

Agenda for consultative meeting of the Audit and Governance Committee
Thursday, 20th January, 2022, 2.30 pm



Members of Audit and Governance Committee

Councillors S Hawkins (Chair), M Armstrong, D Barrow, F Caygill, S Gazzard, P Hayward, N Hookway (Vice-Chair), J Kemp, G Pook and P Twiss

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Tuesday, 11 January 2022

Important - this meeting will be conducted online and recorded by Zoom only.

Please do not attend Blackdown House.

Members are asked to follow the [Protocol for Remote Meetings](#)

This meeting is being recorded by EDDC for subsequent publication on the Council's website and will be streamed live to the Council's Youtube Channel at <https://www.youtube.com/channel/UCmNHQruge3LVl4hcgRnbwBw>

Public speakers are now required to register to speak – for more information please use the following link: <https://eastdevon.gov.uk/council-and-democracy/have-your-say-at-meetings/all-other-public-meetings/#article-content>

Between 8th December 2021 to 11th May 2022, the Council has delegated much of the decision making to officers. Any officer decisions arising from recommendations from this consultative meeting will be published on the webpage for this meeting in due course. All meetings held can be found via the [Browse Meetings](#) webpage.

1 Public speaking

Information on [public speaking](#) is available online

2 Minutes of the previous meeting (Pages 3 - 5)

3 Apologies

4 Declarations on interest

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

5 Matters of urgency

Information on [matters of urgency](#) is available online

6 Confidential/exempt item(s)

To agree any items to be dealt with after the public (including the Press) have been excluded. There are no items which officers recommend should be dealt with in this way.

Matters for Decision

- 7 **External Audit Appointment from 2023/24** (Pages 6 - 11)
- 8 **External Audit Progress report - Grant Thornton** (Pages 12 - 25)
- 9 **Internal Audit Plan Progress 2021/22 - SWAP** (Pages 26 - 40)
- 10 **SWAP audit of Integrated Asset Management Contract update** (Pages 41 - 43)
- 11 **Review of the Anti-Fraud Theft and Corruption Policy, Anti-Bribery Policy and Whistleblowing Policy** (Pages 44 - 46)
- 12 **RIPA update and policy review** (Pages 47 - 66)
- 13 **Audit and Governance Forward Plan** (Page 67)

[Decision making and equalities](#)

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL

Minutes of the meeting of Audit and Governance Committee held at Online via the Zoom app. on 18 November 2021

Attendance list at end of document

The meeting started at 2.30 pm and ended at 3.45 pm

17 Public speaking

There were no members of the public registered to speak.

18 Minutes of the previous meeting

The minutes of the Audit and Governance Committee held on 23 September 2021 were recommended for approval.

19 Declarations on interest

None

20 Matters of urgency

None

21 Confidential/exempt item(s)

None

22 Councillor DBS checks

The Strategic Lead Governance & Licensing asked members to consider the Council's position in relation to DBS checks and associated risks.

During the debate discussions included the following:

- Consideration to including enhanced DBS checks to protect the most vulnerable in the community
- There was an assumption that councillors already had DBS checks, it gives residents confidence that the council was doing the right thing. It was only a matter of time before this would become legislation anyway
- DBS checks were only as good as the day they were issued. Would we be recommending that parish councillors also had them?
- Publishing DBS data online was not legal unless consent was granted by the individual concerned
- This was important as DBS checks could regulate councillor behaviour. There was a need to lobby Government now
- Government must lead on this
- Councillors have to prove they are fit and proper to undertake their duties, was it not for EDDC to double check this information?
- DBS checks were one factor, the Safeguarding Policy was essential alongside these checks for taking forward any matters that caused concern to a designated person.

The Portfolio Holder Democracy, Transparency and Communications thanked Henry Gordon Lennox for his report. She asked that safeguarding training was looked into and what this could include.

RECOMMENDED to Cabinet that;

Members noted the report and agreed that councillors undertake safeguarding training including training on the Council's safeguarding policy and its operation.

23 **External Audit Progress report - Grant Thornton**

Beth Garner from Grant Thornton provided an update on the progress in delivering their responsibilities as the council's external auditors.

Having received the report and noted the contents, members;

RECOMMENDED:

To note the External Audit Progress report.

24 **Risk Review Summer 2021 - Part 2**

Risk information for the 2021/22 financial year was supplied to allow the Committee to monitor the risk status of Strategic and Operational Risks. This followed the full review of risks by responsible officers during May/June 2021.

Having received the report and noted the contents, members;

RECOMMENDED:

To note the current status of risks following the full risk review undertaken in May/June 2021.

25 **Referral from Cabinet - Seaton Jurassic**

Alastair Woodland from SWAP explained that an audit report could be undertaken early next year concerning value for money on the Jurassic Centre; to include lessons learnt, what was done and what improvements could be done in the future.

From the Chair it was recommended that SWAP be asked to add this matter to their 2022/23 audit plan and ask Scrutiny Committee to look into this matter under their own terms of reference.

26 **Audit and Governance Forward Plan**

Members noted the contents of the Committee Forward Plan for 2021/22.

Items to be considered at the January committee included:

- Internal Audit Activity – Quarter 3 2021/22
- Audit Findings Report
- Audit Committee Progress update
- Risk Management review – half year review
- Review of the Anti-Fraud Theft and Corruption Policy, Anti-Bribery Policy and Whistleblowing Policy
- Review of the Local Code of Corporate Governance

- Strata Annual Internal Audit report
- RIPA update and policy review
- Update report from Service Lead Housing on SWAP Limited Assurance report

Attendance List

Councillors present:

S Hawkins (Chair)
D Barrow
S Gazzard
P Hayward
N Hookway (Vice-Chair)
P Twiss

Councillor apologies:

J Kemp
G Pook

Councillors also present (for some or all the meeting)

P Arnott
C Brown
S Jackson
P Millar
A Moulding

Officers in attendance:

Amanda Coombes, Democratic Services Officer
Simon Davey, Strategic Lead Finance
Beth AC Garner
John Golding, Strategic Lead Housing, Health and Environment
Henry Gordon Lennox, Strategic Lead Governance and Licensing (and Monitoring Officer)
Jackson Murray
John Symes, Finance Manager
Alastair Woodland, SWAP

Chair

Date:



Report to: Audit and Governance Committee

Date of Meeting 20 January 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

External Audit Appointment from 2023/24

Report summary:

This report sets out proposals for appointing the external auditor to the Council for the accounts for the five-year period from 2023/24 and seeks authority for the Strategic Lead Finance to opt in to the national scheme for auditor appointments on behalf of the Council.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

Recommend Council to;

1. Accept Public Sector Audit Appointments' invitation to opt into the sector-led option for the appointment of external auditors to principal local government and police bodies for five financial years from 1 April 2023;
2. Authorise the Strategic Lead Finance to opt in to the national scheme for auditor appointments for the provision of external audit services starting with the audit of the 2023/24 accounts.

Reason for recommendation:

The Council is required to appoint an appropriate external auditor

Officer: Simon Davey - sdavey@eastdevon.gov.uk

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

1. Background

- 1.1 The current auditor appointment arrangements cover the period up to and including the audit of the 2022/23 accounts. The Council opted into the ‘appointing person’ national auditor appointment arrangements established by Public Sector Audit Appointments (PSAA) for the period covering the accounts for 2018/19 to 2022/23.
- 1.2 PSAA is now undertaking a procurement for the next appointing period, covering audits for 2023/24 to 2027/28. All local government bodies need to make important decisions about their external audit arrangements from 2023/24. They have options to arrange their own procurement and make the appointment themselves or in conjunction with other bodies, or they can join and take advantage of the national collective scheme administered by PSAA.
- 1.3 If the Council wishes to take advantage of the national auditor appointment arrangements, it is required under the local audit regulations to make the decision at full Council. The opt-in period starts on 22 September 2021 and closes on 11 March 2022. To opt into the national scheme from 2023/24, the Council needs to return completed opt-in documents to PSAA by 11 March 2022.

2. Procurement of External Audit for the period 2023/24 to 2027/28

- 2.1 Under the Local Government Audit & Accountability Act 2014 (“the Act”), the Council is required to appoint an auditor to audit its accounts for each financial year. The Council has three options:
 - a) To appoint its own auditor, which requires it to follow the procedure set out in the Act.
 - b) To act jointly with other authorities to procure an auditor following the procedures in the Act.
 - c) To opt in to the national auditor appointment scheme administered by a body designated by the Secretary of State as the ‘appointing person’. The body currently designated for this role is Public Sector Audit Appointments Limited (PSAA).
- 2.2 In order to opt in to the national scheme, a council must make a decision at a meeting of the Full Council.

3. The Appointed Auditor

- 3.1 The auditor appointed at the end of the procurement process will undertake the statutory audit of accounts and Best Value assessment of the council in each financial year, in accordance with all relevant codes of practice and guidance. The appointed auditor is also responsible for investigating questions raised by electors and has powers and responsibilities in relation to Public Interest Reports and statutory recommendations.
- 3.2 The auditor must act independently of the Council and the main purpose of the procurement legislation is to ensure that the appointed auditor is sufficiently qualified and independent.
- 3.3 The auditor must be registered to undertake local audits by the Financial Reporting Council (FRC) employ authorised Key Audit Partners to oversee the work. As the report below sets out there is a currently a shortage of registered firms and Key Audit Partners.
- 3.4 Auditors are regulated by the FRC, which will be replaced by a new body with wider powers, the Audit, Reporting and Governance Authority (ARGA) during the course of the next audit contract.
- 3.5 Councils therefore have very limited influence over the nature of the audit services they are procuring, the nature and quality of which are determined or overseen by third parties.

4. Appointment by the Council itself or jointly

- 4.1 The Council may elect to appoint its own external auditor under the Act, which would require the Council to:
 - Establish an independent auditor panel to make a stand-alone appointment. The auditor panel would need to be set up by the Council itself, and the members of the panel must be wholly or a majority of independent members as defined by the Act. Independent members for this purpose are independent appointees, excluding current and former elected members (or officers) and their close families and friends. This means that elected members will not have a majority input to assessing bids and choosing to which audit firm to award a contract for the Council's external audit.
 - Manage the contract for its duration, overseen by the Auditor Panel
- 4.2 Alternatively, the Act enables the Council to join with other authorities to establish a joint auditor panel. Again, this will need to be constituted of wholly or a majority of independent appointees. Further legal advice would be required on the exact constitution of such a panel having regard to the obligations of each Council under the Act and the Council would need to liaise with other local authorities to assess the appetite for such an arrangement. No interest in the option has been shown in Devon.

5. The national auditor appointment scheme

- 5.1 PSAA is specified as the 'appointing person' for principal local government under the provisions of the Act and the Local Audit (Appointing Person) Regulations 2015.
- 5.2 PSAA let five-year audit services contracts in 2017 for the first appointing period, covering audits of the accounts from 2018/19 to 2022/23. It is now undertaking the work needed to invite eligible bodies to opt in for the next appointing period, from the 2023/24 audit onwards, and to complete a procurement for audit services. PSAA is a not-for-profit

organisation whose costs are around 4% of the scheme with any surplus distributed back to scheme members.

5.3 In summary the national opt-in scheme provides the following:

- the appointment of a suitably qualified audit firm to conduct audits for each of the five financial years commencing 1 April 2023;
- appointing the same auditor to other opted-in bodies that are involved in formal collaboration or joint working initiatives to the extent this is possible with other constraints;
- managing the procurement process to ensure both quality and price criteria are satisfied. PSAA has sought views from the sector to help inform its detailed procurement strategy;
- ensuring suitable independence of the auditors from the bodies they audit and managing any potential conflicts as they arise during the appointment period;
- minimising the scheme management costs and returning any surpluses to scheme members;
- consulting with authorities on auditor appointments, giving the Council the opportunity to influence which auditor is appointed;
- consulting with authorities on the scale of audit fees and ensuring these reflect scale, complexity, and audit risk; and
- ongoing contract and performance management of the contracts once these have been let.

6. Pressures in the current local audit market and delays in issuing opinions

6.1 Much has changed in the local audit market since audit contracts were last awarded in 2017. At that time the audit market was relatively stable, there had been few changes in audit requirements, and local audit fees had been reducing over a long period. 98% of those bodies eligible opted into the national scheme and attracted very competitive bids from audit firms. The resulting audit contracts took effect from 1 April 2018.

6.2 During 2018 a series of financial crises and failures in the private sector led to questioning about the role of auditors and the focus and value of their work. Four independent reviews were commissioned by Government: Sir John Kingman's review of the Financial Reporting Council (FRC), the audit regulator; the Competition and Markets Authority review of the audit market; Sir Donald Brydon's review of the quality and effectiveness of audit; and Sir Tony Redmond's review of local authority financial reporting and external audit. The recommendations are now under consideration by Government, with some recommendations implemented and others to follow. A new audit regulator (ARGA) is to be established.

6.3 The Kingman review has led to an urgent drive for the FRC to deliver rapid, measurable improvements in audit quality. This has created a major pressure for audit firms to ensure full compliance with regulatory requirements and expectations in every audit they undertake. By the time firms were conducting 2018/19 local audits during 2019, the measures they were putting in place to respond to a more focused regulator were clearly visible. To deliver the necessary improvements in audit quality, firms were requiring their audit teams to undertake additional work to gain deeper levels of assurance. However, additional work requires more time, posing a threat to the firms' ability to complete all their audits by the target date for publication of audited accounts. Delayed opinions are not the only consequence of the FRC's drive to improve audit quality. Additional audit work must also be paid for. As a result, many more fee variation claims have been needed than in prior years.

6.4 This situation has been accentuated by growing auditor recruitment and retention challenges, the complexity of local government financial statements and increasing levels of technical challenges as bodies explore innovative ways of developing new or enhanced income streams to help fund services for local people. These challenges have increased in subsequent audit years, with Covid-19 creating further significant pressure for finance and audit teams.

7. The National Scheme Invitation and Procurement Process

7.1 PSAA is now inviting the Council to opt in for the second appointing period, for 2023/24 to 2027/28, along with all other eligible authorities. Based on the level of opt-ins it will enter into contracts with appropriately qualified audit firms and appoint a suitable firm to be the Council's auditor.

7.2 The prices submitted by bidders through the procurement will be the key determinant of the value of audit fees paid by opted-in bodies. PSAA has pledged to:

- seek to encourage realistic fee levels and to benefit from the economies of scale associated with procuring on behalf of a significant number of bodies;
- continue to pool scheme costs and charge fees to opted-in bodies in accordance with the published fee scale as amended following consultations with scheme members and other interested parties (pooling means that everyone within the scheme will benefit from the prices secured via a competitive procurement process – a key tenet of the national collective scheme);
- continue to minimise its own costs, around 4% of scheme costs, and as a not for-profit company will return any surplus funds to scheme members. In 2019 it returned a total £3.5 million to relevant bodies and in 2021 a further £5.6million was returned.
- seek to encourage market sustainability in its procurement. Firms will be able to bid for a variety of differently sized contracts so that they can match their available resources and risk appetite to the contract for which they bid. They will be required to meet appropriate quality standards and to reflect realistic market prices in their tenders, informed by the scale fees and the supporting information provided about each audit. Where regulatory changes are in train which affect the amount of audit work suppliers must undertake, firms will be informed as to which developments should be priced into their bids.

7.3 The scope of a local audit is fixed. It is determined by the Code of Audit Practice (currently published by the National Audit Office), the format of the financial statements (specified by CIPFA/LASAAC) and the application of auditing standards regulated by the FRC. These factors apply to all local audits irrespective of whether an eligible body decides to opt into PSAA's national scheme or chooses to make its own separate arrangements. The requirements are mandatory; they shape the work auditors undertake and have a bearing on the actual fees required.

7.4 There are currently nine audit providers eligible to audit local authorities and other relevant bodies under local audit legislation. This means that a local procurement exercise would seek tenders from the same firms as the national procurement exercise, subject to the need to manage any local independence issues. Local firms cannot be invited to bid. Local procurements must deliver the same audit scope and requirements as a national procurement, reflecting the auditor's statutory responsibilities.

8. Not Opting in to the National Scheme

8.1 If the Council did not opt in there would be a need to establish an independent auditor panel as outlined above to make a stand-alone appointment. Alternatively, the Council

could join with other authorities to establish a joint auditor panel. Again, this will need to be constituted of wholly or a majority of independent appointees and further legal advice would be required on the exact constitution of such a panel, there is no appetite for this option locally.

- 8.2 These would be more resource-intensive processes to implement for the Council, and without the bulk buying power of the sector-led procurement would be likely to result in a more costly service. It would also be more difficult to manage quality and independence requirements through a local appointment process. The Council would still be unable to influence the scope of the audit and the regulatory regime inhibits the Council's ability to affect quality. The Council and its auditor panel would need to maintain ongoing oversight of the contract.
- 8.3 The national procurement provides the appointment of an independent auditor with limited administrative cost to the Council. By joining the scheme, the Council would be acting with other councils to optimise the opportunity to influence the market that a national procurement provides.
- 8.4 The recommended approach is therefore to opt in to the national auditor appointment scheme.

9. The Process to Opt in to the National Scheme

- 9.1 Regulation 19 of the Local Audit (Appointing Person) Regulations 2015 requires that a decision to opt in must be made by a meeting of the Council meeting as a whole.
- 9.2 The Council then needs to respond formally to PSAA's invitation in the form specified by PSAA by the close of the opt-in period (11 March 2022).
- 9.3 PSAA will commence the formal procurement process in early February 2022. It expects to award contracts in August 2022 and will then consult with authorities on the appointment of auditors so that it can make appointments by the statutory deadline of 31 December 2022.
- 9.4 There is a risk that current external audit fee levels could increase when the current contracts end. It is clear that the scope of audit has increased, requiring more audit work. There are also concerns about capacity and sustainability in the local audit market. However opting into a national scheme provides maximum opportunity to ensure fees are as realistic as possible, while ensuring the quality of audit is maintained, by entering into a large scale collective procurement arrangement.

Financial implications:

No direct financial implications at this stage. Financial implication will not be known until the outcome of national procurement exercise.

Legal implications:

The legal position is detailed in the report and no further comment is required.

East Devon District Council Audit Progress Report and Sector Update

Year ending 31 March 2021

20 January 2022

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The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit planning process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Authority or all weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Introduction

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This paper provides the Audit & Governance Committee with a report on progress in delivering our responsibilities as your external auditors.

Members of the Audit & Governance Committee can find further useful material on our website, where we have a section dedicated to our work in the public sector. Here you can download copies of our publications www.grantthornton.co.uk.

If you would like further information on any items in this briefing, or would like to register with Grant Thornton to receive regular email updates on issues that are of interest to you, please contact either your Engagement Lead or Engagement Manager.

Progress at December 2021

Financial Statements Audit

We signed the 2019/20 opinion in April 2021 and undertook our initial planning for the 2020/21 audit in June 2021.

In July 2021 we issued a detailed audit plan, setting out our proposed approach to the audit of the Authority's 2020/21 financial statements and reported this to the Audit & Governance Committee.

The significant risks we identified within our audit plan were as follows:

- management override of control;
- valuation of land and buildings, including investment properties and council dwellings; and
- valuation of the net pension fund liability.

We began our interim audit in November 2021 and after completing the relevant work have begun our work on your draft financial statements which we received 1 November 2021.

We aim to issue our opinion in March 2022. A summary of our progress against the significant risks and other areas of work will be provided verbally to the committee.

Value for Money

The new Code of Audit Practice (the “Code”) came into force on 1 April 2020 for audit years 2020/21 and onwards. The most significant change under the new Code is the introduction of an Auditor’s Annual Report, containing a commentary on arrangements to secure value for money and any associated recommendations, if required.

The new approach is more complex, more involved and is planned to make more impact.

Under the 2020 Code of Audit Practice, for relevant authorities other than local NHS bodies auditors are required to issue our Auditor’s Annual Report no later than 30 September or, where this is not possible, issue an audit letter setting out the reasons for delay.

As a result of the ongoing pandemic, and the impact it has had on both preparers and auditors of accounts to complete their work as quickly as would normally be expected, the National Audit Office has updated its guidance to auditors to allow us to postpone completion of our work on arrangements to secure value for money and focus our resources firstly on the delivery of our opinions on the financial statements. This is intended to help ensure as many as possible could be issued in line with national timetables and legislation. The extended deadline is now no more than three months after the date of the opinion on the financial statements.

Progress at December 2021 (cont.)

Other areas

Certification of claims and returns

We certify the Authority's annual Housing Benefit Subsidy claim in accordance with procedures agreed with the Department for Work and Pensions (DWP). The certification work for the 2020/21 claim is underway and at the date of writing we plan to certify the claim by the end of January 2022.

We also certify the Authority's annual Pooling of Housing Capital Receipts return in accordance with procedures agreed with the Department for Levelling Up, Housing and Communities (DLUHC). The certification work for the 2020/21 return began in November 2021, and initial queries have been submitted to the finance team. We aim to certify the claim before the end of January 2022.

Meetings

We met with Finance Officers in early October 2021 as part of our quarterly liaison meetings and continue to be in discussions with finance staff regarding emerging developments and to ensure the audit process is smooth and effective. We also met with your Chief Executive to discuss the Authority's strategic priorities and plans.

We have also invited your finance team to our free-to-attend annual accounts workshops which will take place on various dates in early 2022.

Audit Fees

During 2017, PSAA awarded contracts for audit for a five year period beginning on 1 April 2018. 2020/21 is the third year of that contract. Since that time, there have been a number of developments within the accounting and audit profession. Across all sectors and firms, the Financial Reporting Council (FRC) has set out its expectation of improved financial reporting from organisations and the need for auditors to demonstrate increased scepticism and challenge and to undertake additional and more robust testing.

Our work in the Local Government sector in 2018/19 and 2019/20 has highlighted areas where financial reporting, in particular, property, plant and equipment and pensions, needs to improve. There is also an increase in the complexity of Local Government financial transactions and financial reporting. This combined with the FRC requirement that all Local Government audits are at or above the "few improvements needed" (2A) rating means that additional audit work is required.

We have reviewed the impact of these changes on both the cost and timing of audits. We have discussed this with your s151 Officer including any proposed variations to the Scale Fee set by PSAA Limited, and have communicated fully with the Audit and Governance Committee.

As a firm, we are absolutely committed to meeting the expectations of the FRC with regard to audit quality and local government financial reporting.

Audit Deliverables

2020/21 Deliverables	Planned Date	Status
<p data-bbox="120 408 264 437">Audit Plan</p> <p data-bbox="120 456 1357 555">We are required to issue a detailed audit plan to the Audit & Governance Committee setting out our proposed approach in order to give an opinion on the Authority's 2020/21 financial statements and the Auditor's Annual Report on the Authority's Value for Money arrangements.</p>	July 2021	Complete
<p data-bbox="120 584 416 612">Audit Findings Report</p> <p data-bbox="120 632 1279 660">The Audit Findings Report will be reported to the January Audit & Governance Committee.</p>	March 2022	Not yet due – currently on track
<p data-bbox="120 699 338 727">Auditors Report</p> <p data-bbox="120 746 734 775">This is the opinion on your financial statements.</p>	March 2022	Not yet due – currently on track
<p data-bbox="120 813 450 842">Auditor's Annual Report</p> <p data-bbox="120 861 1155 890">This Report communicates the key issues arising from our Value for Money work.</p>	March 2022	Not yet due – currently on track

Sector Update

Authorities continue to try to achieve greater efficiency in the delivery of public services, whilst facing the challenges to address rising demand, ongoing budget pressures and social inequality.

Our sector update provides you with an up to date summary of emerging national issues and developments to support you. We cover areas which may have an impact on your organisation, the wider local government sector and the public sector as a whole. Links are provided to the detailed report/briefing to allow you to delve further and find out more.

Our public sector team at Grant Thornton also undertake research on service and technical issues. We will bring you the latest research publications in this update. We also include areas of potential interest to start conversations within the organisation and with audit committee members, as well as any accounting and regulatory updates.

- [Grant Thornton Publications](#)
- [Insights from local government sector specialists](#)
- [Reports of interest](#)
- [Accounting and regulatory updates](#)

More information can be found on our dedicated public sector and local government sections on the Grant Thornton website by clicking on the logos below:

Public Sector

Local
government

Financial Reporting Council annual report

On 29 October, the Financial Reporting Council (FRC) published its annual report setting out the findings of its review of the work of local auditors. The report summarises the results of the FRC's inspections of twenty audit files for the last financial year. A link to the report is here:

[FRC AQR Major Local Audits October 2021](#)

Grant Thornton are one of seven firms which currently delivers local audit work. Of our 330 local government and NHS audits, 87 are currently defined as 'major audits' which fall within the scope of the AQR. This year, the FRC looked at nine of our audits.

Our file review results

The FRC reviewed nine of our audits this year. It graded six files (67%) as 'Good' and requiring no more than limited improvements. No files were graded as requiring significant improvement, representing an impressive year-on-year improvement. The FRC described the improvement in our audit quality as an 'encouraging response by the firm to the quality findings reported in the prior year.' Our Value for Money work continues to be delivered to a high standard, with all of the files reviewed requiring no more than limited improvement. We welcome the FRC findings and conclusions which demonstrate the impressive improvement we have made in audit quality over the past year.

The FRC also identified a number of good practices including effective challenge of management's valuer, use of an auditor's expert to assist with the audit of a highly specialised property valuation, and the extent and timing of involvement by the audit partner on the VFM conclusion.

Our "Opinion" results over the past three years are shown in the table below:

Grade	Number 2020/21	Number 2019/20	Number 2018/19
Good with limited improvements (Grade 1 or 2)	6	1	1
Improvements required (Grade 3)	3	5	2
Significant improvements required (Grade 4)	0	0	1
Total	9	6	4

Our "VFM" results over the past two years are shown in the table below. The FRC did not review VFM in 2018/19:

Grade	Number 2020/21	Number 2019/20
Good with limited improvements (Grade 1 or 2)	6	6
Improvements required (Grade 3)	0	0
Significant improvements required (Grade 4)	0	0
Total	6	6

Financial Reporting Council annual report (cont.)

Quality Assurance Department (QAD) Reviews

In addition to the reviews undertaken by the FRC on major local audits, the QAD team from the ICAEW undertake annual reviews of non-major local audits as well as reviews of NHS Foundation Trusts on behalf of NHSE&I.

The QAD reviewed five of our audits this year and graded all of them (100%) as 'Satisfactory / generally acceptable' for both the financial statements and VFM elements of the audit, which is the highest grading.

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Grade	Number 2020/21	Number 2019/20	Number 2018/19
Satisfactory / generally acceptable	5	6	2
Improvement required	0	1	0
Significant improvement required	0	0	0
Total	5	7	2

Our continued commitment to Audit quality and continuous improvement

Our work over the past year has been undertaken during the backdrop of COVID-19, when the public sector has faced the huge challenge of providing essential services and helping safeguard the public during the pandemic. Our NHS bodies in particular have been at the forefront of the public health crisis.

As auditors we have had to show compassion to NHS staff deeply affected by the crisis, whilst staying focused on the principles of good governance and financial management, things which are more important than ever. We are very proud of the way we have worked effectively with audited bodies, demonstrating empathy in our work whilst still upholding the highest audit quality.

Over the coming year we will make further investments in audit quality including strengthening our quality and technical support functions, and increasing the level of training, support and guidance for our audit teams. We will address the specific improvement recommendations raised by the FRC, including:

- Enhanced training for local auditors on key assumptions within property valuations, and how to demonstrate an increased level of challenge
- Formalising our arrangements for the consideration of complex technical issues by Partner Panels.

As part of our enhanced Value for Money programme, we will focus on identifying the scope for better use of public money, as well as highlighting weaknesses in governance or financial stewardship where we see them.

Conclusion

Local audit plays a critical role in the way public sector audits and society interact, and it depends on the trust and confidence of all those who rely on it. As a firm we're proud to be doing our part to promote good governance, effective stewardship and appropriate use of public funds.

Guide to support Value for Money (VfM) analysis for public managers – CIPFA

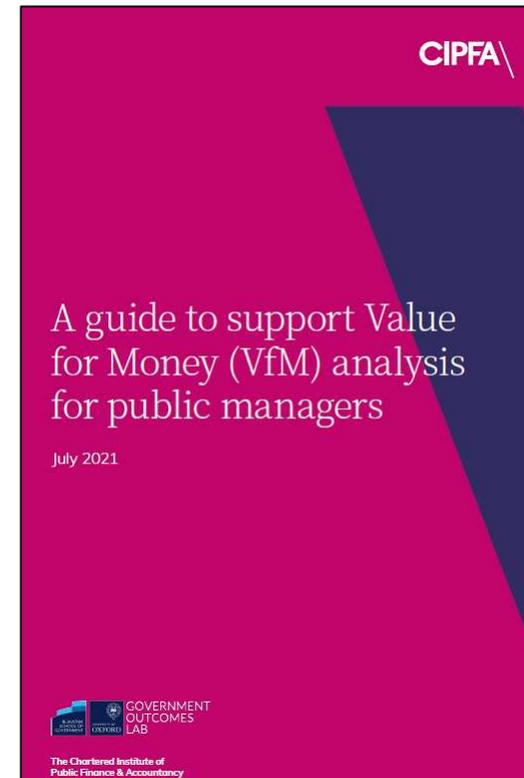
The Chartered Institute of Public Finance and Accountancy (CIPFA) has published this guide which complements a VfM toolkit which has been published separately. Both were developed under a collaborative project between Government Outcomes Lab (GO Lab) and CIPFA.

CIPFA state “The guide is aimed at public managers planning to assess Value for Money (VfM) of outcomes-based contract (OBC) programmes, or any other type of programme with an outcome-focus, using prospective information. This involves assessing economic validity of the programme with respect to ‘doing nothing’ as well as the closest comparator.”

CIPFA explain that the guide:

- Describes what VfM represents in public provision of social services with a special focus on outcome-based contracts (OBCs). In particular the guide emphasises the link between economy and effectiveness criteria.
- Promotes thinking about longer-term effects of interventions, such as outcomes and impact, at the design/ planning stage of programmes. This means that having a good appreciation for efficiency is helpful but not necessary, especially when outcomes are both identifiable and measurable.
- Explain how it could be used to appraise public programmes with respect to anticipated costs and value of them using prospective information.

The guide is available to CIPFA members through the website.



Climate change risk: A good practice guide for Audit and Risk Assurance Committees – NAO

The National Audit Office (NAO) has published this guide to help Audit Committees recognise how climate change risks could manifest themselves and support them in challenging senior management on their approach to managing climate change risks.

The NAO comment “Audit and Risk Assurance Committees (ARACs) play a key role in supporting and advising the board and Accounting Officer in their responsibilities over risk management.

This guide will help ARACs recognise how climate change risks could manifest themselves and support them in challenging senior management on their approach to managing climate change risks. We have outlined specific reporting requirements that currently apply.

Our primary audience is ARAC chairs of bodies that we audit, but the principles of the guide will be relevant for bodies across the wider public sector. It promotes good practice and should not be viewed as mandatory guidance.

Climate change and the nature of its impacts on organisations globally is changing rapidly. This guide acknowledges the evolving nature of climate change and its associated risks and opportunities and will be refreshed in the future to reflect those changes.”

The guide includes sections on “How to support and challenge management”. This includes sections on governance and leadership; collaboration; risk identification and assessment; risk treatment, monitoring and reporting and continual improvement. There is also a “Complete list of questions that Audit and Risk Assurance Committees can ask” for each of these areas. The guide also includes “Key guidance and good practice materials” with links.



The report can be found here:

[Climate change risk: A good practice guide for Audit and Risk Assurance Committees - National Audit Office \(NAO\) Report](#)

Local government and net zero in England – NAO

The National Audit Office (NAO) report responds to a request from the Environmental Audit Committee to examine local government and net zero. It considers how effectively central government and local authorities in England are collaborating on net zero, in particular to:

- clarify the role of local authorities in contributing to the UK's statutory net zero target; and
- ensure local authorities have the right resources and skills for net zero.

The NAO comment “While the exact scale and nature of local authorities’ roles and responsibilities in reaching the UK’s national net zero target are to be decided, it is already clear that they have an important part to play, as a result of the sector’s powers and responsibilities for waste, local transport and social housing, and through their influence in local communities. Government departments have supported local authority work related to net zero through targeted support and funding. However, there are serious weaknesses in central government’s approach to working with local authorities on decarbonisation, stemming from a lack of clarity over local authorities’ overall roles, piecemeal funding, and diffuse accountabilities. This hampers local authorities’ ability to plan effectively for the long-term, build skills and capacity, and prioritise effort. It creates significant risks to value for money as spending is likely to increase quickly.

MHCLG, BEIS and other departments recognise these challenges and are taking steps to improve their approach. Their progress has understandably been slowed by the COVID-19 pandemic, but there is now great urgency to the development of a more coherent approach.”

Key findings include:

- Central government has not yet developed with local authorities any overall expectations about their roles in achieving the national net zero target.
- There is little consistency in local authorities’ reporting on net zero, which makes it difficult to get an overall picture of what local authorities have achieved.
- Neither MHCLG nor HM Treasury has assessed the totality of funding that central government provides to local government that is linked with net zero.

The report can be found here:

<https://www.nao.org.uk/report/local-government-and-net-zero-in-england/>



Cyber and information security: Good practice guide – NAO

The National Audit Office (NAO) has published this guide to help Audit Committees scrutinise cyber security arrangements. To aid them, this guidance complements government advice by setting out high-level questions and issues for audit committees to consider.

The NAO state “Audit committees should gain the appropriate assurance for the critical management and control of cyber security and information risk.

Cyber security is the activity required to protect an organisation’s data, devices, networks and software from unintended or unauthorised access, change or destruction via the internet or other communications systems or technologies. Effective cyber security relies on people and management of processes as well as technical controls.

Our guide supports audit committees to work through this complexity, being able to understand and question the management of cyber security and information risk.

It takes into account several changes which affect the way in which we interact with and manage our information and can drive increased risk. These include changes to the way we work and live due to the COVID-19 pandemic and the ongoing demand to digitise and move to cloud-based services.

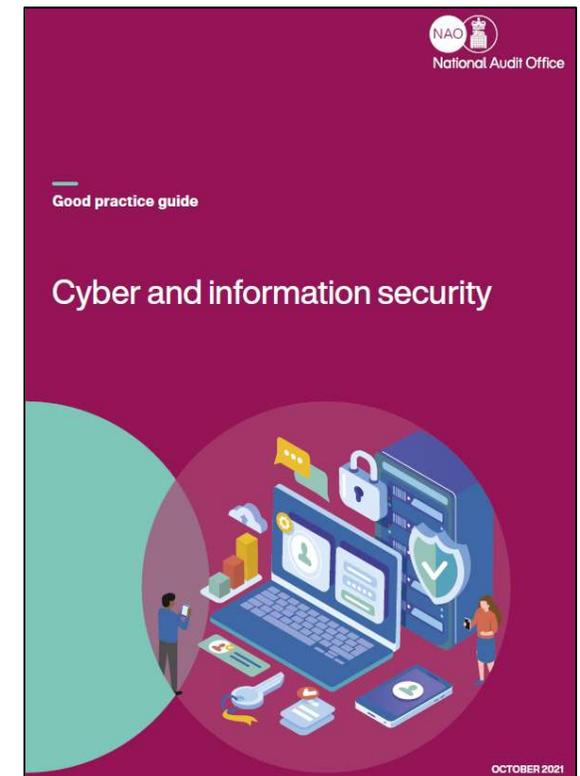
The strategic advice, guidance and support provided by government has also been updated to keep pace with these changes, detailing the impact and risks on the management of cyber security and information risk.

The guide provides a checklist of questions and issues covering:

- The overall approach to cyber security and risk management
- Capability needed to manage cyber security
- Specific aspects, such as information risk management, engagement and training, asset management, architecture and configuration, vulnerability management, identity and access management, data security, logging and monitoring and incident management.”

The report can be found here:

<https://www.nao.org.uk/report/cyber-security-and-information-risk-guidance/>





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Report to: Audit and Governance Committee

Date of Meeting 20 January 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Internal Audit Plan Progress January 2022 (2021/22)

Report summary:

This report is to provide an update on the 2021/22 Internal Audit Plan as at January 2022.

Recommendation:

Members are asked to note progress made in delivery of the 2021/22 internal audit plan and findings Reported.

Reason for recommendation:

The Committee are required to review the progress of the audit plan.

Officer: Alastair Woodland, Assistant Director, SWAP.

Portfolio(s) (check which apply):

- Climate Action
- Coast, Country and Environment
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Finance
- Policy Co-ordination and Regional Engagement
- Strategic Planning
- Sustainable Homes and Communities

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

Climate change Low Impact

Risk: Low Risk;

Links to background information [Internal Audit Plan 2021/22](#)

[Internal Audit Plan Progress Update September 2021](#)

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services



East Devon District Council

Report of Internal Audit Activity

Plan Progress 2021/22 January 2022

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Internal Audit Plan Progress 2021-22

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 SWAP Internal Audit Services (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 which was presented at the March 2021 Audit and Governance Committee.

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
- Grants
- Other Special or Unplanned Review

Internal Audit work is largely driven by an Annual Audit Plan. This is approved by the Senior Management Team in March 2021 following a consultation exercise. The 2021-22 Audit Plan was reported to the Audit and Governance Committee and approved at its meeting in March 2021. Audit assignments are undertaken in accordance with this Plan to assess current levels of governance, control and risk within East Devon District Council.

Internal Audit Plan Progress 2021-22

Outturn to Date:

We rank our recommendations on a scale of 1 to 3, with 3 being minor or administrative concerns to 1 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 in the draft plan for 2021-22. 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.

The following table summarises the Audits finalised from the 2021/22 Plan:

Audit Area	Opinion
LED	Reasonable
Corporate H&S – Revised Working arrangements	Reasonable
Fraud Risk Assessment*	Advisory
New: Election Financing	Reasonable
New: Annual Leave	Advisory
New: Remote meetings - Benchmarking	Advisory
New: DWP Referral	Advisory

*To assist the Audit Committee in its role in overseeing the counter fraud arrangements in the Authority the Fraud Risk Assessment will be shared with Committee members separately.

Internal Audit Plan Progress 2021-22

Significant Corporate Risks

Identified Significant Corporate Risks should be brought to the attention of the Audit Committee.

Completed Assignments:

Summary of work completed with a focus on the high priority issues that we believe should be brought to the attention of the Audit Committee.

- Limited or No Assurance Opinions
- Follow-ups



Significant Corporate Risks

We provide a definition of the 3 Risk Levels applied within audit reports and these are detailed in **Appendix A**. For those audits which have reached report stage through the year, I will report risks we have assessed as 'High'.

In this update there are no final reports included with significant (High) corporate risks.



Summary of Work Completed – Limited or No Assurance Opinions

There are no audits that have been offered a Limited or No Assurance Opinion.

Internal Audit Plan Progress 2021-22

Completed Assignments:

Summary of work completed with a focus on the high priority issues that we believe should be brought to the attention of the Audit Committee.

- Limited or No Assurance Opinions
- Follow-ups



Summary of Work Completed – Follow up Audits

There are no follow up audits to bring to your attention

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 25 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 2021/22 (as of 4 January 2021) were as follows:

Performance Target	Target Year End	Average Performance
<p><u>Audit Plan – Percentage Progress</u> Final, Draft and Discussion In progress Not Started</p>	>90%	52% 21% 28%
<p><u>Quality of Audit Work</u> Customer Satisfaction Questionnaire</p>	>95%	100%
<p><u>Outcomes from Audit Work</u> Value to the Organisation <i>(client view of whether our audit work met or exceeded expectations, in terms of value to their area)</i></p>	>95%	Year end

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Internal Audit Plan Progress 2021-22

We keep our audit plans under regular review so as to ensure that we are auditing the right things at the right time. Plan priority areas will be agreed on a quarter-by-quarter basis.



Approved Changes to the Plan

The audit plan for 2021/22 is detailed in **Appendix B**. The Audit Plan remains flexible to changes in priorities and emerging risks. A number of 'Additions' to the Internal Audit Plan were reported to the Audit Committee in September. Since September, in consultation with the Section 151 Officer and Senior Leadership Team, the audits that need to be deferred have now been agreed to accommodate these additional audits. Items that have been deferred will be carried in the rolling plan for inclusion in 2022-23.

The following audits have been added to the Internal Audit Plan. Timing of some audits were pushed back due to additional work picked up to balance the work across the year:

Original Audit Plan	Revised Audit Plan
Financial Planning (MFTP)	New: Election Finances (reported to Audit Committee September 2021)
Play Schemes/Areas	New: Annual Leave (reported to Audit Committee September 2021)
Post-Payment Assurance for Grant Schemes	New: Spotlight Checking Restart Grants (reported to Audit Committee September 2021)
Follow Up Contingency	New: Integrated Housing Contract- Follow Up (reported to Audit Committee September 2021)
Follow Up Contingency	New: Firmstep Follow up
	New: Resilience Fund Grant Spotlight (reported to Audit Committee September 2021)
	New: Housing Payments Process
Decision Making	New: Remote Meetings Benchmarking
Disabilities Facilities Grants (DFG)	New: Restart Grants Post Assurance CIA
Climate Change	New: DWP Referral (Security Breach)
Main Accounting	New: Whistleblowing

Internal Audit Plan Progress 2021-22

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Assurance Definitions	
No	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control are inadequate to effectively manage risks to the achievement of objectives in the area audited.
Limited	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.
Reasonable	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.
Substantial	A sound system of governance, risk management and control exist, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.
Non-Opinion/Advisory	In addition to our opinion-based work we will provide consultancy services. The “advice” offered by Internal Audit in its consultancy role may include risk analysis and evaluation, developing potential solutions to problems and providing controls assurance.

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

Categorisation of Recommendations	
In addition to the corporate risk assessment it is important that management know how important the recommendation is to their service. Each recommendation has been given a priority rating at service level with the following definitions:	
Priority 1	Findings that are fundamental to the integrity of the service’s business processes and require the immediate attention of management.
Priority 2	Important findings that need to be resolved by management.
Priority 3	Finding that requires attention.

Audit Type	Audit Area	Quarter	Status	Opinion	No of Rec	1 - Major 3 - Minor			Comments
						1	2	3	
FINAL									
Assurance	Payroll	1	Final	Substantial	0	0	0	0	
Assurance	Health and Wellbeing	1	Final	Reasonable	4	0	2	2	
Follow up	S106/CIL	1	Final	Follow up	0	0	0	0	All actions are completed
Advisory	New: Spotlight Checking – Restart Grants	1	Final	Advisory	0	0	0	0	
Assurance	LED	1	Final	Reasonable	5	0	2	3	
Advisory	Fraud Risk Assessment	1	Final	Advisory	0	0	0	0	2020/21 Audit
Assurance	Corporate H&S – Revised Working arrangements	2	Final	Reasonable	3	0	1	2	
Assurance	New: Election Financing	2	Final	Reasonable	3	0	1	2	
Assurance	New: Annual Leave	2	Final	Advisory	2	0	2	0	
Survey	New: Remote meetings - Benchmarking	2	Final	Advisory	0	0	0	0	
Assurance	New: DWP Referral	3	Final	Advisory	0	0	0	0	

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Audit Type	Audit Area	Quarter	Status	Opinion	No of Rec	1 - Major 3 - Minor			Comments
						1	2	3	
DRAFT									
Assurance	Fleet Management	2	Draft						
Assurance	Post-Payment Assurance for Grant Schemes	2	Draft						
Assurance	Small Works and Contracts	2	Draft						
Assurance	Risk Management	2	Draft						
IN PROGRESS									
Assurance	Homelessness	3	In Progress						
Assurance	New: Whistleblowing	3	In Progress						
Assurance	New: Housing Payments	3	In Progress						
Assurance	ICT Assurance	3	In Progress						
Assurance	Workforce Planning	3	In Progress						
Advisory	New: Resilience Fund Grant Spotlight Checks	3	In Progress						Management Request piece of work.

Audit Type	Audit Area	Quarter	Status	Opinion	No of Rec	1 - Major 3 - Minor			Comments
						1	2	3	
NOT STARTED									
Assurance	Debtors	3	Not started						
Assurance	Council Tax Support/Housing Benefit	3	Not started						
Assurance	Housing Rents	4	Not started						
Assurance	New: Restart Grants Post Payment Assurance CIA	4	Not started						
Assurance	Economic Resilience	4	Not started						
Assurance	Housing Compliance – Asbestos	4	Not started						
Assurance	New: Firmstep follow up	4	Not started						
Assurance	New: Integrated Housing Management Contract – Follow up	4	Not started						
Deferred to 2022-23 Audit Plan									
Assurance	Financial Planning (MFTP)	2	Not started	On rolling audit plan for 2022-23					
Assurance	Play Schemes/Areas	3	Not started	On rolling audit plan for 2022-23					

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Audit Type	Audit Area	Quarter	Status	Opinion	No of Rec	1 - Major 3 - Minor			Comments
						1	2	3	
Assurance	Main Accounting	3				On rolling audit plan for 2022-23 – earmarked for q2			
Assurance	Decision Making	3				On rolling audit plan for 2022-23			
Assurance	Disabilities Facilities Grants (DFG)	4				On rolling audit plan for 2022-23			
Assurance	Climate Change	4				On rolling audit plan for 2022-23 – earmarked for q1			

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Report to: Audit and Governance Committee



Date of Meeting: 20 January 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release: N/A

Update to the SWAP Audit of the Integrated Asset Management Contract

Report summary:

This report is to update members on work undertaken following the findings and recommendations contained within the SWAP Audit report of July 2020 and offer assurance that the amber concerns raised have been dealt with in a timely manner

The Integrated Asset Management Contract is the delivery mechanism for all the HRA repairs, maintenance and void processes and is managed by our procured contractor Ian Williams. The contract is currently in its 3rd year of operation and the partnership is maturing well. The working relationship between Ian Williams and EDDC is strong and able to withstand considerable challenge when required to ensure delivery targets are met

It is a sizable and highly transactional service contract completing some 900 -1400 jobs per month on behalf of our tenants and the HRA

There are very strong governance procedures written within the contract and these are followed scrupulously to ensure a clear audit trail, risk mitigation, value for money and financial probity. The governance meeting structure is set out below;

- Tool Box Talks and Training – to ensure all front line operatives have the skills and expertise they require to complete their job role and are clear about EDDCs expectations and delivery standards
- Reactive Repairs Meetings – held weekly for resource planning to ensure all targets are met
- Voids Meetings again held weekly, Housing Allocations Officers also attend this meeting to ensure a smooth transition back into rental
- Operational Group Meeting – Operational Managers meet weekly to discuss and address any delivery issues. If there are issues they are unable to address these are escalated to senior managers. Operational Group reports to Core Group
- Core Group – Strategic management and oversight of the contract and its delivery; review of KPIs, finance, risk, BCP, complaints etc

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

Members are requested to note this report as an update of the SWAP Audit carried out on the Integrated Asset Management Contract in July 2021

Reason for recommendation:

The above mentioned audit gave an amber pass to some areas of delivery. This report seeks to provide reassurance to members that these issues have been addressed and that this contract is robustly and competently managed to the benefit of the council and its tenants

Officer: Joanne Garfoot – Housing Service Lead – Acting JGarfoot@eastdevon.gov.uk

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

This contract was put in place to ensure EDDC could fully comply with its landlord and social housing provider obligations and value for money for the council.

Climate change Low Impact

Risk: Low Risk;

Links to background information

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

This report is intended to offer members reassurance and updated information on the amber rated key findings within the SWAP Audit Report. For ease the numbers below correspond with the findings within the audit

1. Risk Register – At the time of the audit the risk register had been presented and discussed at the last core group meeting held in March 2021 but was not a standard agenda item at Core Group Meetings. This has been addressed, so it is reviewed, updated and agreed at every quarterly meeting
2. Business Continuity Plan (BCP) – The BCP will be formally agreed at the next Core Group Meeting in January. However all risks that could have an impact on safe and consistent service delivery are captured within the Risk Register, which is reviewed and updated regularly

3. Monthly Reporting of Expenditure – Ian Williams provides a financial report at each Core Group Meeting. SWAP felt this was not really sufficient. However at the time of the audit we were already working with Ian Williams on producing a monthly finance report to be reviewed at the Operational Meetings and then a summary presented to Core Group
4. Annual Review Actions – a suggestion was made by SWAP that rather than having actions discussed and monitored via the Core Group Meeting minutes, that these be captured in a standalone Issues Log following each Annual Review. This has now been done, it is actioned by the Operational Group and reviewed at Core Group
5. Compliance Records – The housing service has an exemplary record of delivering full compliance with our statutory obligations. Ian Williams do not manage any of our major compliance works, they cover solid fuel, rain water harvesting etc however this does not negate the need for us to maintain accurate records and we do. The inference in the audit was that we don't receive inspection certificates from Ian Williams but this is not true. We do get them but sometimes there can be a lag, which we are working hard to shorten. Once received they are held within a spreadsheet overseen by our Compliance Manager. When we upgrade to the new One Housing information management system all compliance records will be stored within a new compliance module.....Open Housing does not have such a function
6. Contract Variations – This was raised due to the length of time it took us to manage a small contract amendment. This lead to significant delays in implementing changes that had been agreed at Core group. SWAP suggested a clear delegated authority process be confirmed through appropriate internal channels to reduce future impact. This has still to be finalised
7. Core Group Membership – within the contract there is a stipulation as to who should attend Core Group on behalf of both parties. Our Core Group does not contain 4 of these officers, but this was agreed and formalised within the Core Group Terms of Reference. Those 4 officers form the bulk of the Operational Group
8. Terms of Reference – although in place this document had not been formally ratified by Core Group – this has now been done
9. Core Group Actions – akin to point 4 this relates to actions being captured in the body of the Core Group minutes rather than on a separate Issues Log. This has been addressed and an Issues Log is in place

I hope this offers members the comfort of knowing that this contract is robustly managed. That very strong governance processes are in place and being followed rigorously. That we effectively monitor and mitigate presenting risk and that we have plans in place to cover all eventualities. This has been borne out by the contracts ability to continue to deliver across the district throughout the entire pandemic and in spite of significant staff shortages (currently 11 vacancies) within the Housing Property and Asset Team, who largely oversee and manage this contract

Financial implications:

No direct financial implications to be highlighted.

Legal implications:

There are no legal implications set out within the report on which to comment at this time.

Report to: Audit and Governance Committee



Date of Meeting 20 January 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Review of the Anti-Fraud Theft and Corruption Policy, Anti-Bribery Policy and Whistleblowing Policy

Report summary:

The Council's Whistleblowing Policy is due for review in January 2022 and the Anti-Fraud Theft and Corruption and Anti-Bribery policies are due for review in September 2022. Having reviewed the policies the recommendation is that they all remain fit for purpose and therefore no amendments are required. They will be reviewed again in three years' time or earlier if circumstances require.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That the Committee agree that following review the;

- (i) Anti-Fraud, Theft and Corruption Policy
- (ii) Anti-Bribery Policy
- (iii) Whistleblowing Policy

remain fit for purpose and will continue to apply unchanged.

Reason for recommendation:

The view is that the policies remain fit for purpose and there are no circumstances arising which necessitate any changes.

Officer: Henry Gordon Lennox, Monitoring Officer

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance

- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

- [Anti-Fraud, Theft and Corruption Policy](#)
- [Anti-Bribery Policy](#)
- [Whistleblowing Policy](#)
- [January 2019 Audit & Governance Committee](#) item 44

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1. The Council regularly reviews the policies, codes and procedures that govern the way we operate. This report relates to a review of three of our Key Policies; namely, the Anti-Fraud, Theft and Corruption Policy, the Anti-Bribery Policy and Whistleblowing Policy.
2. These policies were last reviewed in January 2019 by this Committee. A link to the existing policies and previous report is contained in the background links. Comments made in the January 2019 report in relation to audit reports are considered to remain relevant.
3. There have been no legislative changes that would require any of the policies to be changed / updated
4. In relation to the operation of the policies;

There have been no instances where the Anti-Bribery Policy has had to be considered.

In relation to the Whistleblowing Policy, there have been three instances where it has been considered. The first (November 2019) was a complaint to a national body about the way a sports club was being managed. This was copied to EDDC but as it was not specifically about EDDC no action was taken in relation to it. In December 2020 a grievance was also purportedly made under the whistleblowing policy. As it related to the individual's own interests, it was determined that the policy was not engaged. Finally, concerns have been raised under the whistleblowing policy in October 2021 in relation to one of the services the Council provides. As this is a live matter, currently under investigation by SWAP, it is not considered appropriate to provide more detail at this time.

Under the Anti-Fraud, Theft and Corruption Policy there have been five instances in the last three years where a matter has been identified that might have necessitated the calling of the Fraud Forum. In March 2019 there was a concern raised that IT equipment had been stolen from the Knowle – the equipment was eventually located. In April 2019 there was a claim, amongst other matters relating to a planning application, that an employee would

have influence in relation to a planning application - this was reviewed internally and by SWAP with a conclusion that there was no merit to the claim of wrongdoing. Also in July 2019 there was an allegation of theft of fuel by an employee – this was dealt with through the disciplinary process. In March 2021 a member of the public (acting through a councillor) raised historic concerns about an employee’s actions. The member of the public was concerned about recriminations and so (through the councillor) was advised to report the matter directly to SWAP but no more was heard. In conclusion, none of the instances fell within the ambit of the policy such that the Fraud Forum needed to meet.

5. It is considered that these policies are up to date with legal requirements and remain fit for purpose. For the above reasons it is recommended that the three policies continue to apply without amendment

Financial implications:

There are no direct financial implications.

Legal implications:

The review indicates that no changes are required to any of the listed policies. It should be noted that the Council must adhere to any adopted policy in the circumstances where it applies but otherwise there are no legal implications arising.

Report to: Audit and Governance Committee



Date of Meeting 20 January 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Directed surveillance and covert human intelligence sources policy (RIPA) update

Report summary:

To enable 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.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

Members are asked to consider the revised RIPA Policy contained at Appendix A and recommend its adoption to officers.

Reason for recommendation:

To update Members on RIPA including following receipt of the Investigatory Powers Commissioner's Report and to seek Members approval to a revised RIPA policy.

Officer: Henry Gordon Lennox, Strategic Lead Governance and Licensing

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change 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

[September 2017 A&G report](#)

[January 2018 A&G report](#)

[Current RIPA policy](#)

[Link to **Council Plan**](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
-

Report in full

1. The Committee last received reports on the Council's Directed Surveillance and Covert Human Intelligence Sources Policy (also known as RIPA) back in September 2017 and January 2018 (see background links). In light of the Committee's decision in January 2018, there is a standing item on RIPA for the committee to receive updates on activity falling within the scope of the Policy.
2. At its 24th September 2020 meeting, the Committee asked for a simple written explanation of RIPA to be provided to the Committee at its next meeting this could then be used on the Council's website to inform the public of the powers available and any recent use made of them; this being in line with some other authorities practice. More recently, the Council has been subject to an inspection by the Investigatory Powers Commissioner's Office (IPCO) in September 2020. This report addresses the committee request and outcome from the inspection.
3. Members are owed an apology for the length of time it has taken to bring the above information to the Committee, which has simply been down to workload pressure and competing priorities.

What is RIPA?

4. Everyone has a fundamental right to privacy. This right is contained in Article 8 of the European Convention on Human Rights enshrined in the Human Rights Act 1998 (HRA 1998):

"Everyone has the right to respect for his private and family life, his home and his correspondence".
5. This means, for example, a right not to be watched, have your mail opened or have your personal space invaded including by a public authority. Accordingly, a local authority is required to respect the private and family life of each citizen, their homes and correspondence. However, this right is qualified such that it can be interfered with where it is necessary and proportionate and carried out in accordance with the law. If these requirements are not met and an investigation undertaken that interfered with these rights then it would be unlawful interference.

6. The Regulation of Investigatory Powers Act 2000 (RIPA) is one such law that permits interference – it details ways in which public bodies can lawfully carry out investigations when there is a wish to use surveillance techniques. For local authorities these comprise;
 - directed surveillance (covert surveillance of individuals outside of residential premises and vehicles); and
 - covert human intelligence sources (CHIS) (such as the deployment of undercover officers)
 - the acquisition and disclosure of communications data (such as telephone billing information or subscriber details);
7. Where a local authority carries out overt investigation (e.g. enforcement officers on patrol, signposted CCTV cameras in normal use) then this does not fall within the scope of RIPA. Equally, obtaining information that is not private information about an individual but which is obtained without someone's immediate knowledge is in most cases not caught (e.g. including recording noise levels from outside a property where the occupier has been warned this will happen if the noise continues or Food Safety or Health and Safety inspections).
8. The general guiding principle is that if surveillance is overt, or is not obtaining private information it does not need to follow RIPA requirements. Where there is directed surveillance or use of a covert human intelligence source then the requirements of RIPA must be followed.
9. In short, RIPA requires any activity it covers to be appropriately authorised and there is an involved procedure for achieving this including, for local authorities, the need to get approval from a magistrate before commencing. When seeking approval, consideration must be given to the relevant Codes of Practice: Covert Surveillance and Property Interference and Covert Human Intelligence Sources (currently 2018) which include the requirement that a council should ensure that authorisations which are granted should be proportionate to the matter under investigation.
10. However it is not an unlimited power because local authorities may only use covert surveillance for the prevention and detection of crime; and only in those cases where the offence under investigation is subject to a term of imprisonment of 6 months or more. For example, if the investigation is into dog fouling an authorisation for surveillance would not be permitted and would in any event not be proportionate as it involves an invasion of privacy which is disproportionate to the seriousness of the offence. Local authorities may use covert techniques in support of their statutory powers where they are responsible for enforcing the law in respect of:

Environmental crime; consumer scams; loan sharks; taxi cab regulation; underage sale of knives, alcohol and tobacco; and the employment of minors. *[Not all of these areas are applicable to EDDC but they are included here for completeness].*

CHIS and directed surveillance techniques are used in test purchase operations to investigate the sale of tobacco, alcohol and other age-restricted products.
11. EDDC has not had cause to seek authorisation for any RIPA related activity in the recent past. RIPA activity (or lack of) is reported as the standing item on the Committee's agenda. The RIPA regime is overseen by the Investigatory Powers Commissioner's Office and regular inspection visits are made by IPCO to ensure that the Council's training regime and records are in order. The outcomes of the inspection visits are reported to this Committee to

ensure that the Council complies with statutory requirements. Complaint can also be made to IPCO where it is considered that the requirements of the RIPA regime have not been followed in any given case.

IPCO inspection

12. In light of COVID and also the lower risk that local authorities present, the last inspection was not a physical inspection and was carried out remotely. The letter from IPCO has been provided on the basis that before the report is made public then the organisation should be consulted first. IPCO is not subject to FOI and given the nature of what RIPA is and IPCO's role, one can understand the concern about disclosing such information. Whilst respecting this, it is worth noting the following headline comments;

- That the action points from previous inspections had been undertaken
- The Council is well placed with regard to the required safeguarding measures
- The Senior Responsible Officer has a strong understanding of the requirements, and a number of appropriate measures are in place which are supported by the relevant corporate policies
- While powers are rarely used, it is important that there should be regular, ongoing internal oversight of the actual or potential use of these powers, through the Senior Responsible Officer
- IPCO received appropriate reassurance that the integrity of your Council's processes and governance procedures will be maintained to ensure that high standards of compliance with the Act and relevant codes of practice are achieved

13. Overall the above is a positive endorsement to the Council's approach, however the Inspector did have some '*minor observations*' to strengthen the Council's position. In summary these are listed below;

- a. updating the RIPA Policy to incorporate some recent legislative and procedural changes (though the Investigatory Powers Act 2016 and with reference to the oversight role of IPCO)
- b. a change to the authorisation period for juvenile CHIS and a cross-reference to our corporate data management policies in relation to any data obtained
- c. combining the central records held for direct surveillance, CHIS and acquiring communications data into one record
- d. establishing the relationship with the National Anti-Fraud Network (which ensures that any applications to acquire communications data are monitored across the UK and make it much easier for organisations to process such applications).

14. These have been actioned and where the above necessitates changes to the Policy, amendments have been made and therefore the Committee is requested to approve the revised policy attached at Appendix A.

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.

East Devon District Council

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

Reviewed

March 2021

Policy Approval

Audit and Governance Committee on 20th January 2022.

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 members, and senior and relevant staff have been trained on its implementation and will be provided with regular refresher training.

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 which has been incorporated into UK legislation provides a right to private and family life. This

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is not an absolute right; it may be infringed in certain circumstances. The RIPA is designed to provide a statutory regulatory framework, which will meet the requirements of the European Convention on Human Rights and the subsequent provisions in UK legislation.

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) Investigatory Powers Act 2016
- (c) Human Rights Act 1998
- (d) Police and Criminal Evidence Act 1984

Relevant Statutory Instruments (include)

- (e) 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
- (f) The Regulation of Investigatory Powers (Juveniles) Order 2000/2793
- (g) 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 Investigatory Powers Commissioner's Office – website
- (f) Guidance from the Home Office on the judicial approval process for RIPA and crime threshold for directed surveillance

All RIPA Codes, relevant legislation and guidance can be found on the [Government](#) website. Further guidance and advice is also available on the [Investigatory Powers Commissioner's Officer](#) (IPCO) website. IPCO independently oversee the use of investigatory powers, ensuring they are used in accordance with the law and in the public interest. In a case where it is felt that requirements have not been followed, the non-compliance can be reported as an 'error' and IPCO will, in the case of a serious matter, investigate the matter further.

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
- (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

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- 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.

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), 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 and there

is a shorter authorisation period for juvenile CHISs. 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, 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.
- 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 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 Her Majesty's Court Service 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).

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

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- the reasons why it is necessary and proportionate 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 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 [Code of Practice Covert Surveillance and Property Interference eg. paragraph 3.36 - 3.39](#) .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.

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- 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
 - 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:
- 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 (four months in the case of a juvenile CHIS) beginning with the day on which it took effect, being the date of authorisation by the JP.

7.11 **Renewals**

Protective Marking: UNCLASSIFIED

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.

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.

Protective Marking: UNCLASSIFIED

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
- 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](#)

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:

Protective Marking: UNCLASSIFIED

- 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 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 Data Protection

Information ("product") obtained through directed surveillance or CHIS activity which is personal data will be dealt with in accordance with the Council's Data Protection Policy, relevant privacy notices and Document Retention Schedule. These can all be accessed from the [data protection pages](#) of the Council's website.

11 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.

12 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, S.151 Officer and Monitoring Officer are the council's three 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 September 2020). The Inspector confirmed that the SRO has a strong understanding of the requirements and that a number of appropriate measure are in place which are supported by the relevant corporate policies.

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 2025. 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
Data Protection Policy

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.

Audit and Governance Committee
20 January 2022

Audit and Governance Committee		
Forward Plan 2021/22		
Date of Committee	Report	Lead Officer
16 March 2022	<ul style="list-style-type: none"> • Annual Audit Plan 2022/23 and Review of Internal Audit Charter • Internal Audit Plan Progress • Auditor’s Annual Report • Audit Committee Progress update • 2021/22 External Audit Plan • Audit Findings Report • Accounting Polices Approval • Risk Management review – full year review • Review of the Local Code of Corporate Governance • Strata Annual Internal Audit report • RIPA update 	<p>SWAP</p> <p>SWAP</p> <p>Grant Thornton</p> <p>Grant Thornton</p> <p>Grant Thornton</p> <p>Grant Thornton</p> <p>Financial Services Manager</p> <p>Management Information Officer</p> <p>Strategic Lead – Governance & Licensing</p> <p>DAP</p> <p>Strategic Lead – Governance & Licensing</p>