorisations is being retained for longer than is necessary and, if appropriate, consider disposing of retained data.

#### REPORTING OF RELEVANT ERRORS TO IPCO

The Council must report any Relevant Error to IPCO in accordance with the relevant Code of Practice. All reports should be submitted to [Errors@ipco.org.uk](mailto:Errors@ipco.org.uk)

Where any further information or action is required as a result of a Relevant Error report, an IPCO Inspector will make contact with the Council. The Relevant Error will then be assessed to determine whether the circumstances could have a) resulted in serious harm or b) call for any urgent changes to national policy or procedures. If this is the case, an investigation will take place. If not deemed serious, the Relevant Error will be addressed at the next inspection.

Relevant Errors will routinely be examined at each inspection. The Council will be required to provide records and confirmation that any material obtained in consequence of the error that has no connection or relevance to any investigation or operation has been destroyed. The SRO is responsible for oversight of reporting errors to the IPC, and the identification of both the cause(s) of errors and implementation of processes to minimise repetition.

### **8. Conduct and Use of a Covert Human Intelligence Source (CHIS)**

#### ***Who is a CHIS?***

A CHIS is someone who establishes or maintains a personal or other relationship for the covert purpose of using the relationship to obtain information or covertly disclose information to the local authority as a result.

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 attendant and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

However, 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 possible therefore that a person could become engaged in the conduct of a CHIS without the Council inducing, asking or assisting the person to engage in that conduct (i.e. "Tasking" – see Appendix 3 for further detail on the use and management of CHIS). As stated in paragraph 2.27 the Home Office CHIS Code of Practice the tasking of a person should not be used as the sole benchmark in seeking a CHIS authorisation, and it is possible that a person will become engaged in the conduct of a CHIS without a local authority inducing, asking or assisting the person to engage in this conduct. It is recommended that legal advice

is sought in any such circumstances.

### ***What must be authorised?***

The conduct or use of a CHIS requires **prior authorisation**:

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

Most CHIS authorisations will be for both use and conduct. This is because public authorities usually take action in connection with the CHIS, such as tasking the CHIS to undertake covert action, and because the CHIS will be expected to take action in relation to the public authority, such as responding to particular tasking.

Authorisations are also subject to judicial approval and cannot commence until this has been obtained.

Detailed records must be kept relating to each source.

**The Council can only authorise CHIS under RIPA IF, AND ONLY IF, the procedures, as detailed in this Policy, are followed. Authorisation for CHIS can only be granted if it is for the purposes of preventing or detecting crime.**

### ***Juveniles and Vulnerable Individuals***

The Investigatory Powers Commissioner (IPCO) must be informed within seven working days of a CHIS authorisation of a vulnerable adult or a juvenile source.

### **Children as Juvenile CHIS**

It is recognised that children are more likely to be more vulnerable than adults due to their age and level of maturity. As a result, enhanced protections are required to ensure their safety and welfare.

Children should only be authorised to act as CHIS in exceptional circumstances and subject to the enhanced risk assessment process set out in Article 5 of the Regulation of Investigatory Powers (Juveniles) Order 2000. The need to safeguard and promote the best interests of the child is a primary consideration in all such CHIS deployments, both when deciding whether to grant the authorisation and during the conduct of any subsequent operation.

On no occasion can a child under 16 years of age be authorised to give information against their parents or person with parental responsibility.

In accordance with the Code of Practice for Covert Human Intelligence Sources will only be used in exceptional circumstances and the Authorising Officer will be the Head of Paid Service and the duration will be four months.

If a decision is made to authorise a juvenile CHIS then when making arrangements for meetings, staff must ensure that an appropriate adult is present at any meetings with a

juvenile CHIS who is under 16 years of age when the meeting takes place. Where the CHIS is 16 or 17 years of age consideration will be given on a case-by-case basis following an assessment of the individual's maturity and intelligence to ascertain whether they understand the nature and implications of the role and risk, to undertake the role of a CHIS without an appropriate adult being present.

The rationale for any decision not to have an appropriate adult present will be documented by the Authorising Officer.

Further guidance can be found in the Code of Practice for CHIS, which must be consulted prior to any application being made.

### Vulnerable Adults

Special safeguards apply to the authorisation of a vulnerable adult as a CHIS. A vulnerable adult is a person aged 18 or over who by reason of mental disorder or vulnerability, other disability, age, or illness, is or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation. Where it is known or suspected that an adult may be vulnerable, they should only be authorised to act as a CHIS in exceptional circumstances. Vulnerable individuals will only be authorised to act as a CHIS in exceptional circumstances and a Senior Authorising Officer **MUST** give the authorisation for their use.

### ***Test Purchases***

Carrying out test purchases will not usually (as highlighted above) require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. However, using covert recording devices or CCTV cameras to record what is going on in the shop will require **authorisation as directed surveillance**. If required, a combined authorisation can be given for a **CHIS** and also **directed surveillance**.

### ***Anti-Social Behaviour Activities (e.g. noise, violence, race abuse, etc.)***

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

Recording sound (with a DAT recorder) on residential premises could constitute **intrusive surveillance**, unless it is done overtly. For example, it will be possible to record if the noisemaker is warned that this will occur if the level of noise continues.

Covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm), or the recording of verbal content which is made at a level that does not exceed that which can be heard from the street outside or adjoining property with the naked ear, are unlikely to constitute either direct or intrusive surveillance. In the latter circumstance, the perpetrator would normally be regarded as having forfeited any claim to privacy. Placing a covert stationary or mobile video camera outside a building to record anti-social behaviour on residential estates **will** require prior authorisation but it should be noted that unless this meets the definition of serious crime then it cannot be authorised under RIPA.

## ***Use and Management of a CHIS***

Particular requirements apply to the management and use of a CHIS. This is particularly important when considering that the CHIS may be putting themselves in some jeopardy by performing as a CHIS. Details of those arrangements are contained within **Appendix 3**.

The Authorising Officer must be satisfied that these arrangements are in place before authorising a request. The overriding duty is to the safety of and duty of care towards the CHIS.

### **Further Information**

Further guidance on CHIS can be found in the Home Office's Codes of Practice on CHIS listed in **Appendix 5**.

## **9. Acquisition of Communications Data**

Communications Data ('CD') is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). Local Authorities are not permitted to intercept the content of any person's communications.

Part 3 of the Investigatory Powers Act 2016 (IPA) replaced part 1 chapter 2 of RIPA in relation to the acquisition of communications data (CD). Under the IPA, local authorities can now also obtain details of in and out call data, and cell site location. This information identifies who a criminal suspect is in communication with and whereabouts the suspect was when they made or received a call, or the location from which they were using an Internet service. This additional data is defined as "events" data.

The threshold for which CD "events" data can be sought has been introduced under the IPA as "applicable crime". Defined in section 86(2A) of the Act this means: an offence for which an adult is capable of being sentenced to one year or more in prison; any offence involving violence, resulting in substantial financial gain or involving conduct by a large group of persons in pursuit of a common goal; any offence committed by a body corporate; any offence which involves the sending of a communication or a breach of privacy; or an offence which involves, as an integral part of it, or the sending of a communication or breach of a person's privacy.

Further guidance can be found in the Code of Practice on Communications Data

## **10. Authorisation Procedures**

**Directed surveillance** and the use of a **CHIS** can only gain the protection under RIPA if properly authorised, and conducted in strict accordance with the terms of the authorisation. **Appendix 2** provides flow charts of processes from application / consideration to recording of information and the storage / retention of data obtained.

### ***Authorising Officers***

Forms can only be signed by Authorising Officers who have the necessary authority from the Council. Authorised officers are listed in **Appendix 1**. It is the person that is authorised

rather than his/her post. This Appendix will be kept up to date by the RIPA Monitoring Officer and added to as needs require. If it is felt that a post should be removed or added, the RIPA Monitoring Officer will request a resolution from the Cabinet. The RIPA Monitoring Officer is however able to suspend an Authorising Officer from the list as detailed above.

All RIPA authorisations must be for specific investigations only and must be reviewed, renewed or cancelled once the specific surveillance is complete or about to expire. **The authorisations for directed surveillance last for three months and for CHIS 12 months (four months for a juvenile CHIS); however, they must also be cancelled as soon as the need for them no longer exists.**

### ***Training Records***

All Council staff who may be involved in the application, authorisation and management of covert activity will receive refresher training as appropriate in the issues to take into account, including in relation to online covert activity. The RIPA Monitoring Officer will keep a record of those receiving training and will work with Human Resources to ensure that training is carried out as appropriate to account for staff turnover, legislative changes etc. Periodic written tests will be conducted to ensure that the Authorising Officers and Applying Officers retain the knowledge.

The training and testing regime will be documented in sufficient detail to enable assessment of its quality and competence.

### ***Application Forms***

Only the RIPA forms set out in this Policy are permitted to be used. **The Authorising Officer and/or the RIPA Monitoring Officer will reject any other forms used.** All forms are available on the Intranet.

#### **‘A Forms’ (Directed Surveillance) -see Appendix 6**

- Form A1 **Application** for Authority for Directed Surveillance
- Form A2 **Review** of Directed Surveillance Authority
- Form A3 **Renewal** of Directed Surveillance Authority
- Form A4 **Cancellation** of Directed Surveillance
- Form A5 **Judicial approval** for Directed Surveillance

#### **‘B Forms’ (CHIS) -see Appendix 7**

- Form B1 **Application** for Authority for Conduct and Use of a CHIS
- Form B2 **Review** of Conduct and Use of a CHIS
- Form B3 **Renewal** of Conduct and Use of a CHIS
- Form B4 **Cancellation** of Conduct and Use of a CHIS
- Form B5 **Judicial approval** for the use of a CHIS

### ***Grounds for Authorisation***

Directed Surveillance (**A Forms**) and the Conduct and Use of the CHIS (**B Forms**) can be authorised by the Council **only on the grounds of preventing or detecting crime. NO other grounds are available to local authorities.**

### ***Assessing the Application Form***

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

- (a) Be mindful of this Policy, the training provided and any other guidance issued, from time to time, by the RIPA Monitoring Officer on such matters;
- (b) **Be clear on what is being authorised and make sure that there are no ambiguities in either the application or the authorisation;**
- (c) **Ensure that his/her statement as the Authorising Officer is completed spelling out the “5Ws” – who, what, where, when, why and how. In addition, the Authorising Officer must ensure that the proposed operation is both necessary and proportionate;**
- (d) Believe that the RIPA authorisation is:
  - (i) **In accordance with the law;**
  - (ii) **Necessary** in the circumstances of the particular case on the grounds mentioned above; **and**
  - (iii) **Proportionate** to what it seeks to achieve;
  - (iv) Take into account the risk of collateral intrusion into the private lives of those not the subject of the surveillance;
  - (v) Be aware of other activities being undertaken by other public authorities that may impact on the authorisation;
  - (vi) Be aware of any particular sensitivities in the community and
  - (vii) have regard to the Code of Practice,
- (e) In assessing whether or not the proposed surveillance is necessary, consideration should be given to whether it is necessary to use covert surveillance in all the circumstances for the statutory ground of the prevention and detection of crime or preventing disorder. For Directed Surveillance this must be a serious crime or one of the exemptions for underage sales of alcohol or tobacco/nicotine products.
- (f) In assessing whether or not the proposed surveillance is proportionate, consider whether there are any other less intrusive methods available and, if there are none, whether the proposed surveillance is no more than necessary to achieve the objective(s), as the **least intrusive method will be considered proportionate by the courts. Guidance on proportionality is given above;**
- (g) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**Collateral Intrusion**) and the Applying Officer’s plan to minimise that intrusion. Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion.

When considering proportionality, the right to privacy of both third parties and the intended subject of the investigation must be considered against the level of intrusion against the need for the activity in operational terms

Particular consideration should be given in cases where religious, medical, journalistic or legally privileged material may be involved, or where communications between a Member of Parliament and another person on constituency business may be involved.

- (h) Allocate a Unique Reference Number (URN) for **each form;**



- (i) Set a date for **review** of the authorisation and review the authorisation on that date using the relevant form. The Authorising Officer should take account The required duration for authorisations for directed surveillance which is 3 months. The review date must be appropriate for the type of surveillance sought. At a review the Authorising Officer should be satisfied that the criteria for granting the authorisation still exists. They may also amend the authorisation, if it is required and the authorisation allowed for such flexibility when it was initially granted.
- (j) **Make sure that the authorisation expiry date and time are inserted;**
- (k) Ensure that any RIPA Departmental Register is duly completed, and that a copy of the RIPA Forms (and any review / renewal / cancellation of the same) is forwarded to the RIPA Monitoring Officer's Central Register, **within 2 working days of the relevant authorisation, review, renewal, cancellation or rejection**. The original should be kept on the departmental register; and
- (l) If unsure on any matter, obtain advice from the RIPA Monitoring Officer **before** signing any forms.

**The authorisation section of the form should be completed in the Authorising Officer's own handwriting and in his/her own words. The Authorising Officer must be prepared to justify his/her authorisation in a court of law and must be able to answer for his/her decision.**

### ***Additional Safeguards when Authorising a CHIS***

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

- (a) Believe that the **conduct** and/or **use** of the CHIS is **proportionate** to what is sought to be achieved. It should be noted that for CHIS activity there is an additional point that is to be considered when considering granting an authorisation. This additional point is that whether the conduct to be authorised will have any implications for the private and family life of others, and an explanation of why (if relevant) it is nevertheless proportionate to proceed with the operation;
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a written risk assessment (**see Appendix 3**);
- (c) Take into account the risk of collateral intrusion intrusion of all those potentially affected;
- (d) Be aware of any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need-to-know basis; and
- (f) If unsure on any matter, obtain the advice from the RIPA Monitoring Officer **before** signing any forms.

### **Judicial Approval**

After an Authorising Officer has authorised directed surveillance or the Senior Authorising Officer has approved the use of a CHIS, the Council **must** make an application to the Magistrates' Court for approval of the authorisation. This applies to all authorisations and renewals. Local authorities are no longer able to orally authorise the use of RIPA techniques. All authorisations must be made in writing and require approval from a Justice

of the Peace.

The activity permitted by the authorisation **cannot** be carried out until the court has approved the authorisation.

After the Authorising Officer has approved the application, the Applying Officer (or the Authorising Officer in appropriate cases) must complete the first part of the approval form found at Appendix 6 and Appendix 7. Two copies of the approval form, the original authorisation and a copy must be taken to court for the Magistrate to consider.

The court will consider:

- (a) if the Authorising Officer was at the correct grade; and
- (b) whether the activity proposed is necessary and proportionate.

The authorisation and the approval form must be detailed enough for the court to consider the application. Whilst the court may ask the Officer attending court to clarify the application, oral evidence is not a substitute for a full and reasoned written application.

The court can either approve or quash the authorisation or renewal. Any application for renewal must take place before the expiry of the authorisation. The Applying Officer must ensure that any application to renew is made in good time so that the Authorising Officer and the court have enough time to consider the application.

The original authorisation must be retained by the Council. A copy of the approval or rejection by the Magistrates must be placed on the department's register and a further copy given to the RIPA Monitoring Officer for his/her Central Register.

Any Officer attending court to obtain judicial approval must be authorised by the Council under section 223 of the Local Government Act 1972 to conduct legal proceedings on the Council's behalf.

Further information about the procedure for obtaining judicial approval can be found at Appendix 8.

### ***Duration***

The form **must be reviewed in the time stated, renewed and/or cancelled** once it is no longer needed. The authorisation to carry out/conduct the surveillance lasts for three months (from authorisation) for Directed Surveillance, and 12 months (from authorisation) for a CHIS and four months for a juvenile CHIS. However, whether the surveillance is carried out/conducted or not, in the relevant period, does not mean the authorisation is 'spent'. In other words, **the forms do not expire**. The forms have to be **reviewed, renewed and/or cancelled** (once they are no longer required).

Authorisations can be renewed in writing before the maximum period in the Authorisation has expired. The Authorising Officer must **consider the matter afresh** including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred. An Authorisation cannot be renewed after it has expired. In such event, a fresh Authorisation will be necessary.

The renewal will begin on the day when the Authorisation would have expired.

## 11. Working With/Through Other Agencies

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

When some other agency (e.g. Police, HM Revenue & Customs, Department for Work and Pensions etc.):

- (a) Wishes to use the Council's resources, that agency must use its own RIPA procedures **and**, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, s/he **must obtain** a copy of that agency's RIPA authorisation for the record (a copy of which must be passed to the RIPA Monitoring Officer for the Central Register) or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources; or
- (b) Wishes to use the Council's premises for their own RIPA action and is expressly seeking assistance from the Council, the Officer should normally co-operate with the same unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's co-operation in the agency's RIPA operation. In such cases, however, the Council's own RIPA forms should **not** be used, as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

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

### Joint operations

Where the Council is conducting an investigation jointly with another agency and that investigation involves directed surveillance or use of a CHIS only one authorisation under RIPA is needed. Duplicate authorisations therefore should be avoided. At the start of the joint operation the relevant Assistant Directors or Chief Service Officers should agree with his/her opposite number in the other agency who the lead body should be. The lead body will be responsible for RIPA authorisations.

**If in doubt, please consult with the RIPA Monitoring Officer at the earliest opportunity.**

## 12. Record Management

The Council must keep a detailed record of all Authorisations, Reviews, Renewals, Cancellations and rejections in Departments and a **Central Register of all Authorisation Forms will be maintained and monitored by the RIPA Monitoring Officer.**

## ***Records Maintained in the Department***

The Council will retain records for a period of at least three years from the ending of the Authorisation. The Investigatory Power Commissioner's Office (IPCO) can audit/review the Council's policies and procedures and individual Authorisations, Reviews, Renewals, Cancellations and rejections.

## ***Central Register Maintained by the RIPA Monitoring Officer***

Authorising Officers must send a copy of any authorisation, cancellation, renewal or review to the RIPA Monitoring Officer within 2 working days of the issue. Whilst the RIPA Monitoring Officer is responsible for oversight and review of the records, the Authorising Officers are responsible for their own records.

## **13. Reporting Arrangements**

Where there has been an application for the use of powers under RIPA, a report on the use of the powers shall, within three months of the application, be provided to Cabinet.

## **14. Concluding Remarks**

Where there is an interference with the right to respect for private life and family guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority for the interference, or if it is held not to be necessary or proportionate to the circumstances, the consequences of not obtaining or following the correct authorisation procedure set out in RIPA and this Policy, may be that the action (and the evidence obtained) will be held to be unlawful by the courts pursuant to Section 6 of the Human Rights Act 1998.

Obtaining an authorisation under RIPA and following this Policy will ensure therefore, that the action is carried out in accordance with this law and subject to stringent safeguards against abuse of anyone's human rights.

**Authorising Officers MUST exercise their minds every time they are asked to consider a form. They must NEVER sign or rubber stamp form(s) without thinking about their own personal and the Council's responsibilities. They should also report refusals to the RIPA Monitoring Officer. The RIPA Monitoring Officer will be able to assess whether the refusals were reasonable and this will also be reported to Cabinet.**

The case of CHATWANI v NCA prescribes that no boxes should be left blank. Therefore, ALL boxes in the application require a full answer and 'NOT APPLICABLE' is not an acceptable answer for any of the questions.

In the authorisation, any boxes that are not required to be completed must be clearly marked as 'NOT APPLICABLE'. For example, the boxes relating to an urgent authorisation, as this cannot be granted by a local authority.

Great care must also be taken to ensure accurate information is used and is inserted in

the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.

For further advice and assistance on any aspect of RIPA, please contact the Council's RIPA Monitoring Officer; contact details are set out in Appendix 1.

## **15. Accessing Communications Data**

### **Definition**

The Investigatory Powers Act 2016 (IPA) is the legislation governing the acquisition of Communications Data (CD) by Folkestone & Hythe District Council.

Section 60A of the Act provides for the independent authorisation of communications data requests by the Investigatory Powers Commissioner (IPC).

The National Anti-Fraud Network (NFN) provides the services of a dedicated SPoC for acquisition of CD (among other functions).

The Office for Communications Data Authorisations (OCDA) provides the independent authorisation role on behalf of Investigatory Powers Commissioner. An authorising officer in OCDA can authorise any request, for any purpose requested from Folkestone & Hythe District Council, provided it meets the correct application criteria.

The IPA has introduced new definitions of categories of Communications Data which replace those previously described within RIPA. The new categories are Entity Data and Events Data. The definitions are:

- Entity Data relates to the association between an entity and a telecommunications service or telecommunications system and could provide a description and identification of an entity. Entity Data is considered to be less intrusive than Events Data. It can be obtained for the prevention and detection of crime.
- Events Data is any data which identifies or describes an event, (whether or not by reference to its location) on, in or by means of a telecommunications system where the event consists of one or more entities engaging in a specific activity at a specific time. Event data can only be obtained for the prevention and detection of SERIOUS crime.

Serious Crime is defined as,

- An offence by a person who is not an individual (i.e. a corporate body)
- Violence,
- substantial financial gain,
- a large number of persons in pursuit of a common purpose or
- a person of 18 years with no previous convictions could reasonably be expected to be sentenced to 12 months or more imprisonment.

- An offence which involves, as an integral part of it, the sending of a communication.
- An offence which involves, as an integral part of it, a breach of a person's privacy.
- Internet connection records. – not for local authorities.

Folkestone & Hythe District Council is entitled to acquire entity and events data where criteria apply data except for Internet Connection Records.

Examples of entity data are,

- Subscriber checks,
- Subscribers or account holders account information,
- Information about the connection, disconnection, and reconnection of services for the subscriber or account holder,
- Information about devices used or available to the subscriber or account holder and,
- Information about the selection of preferred numbers or discount calls.

Examples of event data are,

- information tracing the origin or destination of a communication including incoming call records,
- Information identifying the location of apparatus when a communication is, has been or may be made or received.
- Information identifying the sender or recipient (including copy recipients) from data in or attached to the communication,
- Routing information identifying apparatus through which a communication is or has been transmitted.
- Itemised telephone call records and timings and duration.
- Information about amounts of data downloaded and/or uploaded,
- Information about services to which the user is allocated or has subscribed to e.g., conference calling, call messaging/waiting/barring.

### **Accessing Communications Data**

Folkestone & Hythe District Council use the National Anti-Fraud Network (NAFN) as the SPOC (Single Point of Contact). Applications are approved by a service manager. The approved application is sent to NAFN who facilitate the process of obtaining authority by OCDA. NAFN notify Folkestone & Hythe District Council of the decision and will liaise with the communications data providers to obtain the material.

**Appendix 1 – List of Senior Authorising Officers Authorising Officers, Senior Responsible Officer and RIPA Monitoring Officer**

<b>Post Title</b>	<b>Current Post Holder</b>	<b>RIPA post</b>	<b>Contact Details</b>
Head of Paid Service	Susan Priest	Senior Authorising Officer / Senior Responsible Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 <a href="mailto:susan.priest@folkestone-hythe.gov.uk">susan.priest@folkestone-hythe.gov.uk</a>
Director of Corporate Services	Charlotte Spendley	Authorising Officer/ Senior Authorising Officer in the absence of the Head of Paid Service	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853263 <a href="mailto:Charlotte.spendley@folkestone-hythe.gov.uk">Charlotte.spendley@folkestone-hythe.gov.uk</a>
Assistant Director (Governance, Law and Regulatory Services)	Amandeep Khroud	RIPA Monitoring Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853253 <a href="mailto:amandeep.khroud@folkestone-hythe.gov.uk">amandeep.khroud@folkestone-hythe.gov.uk</a>
Director of Housing & Operations	Andy Blaszkowicz	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 <a href="mailto:andrew.blaszkowicz@folkestone-hythe.gov.uk">andrew.blaszkowicz@folkestone-hythe.gov.uk</a>
Director - Place	Ewan Green	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY <a href="mailto:Ewan.green@folkestone-hythe.gov.uk">Ewan.green@folkestone-hythe.gov.uk</a>

# RIPA MANAGEMENT STRUCTURE

## Directed Surveillance

**Court**



**Authorising Officers**  
**Susan Priest**  
Head of Paid Service  
**Charlotte Spendley**  
Director of Corporate Services  
**Andrew Blaszkowicz**  
Director of Housing & Operations  
**Ewan Green**  
Director - Place



**Applying Officer**

**Amandeep Khroud**  
Assistant Director  
(Governance, Law and  
Regulatory Services)

## CHIS

**Court**



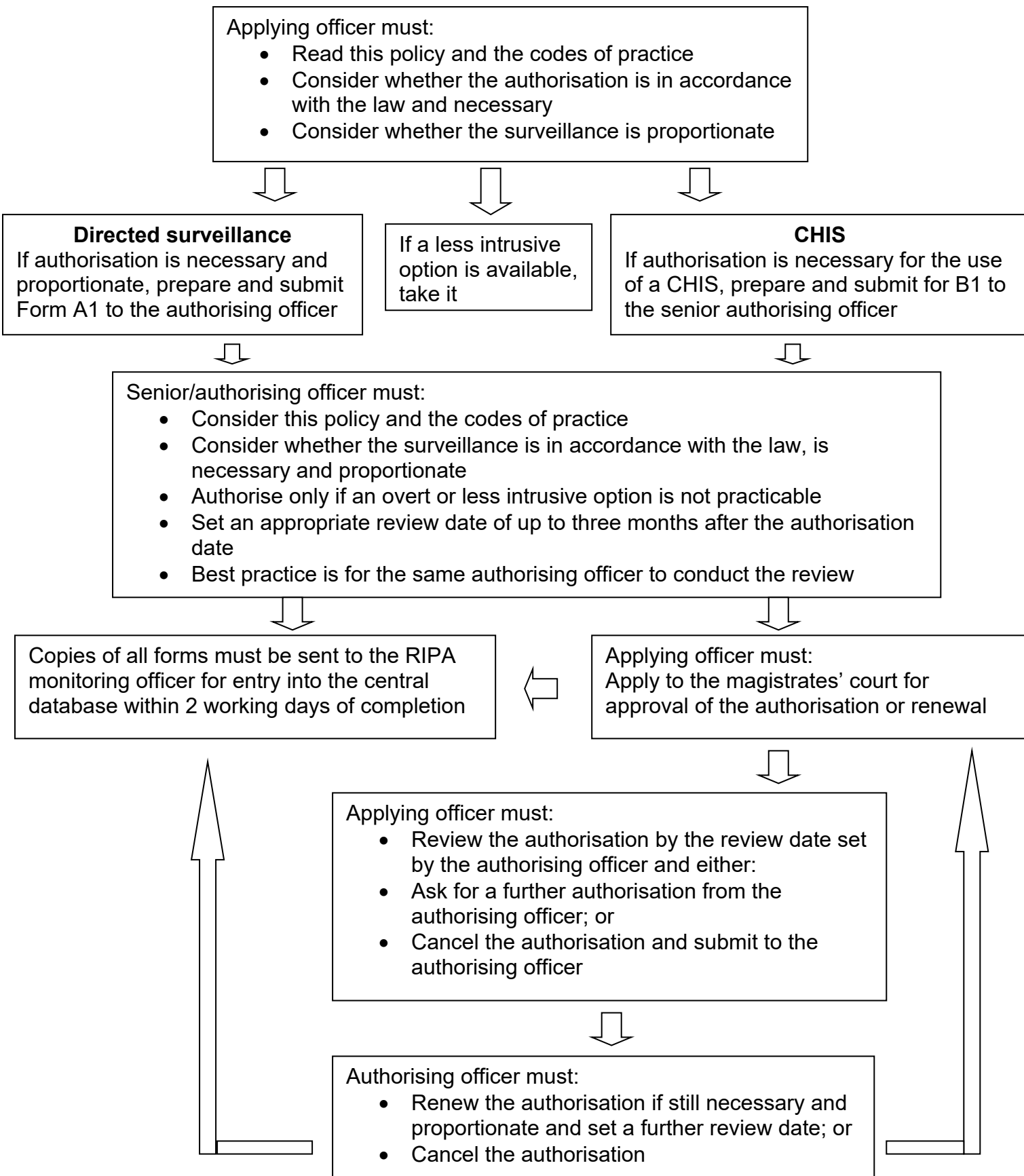
**Susan Priest**  
Head of Paid Service  
  
Or  
**Charlotte Spendley**  
Director of Corporate Services



**Applying Officer**



## Appendix 2 – Flow Chart for Directed Surveillance and CHIS



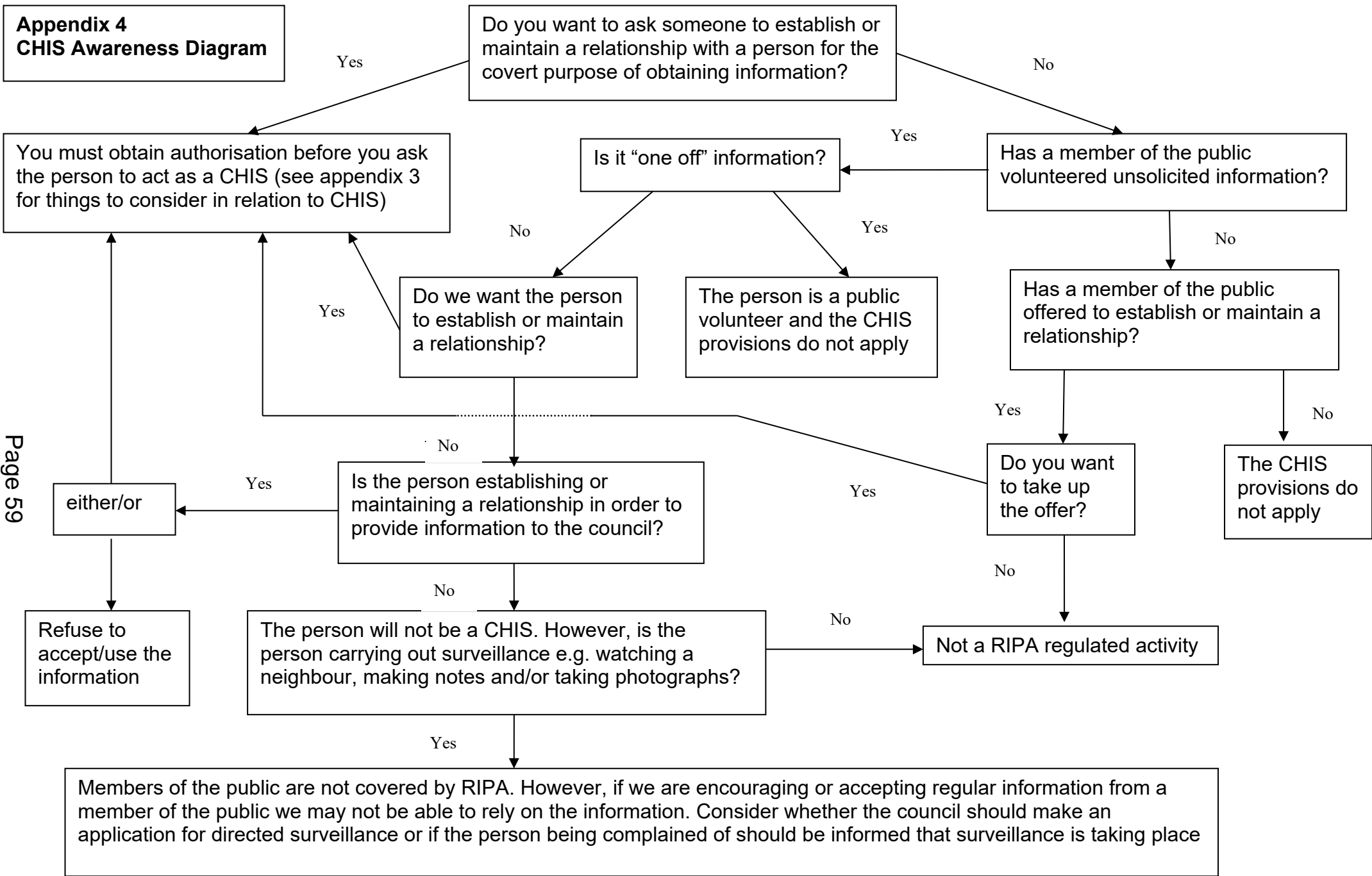
Applying officer – the person who makes a request to use RIPA powers;  
 Authorising officer – the person who considers whether or not to grant an authorisation;  
 Senior authorising officer – the senior person who considers whether or not to grant an authorisation for the use of a CHIS

## Appendix 3 – Additional Notes for the Use and Management of a CHIS

### Tasking

- 1 “Tasking” is the assignment given to the CHIS by the persons defined in sections 29(5) (a) and (b) of RIPA, asking him/her to obtain information, provide access to information or to otherwise act incidentally, for the benefit of the relevant public authority.
- 2 Authorisation for the use or conduct of a CHIS must be obtained prior to any tasking where such tasking requires the CHIS to establish or maintain a personal or other relationship for a covert purpose.
- 3 The person referred to in section 29(5) (a) of RIPA will have day to day responsibility for:
  - Dealing with the CHIS on behalf of the Council
  - Directing the day to day activities of the CHIS
  - Recording the information supplied by the CHIS, and
  - Monitoring the CHIS’s security and welfare
- 4 The person referred to in section 29(5) (b) of the 2000 Act will be responsible for the general oversight of the use of the CHIS.
- 5 The authorisation should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. The authorisation could cover the broad terms of the CHIS’s task.
- 6 The persons mentioned in paragraphs 3 and 4 above must take great care to ensure that actions are recorded in writing and must also keep the authorisation under review to ensure that it covers what the CHIS is actually doing. During the course of a task, unforeseen events may occur which mean that the authorisation may need to be cancelled and applied for again.
- 7 The Corporate Director – Strategy as Head of Paid Service of the Council has the power to appoint officers to act under s29(5)(a) and (b) of RIPA.
- 8 In relation to health and safety, before tasking a CHIS, the relevant Officers will ensure that a risk assessment is carried out which determines the risk to the CHIS and to others in carrying out the task. The ongoing security and welfare of the CHIS after the task has been completed should also be considered.
- 9 Further advice on good practice is contained within the CHIS [Code of Practice](#).

**Appendix 4  
CHIS Awareness Diagram**



**This flowchart cannot answer every scenario an officer may encounter. If you are unsure whether or not you authorisation speak to Legal Services or the RIPA monitoring officer**

## Appendix 5 – Codes of Good Practice

RIPA Codes of Practice can be accessed at:

[Codes of Practice](#)

## Appendix 6 – Directed Surveillance Forms

[Directed surveillance application form](#)

[Directed surveillance renewal form](#)

[Directed surveillance review form](#)

[Directed surveillance cancellation form](#)

[Judicial approval form](#)

## Appendix 7 – CHIS Forms

[Application to authorise a CHIS](#)

[CHIS cancellation form](#)

[CHIS renewal form](#)

[CHIS review form](#)

[Judicial approval form](#)

## **Appendix 8 – Judicial approval protocol**

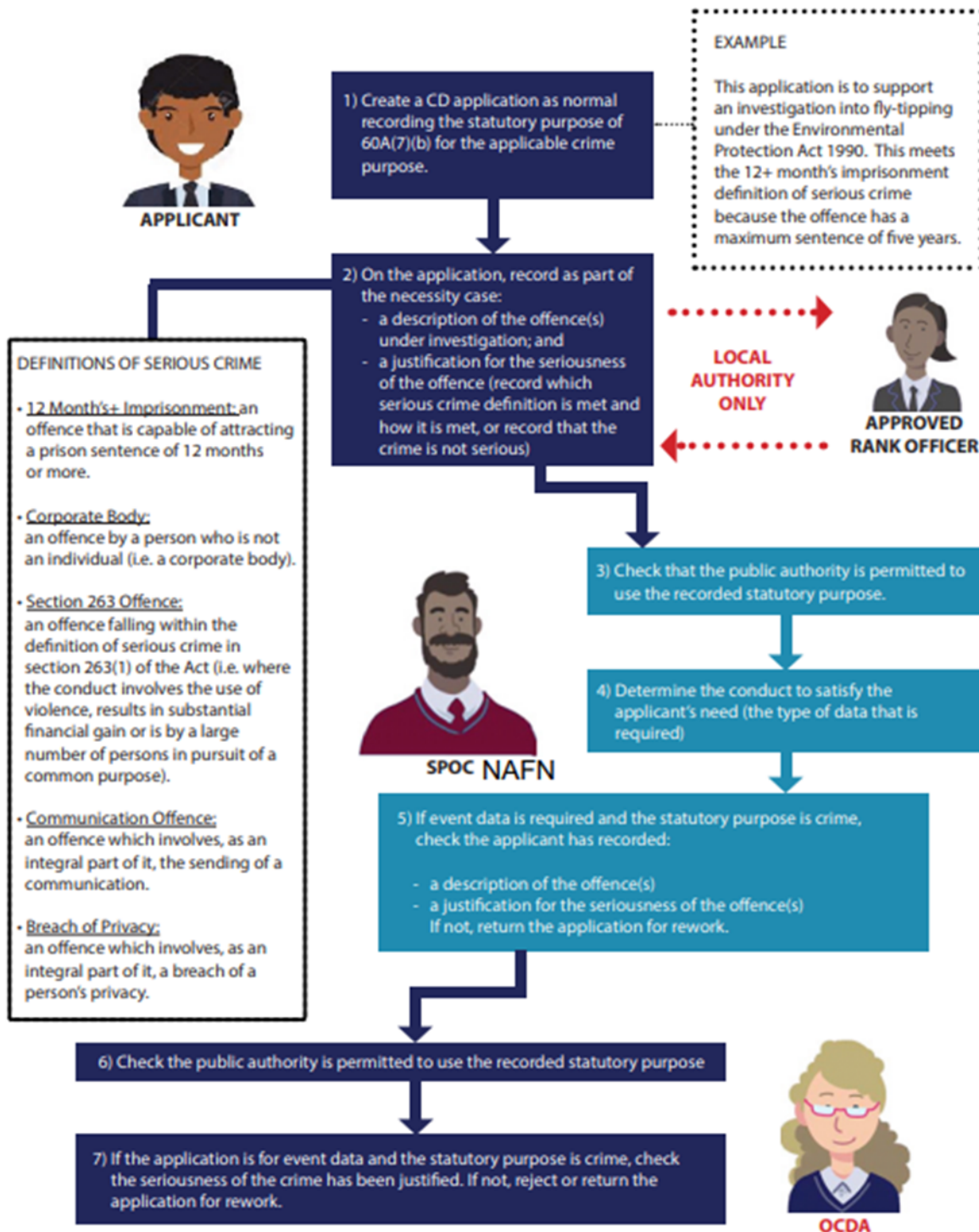
In order to obtain judicial approval for your RIPA authorisation you will need to book an appointment to attend court. You must not turn up to court without an appointment. This step must not be taken unless an Authorised Officer has first authorised the application.

To book an appointment, contact the court administration centre on 01304 218600 option 6. There may be a delay between you making the appointment and attending court so make sure you factor this in when thinking about your timetable and the start date.

Your application may be heard at Folkestone or Canterbury Magistrates' Court. You will generally be asked to attend court at 9.30am before the court starts sitting although you may be given an alternative time to attend.

You will need to take two copies of the approval form with the first part completed and the original authorisation to court as well as a copy. Ensure that you retain the original authorisation and a signed approval form.

# CD APPLICATION PROCESS





This Report will be made public on 12 September 2023



Report Number **A/23/13**

**To:** Council  
**Date:** 20 September 2023  
**Status:** Non-executive Decision  
**Responsible Officer:** Susan Priest, Chief Executive

**SUBJECT:** MEMBERS' ALLOWANCES – INDEPENDENT REMUNERATION PANEL

**Summary:** This report recommends that the term of the current three Members of the Independent Remuneration Panel (IRP) be extended a further four years to November 2023, and also that recruitment be commenced to fill the vacant fourth IRP position.

### **Recommendations:**

1. To receive and note report A/23/13.
2. To extend the term of the existing IRP Members (Paul Murphy, Judy Williams and Chris Harman) for a further four year term of office from the 2 December 2023.
3. To also extend the term of the Parish Remuneration Panel under the regulations, the members of which shall be identical to the members of the Independent Remuneration Panel.
4. To give delegated authority to the Chief Executive to commence recruitment for a fourth member of the IRP (to fill the vacancy left by Beverley Crouch's resignation in March 2022) and to form a selection panel comprised of the Chair of the Council, the Leader of the Council, the Deputy Leader of the Council and a representative from the Conservative Group.

## **1. BACKGROUND**

- 1.1 The Local Authorities (Members' Allowances) (England) Regulations 2003 (S11280) require the Council to appoint an Independent Remuneration Panel (IRP) to consider and advise on the scale of members' remuneration.
- 1.2 In November 2019, Full Council appointed the following members to the IRP following a selection process.
- (a) Beverley Crouch
  - (b) Paul Murphy
  - (c) Judy Williams
  - (d) Chris Harman
- 1.3 In March 2022, Beverley Crouch resigned as an IRP Member.
- 1.4 The term of office of the existing 3 members of the IRP is due to expire on 1 December 2023. All three members have confirmed they are happy to continue for a further four year term of the IRP. Although the legislation requires that there are at least three members on the IRP, it is considered good practice to appoint four members to ensure resilience.
- 1.5 The IRP will need to be convened in November 2023 in order to consider recommendations for a new Members Allowance Scheme in preparation for the move to a committee form of governance in May 2024.

## **2. FOLKESTONE AND HYTHE INDEPENDENT REMUNERATION PANEL / PARISH REMUNERATION PANEL**

- 2.1 A summary of the legislation on the appointment of IRPs is set out below:
- The IRP must have at least three members.
  - Members of the IRP cannot be members of the District Council or of any town or parish council within the district area.
  - Anyone who is disqualified from being an elected member of a local authority is also disqualified from being a member of an IRP.
  - IRP members cannot also be members of a committee or a subcommittee of the District Council, or of any town or parish council within the district area.
- 2.2 The regulations also provide for the establishment of a Parish Remuneration Panel which can make recommendations to town or parish councils on parish basic allowances (no town or parish council in the district presently pays allowances). The Parish Remuneration Panel must be composed of those who form the District Council's IRP. It is recommended that the IRP appointed and the existing IRP be established also as the Parish Remuneration Panel.
- 2.3 The 2003 Regulations do not specify how a local authority may appoint members of its IRP, but the guidance states that the process should command public confidence throughout all the communities in the local authority's area.

- 2.5 With due regard to the guidance, it is suggested that the IRP consist of four members. The three current IRP members have agreed to continue for a further four year term. It is recommended that candidates are sought by advertisement in the local newspapers, the Folkestone Herald and the Kentish Express and via the Council's website for the fourth position on the IRP which is presently vacant. It is also suggested that the Head of Paid Service be authorised to produce a role description. It is recommended that a term of four years is specified to allow any new appointment or reappointment to be considered by the new Council in December 2027.
- 2.6 It is also suggested that a selection panel for the IRP comprising the Chair of the Council, the Leader of the Council, the Deputy Leader of the Council and a representative from the Conservative Group.
- 2.7 The selection panel will consider candidates from a shortlist drawn up by the Chief Executive and the Assistant Director, Governance and Law.

### 3. RISK MANAGEMENT ISSUES

#### 3.1 A summary of the Perceived Risks Follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Inability to convene the IRP with the minimum of 3 members	High	Medium	Recruitment of additional IRP member to ensure resilience
Change to council's governance arrangements and need for IRP to consider new Members Allowance scheme in timely manner	High	Medium	Extending the term of the current three members of the IRP ensures they can start work on the review of members allowance in a timely manner, without the delays of a recruitment process.

### 4. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

#### 4.1 Legal Officer's Comments (XX)

All relevant legal issues have been addressed in the Report.

#### 4.2 Finance Officer's Comments (XX)

Any costs arising from implementation of the recommendations contained in this report can be contained within existing budgets.

#### 4.3 Diversity and Equalities Implications (XX)

No diversity or equality implications.

## **5. CONTACT OFFICER AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Amandeep Khroud, Assistant Director, Governance, Law and Regulatory Services

Tel: 01303 853253

Email: [amandeep.khroud@folkestone-hythe.gov.uk](mailto:amandeep.khroud@folkestone-hythe.gov.uk)

The following background documents have been relied upon in the preparation of this report:

None



This report will be made public on 12 September 2023

Report number **A/23/15**

**To:** Council  
**Date:** 20 September 2023  
**Responsible Officer:** Lydia Morrison, Interim Director – Corporate Services (s151)  
**Cabinet Member:** Councillor Tim Prater, Deputy Leader and Cabinet Member for Finance and Governance

**SUBJECT: TRANSFORMATION 2023-25**

**SUMMARY:** This report sets out an approach to transformation spanning a two-year period. The transformation seeks to reduce management duplication, improve efficiency, ensure that organisation capacity is focused on the Council's priorities, and deliver financial savings by making the best use of IT, Premises, Asset & Contract Management and reducing the overall number of staff across the Council.

**REASONS FOR RECOMMENDATIONS:**

Council is asked to agree the recommendations set out below to approve the creation of a £1.5 million transformation fund in the budget for 2023/24, drawn from existing reserves.

**RECOMMENDATIONS:**

1. To receive and note report A/23/15.
2. To approve the creation of a £1.5 million transformation fund in the budget for 2023/24, drawn from existing reserves.

## **1. INTRODUCTION & BACKGROUND**

- 1.1 Over the last few years, the council has embarked upon a Council-wide programme of improvement to address a number of performance, financial and cultural matters in order to deliver improved outcomes for residents, investors, and visitors to the district.
- 1.2 This Council, like many others, is facing financial challenges over the medium term and maintaining the status quo is not an option. The Council has never stood still in its search for efficiency and better public service, and tough times are expected to continue.
- 1.3 The updated Medium Term Financial Strategy (MTFS) reported to Cabinet and Council in November 2022, highlighted the need to achieve significant savings with reduced resources, whilst demand for services and demographic pressures continue to increase. The challenges for service re-design and delivery, alongside significant financial constraints, have necessitated a thorough review of services across the Council.
- 1.4 There continues to be long-term pressures on the council's finances. The current strategy has been developed in the context of an ongoing period of uncertainty with the war in Ukraine, the effects of the current economic climate including energy price rises, cost of living crisis, increasing demand for services, and a combination of continued downward projections of central government support for local authorities with inflation running at high levels, interest rates and the cost of borrowing continuing to rise rapidly.
- 1.5 The current MTFS forecasts a cumulative funding gap of £18.5 million over its lifetime to 2026/27. Much of this pressure is faced year-on-year and therefore needs to be addressed through the base budget in the early part of each year to have most impact. The Council does have reserves to help mitigate the impact of the deficits in the MTFS, but these reserves will diminish over time and are not sufficient (at this point in time) to absorb the deficit over the four-year period.
- 1.6 The transformation programme will involve service specific and council-wide changes that can be categorised along the following lines:
  - Establishment and Staffing review.
  - ICT/Digital Improvements.
  - Premises.
  - Assets and Contract Review.
- 1.7 Further details are contained within the attached Cabinet report (Appendix A).

## **2. APPENDIX**

- 2.1 Appendix A: Transformation 2023-25 report – Cabinet - 20 September 2023.

This report will be made public on 12 September 2023



Report Number **C/23/37**

**To:** Cabinet  
**Date:** 20 September 2023  
**Status:** Key Decision  
**Responsible Officer:** Lydia Morrison, Interim Director – Corporate Services (s151)  
**Cabinet Member:** Councillor Tim Prater, Deputy Leader and Cabinet Member for Finance and Governance

**SUBJECT:** Transformation 2023-25

#### **SUMMARY:**

The report sets out an approach to transformation spanning a two-year period. The transformation seeks to reduce management duplication, improve efficiency, ensure that organisation capacity is focused on the Council's priorities, and deliver financial savings by making the best use of IT, Premises, Asset & Contract Management and reducing the overall number of staff across the Council.

#### **REASONS FOR RECOMMENDATIONS:**

The delivery of savings associated with the transformation programme is key to supporting the Council in closing the projected financial gap in future years.

Cabinet is asked to consider the matters raised in this report as it is essential that the Council has the appropriate capacity, leadership, and accountability in place to deliver change and the necessary financial savings at pace.

#### **RECOMMENDATIONS:**

1. To receive and note report C/23/37 regarding the Council's transformation plan.
2. Recommend to Council the creation of a £1.5 million transformation fund in the budget for 2023/24, drawn from existing reserves.
3. To note that Personnel Committee will be advised on the relevant matters of detail at their meeting on 21<sup>st</sup> September.

## 1. INTRODUCTION & BACKGROUND

- 1.1 Over the last few years, the council has embarked upon a Council-wide programme of improvement to address a number of performance, financial and cultural matters in order to deliver improved outcomes for residents, investors, and visitors to the district.
- 1.2 This Council, like many others, is facing financial challenges over the medium term and maintaining the status quo is not an option. The Council has never stood still in its search for efficiency and better public service, and tough times are expected to continue.
- 1.3 The updated Medium Term Financial Strategy (MTFS) reported to Cabinet and Council in November 2022, highlighted the need to achieve significant savings with reduced resources, whilst demand for services and demographic pressures continue to increase. The challenges for service re-design and delivery, alongside significant financial constraints, have necessitated a thorough review of services across the Council.
- 1.4 There continues to be long-term pressures on the council's finances. The current strategy has been developed in the context of an ongoing period of uncertainty with the war in Ukraine, the effects of the current economic climate including energy price rises, cost of living crisis, increasing demand for services, and a combination of continued downward projections of central government support for local authorities with inflation running at high levels, interest rates and the cost of borrowing continuing to rise rapidly.
- 1.5 The current MTFS forecasts a cumulative funding gap of £18.5 million over its lifetime to 2026/27. Much of this pressure is faced year-on-year and therefore needs to be addressed through the base budget in the early part of each year to have most impact. The Council does have reserves to help mitigate the impact of the deficits in the MTFS, but these reserves will diminish over time and are not sufficient (at this point in time) to absorb the deficit over the four-year period.
- 1.6 The transformation programme will involve service specific and council-wide changes that can be categorised along the following lines:
  - Establishment and Staffing review.
  - ICT/Digital Improvements.
  - Premises.
  - Assets and Contract Review.
- 1.7 The transformation will deliver financial savings and result in a Council that is efficient, delivers political priorities, and is fit to serve its community in the context of reduced resources in a model that aims to:
  - Improve front-line service delivery;
  - Make best use of IT;
  - Improve accountability;
  - Improve resilience; and
  - Ensure effective management span of control.



## **2 NEW COUNCIL COMMITTEE SYSTEM & STRUCTURE**

- 2.1 On 21 June 2023 Council agreed to establish a committee system for decision making with politically balanced committees under powers delegated by full council. Therefore, the Council's transformation will support service delivery and respond to the implementation of a new committee system.
- 2.2 The four strategic objectives are to:
- Reduce the size of the Council's corporate leadership team (CLT), improving its strategic leadership capability and concentrating on critical issues and financial sustainability.
  - Reduce the tiers of the senior management team (SMT) and seek a more proportionate and consistent span of responsibility with accountability at senior management level by integrating functions into a smaller number of teams.
  - Streamline a range of corporate service functions, and
  - Make substantial changes in how the Council delivers statutory services, reviewing discretionary spend in order to deliver necessary budget savings.
- 2.3 CLT will seek to reduce revenue expenditure or increase income wherever reasonably possible before reducing staff posts.
- 2.4 No areas of Council business, whether statutory or non-statutory, are protected from necessary change but that does not mean savings will come from each area equally; relevant considerations regarding the Council's statutory responsibilities, robust governance and business continuity will be considered.
- 2.5 The Council will continue to meet its statutory responsibilities but, outside of that, some services will inevitably need to be decommissioned; this means that we will do less for less or only continue to function where these generate sufficient income to recover costs in full. 'Efficiencies' (i.e., reducing non-value-added and waste activity that will enable us to do the same with fewer resources) will be identified, but this will not be sufficient alone to address the scale of financial challenge.

## **3. FINANCIAL CONSIDERATIONS**

- 3.1 There will be significant initial one off cost to deliver the transformation and savings associated with the programme and these will need to be approved through the normal financial approval process governed by the budget and policy framework.
- 3.2 Decisions on specific budget savings to deliver the MTFs gap are executive functions which will require approval from Cabinet and subsequently Council as the overall budget is set. Once executive decisions are made, it is for the Chief Executive to agree how staff resources are deployed and any compulsory or voluntary redundancies that result.

- 3.3 The potential costs of redundancies (and any associated pension strain) have been estimated based on work to date. Reserves of up to £1.5m will need to be repurposed to create a transformation fund, which Cabinet is asked to recommend to Council for inclusion in the 2023/24 budget as the majority of redundancies will need to be made by April 2024 for the full effect of the savings to be secured.
- 3.4 In terms of further supporting detail, Personnel Committee is considering the matter at its next meeting on 21<sup>st</sup> September 2023.
- 3.5 Given the scale of the budget pressure, it is also proposed that priority be given to proposals that deliver the most immediate financial savings.
- 3.6 A recent change in the HM Revenue & Customs (HMRC) guidance (following a number of Tribunal decisions) has implications for how local authorities should consider their VAT obligations and liabilities. Following several appeals by local authorities across the UK, HMRC has changed its position on whether local authorities should treat the provision of leisure services as "non-business activity" for VAT purposes. The Council submitted a backdated claim to HMRC for a refund of such VAT for the past four years, which was successful, and the Council received a net repayment amount of £405,542. The recommendation (para 3.9 below) is to transfer the one-off windfall amount into the transformation fund/reserve.
- 3.7 The Council holds a range of Reserves for a variety of reasons. The actual number and value fluctuate over the year as monies are spent on projects, new money is received from funders (most often from Government but not exclusively) and new reserves are created to respond to changing financial pressures. The Reserves are held as funding for specific projects, against known or potential expenditure or to meet future costs or allow for service developments and to allow value for money improvements.
- 3.8 A review of the Council reserve has taken place to consider the forecast use of reserves and to ensure that the Council retains a prudent level of reserves over the medium term. The review was carried out in a number of stages:
- To understand the spending plans regarding the current reserves over the next few years.
  - Consider what level of general balances that FHDC should hold, based on a risk assessment.
  - identifying those reserves that are ringfenced as they have specific grant objectives to deliver
  - considering what strategic earmarked reserves FHDC should hold.
- 3.9 After carrying out a risk assessment, which indicates that there are reserves that can be earmarked for the transformation purpose, it is proposed that the Council transfer £1.095m into the transformation fund to meet future redundancy or pension fund strain costs that may be incurred. The proposed allocations of reserves will retain flexibility in how the Council uses the fund in the future and also puts in place mitigations for risks the Council may face.

- 3.10 The s151 Officer having reviewed current earmarked reserves recommends transfers (into the new Transformation Fund/Reserve) as detailed in the table below:

<u>Description</u>	<u>Current £000</u>	<u>Transfer £000</u>	<u>Balance £000</u>
Earmarked Reserve:			
Corporate Initiatives	687	500	187
Climate Change	4,656	595	4,061
VAT Backdated Claim	405	405	-
<b>Total</b>	<b>5,748</b>	<b>1,500</b>	<b>4,248</b>

## 5. RISK MANAGEMENT ISSUES

- 5.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Budget is not made available by Council	High	Low	Additional resources would be needed which would result in immediate budget reductions or use of reserves. The budget should enable the ongoing proactive management and prioritisation of the council's resources.
Insufficient budget is made available	High	Low	Additional resources would be needed which would result in immediate budget reductions or use of earmarked/general reserves.
Management action is slow resulting in savings not made quickly enough to address the immediate budget deficit and overall MTFS gap	Medium	Low	Transformation Plan is expected to deliver further savings going forward as part of the next MTFS and to address the budget gap along with cross working across the Council to deliver the savings on an ongoing basis.

Perceived risk	Seriousness	Likelihood	Preventative action
Assumptions may be inaccurate.	High	Medium	Transaction plan will be subject to regular monitoring and developments tracked and regularly reviewed.

## 6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 6.1 Legal Officer's Comments – (AK)

There are no legal implications arising directly out of this report other than those already stated therein.

### 6.2 Finance Officer's Comments (OO)

The financial implications are set out in the body of the report. Personnel Committee will be advised of the relevant matters and provision will need to be made for one-off costs that will be incurred to deliver the establishment changes. There will be financial implications attached to other elements of the Transformation Programme and these will be identified as each element progresses. These implications will be reported to the Cabinet as part of future update reports and as each element with budget implications is presented for Council consideration and approval.

### 6.3 Diversities and Equalities Implications (AH)

The report does not require an Equity Impact Assessment.

### 6.4 Climate Change Implications (AH)

No implications arise directly from this report.

## 7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting.

*Ola Owolabi, CFSO*

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The following background documents have been relied upon in the preparation of this report:

Medium-Term Financial Strategy – [Cabinet November 2022](#)

Senior Management Restructure – Personnel Committee Report 21<sup>st</sup> September 2023