

# Agenda for Audit and Governance Committee

## Thursday 18 January 2018, 2.30pm

[Members of the Committee](#)



**Venue:** Council Chamber, Knowle, Sidmouth, EX10 8HL  
[View directions](#)

**Contact:** [Amanda Coombes](#), 01395 517543 (or group number 01395 517546): Issued 9 January 2018

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- 1 [Public speaking](#)
- 2 Minutes for 16 November 2017 (pages 3-5)
- 3 Apologies
- 4 Declarations of interest

Guidance is available online to Councillors and co-opted members on making [declarations of interest](#)

- 5 [Matters of urgency](#) – none identified
- 6 To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

### Part A Matters for Decision

- 7 **Internal Audit Activity – Quarter 3 2017/18** - SWAP (pages 6-21)
- 8 **Audit Committee Progress report** – KPMG (pages 22-46)
- 9 **Certification Report** - KPMG (pages 47-49)
- 10 **Risk Management half year review** – Management Information Officer (pages 50-52)
- 11 **Surveillance Commissioner’s Report** - Strategic Lead Governance and Licensing (pages 53-55)  
**Appendix 1** - Policy on use of directed surveillance and covert human intelligence sources (pages 56-71)
- 12 **Audit and Governance Forward Plan** – Strategic Lead Finance (page 72)

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[Decision making and equalities](#)

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## **EAST DEVON DISTRICT COUNCIL**

### **Minutes of a Meeting of the Audit & Governance Committee held in the Council Chamber at Knowle, Sidmouth on 16 November 2017**

#### **Attendance list at end of document**

The meeting started at 2.30pm and ended at 3.05pm.

**\*27 Chairman's welcome**

The Chairman welcomed everyone to the meeting.

**\*28 Public Speaking**

There were no members of the public present.

**\*29 Minutes**

The minutes of the Audit and Governance Committee meeting held on 21 September 2017 were confirmed and signed as a true record.

**\*30 Declarations of Interest**

Minute 34 Cllr S Hall – Partner on LED Board of Trustees

Minute 34 Cllr B Nash – Partner on LED Board of Trustees

Minute 34 Cllr J Humphreys – Member of Exmouth Regeneration Board

Minute 34 Cllr Ian Thomas – Director of Exeter Science Park Company

**\*31 Annual Audit Letter**

Rob Andrews, Manager from KPMG explained that the Annual Audit Letter summarised the outcome from the audit work at East Devon District Council in relation to the 2016/17 audit year. Although it was addressed to Members it was also intended to communicate key messages to relevant external stakeholders, including members of the public.

**RESOLVED:**

that the Audit Letter be noted.

**\*32 Audit Committee Progress report**

Darren Gilbert Director, KPMG provided the Committee with an overview on progress in delivering their responsibilities as the external auditors.

**RESOLVED:**

that the report be noted.

**\*33 Future of External Audit 2018/19 onwards**

The Strategic Lead Finance updated members on the recent tender and selection process for the Council's External Auditor in relation to auditing the 2018/19 Accounts onwards. Grant Thornton had been appointed to be the external auditors as from 2018/19 accounting period.

**RESOLVED:**

that the outcome of the recent procurement exercise to appointment the Council's external auditors be noted.

**\*34 Partnership Register**

The report by the Management Information Officer supplied Partnership information for the 2016/17 financial year until March 2017 to allow the Audit and Governance Committee to monitor the status of the Council's partnerships. This follows the year-end review of partnerships by responsible officers for 2016/17.

**RESOLVED:**

that the current status of partnerships until March 2017 be noted.

**\*35 Internal Audit Planning**

David Hill Executive Director, SWAP gave a verbal update to the Committee. The review of the risk registers produced lists of audits and the number of audit days available. The Plan reflected any changes to the Council throughout the year. SWAP helped the Council to benchmark and use best practise which could then be seen as best practise the following year to other local authorities partnered with SWAP.

**\*36 Audit and Governance Forward Plan**

Members noted the contents of the Committee Forward Plan for 2017/18.

Items to be considered at the January 2018 committee included:

- Internal Audit Activity – Quarter 3 2017/18
- Audit Committee update
- Certification Report
- Risk management review – half year review
- Surveillance Commissioner's Report
- CIL Methodology update

**RESOLVED:**

that the Forward Plan be noted.

**Attendance list**

**Councillors:**

Mark Williamson (Chairman)  
Dean Barrow (Vice Chairman)  
Cherry Nicholas  
Bill Nash  
John Humphreys  
Ben Ingham  
Steve Hall

Cllr Ian Thomas - Portfolio Holder Finance

**Apologies:**

Steve Gazzard  
John Dyson

**Officers present:**

Simon Davey, Strategic Lead – Finance  
Mark Williams – Chief Executive  
Amanda Coombes, Democratic Services Officer

Darren Gilbert, Director, KPMG

David Hill, Executive Director, SWAP  
Georgina Teale, Senior Auditor, SWAP

Chairman ..... Date.....

**Report to:** **Audit and Governance Committee**

**Date of Meeting:** 18 January 2018

**Public Document:** Yes

**Exemption:** None

**Review date for release** None



**Agenda item:** 7

**Subject:** **Internal Audit Plan Progress Quarter 3 (2017/18)**

**Purpose of report:** The Audit and Governance Committee agreed the 2017-18 Internal Audit Plan at its March 2017 meeting. This report is to provide an update on the 2017/18 Internal Audit Plan (Quarter 3)

**Recommendation:** To note the content of the Internal Audit Progress Report

**Reason for recommendation:** The Committee are required to review the progress of the audit plan.

**Officer:** David Hill, Executive Director, SWAP  
Email: [david.hill@southwestaudit.co.uk](mailto:david.hill@southwestaudit.co.uk)

**Financial implications:** There are no direct financial implications identified.

**Legal implications:** The legal framework is reflected in the report. While there are no direct legal implications arising, ensuring Key Actions are carried out will reduce risk to the Council which in turn will reduce the chance of failures or challenges occurring.

**Equalities impact:** Low Impact

**Risk:** Low Risk

**Links to background information:**

- [Approved Internal Audit Plan 2017/18 – Audit and Governance Meeting March 2017](#)

**Link to Council Plan:** Continuously improving to be an outstanding council.

# East Devon District Council

Report of Internal Audit Activity

Plan Progress 2017/18 Quarter 3

## Summary

## Contents

### The contacts at SWAP in connection with this report are:

#### Gerry Cox

Chief Executive

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#### David Hill

Executive Director

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## Internal Audit Plan Progress 2017/18 Quarter 3

### Our audit activity is split between:

- **Operational Audit**
- **Governance Audit**
- **Key Control Audit**
- **IT Audit**
- **Grants**
- **Other Reviews**



### Role of Internal Audit

The Internal Audit service for the East Devon District Council is provided by South West Audit Partnership Limited (SWAP). SWAP is a Local Authority controlled Company. SWAP has adopted and works to the Standards of the Institute of Internal Auditors, further guided by interpretation provided by the Public Sector Internal Audit Standards (PSIAS), and also follows the CIPFA Code of Practice for Internal Audit. The Partnership is also guided by the Internal Audit Charter approved by the Audit and Governance Committee at its meeting on 29 June 2017.

Internal Audit provides an independent and objective opinion on the Authority's control environment by evaluating its effectiveness. Primarily the work includes:

- Operational Audit Reviews
- Cross Cutting Governance Audits
- Annual Review of Key Financial System Controls
- IT Audits
- Grants
- Other Special or Unplanned Review

## Internal Audit Plan Progress 2017/18 Quarter 3

### Outturn to Date:

We rank our recommendations on a scale of 1 to 5, with 1 being minor or administrative concerns to 5 being areas of major concern requiring immediate corrective action



### Internal Audit Work Programme

The schedule provided at Appendix B contains a list of all audits as agreed in the Annual Audit Plan 2017/18. It is important that Members are aware of the status of all audits and that this information helps them place reliance on the work of Internal Audit and its ability to complete the plan as agreed.

Each completed assignment includes its respective “assurance opinion” rating together with the number and relative ranking of recommendations that have been raised with management. In such cases, the Committee can take assurance that improvement actions have been agreed with management to address these. The assurance opinion ratings have been determined in accordance with the Internal Audit “Audit Framework Definitions” as detailed on Appendix A of this document.

In Quarter 3 work has progressed on the following audits from the 2017/18 Audit Plan:

Audit Area	Quarter	Status	Opinion
Business Continuity Follow Up	2	Final	Non opinion
Habitat Mitigation	2	Final	Reasonable
Income Generation/Discretionary Spend	2	Final	Reasonable
Organised Crime Checklist	2	Final	Reasonable
Procurement	2	Final	Reasonable
Work Force Plan	2	Final	Substantial
Housing Benefit Key Control	2	Final	Reasonable
Corporate Health and Safety Follow Up	2	Final	Non opinion
Achievement of Major Projects Follow Up	3	Final	Non opinion
Creditors Key Control and Follow up	3	Final	Substantial
Treasury Management	3	Final	Substantial
East Devon Business Centre	3	Final	Reasonable
Fleet Management	3	Draft	-
S106/CIL	3	In progress	-
Business Continuity (Key Service Test)	3	In progress	-

# Internal Audit Plan Progress 2017/18 Quarter 2

<p><b>Outturn to Date:</b></p> <p><b>We rank our recommendations on a scale of 1 to 5, with 1 being minor or administrative concerns to 5 being areas of major concern requiring immediate corrective action</b></p>	<p style="text-align: right;">➔</p> <p><b>Internal Audit Work Programme Contd.</b></p> <p>To assist the Committee in its important monitoring and scrutiny role, in those cases where weaknesses have been identified in service/function reviews that are considered to represent significant service risks, a summary of the key audit findings that have resulted in them receiving a ‘Partial Assurance Opinion’ have been summarised in Appendix D.</p> <p>However, in circumstances where findings have been identified which are considered to represent significant corporate risks to the Council, due to their importance, these issues are separately summarised in Appendix C. These items will remain on this schedule for monitoring by the Committee until the necessary management action is taken and appropriate assurance has been provided that the risks have been mitigated / addressed.</p> <p>We are pleased to report that there have been no ‘Partial Assurance Opinion’ audits or significant corporate risks identified in this quarter.</p>
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## Internal Audit Plan Progress 2017/18 Quarter 3

### Added Value

**Extra feature(s) of an item of interest (product, service, person etc.) that go beyond the standard expectations and provide something more while adding little or nothing to its cost.**



### Added Value

Primarily Internal Audit is an assurance function and will remain as such. However, Members requested that we provide them with examples of where we have “added value” to a particular service or function under review. In response to this we have changed our approach and internal processes and will now formally capture at the end of each audit where we have “added value”.

The SWAP definition of “added value” is “extra feature(s) of an item of interest (product, service, person etc.) that go beyond the standard expectations and provide something "more" while adding little or nothing to its cost”.

As we complete our operational audit reviews and through our governance audit programmes across SWAP we seek to bring information and best practice to managers to help support their systems of risk management and control. Examples in Quarter 3 include the following:

- General Data Protection Regulations (GDPR) Benchmarking Work undertaken with our Partners;
- Culture and Ethics Benchmarking with our Partners;
- Payroll process Benchmarking undertaken with our Partners, to aid one Partner in becoming paperless;
- Fees and Charges benchmarking for Streetscene services offered by our Partners;
- Benchmarking of Fees and Charges Policies of Partners to inform the creation of a policy for one of our Partners.
- Distributing Quarterly Bulletins across the Partnership, with the October 2017 edition including details regarding the changes to IR35 legislation and Cyber Security;
- Recommended the use of a purposeful Information Asset Register tool (Service Desk Assyst), in place of the Excel spreadsheet originally proposed;
- Producing a generic GDPR template that can be used across all Partners;
- Introducing data analytics techniques, using our IDEA software, to our conventional testing methods.

## Internal Audit Plan Progress 2017/18 Quarter 3

The Assistant Director for SWAP reports performance on a regular basis to the SWAP Management and Partnership Boards.



### SWAP Performance

SWAP now provides the Internal Audit service for 24 public sector bodies. SWAP performance is subject to regular monitoring review by both the Board and the Member Meetings. The respective outturn performance results for East Devon District Council for the 2017/18 (as at 1 September 2017) were as follows:

Performance Target	Average Performance
<p><b><u>Audit Plan – Percentage Progress</u></b>                      Final, Draft and Discussion                      In progress</p>	<p>70%                      89%</p>
<p><b><u>Draft Reports</u></b>                      Issued within 5 working days                      Average working days</p>	<p>68%                      5</p>
<p><b><u>Final Reports</u></b>                      Issued within 10 working days of                      discussion of draft report                      Average working days</p>	<p>44%                      11</p>
<p><b><u>Quality of Audit Work</u></b>                      Customer Satisfaction Questionnaire</p>	<p>0</p>

## Internal Audit Plan Progress 2017/18 Quarter 3

**We keep our audit plans under regular review so as to ensure that we auditing the right things at the right time.**



### Approved Changes to the Audit Plan

The following changes have been made to the audit plan in Quarter 3 to ensure internal audit resources are focused on the key risks faced by the Council. All changes are made in agreement or at the request of the Section 151 Officer:

- Lone Working has been moved to Quarter 4 at the request of the Service Lead-Environmental Health and Car Parks.
- New Housing System Follow-up and Housing Rents Follow up were removed. We instead plan to complete this follow up as part of a full audit of Housing Rents in 2018/19.
- Licensing has been removed from this year's audit plan at the request of the Strategic Lead and will instead be undertaken in 2018/19. This is due to changes in Management of the Service.
- The scope of Programme and Project Management has been revised at the request of the S151 Officer to include a follow up of the recommendations raised in the Healthy Organisation report only.

At the conclusion of audit assignment work each review is awarded a “Control Assurance Definition”;

- Substantial
- Reasonable
- Partial
- None



Audit Framework Definitions

Control Assurance Definitions

<b>Substantial</b>	▲ ★★ ★	I am able to offer substantial assurance as the areas reviewed were found to be adequately controlled. Internal controls are in place and operating effectively and risks against the achievement of objectives are well managed.
<b>Reasonable</b>	▲ ★★ ★	I am able to offer reasonable assurance as most of the areas reviewed were found to be adequately controlled. Generally risks are well managed but some systems require the introduction or improvement of internal controls to ensure the achievement of objectives.
<b>Partial</b>	▲ ★★ ★	I am able to offer Partial assurance in relation to the areas reviewed and the controls found to be in place. Some key risks are not well managed and systems require the introduction or improvement of internal controls to ensure the achievement of objectives.
<b>None</b>	▲ ★★ ★	I am not able to offer any assurance. The areas reviewed were found to be inadequately controlled. Risks are not well managed and systems require the introduction or improvement of internal controls to ensure the achievement of objectives.

Categorisation of Recommendations

When making recommendations to Management it is important that they know how important the recommendation is to their service. There should be a clear distinction between how we evaluate the risks identified for the service but scored at a corporate level and the priority assigned to the recommendation. No timeframes have been applied to each Priority as implementation will depend on several factors; however, the definitions imply the importance.

We keep our audit plans under regular review, so as to ensure we are auditing the right things at the right time. Recommendations are prioritised from 1 to 5 on how important they are to the service/area audited. These are not necessarily how important they are to the organisation at a corporate level.

Each audit covers key risks. For each audit a risk assessment is undertaken whereby with management risks for the review are assessed at the Corporate inherent level (the risk of exposure with no controls in place) and then once the audit is complete the Auditors assessment of the risk exposure at Corporate level after the control environment has been tested. All assessments are made against the risk appetite agreed by the SWAP Management Board.



Audit Framework Definitions

- Priority 5: Findings that are fundamental to the integrity of the unit’s business processes and require the immediate attention of management.
- Priority 4: Important findings that need to be resolved by management.
- Priority 3: The accuracy of records is at risk and requires attention.
- Priority 2: Minor control issues have been identified which nevertheless need to be addressed.
- Priority 1: Administrative errors identified that should be corrected. Simple, no-cost measures would serve to enhance an existing control.

Definitions of Risk

Risk	Reporting Implications
Low	Issues of a minor nature or best practice where some improvement can be made.
Medium	Issues which should be addressed by management in their areas of responsibility.
High	Issues that we consider need to be brought to the attention of senior management.
Very High	Issues that we consider need to be brought to the attention of both senior management and the Audit Committee.



Audit Type	Audit Area	Quarter	Status	Opinion	No of Rec	Recommendation				
						5=Major		1 = Minor		
						5	4	3	2	1
<b>2017/18</b>										
Advice	Relocation Project Consultancy 17-18	1-4	Ongoing		0	0	0	0	0	0
Follow up	Creditors Follow-up	3	Complete	Non-opinion	0	0	0	0	0	0
Follow up	Achievement of Major Projects Follow Up	3	Complete	Non-opinion	0	0	0	0	0	0
Follow up	Corporate Health & Safety Follow Up	2	Complete	Non-opinion	0	0	0	0	0	0
Follow up	Business Continuity Follow Up	2	Complete	Non-opinion	0	0	0	0	0	0
Follow up	Housing Rents Follow Up	2	Removed		0	0	0	0	0	0
Follow up	New Housing System Implementation Review Follow Up	3	Removed		0	0	0	0	0	0
Key Controls	Housing Benefit	3	Final	Reasonable	3	0	0	3	0	0
Key Controls	Creditors	3	Final	Substantial	0	0	0	0	0	0
Key Controls	Treasury Management	3	Final	Substantial	0	0	0	0	0	0
Operational	Safeguarding	1	Final	Reasonable	5	0	0	5	0	0
Operational	Records Management	1	Final	Reasonable	2	0	0	2	0	0
Operational	Sustainability	1	Final	Reasonable	3	0	0	3	0	0
Operational	Lone Working	4	Not started		0	0	0	0	0	0
Operational	S106/CIL	3	In Progress		0	0	0	0	0	0

Audit Type	Audit Area	Quarter	Status	Opinion	No of Rec	5=Major ↔ 1 = Minor				
						Recommendation				
						5	4	3	2	1
Operational	Habitat Mitigation	3	Final	Reasonable	6	0	0	5	1	0
Operational	Workforce Plan	2	Final	Substantial	0	0	0	0	0	0
Operational	Fighting Fraud Locally	2	Final	Reasonable	4	0	0	4	0	0
Operational	Organised Crime Checklist	2	Final	Reasonable	2	0	0	2	0	0
Operational	Commercial Skills/Income Generation	2	Final	Reasonable	3	0	0	3	0	0
Operational	Culture and Ethics	3	Removed		0	0	0	0	0	0
Healthy Organisation	Programme and Project Management	4	Not started		0	0	0	0	0	0
Operational	East Devon Business Centre	3	Final	Reasonable	4	0	0	4	0	0
Healthy Organisation	Procurement	2	Final	Reasonable	6	0	1	5	0	0
ICT	Business Continuity Key Service Test	3	In Progress		0	0	0	0	0	0
Operational	Fleet Management	3	Draft		0	0	0	0	0	0
Operational	Discretionary Spend	2	Final	Reasonable	3	0	0	4	0	0
Operational	Licensing	4	Removed		0	0	0	0	0	0
ICT	Disaster Recovery	4	Not started		0	0	0	0	0	0
Operational	Electoral Registration	4	Not started		0	0	0	0	0	0

The following potential significant risks were identified from Internal Audit work completed in Quarter 4 2016/17 and are unchanged from the previous update report. No new significant risks have been identified from work completed in the year 2017/18 to date. The risks listed below will continue to feature in this section of the report until mitigated. Further information about the status of recommendations to make the necessary improvements can be seen below in Appendix D.

Name of Audit	Weaknesses Found	Risk Identified	Recommendation Action	Managers Agreed Action
Data Protection	Although the council is largely compliant with current Data Protection legislation, some work remains to be done in preparation for the introduction of GDPR due to come in on 28 May 2018 (General Data Protection Regulations) – see Appendix D for details.			

## Current status of 'Partial Assurance' reviews completed in 2016/17 with Actions due for Completion

Audit Title	Significant Audit Findings	Key Actions Agreed by Service	Dates of Agreed Implementation	Current status
Data Protection	<p>Under the GDPR, organisations are required to have a fully comprehensive information asset register which records what information is collected, held, in what format, for what purpose, or who the information asset owner is.</p> <p>A recommendation on this was made as part of the Protective Marking Audit (May 2016) and an implementation date agreed as Nov 2016. This date has now been exceeded.</p>	<p>The Senior Information Risk Officer (SIRO), in conjunction with senior management, has agreed to ensure that an Information Asset Register for the Council be developed to ensure that data and information held is recorded and subject to regular monitoring and update.</p>	September 17	<p>There is draft Information Asset Register in place. This will be monitored by the SIRO and the GDPR Lead.</p>
Data Protection	<p>The GDPR will require privacy impact assessments to be integral / embedded practice across an organisation where personal data is handled. Audit Testing found that this was not consistently in place across the Council. In the absence of a privacy impact assessment being carried out, the Council may fail to identify all areas of weakness / exposure to risk around the handling of personal data, resulting in an undetected data breach.</p>	<p>The Senior Information Risk Officer (SIRO), has agreed to ensure that the requirement to undertake privacy impact assessments be included in the project management framework currently being drafted by the Section 151 Officer. This will ensure that this becomes embedded in the Council's frameworks.</p>	August 17	<p>As part of the new Project Guidelines, Data Protection issues identified are now required to be included in the Project Initiation Document (PID). However when the Guidelines are reviewed in June 2018 the wording will be strengthened to specifically refer to Privacy Impact Assessments.</p>

Audit Title	Significant Audit Findings	Key Actions Agreed by Service	Dates of Agreed Implementation	Current status
Creditors	At the time of the audit the E-Procurement system not yet been fully implemented although we were advised that this would be completed by April 2016. We have been since advised that EDDC will no longer be accepting paper orders from April 2017 but at the time of the review this had not been agreed. During audit testing we noted opportunities for circumvention of existing controls in the paper based procurement process, which could be easily resolved through full implementation of the electronic procurement system. Until this takes place (or manual controls are enforced more rigorously), there is a risk that the council pays for goods or services that are unauthorised.	The Income and Payments Team Leader has agreed to set a date by which E-Procurement will be implemented in full. At this point, manual (paper based) submissions of invoice payment requests should be refused; except in very limited cases, ensuring that the majority of invoice payments are processed through the E-Procurement system. In the meantime, manual controls around the paper based procurement system should be enforced.	May 2017	Complete. Verified in the Creditors Follow up and Key Controls Audit which has been awarded substantial assurance.
Creditors	The Authorised Signatory List does not reflect the list of officers available to authorise payments through the E-Procurement system. There is a risk that purchases of unauthorised goods or services are being made if the finance team are not fully aware of who is approving them.	The Financial Services Manager has agreed to review the authorisers on the e-procurement system and align them with the Authorised Signatory List.	July 2017	Complete. Verified in the Creditors Follow up and Key Controls Audit which has been awarded substantial assurance.



# Progress Report

East Devon District Council

January 2018

# Contents

**The contacts at KPMG in connection with this report are:**

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**External audit progress report**

**Appendices**

1. 2016/17 audit deliverables

2. KPMG Resources

3. Technical Update

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This report provides the Audit Committee with an overview on progress in delivering our responsibilities as your external auditors.


The report also highlights the main technical issues which are currently having an impact in local government.

If you require any additional information regarding the issues included within this report, please contact a member of the audit team.

We have flagged the articles that we believe will have an impact at the Authority and given our perspective on the issue:

 High impact

 Medium impact

 Low impact

 For information

This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointment's website ([www.psa.co.uk](http://www.psa.co.uk)).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Darren Gilbert, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to [Andrew.Sayers@kpmg.co.uk](mailto:Andrew.Sayers@kpmg.co.uk). After this, if you are still dissatisfied with how your complaint has been handled you can access PSA's complaints procedure by emailing [generalenquiries@psaa.co.uk](mailto:generalenquiries@psaa.co.uk) by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.



# External audit progress report



# External audit progress report

This document provides the audit committee with a high level overview on progress in delivering our responsibilities as your external auditors.

At the end of each stage of the audit we issue certain deliverables, including reports and opinions. A summary of progress against these deliverable is provided in Appendix 1 of this report.

Area of responsibility	Commentary
<b>Financial statements</b>	<p>An unqualified opinion was issued on the financial statements on 21 September 2017 and reported through our ISA 260 at the last Audit Committee.</p> <p>We are beginning our planning work for the 17/18 audit, considering key issues at the Council and any relevant requirements as per the code. These discussions will form our audit plan, which will be reported in March.</p>
<b>Value for Money</b>	<p>An unqualified Value for Money opinion was issued on 21 September 2017 and reported through our ISA 260 at the last Audit Committee.</p>
<b>Certification of claims and returns</b>	<p>The grant certification was completed before the November deadline. We certified the Housing Benefits claim qualified. See attached report for further details.</p>
<b>Other work</b>	<p>There is no other work ongoing currently.</p>
<b>2017/18 Audit</b>	<p>We have confirmed fieldwork dates with the Authority for the 2017/18 audit cycle, and have also began planning discussions for the faster close requirements.</p>



# Appendix

## Appendix 1

# 2016/17 audit deliverables

Deliverable	Purpose	Timing	Status
<b>Planning</b>			
Fee letter	Communicate indicative fee for the audit year	April 2016	Complete
External audit plan	Outline our audit strategy and planned approach Identify areas of audit focus and planned procedures	March 2017	Complete
<b>Interim</b>			
Interim report	Details and resolution of control and process issues. Identify improvements required prior to the issue of the draft financial statements and the year-end audit. Initial VFM assessment on the Council's arrangements for securing value for money in the use of its resources.	June 2017	Complete
<b>Substantive procedures</b>			
Report to those charged with governance (ISA 260 report)	Details the resolution of key audit issues. Communication of adjusted and unadjusted audit differences. Performance improvement recommendations identified during our audit. Commentary on the Council's value for money arrangements.	September 2017	Complete

## Appendix 1

# 2016/17 audit deliverables (cont.)

Deliverable	Purpose	Timing	Status
<b>Completion</b>			
Auditor's report	Providing an opinion on your accounts (including the Annual Governance Statement). Concluding on the arrangements in place for securing economy, efficiency and effectiveness in your use of resources (the VFM conclusion).	September 2017	Complete
WGA	Concluding on the Whole of Government Accounts consolidation pack in accordance with guidance issued by the National Audit Office.	September 2017	Complete
Annual audit letter	Summarise the outcomes and the key issues arising from our audit work for the year.	November 2017	Complete
<b>Certification of claims and returns</b>			
Certification of claims and returns report	Summarise the outcomes of certification work on your claims and returns for Government departments.	December 2017	Presented at this committee



# KPMG Resources

# Ready for General Data Protection Regulations (GDPR)?

The biggest change to rules governing data protection for more than 20 years comes into effect in May 2018, carrying fines of up to 4% of revenue or €20m for organisations that do not comply, whichever is higher. The European Privacy regulators have made it very clear they intend to use their new powers.

Managing data requires a careful strategy to ensure that it's reliable and that customers understand what you are doing with their personal information and where required that you have gained their consent. This will ensure the insights it delivers are actionable, and reduces the risk that organisations won't be perceived as intrusive as customers see more tailored services.

Based on KPMG's extensive experience in working with organisations across sectors and geographies on privacy matters, we recommend the following five step approach. This could be used specifically for the purposes of the GDPR or as a broader privacy strategy approach.

- 1) **Define your privacy strategy** – Defining your privacy strategy is the first step. Without it, you can't have a consistent and coherent approach. The strategy must be defined and articulated, and then presented to senior leadership for their endorsement. You need to get it on the decision maker's agenda fast. Our recent experience has shown that most organisations will need to put investment into a privacy improvement programme.
- 2) **Where are you now?** – In order to establish the size of the task ahead and what specific areas need addressing, you need to understand your organisation's current maturity. This is not a tick box exercise but a pragmatic, focused process to really understand the GDPR privacy risk exposures that exist across your organisation.
- 3) **Take a pragmatic approach** – You need to build a realistic plan which will help you manage your risk to an appropriate level, in line with your overall business strategy. This does not necessarily mean taking a leading position in every single respect – but a clear view of what success looks like for you.
- 4) **Coordinate and deliver** – Focusing on areas of greatest risk, you need to ensure that controls are embedded as part of day to day business operations. This will require coordination across the organisation. Make sure you have the right blend of input from legal, IT, HR and other functions and enough resources. Don't underestimate the level of effort – personal information is everywhere in your organisation.
- 5) **Embed into business as usual** – Complying with the GDPR is about defining, implementing and then sustaining compliant processes. Post 2018 you will be required to demonstrate, on an ongoing basis, how you collect, use, retain, disclose and destroy personal information in line with the GDPR requirements. This impacts everything you do relating to personal information and is therefore a significant transformational activity for your organisation going forwards.

More details, including in relation to the five step approach set out above, can be found at: [www.kpmg.com/uk/privacyservices](http://www.kpmg.com/uk/privacyservices)

# Faster accounts close for Local Government

In February 2015 a new closedown timetable for Councils, Fire Authorities, Police Bodies and National Park Authorities was set out reducing both the time to prepare the accounts and complete the audit. As in prior years The Regulations retain the requirement for the draft accounts to be approved by the Responsible Finance Officer and sets out the period for the exercise of public rights.

## **The Benefits**

The Government has been keen to improve transparency of local government financial reporting. Historically there has been a disconnect between budget monitoring carried out during the year and the annual accounts closedown process producing a set of statements that bear little resemblance to the reported budget position.

## **The Risks**

Reducing the time taken to publish the financial statements presents a number of risks to authorities which will need to be addressed in order to facilitate successful faster closure. The Regulations set out the duties of the Responsible Financial Officer to have proper arrangements in place. potential risks include:

- failure to deliver the draft and final statements within the deadlines;
- incomplete and inaccurate financial statements (e.g. due to risk of error from increased estimation);
- reputational damage; and
- diversion of resources from other key finance activities –leading to issues in other areas.

As well as compliance with the Regulations, failure would lead to potential qualification of the VFM opinion from external auditors and critical comments from national stakeholders.

## **Lessons from bodies already closing early**

Experience elsewhere suggests there needs to be an early recognition of the additional work needed to develop the faster plan. Many Authorities have developed a project group of key senior finance officers and central and service finance office to develop the approach.

Resourcing is always recognised as an issue, but in the development of a plan, authorities need to ensure that accounts production is appropriately shared amongst staff resources, for instance, there is experience at smaller authorities that this is allocated to one person.

Fundamental to the development plan is ensuring that all contributors, including those outside of finance, are aware of the change and they are built into the project.

KPMG have produced a thought leadership document that covers the above in more detail. This is available from your audit team.

# The route to digital business leadership

Whether disruptive technologies are viewed as a threat, an opportunity, or both, the need for digitally enabled business transformation is a survival issue for some and a strategic imperative for just about everyone else. But organizations are meeting with varying levels of success.

In this year's Harvey Nash / KPMG CIO Survey, we recognized that there was a group of respondents who are 'very effective' at using digital technologies to advance their business strategy. We have labelled these organizations 'Digital Leaders'.

Based on extensive analysis of the survey data, KPMG member firms' professional experience and conversations with clients, we have identified four key practices that set these 'digital leaders' apart from other organizations. The report describes each in more detail:

- Build on a stable and secure infrastructure
- Invest aggressively in agile and disruptive technologies
- Adept at aligning business and IT strategy
- Focused on innovation and growth

But how do you become a digital leader? KPMG's report sets out six steps that organizations can take to help close the gap, and move them down the road towards digital business leadership.

The full report can be accessed here: <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/09/the-route-to-digital-business-leadership.pdf>





# Technical developments

# Local government finance settlement 2017-18

Level of impact: ● (For Information)	KPMG Perspective
<p>The Department for Communities and Local Government (DCLG) has published the final local government finance settlement for 2017/18. The settlement reflects comments received by DCLG in response to its consultation, with key features including:</p> <ul style="list-style-type: none"><li>— confirmation of spending allocations for those authorities which have taken up the government’s four-year funding deal first set out in 2015;</li><li>— details of council tax referendum thresholds, including the additional social care precept, and a 2% principle for all shire district councils, and for police and crime commissioners in the lowest quartile; and</li><li>— the legislative framework for business rates reform underpinning the move towards 100% business rates retention.</li></ul> <p>For further information please see <a href="http://www.gov.uk/government/collections/final-local-government-finance-settlement-england-2017-to-2018">www.gov.uk/government/collections/final-local-government-finance-settlement-england-2017-to-2018</a></p>	<p>Committee members may want to be updated as to how this will impact on the medium term financial plans.</p>

# Minimum Revenue Provision Consultation

Level of impact: ● (For Information)	KPMG Perspective
<p>The Prudential System is comprised of 4 statutory codes. The Department for Communities and Local Government is responsible for preparing the guidance on Local Authority Investments and the guidance on Minimum Revenue Provision.</p> <p>Over the past years the regulatory and economic environment has changed significantly and led the sector to consider more innovative types of investment activity. The government has also monitored changes in the practices used for calculating Minimum Revenue Provision.</p> <p>As a result the government proposes to update the guidance as part of the more general update of the statutory codes comprising the prudential framework</p> <p>Department for Communities and Local Government are consulting on the proposed framework</p> <p>This consultation seeks views on the proposals for updating the prudential framework and will last from 10 November 2017 and will conclude on 22 December 2017.</p> <p>The consultation and proposed framework can be found below.</p> <p><a href="https://www.gov.uk/government/consultations/proposed-changes-to-the-prudential-framework-of-capital-finance">https://www.gov.uk/government/consultations/proposed-changes-to-the-prudential-framework-of-capital-finance</a></p>	<p>Committee members may want to ask officers how they propose to respond to the consultation and the potential impact to the medium term financial plans.</p>

# Public Sector Internal Audit Standards (PSIAS)

Level of impact: ● (For Action)	KPMG Perspective
<p>The revised Public Sector Internal Audit Standards (PSIAS) came into force on 1 April 2017 and are included on the IASAB website (a CIPFA microsite – link below). These were agreed by the Relevant Internal Audit Standard Setters (RIASS) who are CIPFA in respect of local government bodies across the UK.</p> <p>The standards apply to local authorities and other local government bodies, including police and fire bodies, as well as government departments (including executive agencies and non-departmental public bodies) and Clinical Commissioning Groups and NHS trusts.</p> <p>The standards are based on the mandatory elements of the International Professional Practices Framework (IPPF) as follows:</p> <ul style="list-style-type: none"><li>– Definition of internal auditing.</li><li>– Core principles for the professional practice of internal auditing.</li><li>– Code of ethics.</li><li>– International standards for the professional practice of internal auditing (which comprise statements, interpretations and a glossary).</li><li>– Plus the mission of internal auditing.</li></ul> <p>In addition, the PSIAS include a small number of the UK public sector requirements, which indicate how internal auditors must implement the IPPF in the UK public sector including:</p> <ul style="list-style-type: none"><li>– conforming to the Code of Ethics. If individual internal auditors have membership of another professional body then he or she must also comply with the relevant requirements of that organisation;</li><li>– having regard to the Committee on Standards of Public Life’s Seven Principles of Public Life; and</li><li>– the requirement for the chief audit executive to deliver an annual internal audit opinion and report that can be used by the organisation to inform its governance statement. The annual internal audit opinion must conclude on the overall adequacy and effectiveness of the organisation’s framework of governance, risk management and control. The annual report must also include a statement on conformance with the Public Sector Internal Audit Standards and the results of the quality assurance and improvement programme.</li></ul> <p>The 2017 PSIAS standards can be found at <a href="http://www.iasab.org/standards">www.iasab.org/standards</a></p>	<p>Committee members may wish to request assurance that the Internal Audit standards will be achieved.</p>

# Local authority accounts: A guide to your rights

### Level of impact: ● (For Information)

The NAO publishes a guide aimed at helping local people understand their rights to ask questions, inspect and object to local authority accounts. The updated publication, *Local authority accounts: A guide to your rights*, is available on the NAO website (at the link below).

The main changes to the guide are as follows:

- A change of title from *Council Accounts: A guide to your rights* to *Local authority accounts: A guide to your rights*, to reflect the fact that public rights apply to a wider selection of authorities than 'councils'.
- The guide contains a new Annex, which addresses issues specific to smaller authorities, such as exemption from limited assurance review, which comes into force from 2017-18 onwards.
- The guide clarifies that, while helpful to do so, it is not necessary for electors to identify an item of account in order for the objection to be eligible, particularly where they are raising issues in respect of governance, and/or are asking the auditor to issue a report in the public interest. Audit committee members are encouraged to read the guide, and to direct members of the public to in correspondence where this may be helpful.

The guide can be found at [www.nao.org.uk/code-audit-practice/council-accounts-a-guide-to-your-rights/](http://www.nao.org.uk/code-audit-practice/council-accounts-a-guide-to-your-rights/)

# Publication of 2017/18 work programme and scale of fees

### Level of impact: ● (For Information)

Following consultation, Public Sector Audit Appointments Ltd (PSAA) has published the work programme and scale fees for the audit of the 2017/18 accounts of principal local government and police bodies.

There are no changes to the overall work programme for 2017/18. Scale fees will therefore also remain at the same level as the scale fees applicable for 2016/17. This retains the significant fee reductions of 55 per cent secured since 2012/13, and continues to protect audited bodies from cost of living increases with an overall real terms saving equivalent to 61 per cent.

The audit of the 2017/18 accounts is the final year for the current audit contracts, which were extended for one year under transitional arrangements made by the Department for Communities and Local Government. For audits of the accounts from 2018/19, the provisions of *the Local Audit and Accountability Act 2014* in relation to local appointment of auditors will apply. The Secretary of State for Communities and Local Government has specified PSAA as the appointing person for principal local government and police bodies, and, in accordance with the Act, PSAA will therefore appoint auditors and set scale audit fees for bodies that have opted into its national scheme.

During the course of 2017/18 PSAA plans to make a distribution of surplus funds to principal local government and police bodies. The distribution is made possible by the transfer of an element of the Audit Commission's retained earnings prior to its closure in March 2015 and by PSAA making further efficiencies since its establishment.

The work that auditors will carry out on the 2017/18 accounts will be completed based on the requirements set out in the *Local Audit and Accountability Act 2014* and under the *Code of Audit Practice* published by the National Audit Office.

The 2017/18 work programme documents and scale fees for individual audited bodies are now available on the PSAA website at [www.psa.co.uk/audit-and-certification-fees/201718-work-programme-and-scales-of-fees/](http://www.psa.co.uk/audit-and-certification-fees/201718-work-programme-and-scales-of-fees/)

# Local Audit (public access to Documents) Act 2017

**Level of impact:** ● (For Information)

The *Local Audit (Public Access to Documents) Act 2017* (the Act) received royal assent on 27 April 2017. The Act extends rights of inspection under section 26 of the *Local Audit and Accountability Act 2014* to include journalists and citizen journalists.

The Act defines a journalist as 'any person who produces for publication journalistic material (whether paid to do so or otherwise).' Committee members will wish to note that while the Act extends rights of inspection, there are no changes in respect of auditors' additional powers and duties; the rights under the *Local Audit and Accountability Act 2014* to ask the auditor questions about the accounts, and to make an objection at audit, continue to be restricted to local government electors only.

# CIPFA consultations

### Level of impact: ● (For Information)

Members will wish to be aware that CIPFA/LASAAC are consulting on the 2018/19 *Code of Practice on Local Authority Accounting in the United Kingdom*.

The consultation will close on 6 October 2017 with responses direct to CIPFA. The changes being consulted on are:

- IFRS 9 Financial Instruments;
- IFRS 15 Revenue from Contracts with Customers;
- narrow scope amendments to International Financial Reporting Standards;
- legislative and policy changes.

A copy of the consultation can be found at [www.cipfa.org/policy-and-guidance/consultations/code-of-practice-on-local-authority-accounting-in-the-united-kingdom-2018-to-2019-invitation-to-comment](http://www.cipfa.org/policy-and-guidance/consultations/code-of-practice-on-local-authority-accounting-in-the-united-kingdom-2018-to-2019-invitation-to-comment) The deadline to respond is 6 October 2017.

In addition, CIPFA is consulting on changes to both the prudential and treasury management codes. These codes have not been updated for some time and CIPFA recognises that they needed to be revised to take into consideration new patterns of local authority borrowing and investment activity.

The prudential code consultation can be found at [www.cipfa.org/policy-and-guidance/consultations/consultation-on-proposed-changes-to-the-prudential-code](http://www.cipfa.org/policy-and-guidance/consultations/consultation-on-proposed-changes-to-the-prudential-code) and the treasury management code consultation at [www.cipfa.org/policy-and-guidance/consultations/consultation-on-treasury-management-code](http://www.cipfa.org/policy-and-guidance/consultations/consultation-on-treasury-management-code)

The closing date for responses for these consultations is the 30 September.



# NAO Report – Progress in setting up combined authorities

### Level of impact: ● (For Information)

In July, the NAO published its report on *Progress in setting up combined authorities* which concludes that for combined authorities to deliver real progress they will need to demonstrate that they can drive economic growth and contribute public sector reform.

These authorities have inherently complex structures and are not uniform. They vary in the extent of the devolution deals they have struck with government. The combined authority with the greatest degree of devolution, Greater Manchester, has now absorbed control over the office of the police and crime commissioner and fire and rescue services. Others are currently primarily focused on transport issues, as well as housing and regeneration.

The report highlights a number of risks including:

- local councillors will have limited capacity for the overview and scrutiny of combined authorities. Furthermore, in May 2017, six mayors were elected to combined authorities in England, with candidates having campaigned on manifestos which frequently made policy commitments beyond the current remits of these organisations. This raises the question of whether mayors can be credible local advocates if they only deal with the limited issues under the remit;
- a number of authorities have been unable to bring local authorities together to establish combined authorities, while areas with a long history of working together have often found it most straightforward to establish combined authorities;
- the capacity of most combined authorities is currently limited and the lack of geographical coherence between most combined authorities and other providers of public services could make it more problematic to devolve more public services in the future; and
- if the United Kingdom's departure from the European Union (EU) results in reductions in regional funding, the economic regeneration role of combined authorities would become more pressing. Combined authorities are generally in areas which receive the most EU funding. The North West, for example, is scheduled to receive in excess of 1 billion euros in European Regional Development Funds, European Social Fund, and Youth Employment allocations between 2014 and 2020.

The report is available on the NAO website at [www.nao.org.uk/report/progress-in-setting-up-combined-authorities/](http://www.nao.org.uk/report/progress-in-setting-up-combined-authorities/)

# PSAA's Value for Money tool

### Level of impact: ● (For Information)

Public Sector Audit Appointments Ltd (PSAA) further updated their Value for Money Profiles tool (VFM Profiles) on 4 August 2017.

The VFM profiles have been updated with the latest available data for the following data sources:

- Alcohol related admissions to hospital (2015/16)
- Attainment by age 19 (2015/16)
- Claimant count (2017)
- Climate change statistics (2015)
- Collection rates for council tax and non-domestic rates (2016/17)
- Conception statistics (2015)
- Council tax demands and precepts statistics (2017/18)
- Delayed transfers of care (Q1 2017)
- Fire and rescue service statistics (2016)
- First time entrants into the youth justice system (2015/16)
- Fly tipping incidents and actions (2015/16)
- Fuel poverty (2015)
- Homelessness statistics (2016/17)
- Mid-year population estimates (2016)
- National road maintenance condition survey (2015/16)
- NHS health check data (2016/17)
- Pupil absence in schools (2015/16)
- School capacity (2016)
- Schools, pupils and their characteristics (2016/17)

The tool can be accessed through the PSAA website at [http://vfm.psaa.co.uk/nativeviewer.aspx?Report=/profiles/VFM\\_Landing](http://vfm.psaa.co.uk/nativeviewer.aspx?Report=/profiles/VFM_Landing)

# PSAA report on the results of auditors' work at Local Government bodies 2016-17

### Level of impact: ● (For Information)

Public Sector Audit Appointments Ltd (PSAA) intends to publish a report on the results of auditors' work at local government bodies for 2016-17.

In December 2016, PSAA published its second report on the results of auditors' work at local government bodies covering the 2015-16 financial year.

PSAA is intending to publish a report on the results of auditors' work at principal local government bodies and small bodies for the 2016-17 audit year, covering the following:

- timing of issue of accounts opinions (early and late);
- non-standard accounts opinions;
- emphasis of matter and other matter paragraphs;
- non-standard conclusions on arrangements to secure VFM; and
- details of public interest reports and statutory recommendations issued since the previous report.

The report will include the names of individual principal bodies under each of the above categories, as appropriate, with a summary of all the principal bodies named in the report in an appendix at the end. PSAA is aiming to publish the report around mid-December 2017.

Information reported by auditors in the PSAA audit issues survey will be the primary source of information for the report.

# NAO homelessness report

### Level of impact: ● (For Information)

The NAO has published a report on Homelessness which may be of interest to members in considering bodies' arrangements to secure value for money.

The report finds that homelessness has increased across all measures since 2010, with many local authorities now seeing it as a risk to their financial sustainability. It also finds that government has not evaluated the impact of its welfare reforms on homelessness, or the impact of the mitigations that it has put in place.

The report details the increase in statutory homelessness in England in recent years, and identifies the factors driving this. It notes that although the Department for Communities and Local Government (DCLG) is responsible for tackling homelessness, during its increase, DCLG took a light touch approach to working with local authorities. This contrasts with the more interventionist approach that it has taken during previous periods of high homelessness. Although DCLG requires each local authority to have a homelessness strategy, it does not monitor their content or their progress.

DCLG has supported new legislation that will increase the responsibilities of local authorities in preventing homelessness. The Homelessness Reduction Act 2017 aims to give local authorities more responsibility for preventing homelessness. DCLG expects that these responsibilities will lead to an increase in prevention cases and a fall in the number of households that qualify for temporary accommodation.

The report finds that the ability of local authorities to respond to increased homelessness is constrained by the limited options they have to house homeless families. As set out in the NAO's assessment of the housing market in Housing in England: overview, there has been a significant reduction in social housing over the past few decades. While spending by local authorities on homelessness services such as temporary accommodation has steadily increased since 2010, spending on overall housing services has fallen by 21% in real terms over the same period. The proportion of homeless households in temporary accommodation outside their home borough increased from 13% in March 2011 to 28% in March 2017. Almost 90% of these households are from London boroughs.

The Homelessness report is available from the NAO website.

# Smith Institute report on the increase of local housing companies

### Level of impact: ● (For Information)

The Smith Institute has published a report on the rise of local housing companies (LHCs) which may be of interest to members in considering bodies' arrangements to secure value for money.

The report finds there are already over 150 LHCs, set up by local authorities to provide commercial and social housing opportunities. The Smith Institute estimates that the number of LHC's will grow to around 200 over the next three years.

The report finds LHCs are largely outside of the housing revenue and housing association regulatory framework and are often partially financed by local authorities borrowing from the public works loan board and on-lending to the LHC while making a commercial return. With the changing regulatory environment around the current updating of the prudential code and the statutory investment regulations there may be a threat to the operation model of the LHC's.

The report can be accessed through the Smith Institute.



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**Private & confidential**

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Our ref KPMG/EDDC/GrantCertL/16-17

15 December 2017

Dear Simon

**East Devon District Council - Certification of claims and returns - annual report 2016/17**

Public Sector Audit Appointments requires its external auditors to prepare an annual report on the claims and returns certified for each audited body. This letter is our annual report for the certification work we have undertaken for 2016/17.

In 2016/17 we carried out certification work on only one grant claim, the Housing Benefit Subsidy claim. The certified value of the claim was £31.548 million, and we completed our work and certified the claim on 30 November 2017.

**Matters arising**

Our certification work on Housing Subsidy Benefit claim included:

- agreeing standard rates, such as for allowances and benefit incomes, to the DWP Circular communicating the value of each rate for the year;
- sample testing of benefit claims to confirm that the entitlement had been correctly calculated and was supported by appropriate evidence;
- undertaking an analytical review of the claim form considering year-on-year variances and key ratios;
- confirming that the subsidy claim had been prepared using the correct benefits system version; and
- completing testing in relation to modified schemes payments, uncashed cheques and verifying the accurate completion of the claim form.

Testing of the initial sample identified one case where benefit had been underpaid as a result of the Authority entering an incorrect LHA rate, resulting in an amendment of £83.08 from cell 12 (board and lodging expenditure up to the cap) to 13 (board and lodging expenditure over the cap).

A 40+ sample was completed over the remaining cases in cell 11 (39 cases), which did not identify further LHA rate errors, however it did identify:

- two cases valued at £14,684.79 (£8,813.77 and £5,871.02 respectively) where at the time of certification we were been unable to fully reconcile the values included in the subsidy report to the detailed case area provided from the Authority records held on the its benefits system, Academy. The Authority has amended the claim form for both cases to the latest detailed workings it has produced. The impact of these adjustments has increased cell 12 by £918, increased cell 13 by £3,708, decreased cell 14 (short term lease accommodation expenditure up to the cap) by £1,500 and decreased cell 15 (short term lease accommodation expenditure up to the cap) by £1,407. These cell entries do not reflect the original values produced by the Authority's subsidy system. As a result of the amendment above, the overall subsidy claimed by the Council decreased by £2,219.

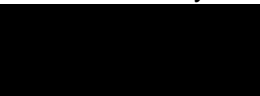
Consequently we were unable to conclude on the two cases before the 30 November deadline. This information was presented to DWP in our qualification letter.

We have made no recommendations to the Council to improve its claims completion process, however we have spoken to the Council about the approach and timing of the certification work to ensure we are able to conclude on each case in 2017/18. There were no recommendations made last year and there are no further matters to report to you regarding our certification work.

### **Certification work fees**

Public Sector Audit Appointments set an indicative fee for our certification work in 2016/17 of £8,108, this compares to the 2015/16 fee for this claim of £8,721. Our actual fee was higher than the indicative fee at £10,874. The reason for the increase is due to a fee variation for the additional testing required after our initial samples. This fee increase is subject to determination by PSAA.

Yours sincerely



Darren Gilbert  
Director, KPMG LLP



This report is addressed to the Council and has been prepared for the sole use of the Council. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointments's website ([www.psaa.co.uk](http://www.psaa.co.uk)).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Darren Gilbert, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to [andrew.sayers@kpmg.co.uk](mailto:andrew.sayers@kpmg.co.uk). After this, if you are still dissatisfied with how your complaint has been handled you can access PSAA's complaints procedure by emailing [generalenquiries@psaa.co.uk](mailto:generalenquiries@psaa.co.uk), by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.

**Report to:** **Audit and Governance Committee**

**Date of Meeting:** 18 January 2018

**Public Document:** Yes

**Exemption:** None

**Review date for release** None



**Agenda item:** **10**

**Subject:** **Full Risk Review November 2017**

**Purpose of report:** Risk information for November 2017/18 financial year is supplied to allow the Audit and Governance Committee to monitor the risk status of Strategic and Operational Risks. This follows the full review of risks by responsible officers during November 2017

**Recommendation:** **That the Audit and Governance Committee considers the current status of risks following the full risk review undertaken in November 2017.**

**Reason for recommendation:** To ensure that the Risk Management Policy and Guidance is being followed and all risks are being monitored and control actions implemented.

**Officer:** Simon Davey, Strategic Lead - Finance  
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Joanne Avery, Management Information Officer  
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**Financial implications:** No direct financial implications

**Legal implications:** There are no direct legal implications

**Equalities impact:** Low Impact  
Failure to identify, assess, monitor, review and manage risks could impact negatively (i.e. financial, reputational, operationally) on the council.

**Risk:** High Risk  
Failure to identify, assess, monitor, review and manage risks could impact negatively (i.e. financial, reputational, operationally) on the council.

**Links to background information:**

- [Appendix A – Full list of Operational Risks November 2017](#)
- [Appendix B – Strategic Risks November 2017](#)
- [Appendix C – Explanations and definitions](#)

**Link to Council Plan:** Continuously improving to be an outstanding council

**Report in full**

1. As part of our corporate governance it is appropriate that we maintain and manage a risk register. The risk register allows us to highlight any risks to our organisation and set out how we are going to mitigate against their impact and likelihood.
2. Our risk management policy requires all risks identified by the council to be reviewed bi-annually. Through the month of November the risk owners were tasked with reviewing their risks in the SPAR system. The complete operational risk register is provided for the Committee to review at [Appendix A](#). This is listed by service area and includes all of the control actions. There are now 86 operational risks, all of which have been reviewed and re-scored in light of all mitigating actions being undertaken. All services were asked to highlight any new and emerging risks with no new risks being put forward at this review
3. In the operational risk register there is one risk currently scored as high. **Lack of funding to enable the delivery of required infrastructure through lack of sufficient income from the Community Infrastructure Levy (CIL) and that this holds up the delivery of development.** - Current estimates show that there will be a £270 million shortfall in infrastructure over the period of the Local Plan. Changes in legislation are needed to address this albeit a CIL charging schedule review is underway and may improve the situation. Fundamentally the current system relies on funding from other sources and infrastructure providers and so pressure needs to be put in bodies such as DCC, NHS etc to help fund infrastructure projects in the district.
4. The tables below set out the number of risks in each service by score.

Finance	High	Medium	Low
<i>Risks by score</i>		3	9

Economy	High	Medium	Low
<i>Risks by score</i>	1	7	8

Housing	High	Medium	Low
<i>Risks by score</i>		10	10

Environment	High	Medium	Low
<i>Risks by score</i>		11	3

Governance & Licensing	High	Medium	Low
<i>Risks by score</i>		10	4

Organisational Development	High	Medium	Low
<i>Risks by score</i>		2	8

5. As part of this review our strategic risks have also been reviewed by their owners and are now submitted for Committee’s consideration.

There are now 6 risks on the strategic register

- **Adequacy of financial resource planning to deliver the Council's priorities** Insufficient financial resources to deliver Council priorities as a consequence of: a) Failure of financial forecasting, budgeting, monitoring and reporting system resulting in insufficient financial resources and inadequate reserves b) Failure to use resources available effectively c) Reduction in government funding
- **Risk: Major disruption in continuity of computer and telecommunications services** Major disruption in continuity of computer and telecommunications facilities to the detriment of service delivery including Cyber-attack

- **Risk: Adequate emergency planning and business continuity** A failure to adequately plan for emergencies and understand what issues arise in planning for business continuity could lead to a major service failure.
- **Risk: Office Relocation** Not relocating would mean the continued high cost of management and maintenance of Knowle Offices. Increasing inefficiency of current accommodation and reducing capacity to deliver improving services, modern working practices and performance improvements. Challenged ability to maintain high quality services and projects in a time of reducing funding and resources.
- **Risk: Roll out new recycling and waste service** Roll out new recycling and waste service – Failure to implement as planned and public rejection of scheme
- **Risk: Delivery of Growth Point** Delivery of Growth Point – Failure to delivery planned housing and business growth, including a successful and vibrant new town.

These are all scored in in the medium range with none currently showing as high risk. More details for each risk can be seen in [Appendix B](#).

Strategic Risks	High	Medium	Low
<i>Risks by score</i>		6	

6. An explanation and definitions of these risks including the risk matrix can be found in [Appendix C](#).

**Report to:** **Audit and Governance Committee**

**Date of Meeting:** 18 January 2018

**Public Document:** Yes

**Exemption:** None

**Review date for release** None

**Agenda item:** 11

**Subject:** **RIPA Report and RIPA Policy update**

**Purpose of report:** To have strategic oversight of the Council's RIPA function, to update Members following receipt of the Investigatory Powers Commissioners Report and to seek adoption of the revised Policy.

**Recommendation:** **Members are asked to;**

- 1. note the content of the report and actions being taken to address the Recommendations of the Investigatory Powers Commissioners Report, and**
- 2. approve and adopt the revised RIPA Policy contained at Appendix A.**

**Reason for recommendation:** To update Members following receipt of the Investigatory Powers Commissioners Report and to seek Members approval to a revised RIPA policy.

**Officer:** Henry Gordon Lennox, Monitoring Officer and RIPA Senior Responsible Officer

**Financial implications:** There are no financial implications identified.

**Legal implications:** Although the RIPA powers are rarely used, it is important that the Council has an up to date and relevant RIPA Policy so that officers are able to understand when authorisation is required and how to go about obtaining an authorisation. The IPCO report identifies amendments that will improve the policy and these have been made and the recommendation is to adopt these which is sound. A failure to do so could result in a failure to follow RIPA requirements and / or reputational issues upon the next inspection.

**Equalities impact:** Low Impact

**Risk:** Medium Risk

Although not often used it is important that the Council are aware of RIPA powers and responsibilities and have a robust policy that can be applied and followed when the need arises. Using RIPA properly allows evidence to be legitimately gathered such that it can be used in court proceedings.

**Links to background information:**

- [Current RIPA Policy](#)
- [Agenda for 21st September Audit and Governance Committee](#)



- [IPCO Report – September 2017](#)

**Link to Council Plan:** Continuously improving to be an outstanding Council.

## Report in full

1. The Committee last received a report at its 21<sup>st</sup> September meeting (link to the agenda is in the background links) and in that report it was noted that the report of the Investigatory Powers Commissioner (formerly the Surveillance Commissioner) was awaited. That report was received at the end of November and a link to it is in the background links.
2. The report reviews the Council's RIPA activity both from a policy / procedural stand point but also practical application. The report concludes that '*East Devon DC has in place an excellent policy and procedures document resort to which would provide good guidance in the event that the Council departed from its existing practice of not engaging in covert surveillance activity*'. However the report does make a number of criticisms, predominantly around training. The Council was aware of the deficiency in this area and indeed highlighted to the Commissioner in its formal return that training was in the process of being organised - this was reported to the Committee in September (see paragraph 6 of the report). The specific concerns raised, dealt with through the recommendations in the report, are addressed individually below.

### Training Programme

3. This is the main finding of the report but is something that the Council was aware of and has been putting in place measures to address. The authorising officer training is confirmed for the 29<sup>th</sup> January and 5<sup>th</sup> February. The investigating officer training is scheduled (over a number of sessions) on 30<sup>th</sup> January and 6<sup>th</sup> February.
4. It is worth pointing out, with respect to comments in paragraph 10 & 14 of the IPCO report, that the SRO has had RIPA training (from previous employment) although this is quite historic and it is accepted that refresher training needs to be undertaken.
5. Going forward there will be a regular programme of training (including refresher training) for identified posts led by the RIPA Co-ordinating Officer with the support of HR.

### Policy updates

6. The recommendations include updating our RIPA policy as follows;
  - a. Inclusion of additional wording in the section on social media to better explain when RIPA authorisation may be required, both from a directed surveillance and use of CHIS point of view. This has been done with additional wording added at paragraph 9.3.
  - b. Identifying the specifics of the role of the Co-ordinating Officer. This has been done with wording added under the 'Who is responsible for delivery' section. It also includes an amendment to section to revise the officer responsible for ensuring training is carried out.
  - c. Inclusion of the authorising officer attending the Magistrates' Court when seeking their approval. This has been done.
  - d. Clarification that the duration of an authorisation commences with the Magistrates' approval. This has been done.

- e. Clarification that only the Chief Executive can authorise use of vulnerable or juvenile CHISs. This was in the policy already but section 5.3 has been expanded to include this aspect as well.
7. Although not a specific recommendation, there is a suggestion of adding another authorising officer to provide resilience. This has been done by inclusion of the Deputy Chief Executive with associated amendments where appropriate.
  8. The Committee is requested to approve the revised policy (Appendix A).

#### Schedule of technical equipment

9. The report identifies that cameras could be used for covert surveillance, although we don't use them as such. Accordingly it is a recommendation that there is a schedule kept of technical equipment which could be used for covert surveillance. This has been actioned and the register will be kept by the RIPA Co-ordinating Officer.

#### Reporting

10. The Committee receives an annual report on RIPA activity, which is a requirement of our policy. In light of the fact that we don't generally carry out any activity, update reporting to provide a nil return has not been carried out to date. The report identifies that there should be regular reporting, even if that is to report no activity. Accordingly going forward there will be a standing item on the Committee's agenda in terms of RIPA activity with the general expectation that this will reflect that no activity has been undertaken since the last meeting or for a short update report (as with the reporting of appeal statistics to Development Management Committee) to identify that it has been used and the circumstances around its use.

## **East Devon District Council**

### **Policy on use of directed surveillance and covert human intelligence sources - Regulation of Investigatory Powers Act 2000**

#### **Reviewed**

November 2017.

#### **Policy Approval**

Audit and Governance Committee on 18<sup>th</sup> January 2018.

#### **Reasons for introducing the Policy**

To explain legal requirements and act as a brief guide to the legislation for Council staff.

#### **Policy Statement**

The purpose of this procedure is to ensure that the Council complies with the requirements of the Regulation of Investigatory Powers Act 2000 ('RIPA') and that appropriate authorisations are given for directed surveillance and the use of covert human intelligence sources ('CHIS').

RIPA, together with its associated regulatory framework, provides a valuable protection to the Council if directed or covert surveillance is carried out, and may protect the Council from the risks of civil action in the event of a breach of a person's human rights. In addition, its correct application may ensure that evidence gained by such means will be admitted in evidence more readily in the criminal courts.

The policy sets out the tests which must be applied in deciding whether authorisation is appropriate. RIPA now restricts directed surveillance to serious criminal cases or to tobacco or licensing offences related to children. Authorisations for directed surveillance or covert human intelligence sources are not effective until approved by a Justice of the Peace (Magistrate).

#### **Terms Explained**

These are set out in the policy at appropriate points in the context of the legislation.

#### **How will we go about it?**

The policy has been approved by the senior management team, and senior and relevant staff have been offered training on its implementation.

#### **Specific Policy Areas**

### **1 INTRODUCTION**

1.1 The Regulation of Investigatory Powers Act 2000 controls the use of covert investigative techniques by public authorities. It provides for the application for and granting of authorisations for those techniques covered by the Act.

1.2 Article 8 of the European Convention on Human Rights provides a right to private and family life. This is not an absolute right; it may be infringed in

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certain circumstances. The RIPA is designed to provide a statutory regulatory framework, which will meet the requirements of the European Convention on Human Rights.

## **2 ASSOCIATED DOCUMENTS**

### **2.1 Relevant Statutes**

- (a) Regulation of Investigatory Powers Act 2000 as amended by the Protection of Freedoms Act 2012 and explanatory notes
- (b) Human Rights Act 1998
- (c) Police and Criminal Evidence Act 1984

### **Relevant Statutory Instruments (include)**

- (d) Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (SI 2003 No 3171) as amended by Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010/521 as amended and Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012/1500
- (e) The Regulation of Investigatory Powers (Juveniles) Order 2000/2793
- (f) The Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010

### **2.2 Relevant Guidance**

- (a) Protection of Freedoms Act 2012 – Home Office Guidance
- (b) Code of Practice for covert surveillance and property interference
- (c) Code of Practice for covert human intelligence sources
- (c) Codes of Practice for the acquisition and disclosure of communications data and retention of communications data
- (d) Code of Practice for investigation of protected electronic information
- (e) Guidance from the Office of Surveillance Commissioner – website
- (f) Guidance from the Home Office on the judicial approval process for RIPA and crime threshold for directed surveillance

All Codes, relevant legislation and guidance is available on the [Office of the Surveillance Commissioner website](#), while the RIPA Codes and guidance on the judicial approval process are also available on the [Home Office website](#).

## **3 SCOPE**

The Act provides a regime of primary legislation and Codes of Practice, which divide covert investigation techniques into categories distinguished to an extent by the degree of intrusion involved. This procedure applies to all investigation and surveillance that may be subject of an authorisation under RIPA.

### **3.1 The Act provides the following investigatory powers:**

- (1) Part 1(Chapter I) – interception of communications
- (2) Part 1 (Chapter II) – the acquisition of communications related data e.g. telephone billing data

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- (3) Part II deals with:
- intrusive surveillance on residential premises or in private vehicles
  - directed surveillance, that is covert surveillance in the course of a specific operation
  - the use of covert human intelligence sources e.g. agents, informants, undercover officers
- (4) Part III – deals with the power to seize electronic keys giving access to encrypted computer material
- (5) Part IV – provides for scrutiny, complaint procedures and codes of practice.

3.2 This policy document relates to the **use of directed surveillance** and **covert human intelligence sources**.

3.3 RIPA sets out the purposes for which each of these powers may be used, the Agencies and authorities that can use them and who should authorise the use. Authorisation under RIPA gives lawful authority for the use of these methods of obtaining information provided there is compliance with the statutory requirements and procedures. Obtaining an authorisation will ensure that the action is carried out in accordance with law and subject to stringent safeguards against abuse. It will also make the action less vulnerable to challenge under the Human Rights Act 1998.

3.4 Services likely to conduct investigations covered by RIPA are Planning, Environmental Health, Housing, Licensing and Revenues & Benefits. **However, before conducting an investigation using methods or techniques covered by this Act, the officer doing so is required to seek the necessary authorisations.**

3.5 Care must be taken that covert surveillance does not become intrusive surveillance. Intrusive surveillance is **only** available to the Home Office, MI5 and certain other central government bodies, **not to councils**.

3.6 Intrusive surveillance is defined in Section 26(3) of RIPA which states that it is intrusive surveillance only if it is covert and it;

- is carried out in relation to anything taking place on residential premises or in a private vehicle; and
- involves the presence of an individual on the premises or vehicle or is carried out by a surveillance device.

#### **4 ACTIVITY REQUIRING AUTHORISATION**

4.1 The following types of activity will require authorisation:

- directed surveillance
- the conduct and use of covert human intelligence sources

4.2 Directed surveillance is, in essence, any activity undertaken covertly for the purpose of a specific investigation in such a way that is likely to result in obtaining information about a person's private life.

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- 4.3 A covert human intelligence source (CHIS) is usually, but not always an inside informant or undercover officer who develops or maintains their relationship with the surveillance target, having the covert purposes of obtaining or accessing information for the investigator. Under the 2000 Act, a person is a CHIS if:
- (a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c);
  - (b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
  - (c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship

## 5 APPLYING FOR AUTHORISATIONS

- 5.1 The authorising officers for the Council are; the Chief Executive (Mark Williams), Deputy Chief Executive (Richard Cohen), s.151 Finance Officer (Simon Davey) and Monitoring Officer and RIPA Senior Responsible Officer (Henry Gordon Lennox).
- 5.2 Any officer intending to use directed surveillance or a CHIS shall apply for authorisation by completing the appropriate application form - **DS/1 - [Application for the use of Directed Surveillance](#) or CHIS/1- [Application for the use of Covert Human Intelligence Sources \(CHIS\)](#)** - and consult with the RIPA Co-ordinating Officer, who is the Principal Solicitor and Deputy Monitoring Officer (Anita Williams) who is also the central point for advice on law and procedure. She will submit completed authorisations to an authorising officer for consideration and advise the officer of the decision. In line with government guidance, the investigating officer will be responsible for making the application to the Magistrates' Court and attending any hearing.
- 5.3 **Confidential information and vulnerable or juvenile CHISs**  
Where the likely consequence of the directed surveillance or conduct of a source would be for any person to acquire knowledge of confidential information, the deployment of a source must be subject to special authorisation. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material. The use of vulnerable or juvenile CHISs requires special authorisation. In these cases the proposed course of conduct must be referred to the Chief Executive, or in his or her absence to the person acting as Head of Paid Service, normally the Deputy Chief Executive, for a decision as to whether authorisation may be granted. [See *Code of Practice for covert surveillance and property interference - Section 4 and Annex A*].
- 5.4 Broadly speaking, legal privilege extends to communications between lawyers and their clients, but not where that communication has a criminal purpose.
- 5.5 Confidential journalistic material includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

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5.6 Confidential personal information is information held in confidence relating to the physical or mental health or spiritual counselling concerning an individual (whether living or dead) who can be identified from it. Such information, which can include both oral and written communications, is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation. Examples might include consultations between a health professional and a patient, information from a patient's medical records or information held by a stockbroker which has been acquired or created in the course of the profession or business, including communications in which personal information is acquired or created.

5.8 In those cases where confidential information has been acquired and retained, the matter should be reported to the relevant Commissioner or Inspector during his next inspection and the material be made available to him if requested. Any application for authorisation to acquire confidential data should only be made where there has been prior consultation with the RIPA Co-ordinating Officer or other qualified legal officer.

## 6 GRANTING OF AUTHORISATIONS FOR DIRECTED SURVEILLANCE

6.1 Section 28 provides that a person shall not grant authorisation for *directed surveillance* unless he believes that:

6.1.1 the authorisation is **necessary** in the circumstances for the purpose of;

- preventing or detecting conduct which is a criminal offence being an offence punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment, or
- offences relating to the underage sale of alcohol and tobacco (*being those offences listed in Article 7A of the 2010 Order [SI: 2010/521] as amended*), or
- preventing disorder where such disorder involves a criminal offence punishable (whether on summary conviction or indictment) by a maximum term of 6 months' imprisonment,

and therefore any application must address **why** it is necessary.

6.1.2 the authorised surveillance is **proportionate** to what is sought to be achieved by it. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

6.2 A local authority may **not** authorise the use of directed surveillance under RIPA to investigate conduct or disorder that does not involve criminal offences

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or to investigate low level offences which may include, for example, littering, dog control and fly-posting. At the start of an investigation, council officers will need to satisfy themselves they are investigating a criminal offence punishable by a prison term of 6 months at least (unless related to under age tobacco and alcohol sales).

- 6.3 The authorising officer in determining whether the surveillance is proportionate will give particular consideration to any collateral intrusion on or interference with the privacy of persons other than the subject(s) of the surveillance. 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.
- 6.4 The Council officer must obtain an authorisations in writing from an authorising officer (see Section 5). Wherever possible authorising officers should not be responsible for authorising the activities of their own services.
- 6.5 Having obtained a written authorisation, it is then necessary to obtain the approval of a Justice of the Peace (Magistrate) ('JP'). The Home Office has issued guidance (which can be found [here](#)) on the judicial approval process as well as the relevant forms to use.
- 6.6 The RIPA Co-ordinating Officer (Deputy Monitoring Officer) will organise for the completion of the judicial application / order form with the investigating officer and liaise with HMCTS to arrange a hearing.
- 6.7 The investigating officer and authorising officer will attend the Court hearing with the application ready to answer the JP's questions, although the forms and supporting papers must by themselves make the case.
- 6.8 If the JP is satisfied that the statutory tests have been met and continue to be met and that the use of the technique is necessary and proportionate s/he will issue an order approving the grant or renewal. The JP will also check that the Council authorising officer was an appropriate designated person within the council and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met. This assessment does not remove or reduce in any way the duty of the Council's authorising officer to determine whether the tests of necessity and proportionality have been met.
- 6.9 The application/order signed by the JP and the original RIPA authorisation will need to be retained by the Council and kept on the central register maintained by the RIPA Co-ordinating Officer.
- 6.10 The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency.
- 6.11 No RIPA authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it (for instance when criminal activity is observed during routine duties).

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## 6.12 Duration of Directed Surveillance Authorisations and Reviews

An authorisation in writing ceases to have effect at the end of a period of 3 months beginning with the day on which it took effect, being the date of authorisation by the JP. So an authorisation starting 1 January would come to an end on 31 March. Regular reviews of authorisations should be undertaken. If, during an investigation it becomes clear that the activity being investigated does not amount to a criminal offence or that it would be a less serious offence that does not meet the threshold (of at least a maximum of 6 months in prison) the use of directed surveillance should cease. The results of the review should be recorded on **DS/2** [Review of the use of directed surveillance](#) and a copy filed on the central record of authorisations. If the surveillance provides access to confidential information or involves collateral intrusion more frequent reviews will be required. The authorising officer should determine how often a review should take place.

## 6.13 Renewals

6.13.1 While an authorisation is still effective the authorising officer can renew it if he considers this necessary for the purpose for which the authorisation was originally given. The authorisation will be renewed in writing for a further period, beginning with the day when the authorisation would have expired, but for the renewal, and can be for a further period of 3 months.

6.13.2 Applications requesting renewal of an authorisation are to be made on the appropriate form as set out at **DS/3** [Renewal of directed surveillance](#) and be submitted to the authorising officer.

6.13.3 Applications for renewal will record:

- whether this is the first renewal, if not, the occasion which the authorisation has previously been renewed
- the information as required in the original application, as it applies at the time of the renewal; together with;
  - the significant changes to the information in the previous authorisation
  - the reasons why it is necessary to continue with the surveillance
  - the content and value to the investigation or operation of the information so far obtained by the surveillance
  - an estimate of the length of time the surveillance will continue to be necessary

**Renewals will also require the approval of a JP in the magistrates' court before they can take effect and investigating officers should bear in mind the relevant timescales when considering the need to renew an authorisation.**

## 6.14 Cancellations

The person who granted or last renewed the authorisation **MUST** cancel it if he is satisfied that the directed surveillance no longer meets the criteria for

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authorisation. Requests for cancellation will be made on the appropriate form as set out at **DS/4** [Cancellation of the use of directed surveillance](#). and submitted to the authorising officer for authorisation of the cancellation. No JP's involvement is required for cancellation. When cancelling an authorisation, the authorising officer should:

- record the date and times (if at all) that surveillance took place and when the order to cease the activity was made
- the reason for cancellation
- ensure that the surveillance equipment has been removed and returned
- provide directions for the management of the product
- ensure that detail of property interfered with, or persons subjected to surveillance, since the last review or renewal is properly recorded.
- record the value of the surveillance or interference (i.e. whether the objectives as set in the authorisation were met).

## 6.15 Use of CCTV systems

6.15.1 General operation of overt CCTV equipment and the use of any information it has gathered in a reactive operation will not require a RIPA authorisation as it is not viewed as directed surveillance (see *paragraph 2.27 – 2.30 Code of Practice on Covert Surveillance and Property Interference*). Use as part of a proactive investigation (i.e. to track individuals) may well require authorisation.

6.15.2 The Council has regard to the [Surveillance Camera Code of Practice](#) regarding the use of CCTV and has a policy relevant to it which can be found [*link to be provided when CCTV policy adopted*].

## 7 GRANTING OF AUTHORISATION FOR THE CONDUCT AND USE OF COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

7.1 The same requirements of 'necessity' and 'proportionality' exist for the granting of CHIS authorisations as are set down for directed surveillance (see *sections 6.1.1. and 6.1.2* above) but the crime threshold (i.e. the availability of 6 month prison sentence) **does not** apply.

7.2 Additionally the authorising officer shall not grant an authorisation unless he/she believes that arrangements exist for a CHIS which satisfy the following requirements:

- there will at all times be an officer with day to day responsibility for dealing with the source and the source's welfare
- there will at all times be an officer who will have general oversight of the use made of the source
- there will at all times be an officer with responsibility for maintaining a record of the use made of the source
- those records will always contain particulars of all such matters as may be specified for this purpose by the Secretary of State

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- records which disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available
- 7.3 Similarly before authorising use or conduct of the source, the authorising officer must be satisfied that the conduct/use is proportionate to what the use or conduct of the source seeks to achieve, taking into account the likely degree of intrusion into privacy of those potentially effected or the privacy of persons other than those who are directly the subjects of the operation or investigation. Alternative means of gathering the evidence should be considered, and reasons given why this has been rejected. Measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation. Where there is intrusion upon a target this and any collateral intrusion should be kept to a minimum.
- 7.4 Particular care is required where people would expect a high degree of privacy or where, as a consequence of the authorisation confidential material is likely to be obtained. Where confidential material is likely to be acquired, or a juvenile or vulnerable CHIS is used, then approval must be obtained from the Chief Executive, or in his absence, the person acting as Head of Paid Service.
- 7.5 Consideration is also required to be given to any adverse impact on community confidence that may result from the use or conduct of a source or information obtained from that source.
- 7.6 Additionally, the authorising officer should make an assessment of any risk to a source in carrying out the conduct in the proposed authorisation. This should include the risk to the source of any task and the likely consequences should the role of the source become known. The ongoing security and welfare of the source, after the cancellation of the authorisation, should also be considered at the outset. A responsible officer should be identified within the service concerned who will have day to day responsibility for the control and direction and activities of the source, recording the information supplied by the source; and monitoring the source's security and welfare.
- 7.7 Authorisation for the use of a CHIS must be given in writing. **Care must be taken to make sure that covert surveillance does not become intrusive surveillance** (see section 3.6 above for what this is), **as this authority is not permitted to carry out intrusive surveillance. Application must also be made to a JP for authorisation before covert surveillance is undertaken.**
- 7.8 Ideally the authorising officers should not be responsible for authorising their own activities, e.g. those in which they themselves are to act as a source or in tasking a source. However it is recognised that this will not always be possible especially in the case of small departments.
- 7.9 An application for authorisation for the use or conduct of a source will be made on the appropriate form as set out at **CHIS/1 [Application for the use of Covert Human Intelligence Sources \(CHIS\)](#)** and must record:

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- The source's pseudonym or ref number
- The details of the handler
- The details of the manager with general oversight
- The person responsible maintaining records under the RIPA (Source Records) Regulations 2000
- Operation name
- Job title of authorising officer
- Purpose of specific operation or investigation
- The purpose for which the source will be tasked or deployed
- Details of what the source would be tasked to do
- Why the conduct or use of the source is necessary for the purpose of preventing or detecting crime or preventing disorder
- Why the conduct or use of the source is proportionate to what it seeks to achieve
- Details of potential collateral intrusion and why the intrusion is unavoidable, precautions to minimise collateral intrusion and how any will be managed, and whether the evidence could be obtained by any other means
- Any particular sensitivities in the local community where the source is to be used, and whether similar activities are being undertaken by other public authorities that could impact on the deployment of the source
- A risk assessment of the risk to the source in carrying out the proposed conduct
- Details of any confidential material that might be obtained as a consequence of the authorisation and confidential information authorisation

The RIPA (Source Records) Regulations 2000 (SI 2000/2725) further require a record to be kept of

- the identity of the source;
- the identity, where known, used by the source;
- any relevant investigating authority other than the authority maintaining the records;
- the means by which the source is referred to within each relevant investigating authority;
- any other significant information connected with the security and welfare of the source;
- any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of

the source have where appropriate been properly explained to and understood by the source;

- the date when, and the circumstances in which, the source was recruited;
- the identities of the persons who, in relation to the source, are discharging or have discharged the functions mentioned in section 29(5)(a) to (c) of the 2000 Act or in any order made by the Secretary of State under section 29(2)(c);
- the periods during which those persons have discharged those responsibilities;
- the tasks given to the source and the demands made of him in relation to his activities as a source;
- all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- the information obtained by each relevant investigating authority by the conduct or use of the source;
- any dissemination by that authority of information obtained in that way; and
- in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

#### 7.10 **Duration of Authorisations**

A written authorisation, unless renewed, will cease to have effect at the end of a period of twelve months beginning with the day on which it took effect, being the date of authorisation by the JP.

#### 7.11 **Renewals**

Authorisations for the conduct and use of CHIS can be renewed, the same criteria applying as on first authorisation. Applications for renewal must be made on the appropriate form as set out at **CHIS/3 [Renewal of authorisation to use Covert Human Intelligence Sources](#)** and submitted to the authorising officer. However, an application for renewal should not be made until shortly before the authorisation period is coming to an end.

7.12 An authorisation may be renewed more than once – provided it continues to meet the criteria for authorisation. **Renewals must also be approved by a JP before they can take effect.**

#### 7.13 **Reviews**

Regular reviews of authorisations should be undertaken. The results of the review should be recorded on **CHIS/2 [Reviewing the use of Covert Human Intelligence Sources \(CHIS\)](#)** and a copy filed on the central record of authorisations. If the surveillance provides access to confidential information or involves collateral intrusion frequent reviews will be required. The authorising officer should determine how often a review should take place.

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7.14 Before an authorising officer renews an authorisation he must be satisfied that a review has been carried out of:

- The use made of the source during the period authorised
- The tasks given to the source
- The information obtained from the use or conduct of the source

7.15 If the authorising officer is satisfied that the criteria necessary for the initial authorisation continue to be met, he may renew it in writing for a further period. **Renewals must also be approved by a JP before they can take effect.**

#### 7.16 **Cancellations**

The officer who granted or renewed the authorisation **MUST** cancel it if he/she is satisfied that

- the use or conduct of the source no longer satisfies the criteria for authorisation, or
- that the arrangements for the source's case no longer exist

7.17 Requests for cancellation will be made on the appropriate form as set out at **CHIS/4 [Cancellation of Covert Human Intelligence Sources \(CHIS\)](#)** and submitted to the authorising officer for authorisation of the cancellation. The cancellation process does not involve a JP.

#### 7.18 **Management Responsibility**

The day to day contact between the Council and the source is to be conducted by the handler, who will usually be an officer below the rank of the authorising officer. No vulnerable person or young person under the age of 18 should be used as a source.

#### 7.19 **Security and Welfare**

Account must be taken of the safety and welfare of the source. The authorising officer prior to granting authorisation should ensure that an assessment is carried out to determine the risk to the source of any tasking and the likely consequences should the target know the role of the source.

#### 7.20 **Special Rules**

The fullest consideration should be given in cases where, the subject of the surveillance might reasonably expect a high degree of privacy, for instance in his/her home, or where there are special sensitivities.

## **8 MAINTENANCE OF RECORDS**

8.1 The RIPA Co-ordinating Officer is responsible for keeping in a dedicated place;

- a record of all authorisations sought
- a record of authorisations granted and refused

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- applications for the granting, renewing and cancellation of authorisations
- a record of all JP approvals and renewals

The records will be confidential and will be retained for a period of 5 years (for both CHIS and directed surveillance) from the ending of the authorisation. It is intended that the Central Record will be spreadsheet format and represent the requirements of the *Code of Practice for Covert Surveillance and Property Interference (Chapter 8)* and the *Code of Practice for CHIS (Chapter 7)*

- 8.3 Authorising officers will ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities in the handling and storage of material.
- 8.4 Where material is obtained by surveillance which is wholly unrelated to a criminal or other investigation or the person subject of the surveillance and no reason to believe it will be relevant to future civil or criminal proceedings it should be destroyed immediately. The decision to retain or destroy material will be taken by the relevant authorising officer.

## **9 USE OF SOCIAL MEDIA FOR GATHERING EVIDENCE TO ASSIST IN ENFORCEMENT ACTIVITIES**

- 9.1 As explained in this policy, the Regulation of Investigatory Powers Act 2000 regulates the use of covert surveillance activities by Local Authorities. Special authorisation arrangements need to be put in place whenever the Council considers commencing a covert surveillance or obtaining information by the use of informants or officers acting in an undercover capacity.
- 9.2 This also includes the use of social media sites for gathering evidence to assist in enforcement activities, as set out below:
- officers must not create a false identity in order to ‘befriend’ individuals on social networks without authorisation under RIPA.
  - officers viewing an individual’s public profile on a social network should do so only to the minimum degree necessary and proportionate in order to obtain evidence to support or refute their investigation.
  - repeated viewing of open profiles on social networks to gather evidence or to monitor an individual’s status, must only take place once RIPA authorisation has been granted and approved by a Magistrate.
  - officers should 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.
- 9.3 Reviewing open source sites does not require authorisation unless the review is carried out with some regularity, usually when creating a profile, in which

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case directed surveillance authorisation will be required. If it becomes necessary to breach the privacy controls and become, for example, a 'friend' on Facebook, with the investigating officer utilising a false account concealing his/her identity as a Council officer for the purposes of gleaning intelligence, this is a covert operation intended to obtain private information and should be authorised, at a minimum, as directed surveillance. If the investigator engages in any form of relationship with the account operator then s/he becomes a CHIS requiring authorisation as such and management by a controller and handler with a record being kept and a risk assessment created.

## **10 AWARENESS OF THE CONTENTS OF THE ACT AND TRAINING**

It shall be the responsibility of the RIPA Co-ordinating Officer to have oversight of the training programme (to be organised by the H.R. training team) and to ensure that all staff involved or likely to be involved in investigations or enforcement receive a copy of the training document, have received training and are aware of the requirements and implications of the Act.

## **11 CODES OF PRACTICE**

A copy of each Code of Practice shall be kept in the reception area and be available to members of the public during usual working hours.

### **Outcomes**

A clear policy should support a positive outcome when the Council is next inspected by the Office of the Surveillance Commissioner.

### **Who is responsible for delivery?**

The Monitoring Officer as Senior Responsible Officer has oversight of:

- the integrity of the process in place within the local authority for the management of CHIS;
- compliance with Part II of the Act and with the Codes;
- oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- engagement with the Office of the Surveillance Commissioner (OSC) inspectors when they conduct their inspections, where applicable; and
- where necessary, oversight of the implementation of 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 the inspection reports prepared by the OSC.

- where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring the concerns are addressed.

The Deputy Monitoring Officer as the RIPA Co-ordinating Officer will:

- Maintain the central record of authorisations (see Section 8).
- Have oversight of all applications and authorisations for directed surveillance or use of CHISs, including preparation of the judicial application / order form.
- Providing general advice to investigating officers.
- Ensure a programme of RIPA training for all investigating officers and authorising officers (including the SRO) and the Co-ordinating Officer.
- Raise awareness of RIPA requirements throughout the organisation and ensuring staff are aware of the policy and receive appropriate support and training (with support from Heads of Service).

The Chief Executive, Deputy Chief Executive, S.151 Officer and Monitoring Officer are the council's four authorising officers. Only the Chief Executive (or acting Head of Paid Service in his absence) may authorise surveillance which involves confidential information (see *section 5.3*). Records of all authorisations, reviews and cancellations are to be kept by the RIPA Co-ordinating Officer.

### **Performance Monitoring**

Through the review provisions set out in the policy. The Council is also monitored by the Office of the Surveillance Commissioner which inspects approximately three yearly at the current time (last inspection Summer 2017).

It is also recommended that the Audit and Governance Committee should review the authority's use of RIPA, and the policy on an annual basis. Councillors must not be directly involved in, or have details disclosed to them of specific authorisations or engage in the authorisation process.

### **Policy Consultation**

Strategic Management Team and Audit and Governance Committee

### **Policy Review**

The RIPA Senior Responsible Officer will review the policy in 2020. In the interim any changes necessary to reflect updates in legislation or guidance will be made by the RIPA Senior Responsible Officer.

### **Related Policies and Strategies.**

Anti-fraud, Theft and Corruption Policy

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**Note:**

The links within the policy to Forms CH1, CH2, CH3, CH4, DS1, DS2, DS3, DS4 are to the forms on the Government website. The forms are also maintained on the Policy Register under RIPA by the RIPA Co-ordinating Officer.

## Agenda Item: 12



### Audit and Governance Committee

18 January 2018

### Audit and Governance Committee

#### Forward Plan 2017/18

Date of Committee	Report	Lead Officer
15 March 2018	<ul style="list-style-type: none"><li>• Annual Audit Plan 2018/19</li><li>• External Audit Plan</li><li>• Audit Committee update</li><li>• Accounting Policies Approval</li> <li>• CIL Methodology update</li> <li>• Early closure of 2017/18 Accounts</li></ul>	SWAP KPMG KPMG Financial Services Manager  Service Lead, Planning Strategy and Development Management  Strategic Lead Finance